

Fall 2017

# Police Brutality, the Law & Today's Social Justice Movement: How the Lack of Police Accountability has Fueled #Hashtag Activism

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## Recommended Citation

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## **Acknowledgements**

The author is grateful to Professor Victor Goode for his guidance while she worked on this article.

**POLICE BRUTALITY, THE LAW & TODAY’S  
SOCIAL JUSTICE MOVEMENT: HOW THE LACK  
OF POLICE ACCOUNTABILITY HAS FUELED  
#HASHTAG ACTIVISM**

*Corinthia A. Carter*†

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“It is necessary that the weakness of the powerless is transformed into a force capable of announcing justice. For this to happen, a total denouncement of fatalism is necessary. We are transformative beings and not beings for accommodation.”

—Paulo Freire, *Pedagogy of the Heart*<sup>1</sup>

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† Corinthia A. Carter graduated from CUNY School of Law in May 2017. She is grateful to Professor Victor Goode for his guidance while she worked on this article.

<sup>1</sup> PAULO FREIRE, *PEDAGOGY OF THE HEART* 36 (Donaldo Macedo & Alexandre Oliveira trans., 1997).

## I. INTRODUCTION

On April 30, 2014, Milwaukee police officers responded to complaints about a man sleeping in Red Arrow Park.<sup>2</sup> The man was Dontre Hamilton, 31, a Black male with a history of mental illness.<sup>3</sup> Christopher Manney, the white officer, woke up Hamilton and began patting him down.<sup>4</sup> At some point, a struggle ensued and it ended with Hamilton's death; his body left riddled with bullets.<sup>5</sup> Manney had shot Hamilton 14 times.<sup>6</sup> This story, unlike the stories of Michael Brown and a few others, received little social media coverage.<sup>7</sup> The lack of coverage did not inhibit protests by local residents and activists, which even led to the closing of I-43.<sup>8</sup> However, like other cases, the district attorney declined to prosecute, stating that Manney's "use of force . . . was justified self-defense."<sup>9</sup> Additionally, the Department of Justice cited insufficient evidence to pursue a civil rights violation claim.<sup>10</sup> Hamilton's murder is just one of the many murders suffered by Black males at the hands of officers. The seemingly state-sanctioned deaths of Black males are not abstract events, but rather almost daily occurrences.<sup>11</sup>

In recent years, with the assistance of individuals recording officers as they engage in violence against Black citizens, social media has become the venue in which the world has begun to see the

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<sup>2</sup> Aamer Madhani, *No Charges for Milwaukee Officer Who Shot Man 14 Times*, USA TODAY (Dec. 22, 2014, 11:39 AM), <http://www.usatoday.com/story/news/nation/2014/12/22/police-shooting-milwaukee/20760011/> [<https://perma.cc/N4XB-E8R6>] ("At the time of the call, Manney was handling another unrelated incident and two other officers were dispatched to the park, but Manney was unaware of it. The two other officers checked on Hamilton twice and determined he wasn't doing anything wrong."). The officers who originally reported had already left when Manney arrived at the scene. Manney was eventually fired from the Milwaukee Police Department.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Dave Begel, *Dontre Hamilton Deserves Some National Media Attention*, ONMILWAUKEE (Dec. 11, 2014, 5:30 AM), <https://onmilwaukee.com/buzz/articles/dontrehamilton.html> [<https://perma.cc/U6K3-57X5>].

<sup>8</sup> Madhani, *supra* note 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Federal Officials Close Review into the Death of Dontre Hamilton*, U.S. DEP'T JUST. (Nov. 10, 2015), <https://www.justice.gov/opa/pr/federal-officials-close-review-death-dontre-hamilton> [<https://perma.cc/W6F4-UJ46>].

<sup>11</sup> Jon Swaine et al., *Young Black Men Killed by US Police at Highest Rate in Year of 1,134 Deaths*, GUARDIAN (Dec. 31, 2015, 3:00 PM), <https://www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-young-black-men> [<https://perma.cc/3AUW-CBY5>].

human rights violations against Blacks.<sup>12</sup> This has led to much public outcry and has been the catalyst for today's social justice movements. The Black Lives Matter ("BLM") movement and others are products of the continued failure of this country's legislature and judiciary to enact and apply laws that effectively address the racially driven violence that police officers commit against Blacks. BLM calls for a complete reform in policing policies as well as true accountability for police departments that systematically violate the rights of Black individuals.<sup>13</sup>

BLM's efforts are the latest in a long legacy of Black resistance to police brutality. For decades, there has been a call for justice when police officers are not held accountable for causing the serious injury or death of Black men and women.<sup>14</sup> The responses from the impacted communities have included marches, boycotts, and protests.<sup>15</sup> However, police misconduct and violence continues to be an issue in this so-called post-civil rights era. There have only been some changes made in the way police officers handle their encounters with Black children, women, and men, yet many issues remain the same.<sup>16</sup>

In order to properly understand police violence—and the movements addressing it—today, it must be viewed through a racial lens. To try and address it in another manner would lead us to the same flawed conclusions and failed remedies. Excessive police force has disproportionately impacted Black lives. Numerous schol-

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<sup>12</sup> Damien Cave & Rochelle Oliver, *The Raw Videos That Have Sparked Outrage Over Police Treatment of Blacks*, N.Y. TIMES (Oct. 4, 2016), <https://www.nytimes.com/interactive/2015/07/30/us/police-videos-race.html> [<https://perma.cc/VU3P-XRQK>]; Drew Harwell, *How the Horror of Police Violence Against Blacks Was Shared in the Years Before Facebook*, WASH. POST: THE SWITCH (July 7, 2016), <https://www.washingtonpost.com/news/the-switch/wp/2016/07/07/how-the-horror-of-police-violence-against-blacks-was-shared-in-the-years-before-facebook/> [<https://perma.cc/SF5E-U8KE>].

<sup>13</sup> *About the Black Lives Matter Network*, BLACK LIVES MATTER, <http://blacklivesmatter.com/about/>.

<sup>14</sup> Harwell, *supra* note 12.

<sup>15</sup> See ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* 67 (1984) ("[N]onviolence became a disciplined form of mass struggle because it was systematically developed through the organized structures of the movement."); Frederick C. Harris, *The Next Civil Rights Movement?*, DISSENT, Summer 2015, at 34, 38 (describing protest tactics used by the civil rights movement and Black Lives Matter); Elahe Izadi, *Black Lives Matter and America's Long History of Resisting Civil Rights Protesters*, WASH. POST (Apr. 19, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/04/19/black-lives-matters-and-americas-long-history-of-resisting-civil-rights-protesters> [<https://perma.cc/J6RF-CA8J>].

<sup>16</sup> Garret Felber, *What Black Lives Matter Means Beyond Policing Reform*, U.S. NEWS (July 12, 2016, 10:04 AM), <https://www.usnews.com/news/articles/2016-07-12/what-black-lives-matter-means-beyond-policing-reform> [<https://perma.cc/BYR5-YDQS>].

ars have “analogize[d] police brutality today to lynchings in the past.”<sup>17</sup> In the years following the Emancipation Proclamation of 1863, law enforcement officers actively participated in lynching throughout America.<sup>18</sup>

According to recent data, in February 2016, a Black person was killed every thirty-two hours by law enforcement.<sup>19</sup> More than 100 unarmed Black persons were killed by officers in 2015, and less than 10% of those deaths have resulted in criminal charges against the officers involved.<sup>20</sup> There are very few instances where officers are promptly charged with the deaths of the individuals they murdered. In those cases, officers’ race and their victims’ race play a role in the action taken against them.<sup>21</sup> This is important to note as the Supreme Court continues to move toward a defective notion of “colorblindness.”<sup>22</sup> Colorblindness has been defined as a “racial ideology that posits the best way to end discrimination is by treating individuals as equally as possible, without regard to race, culture, or ethnicity.”<sup>23</sup> However, the notion of colorblindness is

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<sup>17</sup> Alexa P. Freeman, *Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality*, 47 HASTINGS L.J. 677, 690-91 (1996) (stating that lynchings and excessive force are both used to exercise social control).

<sup>18</sup> *Id.* at 691.

<sup>19</sup> *Police Violence Reports*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/reports/> [https://perma.cc/R283-46HP].

<sup>20</sup> *Police Killed More Than 100 Unarmed Black People in 2015*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/unarmed/> [https://perma.cc/V7JQ-2G6E].

<sup>21</sup> NAZGOL GHANDNOOSH, THE SENTENCING PROJECT, BLACK LIVES MATTER: ELIMINATING RACIAL INEQUITY IN THE CRIMINAL JUSTICE SYSTEM 3 (2015), <http://www.sentencingproject.org/publications/black-lives-matter-eliminating-racial-inequity-in-the-criminal-justice-system/> [https://perma.cc/4Y4G-ESGM] (“Official data, although woefully inadequate, show that over half of those killed by police in recent years have been Black or Latino. Officers involved in these killings are rarely indicted, much less convicted, for excessive use of force.” (footnotes omitted)). Anecdotal evidence in specific cases demonstrates a trend of failure to prosecute officers for the killing of unarmed Black individuals. *Compare* Kate Abbey-Lambertz, *Charges Dismissed Against Joseph Weekley, Cop Who Fatally Shot Sleeping 7-Year-Old*, HUFFINGTON POST (Jan. 28, 2015, 6:00 PM), [http://www.huffingtonpost.com/2015/01/28/joseph-weekley-charges-dismissed-aiyana-stanley-jones\\_n\\_6566032.html](http://www.huffingtonpost.com/2015/01/28/joseph-weekley-charges-dismissed-aiyana-stanley-jones_n_6566032.html) [https://perma.cc/2UKH-NL2J] (describing dismissal of charges against white officer who shot and killed Black girl in “botched” home raid), *with* Phil Helsel, *Two Louisiana Officers Arrested in the Fatal Shooting of Boy*, 6, NBC NEWS (Nov. 7, 2015, 10:36 AM), <http://www.nbcnews.com/news/us-news/two-louisiana-cops-arrested-fatal-shooting-boy-6-n459136> [https://perma.cc/2LG4-LXHT] (describing two Black officers quickly charged with second-degree murder for killing white autistic boy in his father’s car).

<sup>22</sup> Barbara J. Flagg, “Was Blind, But Now I See”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 958 n.24 (1993).

<sup>23</sup> Monnica T. Williams, *Colorblind Ideology Is a Form of Racism*, PSYCH. TODAY (Dec. 27, 2011), <https://www.psychologytoday.com/blog/culturally-speaking/201112/colorblind-ideology-is-form-racism> [https://perma.cc/TP96-7H3Z].

deficient because it fails to acknowledge the historical inequalities faced by Blacks in education, poverty, employment, and other areas, as compared to their white counterparts.<sup>24</sup> The laws that were created and continue to exist in this country are anything but colorblind.<sup>25</sup>

The continuous disregard for and attacks by police on “the Black body” should not be viewed as simply a civil rights issue as that framing is too general and too broad. It must be seen as a racial issue that should have criminal ramifications for the officers involved as well as serious financial penalties for police departments or precincts that allow their officers to continue their behavior without reprimand. It must be understood that in America “extinguishing [B]lack lives is legally, constitutionally, and culturally permissible . . . .”<sup>26</sup> Such categorical indifference for Black lives led to the creation of the BLM movement and subsequent groups to bring attention to these tragedies that plague American society.

Today’s social justice movement is a byproduct of inadequate laws and the continued injustice faced by the Black community. In the following pages, I will look at the contextual perception of the laws as well as the laws that were created to tackle police brutality. These laws, by appearing race-neutral, ignore the racist pillars that this country was built on. I will then review the other insufficient remedies that are currently in effect but provide little to no justice. Next, I will provide an overview of past rebellions against police violence and their connection to today’s hashtag activism. Lastly, I will discuss several proposed remedies and address their possible effectiveness.

## II. CONTEXTUAL PERCEPTION OF THE LAWS

The demonization of Blacks has led many to view the brutal conduct of police officers not as violence but rather as officers’ preservation of “self and community.”<sup>27</sup> In order for the vicious treatment of Blacks to be deemed permissible, it is important to paint the Black community as comprised of hyper-aggressive irrational beings that require whatever force police officers determine to be necessary. This provides officers with the green light to treat

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<sup>24</sup> *Id.*

<sup>25</sup> See Flagg, *supra* note 22, at 955-56.

<sup>26</sup> Zach Newman, Note, “*Hands Up, Don’t Shoot*”: Policing, Fatal Force, and Equal Protection in the Age of Colorblindness, 43 HASTINGS CONST. L.Q. 117, 119 (2015).

<sup>27</sup> Freeman, *supra* note 17, at 698-99.

