

FOREWORD

Fall 2020 Symposium: Addressing the Crisis in Policing Today: Race, Masculinity, and Police Use of Force in America

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The year 2020 was a year of reckoning. The COVID-19 pandemic, along with the protests in support of the Black Lives Matter movement and against police violence toward unarmed Black, Brown, and Indigenous peoples, revealed our collective, but also differing, vulnerability to violence, sickness, death, and economic harm. Meanwhile, the #metoo movement claimed a victory in the conviction of Harvey Weinstein for sexual assault and has further spurred discussions of “toxic masculinity.” To be sure, the pandemic meant that even some privileged white Americans experienced what it is like to be unprotected by the State, as they saw friends and family succumb to the virus. But for so many others, the impact of police violence, the hypermasculinized nature of policing, and the unequal impact of COVID-19 on low-income people and communities of color reflected our country’s ongoing failure to meaningfully address longstanding race, gender, and class-based inequities in American life.

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The intertwined legacies of slavery and patriarchy underlying police violence are the themes of this year's Symposium, *Addressing the Crisis in Policing Today: Race, Masculinity, and Police Use of Force in America*. The themes are especially timely as the country engages in much needed conversations about the proper role, if any, of police. Of course, scholars and advocates—including those who are part of this Symposium—have long debated the role of police, as well as the history and culture of policing.¹ But this year of reckoning offers a unique window of opportunity.

In particular, the pandemic is forcing a reconsideration of what should be the “new normal” for policing. And thanks to the protesters and activists who took to the streets during the summer of 2020, there is a push to interrogate the need for policing to begin with. Rather than return to prepandemic practices, there is hope for a transformative path forward. As the Booker Prize-winning writer Arundhati Roy explains, “coronavirus has made the mighty kneel and brought the world to a halt like nothing else could. . . . [I]n the midst of this terrible despair, it offers us a chance to rethink the doomsday machine we have built for ourselves.”² Roy states that “[n]othing could be

¹ See generally, e.g., Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2065–68 (2017); Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 AM. U. L. REV. 1513, 1541 (2018); Christy E. Lopez, Opinion, *Defund the Police? Here's What That Really Means*, WASH. POST (June 7, 2020), <https://www.washingtonpost.com/opinions/2020/06/07/defund-police-heres-what-that-really-means/> [<https://perma.cc/Q7ZY-J953>]; Josephine Ross, *Cops on Trial: Did Fourth Amendment Case Law Help George Zimmerman's Claim of Self-Defense?*, 40 SEATTLE U. L. REV. 1, 2 (2016); Justin Hansford, Opinion, *5 Years After Ferguson, We're Losing the Fight Against Police Violence*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/2019/08/09/opinion/ferguson-anniversary-police-race.html> [<https://perma.cc/2PH3-8QNJ>]; Cynthia Lee, *Reforming the Law on Police Use of Deadly Force: De-escalation, Preseizure Conduct, and Imperfect Self-Defense*, 2018 U. ILL. L. REV. 629, 635; Stephen Rushin, *Police Arbitration*, 74 VAND. L. REV. 1023 (2021); Julian A. Cook III, *Policing in the Era of Permissiveness: Mitigating Misconduct Through Third-Party Standing*, 81 BROOK. L. REV. 1121 (2016); Frank Rudy Cooper, *Cop Fragility and Blue Lives Matter*, 2020 U. ILL. L. REV. 621; PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017); Eric J. Miller, *Reasonably Radical: Terry's Attack on Race-Based Policing*, 54 IDAHO L. REV. 479 (2018); Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611 (2016); Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635 (2019); Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1505–08 (2016); Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1869–75 (2015); V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453 (2019); Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community-Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1363–68 (2017).

² Arundhati Roy, *The Pandemic is a Portal*, FIN. TIMES (Apr. 3