Blacks as if their lives do not matter.<sup>28</sup> As a result of this belief and for fear of retaliation, police violence often goes “underreported, underinvestigated, underprosecuted and underconvicted.”<sup>29</sup>

Historically there has always been a double standard in the way police officers are treated when they commit violence against Blacks. Officers are often excused while victims are often blamed for their own deaths.<sup>30</sup> This was exhibited in the recent deaths of 43-year-old Eric Garner who was accused of selling loose cigarettes, 18-year-old Michael Brown who was accused of stealing cigars from a local store, and 12-year-old Tamir Rice, who was playing with a BB gun.<sup>31</sup> At the end of these cases, the victims were accused of acting in a manner that provoked officers into using deadly force. The list of Blacks being blamed for their deaths at the hands of police officers is extensive.<sup>32</sup>

Black men and boys are particularly at risk of losing their lives to officers regardless of whether they have committed a crime. According to a study published by the American Psychological Association, young Black males are presumed guilty and are considered years older than their actual age.<sup>33</sup> As these individuals are seen as threats, officers perceive that they have the authority to use the force necessary to maintain order and control.<sup>34</sup>

It is important to note that Black police officers have also

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<sup>28</sup> See GHANDNOOSH, *supra* note 21, at 17; Brentin Mock, *Police Are More Aggressive Overall in Encounters with African Americans*, CITYLAB (Nov. 17, 2015), <http://www.citylab.com/crime/2015/11/police-are-more-aggressive-overall-in-encounters-with-african-americans/416253/> [<https://perma.cc/7839-U98E>].

<sup>29</sup> Freeman, *supra* note 17, at 703.

<sup>30</sup> *Id.* at 704; Steve Chapman, *Are Blacks to Blame for Cops' Actions?*, CHI. TRIB. (Dec. 5, 2014, 7:36 PM) <http://www.chicagotribune.com/news/opinion/chapman/ct-garner-brown-ferguson-police-brutality-crime-blacks-perspec-1207-jm-20141205-column.html> [<https://perma.cc/N8MH-74QT>].

<sup>31</sup> Stacey Patton & David J. Leonard, *Viewpoint: Why Eric Garner Was Blamed for Dying*, BBC MAG. (Dec. 8, 2014), <http://www.bbc.com/news/magazine-30340632> [<https://perma.cc/H5DB-UJNR>].

<sup>32</sup> See, e.g., Julia Craven & Nick Wing, *What We Lose When Police Blame Victims for Their Own Deaths*, HUFFINGTON POST (May 15, 2015, 2:32 PM), [http://www.huffingtonpost.com/2015/05/15/police-shootings-victim-blaming\\_n\\_7284792.html](http://www.huffingtonpost.com/2015/05/15/police-shootings-victim-blaming_n_7284792.html) [<https://perma.cc/XJ63-JGWA>]; Simon Vozick-Levinson, *Black Lives Matter: 11 Racist Police Killings with No Justice Served*, ROLLING STONE (Dec. 4, 2014), <http://www.rollingstone.com/politics/news/black-lives-matter-11-racist-police-killings-with-no-justice-served-20141204> [<https://perma.cc/3CJ5-YLBL>].

<sup>33</sup> See generally Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526 (2014), <http://www.apa.org/pubs/journals/releases/psp-a0035663.pdf> [<https://perma.cc/Z3J8-UL6B>].

<sup>34</sup> Christopher Cooper, *An Afrocentric Perspective on Policing*, in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 331, 343 (Roger G. Dunham & Geoffrey P. Alpert eds., 7th ed. 2015).



fallen victims to violence at the hands of their fellow officers, solidifying the racial component of police violence. There have been several instances where Black officers were injured or killed by their colleagues. As early as 1940, “white officers in Harlem mistook a Black officer, John A. Holt Jr., for a burglar and shot him dead in his own apartment building.”<sup>35</sup> In 1972, another Black officer, William Capers, was once again shot and killed by a white officer.<sup>36</sup> This prompted the NYPD to implement the policy that requires undercover officers to wear their badge around their necks.<sup>37</sup>

In 2008, Christopher A. Ridley, a Mount Vernon officer, was shot and killed by Westchester officers while he was trying to restrain a suspect.<sup>38</sup> A year later, on May 29, 2009, off-duty NYPD officer Omar J. Edwards was shot and killed by a white officer shortly after pursuing an individual who had broken into his car.<sup>39</sup> In August 2010, off-duty officer Larry Johnson was beaten by fellow officers, who were called by his wife because there was “an armed man [who] had crashed a party” at their Queens home.<sup>40</sup> The gunman had already left when the police arrived, but then a fight erupted and the officers struggled to “both restrain and repel people . . . .”<sup>41</sup> Johnson was subsequently arrested and “received medical care for a broken hand while in police custody . . . .”<sup>42</sup>

On March 16, 2016, a Black Maryland police detective, Jacai Colson, was shot and killed by fellow officers.<sup>43</sup> The officers involved in the shooting claim that it was an incident of mistaken identity.<sup>44</sup> These incidents further indicate that the underlying is-

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<sup>35</sup> Michael Powell, *On Diverse Force, Blacks Still Face Special Peril*, N.Y. TIMES (May 30, 2009), <http://www.nytimes.com/2009/05/31/nyregion/31friendly.html> [https://perma.cc/F6FZ-L9LM].

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Russ Buettner & Al Baker, *Off-Duty Officer Is Fatally Shot by Police in Harlem*, N.Y. TIMES (May 29, 2009), <http://www.nytimes.com/2009/05/29/nyregion/29cop.html> [https://perma.cc/FF8V-KGZL].

<sup>39</sup> *Id.*

<sup>40</sup> Liam Stack, *Queens Officer Who Sued Police Over Beating Is Awarded \$15 Million*, N.Y. TIMES (Feb. 3, 2016), <https://www.nytimes.com/2016/02/04/nyregion/queens-officer-beaten-by-police-is-awarded-15-million.html> [https://perma.cc/5TN2-SBWJ].

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Tracee Wilkins & Andrea Swalec, *Police Chief: Maryland Officer ‘Deliberately’ Shot, Killed Fellow Officer; Sources: Shooting Was Case of Mistaken Identity*, NBC4 WASH. (Mar. 16, 2016, 11:56 AM), <http://www.nbcwashington.com/news/local/Prince-Georges-County-Police-Shooting-Suspect-Hit-With-25-Charges-372235001.html> [https://perma.cc/NEY4-NQ5N].

<sup>44</sup> *Id.*

sue is race, which drives officers to react to Blacks in a violent manner. The fact that the officers who were injured or killed took the same oath as their colleagues meant nothing because in the eyes of the system, they are Black and disposable.

So, how does the law respond to events like these? The next section will consider how the federal laws that were established to control police violence have methodically failed to effectively reduce it.

### III. THE LAW

There is a long history in the United States of police violence against civilians, which led the government to create laws that allowed citizens to seek a remedy when their rights were violated.<sup>45</sup> It has been argued that because the structure of modern police forces stems from slave patrols,<sup>46</sup> it was necessary to create laws to counter behaviors that were once sanctioned by the institution of slavery. Following the Emancipation Proclamation of 1863 and the 14th Amendment, laws were passed consisting of both criminal and civil remedies for civil rights violations.<sup>47</sup>

#### A. 18 U.S.C. § 242

In 1866, in an effort to tackle the violence against Blacks, Congress enacted a law, the substance of which is codified today at 18 U.S.C. § 242.<sup>48</sup> The deprivation of individual rights by federal,

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<sup>45</sup> MARILYNN S. JOHNSON, *STREET JUSTICE: A HISTORY OF POLICE VIOLENCE IN NEW YORK CITY* 13 (2003) (affirming that police violence had been documented since the mid-1800s following the formation of the NYPD).

<sup>46</sup> Stephen L. Carter, *Policing and Oppression Have a Long History*, BLOOMBERG VIEW (Oct. 29, 2015, 6:19 PM), <https://www.bloomberg.com/view/articles/2015-10-29/policing-and-oppression-have-a-long-history> [<https://perma.cc/4CC8-BX25>].

<sup>47</sup> See, e.g., Harry A. Blackmun, *Section 1983 and Federal Protection of Individual Rights-Will the Statute Remain Alive or Fade Away?*, 60 N.Y.U. L. REV. 1, 7-8 (1985) (“Reconstruction thus established a new legal order that contemplated direct federal intervention in what had been considered to be state affairs, a system in which federal courts were to enforce newly created federal constitutional rights against state officials through civil remedies and criminal sanctions.”); Donald H. Zeigler, *A Reassessment of the Younger Doctrine in Light of the Legislative History of Reconstruction*, 1983 DUKE L.J. 987, 992-1020 (1983) (describing federal laws passed in the Reconstruction era to provide remedies for civil rights violations).

<sup>48</sup> Civil Rights Act of 1866, ch. 31, sec. 2, 14 Stat. 27, 27 (“That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the

state, or local government officers (including police) acting “under color of any law” became a federal crime and harsher penalties were given when such violations lead to bodily injury or death.<sup>49</sup>

Currently, Section 242 allows for a fine and/or imprisonment of up to one year for any officer that deprives a person of their rights because of their color or race.<sup>50</sup> However, if that violation results in the victim’s death, the officer could face up to life in prison.<sup>51</sup> Apart from Section 242, which names race as an element, “[c]riminal prosecutions can also be brought under generally applicable state laws such as laws against assault, aggravated assault, manslaughter, and murder.”<sup>52</sup> In 1989, the Supreme Court established the objective reasonableness standard of police conduct which the U.S. Department of Justice (“DOJ”) currently applies to its Section 242 cases.<sup>53</sup> The standard determines “whether [an] officer’s actions are ‘objectively reasonable’ in light of facts and circumstances confronting them, without regard to their underlying intent or motivation.”<sup>54</sup>

#### B. 42 U.S.C. § 1983

As a compliment to Section 242, Congress passed a civil rem-

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punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.”). Similar language was reintroduced in 1948. *See* Act of June 25, 1948, ch. 645, § 242, 62 Stat. 696, 696 (codified as amended at 18 U.S.C. § 242 (2012)) (“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.”).

<sup>49</sup> 18 U.S.C. § 242 (2012); *see also* RACE, RACISM & AMERICAN LAW 463 (Derrick A. Bell ed., 4th ed. 2000).

<sup>50</sup> 18 U.S.C. § 242.

<sup>51</sup> *Id.*

<sup>52</sup> Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 465 (2004).

<sup>53</sup> *See* *Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (reasoning that a balancing test weighing the “‘nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake” must be applied in order to determine an officer’s reasonableness (quoting *United States v. Place*, 462 U.S. 696, 703 (1983))); *Law Enforcement Misconduct: Physical Assault*, U.S. DEP’T JUST., <https://www.justice.gov/crt/law-enforcement-misconduct#assault> [<https://perma.cc/2AFK-4YR5>] (last updated Jan. 26, 2017).

<sup>54</sup> *Graham*, 490 U.S. at 397.

edy in 1871.<sup>55</sup> Section 1983 allows individuals to file a civil action against anyone, acting “under color of any statute ordinance, regulation, custom, or usage, of any State or Territory,” that has deprived them “of any rights, privileges, or immunities secured by the Constitution and laws . . . .”<sup>56</sup> The Supreme Court allowed individuals to utilize this law as a means of enforcing their constitutional rights and to curb the police use of deadly force.<sup>57</sup> Similar to Section 242, this statute is rooted in the protections of the Fourth Amendment against “excessive (unreasonable) force during a search or arrest.”<sup>58</sup>

C. 42 U.S.C. § 14141

Another counterpart to Section 242 is Section 14141, which was established two years after the globally broadcasted Rodney King incident of 1991.<sup>59</sup> It was part of the Violent Crime Control and Law Enforcement Act of 1994, which was Congress’s approach to addressing the need for change in police departments across the U.S.<sup>60</sup> Section 14141 allows the DOJ to launch investigations against police departments that potentially “engage in a pattern or practice of [unlawful] conduct by law enforcement officers . . . .”<sup>61</sup>

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<sup>55</sup> Civil Rights Act of 1871, ch. 22, sec. 1, 17 Stat. 13, 13; *see also* Jeremy R. Lacks, Note, *The Lone American Dictatorship: How Court Doctrine and Police Culture Limit Judicial Oversight of the Police Use of Deadly Force*, 64 N.Y.U. ANN. SURV. AM. L. 391, 400 (2008).

<sup>56</sup> 42 U.S.C. § 1983 (2012).

<sup>57</sup> Lacks, *supra* note 55, at 401.

<sup>58</sup> Armacost, *supra* note 52, at 465.

<sup>59</sup> Simone Weichselbaum, *Policing the Police*, MARSHALL PROJECT (May 26, 2015, 6:12 PM), <https://www.themarshallproject.org/2015/04/23/policing-the-police> [<https://perma.cc/Q6QD-EV6A>] (“The Civil Rights Division conducts its broader, ‘pattern or practice’ investigations under [Section 14141]. That law took shape after the 1991 roadside beating of Rodney King by white officers of the Los Angeles Police Department, and was finally enacted in 1994.”).

<sup>60</sup> *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 210401, 108 Stat. 1796, 2071 (codified as amended at 42 U.S.C. § 14141).

<sup>61</sup> 42 U.S.C. § 14141 (2012); *see also* *Addressing Police Misconduct Laws Enforced by the Department of Justice*, U.S. DEP’T JUST., <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice> [<https://perma.cc/UVV8-CN7E>] (last updated Aug. 6, 2015) (“The types of conduct covered by this law can include, among other things, excessive force, discriminatory harassment, false arrests, coercive sexual conduct, and unlawful stops, searches or arrests. In order to be covered by this law, the misconduct must constitute a ‘pattern or practice’ — it may not simply be an isolated incident. The DOJ must be able to show in court that the agency has an unlawful policy or that the incidents constituted a pattern of unlawful conduct. However, unlike the other civil laws discussed . . . DOJ does not have to show that discrimination has occurred in order to prove a pattern or practice of misconduct. What remedies are available under this law? The remedies available under this law do not provide for individual monetary relief for the victims of the misconduct. Rather, they provide for injunctive relief, such as orders to end the misconduct and changes in the

This law also grants the U.S. Attorney General the authority to file lawsuits against police departments in order to “obtain appropriate equitable and declaratory relief to eliminate the pattern or practice.”<sup>62</sup> The lawsuits were a way “to effect organizational reforms designed to establish standards of accountability that will prevent such abuses from occurring in the future.”<sup>63</sup>

*D. Successes and Shortcomings of the Federal Provisions*

On their face, these laws provide victims with a remedy allowing some form of justice for police violence as well as holding police officers and their departments accountable for their actions and practices. Unfortunately, when the laws are applied, the officers often benefit from their application and victims are left remediless.

In 1945, the landmark case on criminal law accountability for state and private civil rights violators, *Screws v. United States*, addressed an action brought under then Section 20 of the Criminal Code (currently Section 242).<sup>64</sup> That case was about the murder of Robert Hall, a Black male, who was arrested late one night in his home by Sheriff Screws of Baker County, Georgia for stealing a tire.<sup>65</sup> Somewhere between the arrest in his home and arriving at the police station, Hall was beaten to unconsciousness by Screws and two other officers.<sup>66</sup> He died shortly after.<sup>67</sup> The Court established that there must be a balance found between state and federal laws and that a “[v]iolation of local law does not necessarily mean that federal rights have been invaded.”<sup>68</sup> “The fact that a prisoner is assaulted, injured, or even murdered by state officials

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agency’s policies and procedures that resulted in or allowed the misconduct. There is no private right of action under this law; only DOJ may file suit for violations of the Police Misconduct Provision.” (emphasis omitted)).

<sup>62</sup> 42 U.S.C. § 14141.

<sup>63</sup> Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State “Pattern or Practice” Statute*, 19 GEO. MASON U. C.R. L.J. 479, 479 (2009).

<sup>64</sup> *Screws v. United States*, 325 U.S. 91 (1945). Screws and others were indicted and convicted by a federal judge for the deliberate deprivation of Robert Hall’s right not to be deprived of life without due process of law, right to trial, and right to punishment under Georgia’s laws, as well as violation of his Fourteenth Amendment rights, after they beat him to death. At the Supreme Court, though, the convictions were reversed and the case remanded for retrial. At retrial, the defendants were acquitted. John Q. Barrett, *More on Screws v. United States*, JACKSON LIST (2010), <http://thejacksonlist.com/wp-content/uploads/2014/02/20100729-Jackson-List-More-Screws.pdf> [<https://perma.cc/28T6-LP53>].

<sup>65</sup> *Screws*, 325 U.S. at 92.

<sup>66</sup> *Id.* at 92-93.

<sup>67</sup> *Id.* at 93.

<sup>68</sup> *Id.* at 108.

does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States.”<sup>69</sup> In interpreting Section 20 to require specific intent of willfulness to deprive someone of Constitutional rights, the Court diminished the strength of the law and in effect devalued Black life.<sup>70</sup>

Twenty years after the *Screws* ruling, in *United States v. Price*, the Court moved away from its previous rulings on Section 241 (conspiracy against rights) and Section 242 and found that three officers and fifteen non-official defendants violated the rights of three civil rights workers when they were released from jail, taken to a secluded area by the county sheriff, and then lynched.<sup>71</sup> The Court reasoned that all eighteen individuals acted “‘under color’ of law” because the private persons were “willful participant[s] in joint activity with the State or its agents.”<sup>72</sup> This case brought about national attention which, in turn, put pressure on the Department of Justice to act.<sup>73</sup> Despite this pressure, many cases of murdered and missing Blacks pre-1970 remain unsolved and the government has taken no action to hold those involved accountable.<sup>74</sup> These deaths were a result of violence faced by Blacks during the Civil Rights movement.<sup>75</sup>

The *Screws* reluctance to hold officers criminally accountable for civil rights violations against Black people is reflected in the civil context as well. In *Monroe v. Pape*, the petitioner brought a Section 1983 action against the City of Chicago because the officers who violated his rights were acting “under color of law” and with-

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<sup>69</sup> *Id.* at 108-09.

<sup>70</sup> *Id.* at 103-05.

<sup>71</sup> *United States v. Price*, 383 U.S. 787 (1966). In *Price*, two white men and one Black man, civil rights workers, were arrested and held in Neshiba County jail, but were later released by the deputy sheriff. The sheriff took the men to a secluded area where the men were murdered and buried. The bodies of the men were discovered weeks later. The perpetrators were charged with violating the rights of the three civil rights workers. The fifteen men sought to have the Section 242 claim dismissed, but that failed.

<sup>72</sup> *Id.* at 794.

<sup>73</sup> FREDERICK M. LAWRENCE, *PUNISHING HATE: BIAS CRIMES UNDER AMERICAN LAW* 147 (1999).

<sup>74</sup> Ed Pilkington, *UN Panel to Consider U.S. 'Failure' to Clear Up Racial Murders of Civil Rights Era*, *GUARDIAN* (Mar. 19, 2015, 6:00 AM), <http://www.theguardian.com/world/2015/mar/19/un-us-racial-murders-civil-rights-era> [<https://perma.cc/59VB-VWMG>] (reporting that, in 2015, the United Nation's Human Rights Council held a special meeting to address America's failure to comply with a 2008 law that ordered the investigation of hundreds of pre-1970 cases where Blacks either disappeared or were murdered during the Civil Rights Era).

<sup>75</sup> *Id.*

out a search warrant.<sup>76</sup> Applying the *Screws* analysis, the court held that there must be adequate state action where the officer is accused of misusing his authority or violating state law.<sup>77</sup> It also limited municipal incentives to provide better training and supervision. The Court ruled that a cause of action is limited to individual offenders and not the city that employs him/her, thus protecting local governments from economic responsibility.<sup>78</sup> This ruling “left plaintiffs in an unfortunate situation, since police officers were all too often judgement-proof.”<sup>79</sup>

Even plaintiffs seeking injunctive relief in cases where there is a clearly determined violation have an extremely difficult time obtaining that relief.<sup>80</sup> In *Rizzo v. Goode*, the Court ruled that injunctive relief was not a proper remedy because the future actions of a handful of officers were considered too speculative.<sup>81</sup> The Court reasoned that granting such relief is a federal intrusion on State rights and, therefore, not within the Court’s jurisdiction.<sup>82</sup> The decision made it exceedingly difficult for plaintiffs to seek any form of relief and it was furthered by the Court’s ruling in *City of Los Angeles vs. Lyons*, where it found that Mr. Lyons’s claim of repeated injury from a chokehold by LAPD was too speculative,<sup>83</sup> and found his case non-justiciable due to lack of standing.<sup>84</sup>

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<sup>76</sup> *Monroe v. Pape*, 365 U.S. 167, 168 (1961). In *Monroe*, police officers broke into the victim’s home early one morning, forcing the husband and wife to stand naked as they searched the home. They detained Mr. Monroe on “open charges” and he endured ten hours of interrogation about a murder that took place two days prior. He was not allowed to contact his family or an attorney and was later released without going before the magistrate. No criminal charges were filed against him.

<sup>77</sup> RACE, RACISM & AMERICAN LAW, *supra* note 49, at 476.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 477.

<sup>81</sup> *Rizzo v. Goode*, 423 U.S. 362, 372 (1976). In *Rizzo*, numerous allegations of police violence and misconduct towards Black residents lead to class-action suits against the mayor and police commission of Philadelphia, seeking injunctive relief to address the ineffective civilian complaint procedures. *Id.* at 366-67. The trial court found for the plaintiffs, stating that procedures should be reformed. *Id.* at 368-70. The Supreme Court overruled the lower court’s ruling. *Id.* at 380-81.

<sup>82</sup> *Id.* at 379-80.

<sup>83</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1982). Lyons, a Black male, was stopped by officers for a traffic violation. Officers, without provocation, proceeded to choke Lyons to unconsciousness. As it was believed that this was a common practice of L.A. police officers, Lyons sought injunctive relief to prevent officers from applying chokeholds in their future interactions with civilians. The Court ruled that Lyons lacked standing because he was unable to prove that the officers had a policy of applying chokeholds and could not guarantee that he would interact with those officers again and that they would apply a chokehold to him again. *Id.*

<sup>84</sup> *Id.* at 111-13.

The impediments created by the Court coupled with the fact that Section 1983 suits are costly and that “juries are more likely to believe the police officer’s version of the incident than the plaintiff’s” (if the victims survive the encounter) renders these laws extremely limited as just options for victims of police violence.<sup>85</sup> According to Barbara Armacost, legal scholar and law professor, Section 242 and Section 1983 place the typical civil rights plaintiff, a criminal suspect, at a “distinct, practical disadvantage.”<sup>86</sup> These individuals often have criminal records, are poor, and are not considered reliable witnesses by juries.<sup>87</sup> Officers are able to serve as and provide more “credible witnesses” whereas a plaintiff must rely on the testimony of family and friends which jurors tend to view as untrustworthy.<sup>88</sup>

However, there is one noteworthy victory in a Section 1983 action. In *Tennessee v. Garner*, the Court ruled that it was unconstitutional for law enforcement to use deadly force when individuals are attempting to flee.<sup>89</sup> The Court held that laws interpreted to authorize officers to use deadly force to apprehend an “apparently unarmed suspected felon” violated the Fourth Amendment.<sup>90</sup>

While *Garner* was heralded as a victory, scholars have also argued that it was flawed because the Court’s ruling “severely restricted the Any-Felony Rule, but did not limit the use of deadly force to self-defense.”<sup>91</sup> This means that *Garner* essentially allows police officers to use deadly force even where there is no “life-threatening crime.”<sup>92</sup> This led some analysts to find that the decision would not have a substantial effect on “police conduct, be-

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<sup>85</sup> Alison L. Patton, Note, *The Endless Cycle of Abuse: Why 42 U.S.C. § 1983 Is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 754 (1993) (detailing the extent to which the law does nothing to prevent or discourage police violence as police are offered many protections rendering them virtually untouchable).

<sup>86</sup> Armacost, *supra* note 52, at 467.

<sup>87</sup> *Id.* at 467-68.

<sup>88</sup> *Id.* at 468 (“[O]fficers may be able to allege facts—such as that the plaintiff was resisting arrest or appeared to be reaching for a gun—that would support the officers’ use of force.”).

<sup>89</sup> *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). In this case, a young Black male suspect attempted to escape by climbing a fence. Officers, in accordance with Tennessee law, fatally shot him. *Id.* at 3-4. The Court found the law unconstitutional, holding that the “use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable.” *Id.* at 11.

<sup>90</sup> *Id.* at 3.

<sup>91</sup> Abraham N. Tennenbaum, *The Influence of the Garner Decision on Police Use of Deadly Force*, 85 J. CRIM. L. & CRIMINOLOGY 241, 245 (1994). The Any-Felony Rule stemmed from English common law and was interpreted by American courts as “legal permission to shoot an unarmed felony suspect in flight.” *Id.* at 242.

<sup>92</sup> *Id.* at 245.



cause the creation or modification of laws has never effectively modified police behavior.”<sup>93</sup>

Years later, the Court in *Graham*<sup>94</sup> “essentially prohibit[ed] any second-guessing of [an] officer’s decision to use deadly force: no hindsight is permitted, and wide latitude is granted to the officer’s account of the situation, even if scientific evidence proves it to be mistaken.”<sup>95</sup> Therefore, the law has not provided any real impact that compels individual officers or police departments to change the way they interact with members of the Black community.<sup>96</sup>

With respect to departmental charges, since its enactment, the DOJ has rarely enforced Section 14141. These cases are difficult to analyze as the DOJ does not provide much data. Between 2000 and 2013, DOJ made approximately 325 preliminary inquiries, but of those inquires only nine (2.8%), resulted in the appointment of an independent monitor.<sup>97</sup> Additionally, no cases have gone to trial under this provision as police departments tend to settle with the DOJ to avoid embarrassment.<sup>98</sup> When the DOJ establishes that a police department exhibits “a pattern or practice,” a monitor may be assigned to supervise reform, though this practice is not consistent across presidential administrations.<sup>99</sup>

Under the Obama administration, the DOJ became more aggressive in its application of the law.<sup>100</sup> However, there has been criticism with respect to the police departments the DOJ choose to investigate because larger police departments such as New York or

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<sup>93</sup> *Id.* (footnote omitted).

<sup>94</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>95</sup> Chase Madar, *Why It's Impossible to Indict a Cop*, NATION (Nov. 25, 2014), <http://www.thenation.com/article/why-its-impossible-indict-cop/> [<https://perma.cc/Z5SL-6BE6>]

<sup>96</sup> See Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3202 (2014) (“It only works if aggrieved parties regularly litigate and departments feel the financial consequences of this litigation, thus motivating them to change behaviors and policies.”).

<sup>97</sup> *Id.* at 3226, 3226 n.256. For a list of the negotiated settlements between DOJ and police agencies and which of those settlements resulted in a monitor being appointed, see *id.* at 3247.

<sup>98</sup> *Id.* at 3227-28, 3227 n.270 (all police departments settled).

<sup>99</sup> *Id.* at 3238-39.

<sup>100</sup> *Id.* at 3234 (“In March 2009, less than two months after Eric Holder took over as attorney general, the DOJ approved a consent decree with the Virgin Islands Police Department. This was the first negotiated settlement that the DOJ had approved under § 14141 in over five years. Since then, the DOJ has reached settlement agreements with seven different police agencies in seven different states. In three of these cases - the Virgin Islands; Seattle, Washington; and New Orleans, Louisiana - these settlements have included clauses that require the appointment of an external monitor to ensure departmental compliance with the terms of the agreement.” (footnotes omitted)).

Los Angeles seemed to avoid more serious scrutiny.<sup>101</sup> Critiques have focused on DOJ's lack of transparency in the policy and procedures for deciding which departments are in need of reform.<sup>102</sup>

In December 2015, the DOJ announced its plan to investigate police misconduct in Chicago to "determine whether there are systemic violations of the Constitution or federal law by officers of CPD [Chicago Police Department]."<sup>103</sup> This was long-awaited action by the DOJ because for decades the City of Chicago had been plagued with allegations of torture, murder, and coerced confessions.<sup>104</sup>

Shortly after the events in Ferguson, Missouri, the DOJ began investigating the city and its police department.<sup>105</sup> In its 104-page report, the DOJ concluded that the police engaged in a pattern/practice that violated the rights of its Black residents.<sup>106</sup> In February 2016, the DOJ filed a lawsuit against Ferguson, citing that the city failed to take any remedial measures to protect the rights of its

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<sup>101</sup> *Id.* at 3219.

<sup>102</sup> Rushin, *supra* note 96, at 3243.

<sup>103</sup> *Justice Department Opens Pattern or Practice Investigation into the Chicago Police Department*, U.S. DEP'T JUST. (Dec. 7, 2015), <https://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-chicago-police-department> [<https://perma.cc/KM5H-PWNM>] ("The investigation will focus on CPD's use of force, including racial, ethnic and other disparities in use of force, and its systems of accountability.")

<sup>104</sup> *See, e.g.*, Sarah Macaraeg & Yana Kunichoff, 'Nothing Happens to the Police': Forced Confessions Go Unpunished in Chicago, *GUARDIAN* (Jan. 28, 2016, 9:10 AM), <http://www.theguardian.com/us-news/2016/jan/28/chicago-police-department-false-confessions-torture> [<https://perma.cc/Y3QA-YFJZ>]; G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 *CUNY L. Rev.* 329, 362-63 (2014) (noting the continuous outcries of the citizens of Chicago and the City Council regarding police violence against people of color as well as the lack of accountability for police officers).

<sup>105</sup> *Justice Department Files Lawsuit to Bring Constitutional Policing to Ferguson, Missouri*, U.S. DEP'T JUST. (Feb. 10, 2016), <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-bring-constitutional-policing-ferguson-missouri> [<https://perma.cc/M2FC-TMT7>].

<sup>106</sup> *Id.* In the press release, Principal Deputy Assistant Attorney General Vanita Gupta stated "[o]ur investigation found that Ferguson's policing and municipal court practices violate the Constitution, erode trust and undermine public safety . . ." *Id.* The release went on to explain that "[t]he lawsuit, filed pursuant to Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994 and Title VI of the Civil Rights Act of 1964 (Title VI), alleges that the city of Ferguson, through its police department and municipal court: conducts stops, searches and arrests without legal justification, and uses excessive force, in violation of the Fourth Amendment; interferes with the right to free expression in violation of the First Amendment; prosecutes and resolves municipal charges in a manner that violates due process and equal protection guaranteed by the 14th Amendment; and engages in discriminatory law enforcement conduct against African Americans in violation of the 14th Amendment and federal statutory law." *Id.*

residents.<sup>107</sup>

The following month on March 30, 2016, the DOJ announced that it had reached a settlement with the city of Newark, New Jersey.<sup>108</sup> The settlement was based on the DOJ's findings that the Newark Police Department "has engaged in a pattern or practice of unconstitutional stops, searches, arrests, use of excessive force and theft by officers in violation of the First, Fourth and 14th Amendments."<sup>109</sup>

As the Court continues to place an insurmountable number of hurdles in front of plaintiffs seeking justice against police officers that have violated these federal laws and the DOJ inconsistently enforces Section 14141, victims and their families are often left to pursue local remedies.

#### IV. CURRENT STATE AND LOCAL REMEDIES

##### A. *Criminal Code*

In theory, police officers can be charged with violating state and local laws ranging from aggravated assault to second degree murder for violence against civilian suspects. However, in practice, officers are rarely prosecuted for such crimes, and on those occasions that they are charged, the officers are often acquitted. Between 2005 and 2014 there were 47 officers charged (including officers from Baltimore, Maryland; Cincinnati, Ohio; North Charleston, South Carolina; and Portsmouth, Virginia) and only 11 of them were convicted of a crime.<sup>110</sup> Officers are given special

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<sup>107</sup> *Id.* (The residents of Ferguson have waited nearly a year for their city to adopt an agreement that would protect their rights and keep them safe. They have waited nearly a year for their police department to accept rules that would ensure their constitutional rights and that thousands of other police departments follow every day. They have waited nearly a year for their municipal courts to commit to basic, reasonable rules and standards. But residents of Ferguson have suffered the deprivation of their constitutional rights – the rights guaranteed to all Americans – for decades. They have waited decades for justice. They should not be forced to wait any longer.)

<sup>108</sup> *Justice Department Reaches Agreement with City of Newark, New Jersey, to Reform Police Department's Unconstitutional Practices*, U.S. DEP'T JUST. (Mar. 30, 2016), <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-city-newark-new-jersey-reform-police-department-s> [https://perma.cc/Y4YQ-8QFJ] ("The Justice Department's findings were announced in July 2014 following a comprehensive investigation into the NPD started in May 2011. The investigation also found that this pattern of constitutional violations has eroded public confidence in the police. As a result, public safety suffers and the job of delivering police services was more difficult and more dangerous.")

<sup>109</sup> *Id.*

<sup>110</sup> Ian Simpson, *Prosecution of U.S. Police for Killings Surges to Highest In Decade*, HUFFINGTON POST (Oct 26, 2015, 9:21 AM), <http://www.huffingtonpost.com/entry/pros>

treatment whereas civilians would be charged and sentenced to the full extent of the law.<sup>111</sup> Bail set for police officers is extremely low considering the type of offense being charged.<sup>112</sup> For example, a young man who participated in the Baltimore riots protesting Freddie Gray's death was arrested for using a traffic cone to smash the window of a police car.<sup>113</sup> He was given \$500,000 bail, whereas the bail amounts for the officers charged with Freddie Gray's actual death ranged between \$250,000-\$350,000.<sup>114</sup>

Bail aside, it seems that there has been a recent "surge" in the number of officers that have been prosecuted.<sup>115</sup> Yet, the number of Blacks killed and the number of prosecutions, not convictions, remains very disproportionate.<sup>116</sup>

As officers rarely face criminal charges, citizens have to turn to other mechanisms of accountability, like filing complaints with their local civilian review boards hoping that some type of disciplinary action will be taken against the officer(s) that violated their rights.

### B. *Civilian (Complaint) Review Boards*

Civil rights advocates first started pushing for Civilian Review Boards ("CRBs") in the 1940s, as a way to offer some type of exter-

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ecution-police-killings\_562e26aee4b0ec0a3894eb23 [https://perma.cc/5QGE-TNDS] (explaining that public outrage, bystander videos, and body cameras are contributing factors that have motivated prosecutors to take some action against officers that murder Blacks).

<sup>111</sup> See, e.g., *White Ex-Police Chief Makes Plea Deal in Shooting of Black Man*, CBSNEWS.COM (Sept. 1, 2015, 3:58 PM), <http://www.cbsnews.com/news/richard-combs-white-police-chief-south-carolina-plea-deal-shooting-narmed-black-man/> [https://perma.cc/DQ5G-62HG]. In the case described in the article, former Police Chief Richard Combs of Eutawville, South Carolina, plead guilty to killing a Black man over a traffic ticket. After two mistrials the murder charges against him were dropped. For the guilty plea he only received a ten year suspended sentence in prison, five years of probation, and one year of home detention.

<sup>112</sup> Todd Oppenheim, Opinion, *Another Baltimore Injustice*, N.Y. TIMES (Nov. 28, 2015), <http://www.nytimes.com/2015/11/29/opinion/another-baltimore-injustice.html?mwrsm=Email> [https://perma.cc/NR7N-P4CB] (noting that officers involved in the death of Freddie Gray were given an opportunity to turn themselves in and assigned considerably low bail amounts).

<sup>113</sup> Adam Howard, *Teen Faces Higher Bail Than Baltimore Cops Accused of Murder*, MSNBC (May 1, 2015, 7:31 PM), <http://www.msnbc.com/msnbc/teen-faces-higher-bail-baltimore-cops-accused-murder> [https://perma.cc/9W7S-6G2N].

<sup>114</sup> *Id.*

<sup>115</sup> Simpson, *supra* note 110.

<sup>116</sup> Matt Ferner & Nick Wing, *Here's How Many Cops Got Convicted of Murder Last Year for On-Duty Shootings*, HUFFINGTON POST (Jan. 13, 2016, 11:34 AM), [http://www.huffingtonpost.com/entry/police-shooting-convictions\\_us\\_5695968ce4b086bc1cd5d0da](http://www.huffingtonpost.com/entry/police-shooting-convictions_us_5695968ce4b086bc1cd5d0da) [https://perma.cc/7WG7-3R8C].

nal oversight for police officers and address police corruption and violence.<sup>117</sup> These external entities are set up in cities as a way to police the police by providing “independent review of specific instances of police abuse or to determine whether the internal procedures used by police are legitimate.”<sup>118</sup> The boards’ roles and power are “determined by local politics, [and therefore] CRBs vary wildly in terms of powers, responsibilities, and actual success at supervising police.”<sup>119</sup> Though their purpose is to provide civilians with some authority to review and curb officers’ conduct, these boards in fact have very little impact on officer discipline. For example, in 2012 “the NYPD followed the [Civilian Complaint Review Board’s] recommendation in only 25 out [sic] 258 cases (9.7%). Officers received no discipline in 104 cases (40.3%).”<sup>120</sup> The CCRB recommended that officers receive the most severe discipline (ranging from loss of vacation days, suspension, probation, or termination) in 175 cases, however “the NYPD only sought charges in 7.”<sup>121</sup> Unfortunately, this supports the notion that the CCRB, and similar boards throughout the country, are ineffective in the fight for reforming police practices and stopping the violence against civilians.<sup>122</sup> Some argue that CRBs are ineffective because (1) police departments refuse to cooperate with the boards; (2) police departments generally reject the findings and recommendations of

<sup>117</sup> Andrew Rosado Shaw, Note, *Our Duty in Light of the Law’s Irrelevance: Police Brutality and Civilian Recordings*, 20 GEO. J. POVERTY L. & POL’Y 161, 166 (2012).

<sup>118</sup> Tim Lynch & Richard Stone, CATO Inst., *Civilian Review Boards*, POLICEMIS CONDUCT.NET, <http://www.policemisconduct.net/explainers/civilian-review-boards/> [<https://perma.cc/8SRS-5RVQ>].

<sup>119</sup> *Id.*

<sup>120</sup> *Police Punishment: CCRB vs NYPD*, WNYC, <http://project.wnyc.org/ccrb/> [<https://perma.cc/SZ8T-ZA49>] (emphasis omitted).

<sup>121</sup> *Id.*

<sup>122</sup> Donna Lieberman, Exec. Dir., N.Y. Civil Liberties Union, Testimony before The New York City Council Committee on Public Safety and the Committee on Civil Rights regarding The Civilian Complaint Review Board and Civilian Oversight of Policing (Mar. 9, 2007), <http://www.nyclu.org/content/civilian-complaint-review-board-and-civilian-oversight-of-policing> [<https://perma.cc/Q7C6-62U6>]; see also D. Brian Burghart, *Eyes Wide Open: What Should Citizen Oversight of Law Enforcement Look Like?*, RENO NEWS & REV., (Oct. 16, 2014), <http://www.newsreview.com/reno/eyes-wide-open/content?oid=15222461> [<https://perma.cc/CZ8V-NYKX>] (discussing the effectiveness of Civilian Review Boards in the wake of the nation’s attention to police violence); Sonia Moghe, *NYPD Fails to Discipline Officers Who Use Excessive Force, Report Says*, CNN (Oct. 2, 2015, 12:24 PM), <http://www.cnn.com/2015/10/02/us/new-york-police-excessive-force-report/> [<https://perma.cc/HB9N-432T>]; Timothy Williams, *Chicago Rarely Penalizes Officers for Complaints, Data Shows*, N.Y. TIMES (Nov. 18, 2015), <http://www.nytimes.com/2015/11/19/us/few-complaints-against-chicago-police-result-in-discipline-data-shows.html> [<https://perma.cc/5VK5-RRS3>] (“From 2011 to 2015, 97 percent of more than 28,500 citizen complaints resulted in no officer being punished, according to the files.”).

the boards; (3) citizens are often unaware of the boards' purpose and/or mission.<sup>123</sup>

As shown, these boards are not a viable remedy for Blacks as they have no real power and officers often go unpunished. People are left only with the hope that internal controls within police departments will discipline officers who have engaged in excessive force against Blacks.

### C. *Administrative Action*

Police departments have internal mechanisms that are intended to investigate officers for misconduct (i.e. Internal Affairs). However, this system also fails to properly and consistently discipline officers for their reckless behavior and utter disregard for Black lives. For serious infractions, such as breaking internal policies, officers face little punishment. While the departments conduct an "investigation" officers are regularly given desk duty or administrative leave (often with pay—in other words, a paid vacation) which is often part of their union contracts.<sup>124</sup> As there are often public records exemptions in place, police departments are not forthcoming with data detailing the disciplinary actions taken to enforce their internal policies, many of which may not address issues involving excessive force.<sup>125</sup>

The ineffectiveness of these remedies have left citizens angry and frustrated. Over the years, this has prompted members of the Black community and their allies to take their vexation to the streets.

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<sup>123</sup> ALLYSON COLLINS, HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES 73-75 (1998), <https://www.hrw.org/legacy/reports98/police/download.htm> [<https://perma.cc/JM5C-QTYB>] (explaining these limitations as they relate to the New York Civilian Complaint Review Board and Philadelphia's Police Advisory Commission).

<sup>124</sup> See, e.g., Mark Gokavi, *Officer Who Shot John Crawford to Stay on Desk Duty*, DAYTON DAILY NEWS (Dec. 4, 2014, 7:21 PM), <http://www.daytondailynews.com/news/news/crime-law/officer-who-shot-john-crawford-to-remain-on-desk-d/njLwC/> [<https://perma.cc/8BHE-STTB>]; Aaron C. Davis, *Lengthy Review Process Keeps Prince George's Police Who Fire Weapons Off Patrol*, WASH. POST (Apr. 13, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/12/AR2009041202726.html> [<https://perma.cc/2UBU-LJK4>]; *Fair Police Contracts*, CAMPAIGN ZERO, <http://www.joincampaignzero.org/contracts/> [<https://perma.cc/2M9J-DYSC>].

<sup>125</sup> CHRISTINE BECKETT, REPORTERS COMM. FOR FREEDOM OF THE PRESS, PRIVATE EYES: CONFIDENTIALITY ISSUES AND ACCESS TO POLICE INVESTIGATION RECORDS 2 (2010), <https://www.rcfp.org/rcfp/orders/docs/PRIVATEEYES.pdf> [<https://perma.cc/PEA7-PH4W>].

## V. HISTORY OF REBELLION AGAINST POLICE BRUTALITY

America has an extensive history of Black people rebelling against the continuous assault against their communities.<sup>126</sup> Police misconduct against the Black community represents the larger issue of institutional racism.<sup>127</sup> Though it may seem that these incidents are responses to individual events, they in fact symbolize a rebellion against institutional racism and a system that does little to protect its Black citizens.<sup>128</sup> Therefore, the fight against one becomes a figurative fight against all. The following historical events – a sampling of some of the most notable riots that took place – happened as an attempt to compel change and to make others aware of the injustices that plague Black communities. They provide valuable historical context for the rise of BLM.

### 1. Harlem, New York

On August 1, 1943, Robert Bandy, a Black soldier, approached a white police officer who was in the process of arresting a Black woman for disorderly conduct.<sup>129</sup> At some point, the officer shot and wounded Bandy.<sup>130</sup> Shortly after the incident, thousands of angry citizens gathered and a riot began. The next day Mayor Fiorello La Guardia called for the assistance of the U.S. Army and put a 10:30 PM curfew into place.<sup>131</sup> There were two days of civil unrest, which resulted in six deaths and five hundred arrests.<sup>132</sup>

### 2. Philadelphia, Pennsylvania

On August 28, 1964, an argument between a bystander and two police officers (one white and the other Black) ensued shortly after Odessa Bradford's (a Black woman) car stopped working on a

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<sup>126</sup> Casey Gane-McCalla, *Riots Racism and Police Brutality: A Never Ending Cycle*, HUFFINGTON POST: THE BLOG (Feb. 11, 2009, 5:12 AM), [http://www.huffingtonpost.com/casey-ganemccalla/riots-racism-and-police-b\\_b\\_156771.html](http://www.huffingtonpost.com/casey-ganemccalla/riots-racism-and-police-b_b_156771.html) [https://perma.cc/FU6A-W4MF].

<sup>127</sup> Alev Dudek, *Police Brutality Against Black Men, Plausible Outcome of Structural Racism*, HUFFINGTON POST: THE BLOG (June 22, 2015, 5:50 PM), [http://www.huffingtonpost.com/alev-dudek/police-brutality-against-2\\_b\\_7633184.html](http://www.huffingtonpost.com/alev-dudek/police-brutality-against-2_b_7633184.html) [https://perma.cc/7BXW-NVY6].

<sup>128</sup> *Id.*

<sup>129</sup> Ricky Riley, *8 Facts You May Not Know About the Harlem Riot of 1943*, ATLANTA BLACK STAR (Aug. 2, 2014), <http://atlantablackstar.com/2014/08/02/8-facts-may-know-harlem-riot-1943/> [https://perma.cc/NV3M-6P4C].

<sup>130</sup> *Harlem Race Riot of 1943*, ENCYC. BRITANNICA, <http://www.britannica.com/topic/Harlem-race-riot-of-1943> [https://perma.cc/97P9-QFAZ] (last updated Apr. 27, 2016).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

city street.<sup>133</sup> As officers attempted to remove Ms. Bradford from her car, the bystander intervened, which resulted in the arrest of both individuals.<sup>134</sup> Angered by the actions of the officers, residents took to the streets. Close to 800 people were arrested and over 200 stores were destroyed.<sup>135</sup> This marked the first in a series of such rebellions that took place during the Civil Rights Era.<sup>136</sup>

### 3. Harlem, New York

Another revolt erupted in Harlem in 1964 after Lieutenant Thomas Gilligan (who was off-duty at the time), shot and killed James Powell, a 15-year-old Black teenager.<sup>137</sup> Many people, including his classmates, assembled and began protesting and demanding answers.<sup>138</sup> This led to days of protests in Harlem and Bedford-Stuyvesant, Brooklyn. One person died, over 100 people were injured, and there were over 450 arrests.<sup>139</sup>

### 4. Watts, Los Angeles, California

The “Watts Riots” were sparked on August 11, 1965 after police arrested Marquette Frye, a 21-year-old Black man, his friend, and his mother.<sup>140</sup> Frye was pulled over for reckless driving, so many were left confused as to why his mother was arrested upon her arrival at the scene.<sup>141</sup> The arrests caused outrage amongst the Black community, which led to tens of thousands protesting.<sup>142</sup> During the protests, the police commissioner referred to the protesters as “monkeys in a zoo.”<sup>143</sup> Thousands of National Guard

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<sup>133</sup> History Making Productions, *The Philadelphia Race Riot of August 1964*, PHILLY.COM (Aug. 28, 2013, 6:43 PM) <http://www.philly.com/philly/blogs/TODAY-IN-PHILADELPHIA-HISTORY/The-Philadelphia-race-riot-of-August-1964.html> [https://perma.cc/R2NT-L652].

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *New York Race Riots*, C.R. DIGITAL LIBR., [http://crdl.usg.edu/events/ny\\_race\\_riots/](http://crdl.usg.edu/events/ny_race_riots/) [https://perma.cc/M3RT-D9DM] (last modified Apr. 6, 2017); Michael W. Flamm, Opinion, *The Original Long, Hot Summer: The Legacy of the 1964 Harlem Riot*, N.Y. TIMES (July 15, 2014), <http://www.nytimes.com/2014/07/16/opinion/16Flamm.html> [https://perma.cc/HE63-2CRK].

<sup>138</sup> Flamm, *supra* note 137.

<sup>139</sup> *New York Race Riots*, *supra* note 137.

<sup>140</sup> James Queally, *Watts Riots: Traffic Stop Was the Spark that Ignited Days of Destruction in L.A.*, L.A. TIMES (July 29, 2015, 9:20 AM), <http://www.latimes.com/local/lanow/la-me-ln-watts-riots-explainer-20150715-htmistory.html> [https://perma.cc/9S47-V2V8].

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Lily Rothman, *50 Years After Watts: The Causes of a Riot*, TIME (Aug. 11, 2015), <http://time.com/3974595/watts-riot-1965-history/> [https://perma.cc/N294-43E9].



officers were deployed at the scene.<sup>144</sup> At the conclusion of the six-day rebellion, 34 people were left dead, over 1,000 were injured, and 3,500 people were arrested.<sup>145</sup>

#### 5. San Francisco, California

On September 27, 1966, Matthew Johnson, a 16-year-old teenager, was shot and killed by an officer for trying to flee the scene of a stolen vehicle.<sup>146</sup> Once again people gathered at the scene and began throwing rocks at officers and setting fires.<sup>147</sup> The National Guard was also called in.<sup>148</sup> Fortunately, after days of protests, there were no deaths.<sup>149</sup>

#### 6. Newark, New Jersey

On July 12, 1967, officers pulled over John Smith, a Black taxi driver, and badly beat him and arrested him.<sup>150</sup> This took place near a housing project and was observed by residents who took to the streets and began protesting.<sup>151</sup> In the end, 26 people were killed, over 700 injured and, 1,500 were arrested.<sup>152</sup> It was determined that “most of the deaths were caused by police or National Guard rifles.”<sup>153</sup>

#### 7. Los Angeles, California

Following the August 29, 1992 acquittal of four LAPD officers, in spite of a video recording, for the beating of Rodney King (a Black man), there were four days of civil unrest.<sup>154</sup> Media captured

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<sup>144</sup> Queally, *supra* note 140.

<sup>145</sup> *Id.*

<sup>146</sup> *Hunters Point – Cops Shot into Community Center Sheltering 200 Children*, MOVEMENT, Oct. 1966, at 1, 1, <https://libraries.ucsd.edu/farmworkermovement/ufwarchives/sncc/16B%20-%20October%201966.pdf> [<https://perma.cc/887A-42SJ>]; *1966 Hunters Point Rebellion: Recollections of Harold Brooks and Thomas Fleming*, S.F. BAY VIEW (Sept. 27, 2011) [hereinafter *1966 Hunters Point Rebellion*], <http://sfbayview.com/2011/09/1966-hunters-point-rebellion-recollections-of-harold-brooks-and-thomas-fleming> [<https://perma.cc/S5V3-EZCB>].

<sup>147</sup> *1966 Hunters Point Rebellion*, *supra* note 146.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Nancy Solomon, *40 Years On, Newark Re-Examines Painful Riot Past*, NPR (July 14, 2007, 6:44 PM), <http://www.npr.org/templates/story/story.php?storyId=11966375> [<https://perma.cc/3VFY-C6TX>].

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> Jessica Dickerson, *Remembering the 1992 LA Riots Over 2 Decades Later*, HUFFINGTON POST (Apr. 29, 2015, 6:31 PM), [http://www.huffingtonpost.com/2015/04/29/1992-la-riot-photos\\_n\\_7173540.html](http://www.huffingtonpost.com/2015/04/29/1992-la-riot-photos_n_7173540.html) [<https://perma.cc/4B3A-2WW7>].

the protest as it unfolded. Fifty-three people died, at least 2,300 were injured, thousands were arrested, and over \$1 billion in property damage resulted from these events.<sup>155</sup>

#### 8. Cincinnati, Ohio

On April 9, 2001, an unarmed 19-year-old Black male, Timothy Thomas, was shot and killed by a police officer who pulled him over for a traffic violation.<sup>156</sup> The incident led to civil outrage and unrest.<sup>157</sup> The days of demonstrating resulted in \$3.6 million in property damage.<sup>158</sup>

#### 9. Ferguson, Missouri

On August 9, 2014, unarmed teenager Michael Brown was shot and killed following an interaction with a white officer.<sup>159</sup> Brown's body stayed uncovered for hours while media was allowed to take pictures.<sup>160</sup> Protesting ensued shortly after, the National Guard was called in, and a curfew was put in place.<sup>161</sup> Months later, after the prosecutor's officer failed to obtain an indictment of Officer Wilson,<sup>162</sup> protests began again.<sup>163</sup> There were many arrests during both protests. This incident led to the DOJ issuing a report documenting a history of racial discrimination by the Ferguson Po-

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<sup>155</sup> *Id.*

<sup>156</sup> Danny Vinik, *We've Been Here Before. A Solution Exists.*, NEW REPUBLIC (Aug. 18, 2014), <https://newrepublic.com/article/119133/cincinnati-2001-race-riots-reveal-solutions-ferguson-unrest> [<https://perma.cc/4EAE-2JJD>].

<sup>157</sup> *Id.*

<sup>158</sup> Robert Anglen et al., *Riot Costs Add Up*, CIN. ENQUIRER (Oct. 7, 2001), [http://www.enquirer.com/editions/2001/10/07/loc\\_1riot\\_costs\\_add\\_up.html](http://www.enquirer.com/editions/2001/10/07/loc_1riot_costs_add_up.html) [<https://perma.cc/G68Z-W2PH>].

<sup>159</sup> Larry Buchanan et al., *What Happened in Ferguson?*, N.Y. TIMES (Aug. 13, 2014), <http://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html> [<https://perma.cc/Z7J6-H2K5>].

<sup>160</sup> Julie Bosman & Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street*, N.Y. TIMES (Aug. 23, 2014), <http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html> [<https://perma.cc/ZJ9E-49ZV>].

<sup>161</sup> Emily Brown, *Timeline: Michael Brown Shooting in Ferguson, Mo.*, USA TODAY (Aug. 14, 2014, 11:59 AM), <https://www.usatoday.com/story/news/nation/2014/08/14/michael-brown-ferguson-missouri-timeline/14051827/> [<https://perma.cc/6WQ4-GZZG>].

<sup>162</sup> *Darren Wilson Not Indicted: Read the Full Grand Jury Report*, GUARDIAN (Nov. 25, 2014, 12:17 AM), <http://www.theguardian.com/us-news/ng-interactive/2014/nov/25/darren-wilson-not-indicted-ferguson> [<https://perma.cc/Y74W-M4CT>].

<sup>163</sup> Yamiche Alcindor et al., *Ferguson Burning After Grand Jury Announcement*, USA TODAY (Nov. 24, 2014, 9:38 AM), <http://www.usatoday.com/story/news/nation/2014/11/24/ferguson-grand-jury-deliberations/19474907/> [<https://perma.cc/VE69-RLF4>].

lice Department.<sup>164</sup>

#### 10. Baltimore, Maryland

On April 12, 2015, Freddie Gray, a 25-year-old Black man, was arrested after running away from a police officer.<sup>165</sup> Video of his arrest was caught on camera and he can be seen limping and crying out in pain.<sup>166</sup> He was placed in a police van and, half an hour later, was removed from the van unable to breathe and with severe spinal injuries.<sup>167</sup> Gray died a week later.<sup>168</sup> Residents protested, calling attention to the systematic police violence by Baltimore officers.<sup>169</sup> Six officers were charged with Gray's death (both Black and white).<sup>170</sup> All of the officers were eventually acquitted of the charges, leaving no one legally responsible for Freddie Gray's death.<sup>171</sup> However, weeks after the final acquittal in the Gray case, the DOJ released the findings of its investigation of the Baltimore Police Department (BDP).<sup>172</sup> The DOJ found that the BDP's practices included disproportionately stopping, searching, and arresting Blacks; excessive use of force; and continuously failing to address allegations of police officers' racist behavior.<sup>173</sup>

<sup>164</sup> Conor Friedersdorf, *Ferguson's Conspiracy Against Black Citizens*, ATLANTIC (Mar. 5, 2015), <https://www.theatlantic.com/national/archive/2015/03/ferguson-as-a-criminal-conspiracy-against-its-black-residents-michael-brown-department-of-justice-report/386887/> [https://perma.cc/REL6-9H8K].

<sup>165</sup> David A. Graham, *The Mysterious Death of Freddie Gray*, ATLANTIC (Apr. 22, 2015), <https://www.theatlantic.com/politics/archive/2015/04/the-mysterious-death-of-freddie-gray/391119/> [https://perma.cc/EP7X-NKJA].

<sup>166</sup> *Id.*

<sup>167</sup> Scott Dance, *Freddie Gray's Spinal Injury Suggests 'Forceful Trauma,' Doctors Say*, BALT. SUN (Apr. 21, 2015), <http://www.baltimoresun.com/health/bs-hs-gray-injuries-20150420-story.html> [https://perma.cc/29K7-RVD7].

<sup>168</sup> Graham, *supra* note 165.

<sup>169</sup> Ta-Nehisi Coates, *Nonviolence as Compliance*, ATLANTIC (Apr. 27, 2015), <http://www.theatlantic.com/politics/archive/2015/04/nonviolence-as-compliance/391640/> [https://perma.cc/GR8X-R8AS].

<sup>170</sup> Elliott C. McLaughlin & Amanda Watts, *Charges Against Baltimore Officers in Freddie Gray Case*, CNN (Dec. 16, 2015, 9:14 PM), <http://www.cnn.com/2015/12/15/us/charges-against-baltimore-officers-freddie-gray-trials/index.html> [https://perma.cc/7PBB-45V6].

<sup>171</sup> Sarah Almukhtar et al., *Freddie Gray Case Ends with No Convictions of Any Police Officers*, N.Y. TIMES (July 27, 2016), <http://www.nytimes.com/interactive/2015/04/30/us/what-happened-freddie-gray-arrested-by-baltimore-police-department-map-timeline.html> [https://perma.cc/Y7XZ-SWNF].

<sup>172</sup> *Justice Department Announces Findings of Investigation into Baltimore Police Department*, U.S. DEP'T JUST. (Aug. 10, 2016), <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-baltimore-police-department> [https://perma.cc/N4QM-AP57].

<sup>173</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 3 (2016), <https://www.justice.gov/opa/file/883366/download>

As shown, the riots were destructive, with most of the damage done in the neighborhoods inhabited by the same suffering community. This type of response did not accomplish much. While these riots—spanning over 73 years—have resulted in some change, they have not resulted in the type of change that will lead to an end to police misconduct against the Black community. It was clear that in order for there to be actual change, the community must move away from violent riots. This gave birth to a new movement that sought to use 21st century tactics to obtain constructive changes without the destructive effects (like injuries, arrests, and property damage). Hence, the founders of BLM began the fight for citizen control over the police by pushing legislation and being a very visible part of the political arena. BLM “has been described as ‘not your grandfather’s civil-rights movement,’ to distinguish its tactics and its philosophy from those of nineteen-sixties-style activism” because it “eschews hierarchy and centralized leadership . . . .”<sup>174</sup>

#### VI. TODAY’S SOCIAL JUSTICE MOVEMENT: AN EXTENSION OF THE HISTORY OF POLICE VIOLENCE

Today’s social justice movement has been prompted by what Blacks perceive as systematic racism by police officers throughout this country against their community.<sup>175</sup> Social media is the mechanism that has allowed the world to gain some insight into the violence that Blacks encounter on a daily basis and to see that what Blacks endure is not merely perception but rather an unrelenting reality. While social media is a new tool, today’s movement is merely a continuation of the rebellions of the past 70 years, all similarly calling for police accountability and reform in policing tac-

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[<https://perma.cc/QK4Y-9XP4>]. The DOJ findings emphasized that “the consequence of the large racial disparities in stops, searches, and arrests may also manifest itself in what may be disproportionate use of force against African Americans by BPD. We found that African Americans accounted for roughly 88 percent of the subjects of non-deadly force used by BPD officers in a random sample of over 800 cases we reviewed.” *Id.* at 61. The report further stated that “BPD misclassifies and fails to investigate complaints of racial slurs and racial bias, allowing a culture of bias against African Americans to persist.” *Id.* at 67.

<sup>174</sup> Jelani Cobb, *The Matter of Black Lives: A New Kind of Movement Found its Moment. What Will Its Future Be?*, NEW YORKER (Mar. 14, 2016), <http://www.newyorker.com/magazine/2016/03/14/where-is-Black-lives-matter-headed> [<https://perma.cc/T9Q9-YPSC>].

<sup>175</sup> David A. Graham, *Systemic Racism or Isolated Abuses? Americans Disagree*, ATLANTIC (May 7, 2015), <http://www.theatlantic.com/politics/archive/2015/05/systemic-racism-or-isolated-abuse-americans-disagree/392570/> [<https://perma.cc/9V7N-NWCT>].

tics. America's consistent disregard for Black lives continues to strengthen recently founded organizations like BLM.

Social media has and continues to have a profound impact on today's reaction to police brutality because it allows citizens to essentially become journalists and disseminate information to people in a matter of seconds.<sup>176</sup> It has allowed activists to organize a rally or protest and communicate with thousands in minutes.<sup>177</sup> Social media has become a platform for protesting police violence and exposing the many flaws of the American justice system.<sup>178</sup> It allows activists to raise awareness and garner support.<sup>179</sup>

Issues turned into hashtags<sup>180</sup> cannot be ignored as they quickly begin forcing mainstream media to take notice. Today, there are many hashtags that have been created for various reasons, but there is one that has captured the attention of millions of people throughout the world.

#Blacklivesmatter, which started as a tweet from a young woman in 2012, turned into an organization that currently has 38 chapters located throughout the country.<sup>181</sup> Defying the odds, this organization continues to gain support from individuals of all backgrounds in its fight against a system that treats Black lives as insig-

<sup>176</sup> Frederick C. Harris, *The Next Civil Rights Movement?*, DISSENT (Summer 2015), <https://www.dissentmagazine.org/article/black-lives-matter-new-civil-rights-movement-fredrick-harris> [<https://perma.cc/KVQ8-JK37>].

<sup>177</sup> Noah Berlatsky, *Hashtag Activism Isn't a Cop-Out*, ATLANTIC (Jan. 27, 2015), <http://www.theatlantic.com/politics/archive/2015/01/not-just-hashtag-activism-why-social-media-matters-to-protestors/384215/> [<https://perma.cc/ED4M-ENRJ>]; Eric Yaverbaum, *#HashtagActivism — Turning Whispers into Shouts and Fighting Stigma with Story*, HUFFINGTON POST (Dec. 9, 2015, 3:20 PM), [http://www.huffingtonpost.com/eric-yaverbaum/hashtagactivism-turning-w\\_b\\_8751204.html](http://www.huffingtonpost.com/eric-yaverbaum/hashtagactivism-turning-w_b_8751204.html) [<https://perma.cc/H62G-JSQ3>].

<sup>178</sup> See generally Yarimar Bonilla & Jonathan Rosa, *#Ferguson: Digital Protest, Hashtag Ethnography, and the Racial Politics of Social Media in the United States*, 42 AM. ETHNOLOGIST 4 (2015), <http://onlinelibrary.wiley.com/doi/10.1111/amet.12112/epdf> [<https://perma.cc/F29B-XEEN>].

<sup>179</sup> See, e.g., *id.*; *Social Media Plays Major Role in National Debate on Police Violence*, PBS NEWSHOUR (July 15, 2016, 2:12 PM), <http://www.pbs.org/newshour/bb/social-media-plays-major-role-national-debate-police-brutality/> [<https://perma.cc/22NX-E4M5>]; Kimberlee Morrison, *Social Media Activism: Sandra Bland, Police Brutality and #BlackLivesMatter*, ADWEEK (July 30, 2015), <http://www.adweek.com/digital/social-media-activism-sandra-bland-police-brutality-and-blacklivesmatter/> [<https://perma.cc/ZK6L-8U4A>].

<sup>180</sup> Rebecca Hiscott, *The Beginner's Guide to the Hashtag*, MASHABLE (Oct. 8, 2013), <http://mashable.com/2013/10/08/what-is-hashtag/#2WtFHecHXuqB> [<https://perma.cc/62MV-ADZ7>] (defining hashtags as "those short links preceded by the pound sign (#)," used as an important way "we communicate online").

<sup>181</sup> See Alicia Garza, *A HerStory of the #BlackLivesMatter Movement*, BLACK LIVES MATTER, <http://blacklivesmatter.com/herstory/>; *Locate a Chapter*, BLACK LIVES MATTER, <http://blacklivesmatter.com/find-chapters/>.

nificant.<sup>182</sup> The organization has successfully held rallies, boycotts, and protests throughout the country,<sup>183</sup> all the while maintaining its aim of disrupting business as usual and of “shut[ting] sh\*t down.”<sup>184</sup>

For example, days before Christmas 2015, BLM held demonstrations at the Mall of America and Minneapolis-St. Paul International Airport, which led to the forced closing of a number of stores as well as delays.<sup>185</sup> Just days earlier, a judge denied the Mall’s request for a restraining order to prevent the demonstration, despite the fact that in 2014 a similar BLM protest had disrupted many businesses and caused some to close for the day.<sup>186</sup>

BLM also serves as a legal and political platform. During the 2016 presidential campaign, the organization made headlines when it disrupted Bernie Sanders during one of his political rallies in Seattle<sup>187</sup> and met with Hillary Clinton to ask her questions about past policies she supported.<sup>188</sup> The organization is forcing politicians to address issues involving policing and race in

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<sup>182</sup> See, e.g., Alexandra Olteanu et al., *Characterizing the Demographics Behind the #BlackLivesMatter Movement*, 2016 AAAI SPRING SYMP. SERIES 310, 313, <http://www.aaai.org/ocs/index.php/SSS/SSS16/paper/view/12720/11945> [<https://perma.cc/3UEZ-25LB>] (explaining that 60% of users of the #BlackLivesMatter hashtag are African American, 40% are white, and 4% are Asian, with adults between 30 and 64 years old being the most active age group); Munmun De Choudhury et al., *Social Media Participation in an Activist Movement for Racial Equality*, in PROCEEDINGS OF THE TENTH INTERNATIONAL CONFERENCE ON WEB AND SOCIAL MEDIA 92, 100 (2016), <http://www.aaai.org/Library/ICWSM/icwsml6contents.php> [<https://perma.cc/VUN2-RMMR>] (“Our results demonstrate that while notable events may have triggered many individuals to engage in cursory or one-time discourse on the various issues of the Black Lives Matter activist movement, some individuals remained involved in the social media conversations over a long period and across temporally spread-out events. This indicates that Twitter emerged as an important platform of discourse and reflection for many individuals, allowing them to share stories, find common ground and agitate for police and government reform around racial issues.”).

<sup>183</sup> Sara Sidner & Mallory Simon, *The Rise of Black Lives Matter: Trying to Break the Cycle of Violence and Silence*, CNN (Dec. 28, 2015, 8:28 AM), <http://www.cnn.com/2015/12/28/us/black-lives-matter-evolution/> [<https://perma.cc/22AW-F8UC>].

<sup>184</sup> *Id.*

<sup>185</sup> Amanda Holpuch, *Black Lives Matter Protest Shuts Down Mall of America and Airport Terminal*, GUARDIAN (Dec. 23, 2015, 4:46 PM), <https://www.theguardian.com/us-news/2015/dec/23/black-lives-matter-organizers-protest-mall-of-america> [<https://perma.cc/6C97-9UZR>].

<sup>186</sup> *Id.*

<sup>187</sup> Alex Seitz-Wald, *Bernie Sanders Event Shut Down by Black Lives Matter Activists*, MSNBC (Aug. 8, 2015, 9:17 PM), <http://www.msnbc.com/msnbc/bernie-sanders-event-shut-down-black-lives-matter-activists> [<https://perma.cc/TN3N-4FUR>].

<sup>188</sup> Darrel Rowland, *Black Lives Pair Meets with Hillary Clinton in Cleveland*, COLUMBUS DISPATCH (Oct. 21, 2016, 12:01 AM), <http://www.dispatch.com/content/stories/local/2016/10/21/hillary-clinton-cleveland.html> [<https://perma.cc/YT4C-TKYF>].

America.<sup>189</sup> BLM demands that local political leaders respond promptly when police misconduct occurs.<sup>190</sup>

Recently, BLM has been instrumental in influencing the outcomes of several elections, particularly in cities where police officers committed violent acts against Blacks and the incumbent failed to adequately address the issue. In Chicago, Cook County State's Attorney Anita Alvarez lost her prosecutorial position,<sup>191</sup> which she held for two previous terms.<sup>192</sup> Alvarez's controversial decision to wait a year to prosecute the officer in the death of Laquan McDonald subsequently led to her losing her bid for reelection 2-1 to her opponent.<sup>193</sup> Meeting the same fate, Cleveland's Timothy McGinty, the Cuyahoga Prosecuting Attorney, also lost his bid for reelection.<sup>194</sup> McGinty "encouraged a grand jury not to charge the two officers who opened fire on [Tamir] Rice after less than two seconds on the scene."<sup>195</sup> In both instances, BLM, working with other organizations, protested, canvassed, and created hashtag campaigns.<sup>196</sup> These strategies have proven successful and helps BLM further their mission.

There have been calls by conservatives to label BLM as a hate group even though the group maintains that it does not support or condone violence against police officers.<sup>197</sup> These critics are trying to exhaust whatever means are available to prevent conversations about racism and racist policing from taking place. These attempts show how important and necessary it is to address the racial issues that are plaguing America.

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<sup>189</sup> Jessica Washington & Perry Bacon Jr., *How 'Black Lives Matter' Activists Are Shaping the 2016 Campaign*, NBC NEWS (July 31, 2015, 5:00 AM), <http://www.nbcnews.com/news/nbcblk/how-Black-lives-matter-activists-are-shaping-2016-campaign-n401146> [<https://perma.cc/Q9EM-F8FV>].

<sup>190</sup> *Id.*

<sup>191</sup> Jessica Lussenhop, *Chicago Prosecutor Loses her Fight with Black Lives Matter*, BBC NEWS MAG. (Mar. 16, 2016), <http://www.bbc.com/news/world-us-canada-35817890> [<https://perma.cc/77D5-EPUF>].

<sup>192</sup> Dana Ford, *Anita Alvarez Concedes Bid for Third Term in Chicago*, CNN (Mar. 15, 2016, 10:59 PM), <http://www.cnn.com/2016/03/15/politics/anita-alvarez-election/> [<https://perma.cc/284D-3R86>].

<sup>193</sup> Lussenhop, *supra* note 191.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* On Election Day in Chicago, the group hired an airplane that displayed a massive banner with the words #ByeAnita. The campaign launched against her caused her to lose key endorsements.

<sup>197</sup> See Hilary Hanson & Simon McCormack, *Fox News Suggests Black Lives Matter is a 'Murder' Movement, 'Hate Group'*, HUFFINGTON POST (Sept. 1, 2015, 3:49 PM), [http://www.huffingtonpost.com/entry/Black-lives-matter-fox-news-hate-group\\_55e5c102e4b0b7a9633a3b12](http://www.huffingtonpost.com/entry/Black-lives-matter-fox-news-hate-group_55e5c102e4b0b7a9633a3b12) [<https://perma.cc/4V8Q-W55S>].

The methods by which BLM seeks to end police violence differ from the civil rights leaders of the 1960s and 1970s because social media provides a tool that can be used to quickly expose acts of police violence and spread the word to organize the masses. However, the message remains the same: people cannot and should not stand idly by and allow police officers to murder Black men and women with impunity. This call to action can be accomplished by calling out America's systematic racism and charging politicians at the federal, state, and local levels to change laws to hold officers accountable for their actions.<sup>198</sup>

Today's social justice movement is the reaction to this country's failure to provide actual police reform and accountability. The organizations that make up today's movement, like movements of the past, have also provided lawmakers with recommendations that can help remedy the ongoing problem of police violence.<sup>199</sup>

## VII. RECOMMENDATIONS

Until laws are reformed to address the racial components of police violence against Black people and officers are ACTUALLY held accountable for their actions, America will continue this cycle of civilian deaths and civil unrest. The following are recommendations that should be applied at every level: federal, state/local and civilian.

### A. Federal Action

Congress must to take a more active role in effectuating change in policing. One step towards that change would be to increase the funding to the DOJ for Section 14141 so that the law can be aggressively enforced.<sup>200</sup> If police departments believe that this

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<sup>198</sup> For example, the Movement for Black Lives policy platform lays out a number of concrete policy proposals that government officials could enact to strengthen police accountability. MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK FREEDOM, POWER, AND JUSTICE (2016), <https://policy.m4bl.org/wp-content/uploads/2016/07/20160726-m4bl-Vision-Booklet-V3.pdf> [<https://perma.cc/63V9-C6V7>].

<sup>199</sup> Radley Balko, Opinion, *The Black Lives Matter Policy Agenda is Practical, Thoughtful — and Urgent*, WASH. POST (Aug. 25, 2015), [https://www.washingtonpost.com/news/the-watch/wp/2015/08/25/the-black-lives-matter-policy-agenda-is-practical-thoughtful-and-urgent/?utm\\_term=.b6662d9fba28](https://www.washingtonpost.com/news/the-watch/wp/2015/08/25/the-black-lives-matter-policy-agenda-is-practical-thoughtful-and-urgent/?utm_term=.b6662d9fba28) [<https://perma.cc/53G7-FEF2>].

<sup>200</sup> See Rushin, *supra* note 96, at 3226 (“In 2000, the DOJ requested \$100 million in additional funding to expand the number of police department investigations under § 14141. This increase in funding was supposed to hire an additional sixteen new investigators each year—suggesting that investigations are a costly endeavor. The average investigation ‘can take years as investigators wade through piles of internal records and personnel files.’” (footnotes omitted)).



law is an actual and viable threat, they are more likely to curtail officer behavior and change department policy. The DOJ should be more transparent by modifying its process for selecting and investigating police departments.<sup>201</sup> It should also publish “best practices” and target those departments that choose not to follow the recommended policies.<sup>202</sup>

In order to properly protect the constitutional rights of Black people, it is necessary for the federal government to take an active, multi-faceted role in addressing police brutality.<sup>203</sup> Shortly after the Ferguson protests, President Obama formed “The President’s Task Force on 21st Century Policing,” which provided a final report in May 2015.<sup>204</sup> This report could be used by the DOJ as an outline of best practices. The report states that modern policing must focus on six “pillars” to repair community relations: (1) building trust and legitimacy; (2) policy and oversight; (3) technology and social media; (4) community policing and crime reduction; (5) training and education; and (6) officer wellness and safety.<sup>205</sup> The report provides a number of recommendations that police departments should implement and enforce for more effective policing. Similar to the Task Force’s Interim Report, the Final Report “calls for ‘procedurally just behavior’ based on four principles, including treating people with dignity and respect, giving individuals a voice in encounters, remaining neutral and transparent, and conveying trustworthy motives.”<sup>206</sup>

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<sup>201</sup> *Id.* at 3237 (“The DOJ should adopt a more transparent case selection process that incentivizes local law enforcement agencies to reform proactively.”).

<sup>202</sup> *Id.* at 3240 (“One way that that [sic] the DOJ could do this is by creating a national list of best practices each year, and prioritizing suits against departments that fail to implement these recommended policies. This solution would not only require the DOJ to develop a core set of best practices each year, it would also require the DOJ to collect data from all of the nation’s police agencies on whether the department currently employs certain best practices.”).

<sup>203</sup> See Newman, *supra* note 26, at 143 (“[F]ederal oversight of individual civil rights violations and of the constitutional violations by entire police departments represents an important mechanism for ensuring constitutional compliance but should not displace efforts to objectively prosecute individual officers. Thus, Department of Justice (“DOJ”) investigations represent only one important solution to the intertwined problems of use of excessive force, implicit and explicit racial bias, and unconstitutional policing.”)

<sup>204</sup> PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, U.S. DEP’T OF JUSTICE, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015), [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) [<https://perma.cc/M8UR-SKE7>].

<sup>205</sup> *Id.* at 1-4.

<sup>206</sup> Newman, *supra* note 26, at 153; see also PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 204, at 10.

B. *State/Local Action*

State and local governmental officials must push police departments to adjust their policies, particularly because taxpayers bear the brunt of paying victims and their families for police misconduct.<sup>207</sup> These officials should create new policies that would require victim payments to be deducted from police budgets and officer pensions. This may be a radical recommendation, but it seems that the current system of city payouts have not motivated change.<sup>208</sup> City funds should not be used to pay for officers' misconduct; the funds should be used to address issues in our education systems, homelessness, and other social welfare initiatives.<sup>209</sup>

Another recommendation that can be implemented at the local level is enlisting special prosecutors to ensure that cases involving officers are handled without bias.<sup>210</sup> The bond between a local prosecutor and the police department is a close one that cannot be easily severed or neutralized when officers break the law.<sup>211</sup> States must provide special prosecutors so that victims and their families have some type of reassurance, knowing that officers will not receive special treatment.

Police body cameras and dashboard cameras are another essential element for change.<sup>212</sup> The cameras are beneficial for po-

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<sup>207</sup> Patton, *supra* note 85, at 802; Nick Wing, *We Pay a Shocking Amount for Police Misconduct, And Cops Want Us Just to Accept It. We Shouldn't.*, HUFFINGTON POST (May 29, 2015, 7:39 AM), [http://www.huffingtonpost.com/2015/05/29/police-misconduct-settlements\\_n\\_7423386.html](http://www.huffingtonpost.com/2015/05/29/police-misconduct-settlements_n_7423386.html) [<https://perma.cc/RG7E-8DU2>] (“But if we continue to do nothing, we are giving tacit approval to a relationship in which taxpayers sometimes end up being victimized twice—both as the direct casualties of police misconduct and the unwilling enablers who must eventually pay for that misconduct.”).

<sup>208</sup> Patton, *supra* note 85, at 771-72 (“[C]ities will likely choose to pay punitive damages because officers may otherwise sue the city for poor representation or conflict of interest. Consequently, police officers have absolutely no economic incentive to stop their violent behavior, since they are fully insulated from the financial effects of a lawsuit. ‘Instead, the taxpayers keep paying large amounts of money and the brutality continues.’”).

<sup>209</sup> Wing, *supra* note 207.

<sup>210</sup> Newman, *supra* note 26, at 157.

<sup>211</sup> *Independent Investigations and Prosecutions*, CAMPAIGN ZERO, <https://www.join-campaignzero.org/solutions/#force> [<https://perma.cc/URU7-VPUX>] (“Local prosecutors rely on local police departments to gather the evidence and testimony they need to successfully prosecute criminals. This makes it hard for them to investigate and prosecute the same police officers in cases of police violence. These cases should not rely on the police to investigate themselves and should not be prosecuted by someone who has an incentive to protect the police officers involved.”).

<sup>212</sup> JAY STANLEY, AM. CIVIL LIBERTIES UNION, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL 7 (2015), [https://www.aclu.org/sites/default/files/assets/police\\_body-mounted\\_cameras-v2.pdf](https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf) [<https://perma.cc/DE5N-7NYH>] (“The ACLU supports the use of cop cams for the purpose of police accounta-

lice and civilians as they can exonerate an officer who is potentially accused of wrongdoing and can support a victim's abuse complaint. However, where there is public outcry and accusations of excessive force, these recordings should be released as soon as possible. Citizens should not have to wait for videos to be released a year after an incident takes place, as recently seen in Chicago.<sup>213</sup> The apparent police cover-up situation in the death of Laquan McDonald<sup>214</sup> proves that there is true value in the evidence video recordings provide.

Police Departments should also be forced to make serious efforts to diversify their departments so that they are more reflective of the communities they patrol.<sup>215</sup> Funding should be provided to support these efforts.<sup>216</sup> Though this is not a perfect solution, it

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bility and oversight. It's vital that this technology not become a backdoor for any kind of systematic surveillance or tracking of the public. Since the records will be made, police departments need to be subject to strong rules around how they are used. The use of recordings should be allowed only in internal and external investigations of misconduct, and where the police have reasonable suspicion that a recording contains evidence of a crime.”).

<sup>213</sup> Monica Davey & Mitch Smith, *Chicago Protests Mostly Peaceful After Video of Police Shooting Is Released*, N.Y. TIMES (Nov. 24, 2015), <https://www.nytimes.com/2015/11/25/us/chicago-officer-charged-in-death-of-black-teenager-official-says.html> [https://perma.cc/V8NT-X4W8] (“For months, the city had refused to release the video. On Thursday, Franklin Valderrama, a Cook County judge, ordered it released. The city initially indicated that it would appeal, but [Mayor] Emanuel then announced that Chicago would release the video, and he issued a statement condemning Officer Van Dyke’s actions and calling for prosecutors to take prompt action. ‘In accordance with the judge’s ruling, the city will release the video by Nov. 25, which we hope will provide prosecutors time to expeditiously bring their investigation to a conclusion so Chicago can begin to heal,’ Mr. Emanuel said last week.”).

<sup>214</sup> Mitch Smith & Richard A. Oppel Jr., *7 Chicago Officers Face Firing Over Laquan McDonald Cover-Up*, N.Y. TIMES (Aug. 18, 2016), <https://www.nytimes.com/2016/08/19/us/laquan-mcdonald-chicago-police.html> [https://perma.cc/8BPF-FFWC].

<sup>215</sup> Matt Apuzzo & Sarah Cohen, *Police Chiefs, Looking to Diversify Forces, Face Structural Hurdles*, N.Y. TIMES (Nov. 7, 2015), <http://www.nytimes.com/2015/11/08/us/politics/police-chiefs-looking-to-diversify-forces-face-structural-hurdles.html> [https://perma.cc/5G42-WA8A] (“Though the history of discrimination and segregation looms large over American policing, many police chiefs are eager to hire minorities yet face structural hurdles that make it hard to diversify their departments. Those issues vary by state and city, making any single solution particularly elusive. In many cities, well-intentioned policies that were not meant to discriminate have become obstacles to hiring a diverse police force. In Inkster, Chief Riley found, a significant problem was something that seemed mundane: how training is paid for. Other cities face rigid hiring processes that were intended to prevent elected leaders from handing out police jobs as patronage, but that now make it harder to shape the force to mirror the population.”).

<sup>216</sup> *Id.* (“In his first weeks in Inkster, Chief Riley met a young Black man who wanted to become a police officer. But the man said he did not have the \$6,000 or more it would cost to attend a police academy and be certified.

The chief was taken aback. Traditionally, cities pay for training. Inkster does not.

may lead to some positive change. Campaign Zero also provides a comprehensive list of solutions that can bring about more effective policing.<sup>217</sup> Their proposed wide-ranging solutions include the use of body cameras and demilitarization of the police.<sup>218</sup> Though officers in New York and presumably throughout the country are resistant to reform, this should not deter policymakers from enacting laws that protect Black constituents from the nonstop harassment and violence they confront on a daily basis.<sup>219</sup>

### C. *Civilian Action*

Civilians should take several steps to push for change. For example, consider the action taken by the civilian women that founded Black Lives Matter. First, citizens can appeal to all local politicians and demand more effective community oversight of their local police departments. The true power is in one's ability to hold elected officials accountable. Citizens should also continue to record and share incidents of police violence whenever possible. This will empower victims to come forward as well as cause embarrassment to those police departments that do not take swift action to punish corrupt officers. Lastly, in several states the ACLU has a downloadable application called Mobile Justice, which allows individuals to record their interaction with police.<sup>220</sup> The videos are transmitted directly to the ACLU office located in that particular

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Like many Michigan cities, it prefers to hire only officers who are already certified. Hiring uncertified officers means paying not only the training expenses but also their salaries and benefits while they are at the academy.”).

<sup>217</sup> *Solutions*, CAMPAIGN ZERO, <https://www.joincampaignzero.org/solutions/#solutionsoverview> [<https://perma.cc/T3GB-VPMN>].

<sup>218</sup> *Id.*

<sup>219</sup> Alex S. Vitale, Opinion, *PBA Continues Misguided Resistance to Reform*, GOTHAM GAZETTE (Aug. 31, 2015), <http://www.gothamgazette.com/index.php/opinion/5864-pba-continues-misguided-resistance-to-reform-lynch-vitale> [<https://perma.cc/T8K4-PLVM>] (“By attempting to evade transparency and accountability, [Pat Lynch] is signaling to his members and the public that police have something to hide about the way they interact with the public. Further, his suggestion that accountability hurts crime fighting is based on the faulty belief that the only way to reduce crime is through aggressive, disrespectful, and unconstitutional policing. This is a deeply disturbing view of policing and should be of great concern to elected leaders and the public.”).

<sup>220</sup> *ACLU-NJ Launches Mobile Justice Smartphone App*, AM. C.L. UNION N.J. (Nov. 13, 2015), <https://www.aclu-nj.org/news/2015/11/13/aclu-nj-launches-mobile-justice-smartphone-app> [<https://perma.cc/FU4W-FN33>] (“As part of a national movement to hold police departments accountable, the ACLU-NJ joins 11 other ACLU affiliates today in launching state-specific versions of Mobile Justice, an app for Android . . . and Apple . . . phones that allows users to record interactions with police and to send them immediately to the ACLU to evaluate for civil rights and civil liberties violations.”).

state, so if an officer gains access to the phone and the recording mysteriously disappears, the video remains safe.<sup>221</sup> Unfortunately, this application is not available in all states.<sup>222</sup>

#### D. Data Collection

Data collection around police involved shootings can be an important factor in determining whether there is a pattern or practice of abuse in a particular police force. Although there have been numerous police shootings that have taken place throughout the years, until recently there was no federal database used to collect the data.<sup>223</sup> Previously, the government relied on data it voluntarily received from local police departments, which seemed to deem many of their own shootings as “justified.”<sup>224</sup> Databases created by The Guardian prompted the FBI into action and it began collecting this type of information.<sup>225</sup> The Guardian’s “The Counted” disaggregates police shooting data across a number of parameters, including the victim’s race, age, state/city, and whether the person was armed (if armed what type of weapon) or unarmed.<sup>226</sup> Similar to The National Police Violence Map,<sup>227</sup> it provides information on each victim as well as their picture.<sup>228</sup> The Guardian has also pro-

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<sup>221</sup> *Id.* (describing additional features of the app such as the ability to operate the app through a locked screen and an “witness” option for the recorder to share their location with other users of the app while recording).

<sup>222</sup> *Id.* (noting that, including NJ, twelve states were participating in the launch of Mobile Justice).

<sup>223</sup> Jon Swaine & Oliver Laughland, *Number of People Killed by U.S. Police in 2015 at 1,000 After Oakland Shooting*, GUARDIAN (Nov. 16, 2015, 11:22 AM), <http://www.theguardian.com/us-news/2015/nov/16/the-counted-killed-by-police-1000> [<https://perma.cc/M6Q8-XMZJ>] (describing The Guardian’s new interactive website called “The Counted”, designed as a means of sharing data about 2015 police-involved shootings throughout the U.S.). The information collected on The Counted may have been used to assist President Obama’s Task Force on 21st Century Policing (created after last year’s unrest in Ferguson). *Id.* (“Brittany Packnett, a member of Barack Obama’s taskforce on 21st century policing and a founder of the Campaign Zero movement that lobbies to curb the levels of police violence in America, said the milestone should be met with ‘sadness, but not deep shock’. [sic] ‘Black folks like me have known for a long time that the police do not always represent safety for us and that an encounter could be deadly,’ said Packnett. ‘But having these statistics that add to our personal stories should continue to move everyone towards wanting to having a part in correcting this.’”).

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *The Counted*, GUARDIAN, <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database> [<https://perma.cc/7M7Q-66NS>].

<sup>227</sup> MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> [<https://perma.cc/JUK6-6X37>] (last updated Jan. 1, 2017).

<sup>228</sup> *The Counted*, *supra* note 226.

vided data on police violence in the U.S. compared to other countries.<sup>229</sup> According to the site, the number of deaths is over 1,100; 216 of those victims were unarmed yet less than 5% of deaths have led/will lead to the criminal prosecution of police officer(s).<sup>230</sup> Collection of this data should continue so lawmakers can see that police violence is not limited to isolated incidents but rather part of a widespread problem.<sup>231</sup>

### VIII. CONCLUSION

The people are the ones to force the government to change. Even after centuries of oppression and decades of resistance and revolt, Blacks remain continuously fearful that any interaction with police officers could potentially result in their death. Blacks should enjoy the ability to move freely without feeling that officers are looking to destroy their Black bodies. Police officers throughout America should not be granted the license to act as if they are at war with this country's Black population.

The Black Lives Matter movement and other groups, through social media and otherwise, have employed mechanisms by which we can hold our government accountable for its unwillingness to address the systemic and racially charged violence that police officers perpetrate against the Black community. Only through sustained collective action, continued public pressure, direct engagement with legislators and other public officials, and reckoning with the truth of the data around police misconduct will people be able to bring about the cultural and institutional changes needed to end police brutality once and for all. As writer Ta-Nehisi Coates explains,

You may have heard the talk of diversity, sensitivity training, and body cameras. These are all fine and applicable, but they under-

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<sup>229</sup> See Jamiles Lartey, *By the Numbers: US Police Kill More in Days Than Other Countries Do in Years*, GUARDIAN (June 9, 2015, 6:00 AM), <https://www.theguardian.com/us-news/2015/jun/09/the-counted-police-killings-us-vs-other-countries> [https://perma.cc/2L27-9ZFU].

<sup>230</sup> Swaine et al., *supra* note 11 (“Of the 1,134 people killed, about one in five were unarmed . . . .”); *id.* (“Law enforcement officers were charged with crimes in relation to 18 of 2015’s deadly incidents – 10 shootings, four deadly vehicle crashes and four deaths in custody.”).

<sup>231</sup> Sendhil Mullainathan, *Police Killings of Blacks: Here is What the Data Say*, N.Y. TIMES: THE UPSHOT (Oct. 16, 2015), <https://www.nytimes.com/2015/10/18/upshot/police-killings-of-blacks-what-the-data-says.html> [https://perma.cc/548T-SZHP]; Eric Bradner, *Factcheck: Grim Statistics on Race and Police Killings*, CNN (Dec. 3, 2014, 8:38 PM), <http://edition.cnn.com/2014/12/02/politics/kristoff-oreilly-police-shooting-numbers-fact-check/index.html> [https://perma.cc/R9TP-MSGJ].

state the task and allow the citizens of this country to pretend that there is real distance between their own attitudes and those of the ones appointed to protect them. The truth is that the police reflect America in all of its will and fear, and whatever we might make of this country's criminal justice policy, it cannot be said that it was imposed by a repressive minority.<sup>232</sup>

Reform cannot be accomplished by merely training officers in diversity or equipping them with new technology; rather, it must be achieved by a number of means which include addressing the racist and oppressive ideals that are rooted in the American criminal justice system. Racism can no longer be ignored: “[P]olice brutality and its connection to racism has [sic] reached the national consciousness.”<sup>233</sup> This statement, though it was made decades ago, is uniquely relevant today because society is finally being forced to face the racial undertones that clearly are linked to police violence; social media has brought this issue to the forefront and made it part of an ongoing conversation—a national dialogue. However, discussing its existence is not enough – action is the only way to bring about change. The fight to protect Black lives can be accomplished through pressure points in the law and social activism. The latter can force the hand of the former to change.

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<sup>232</sup> TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 78-79 (2015).

<sup>233</sup> RACE, RACISM & AMERICAN LAW, *supra* note 49, at 477.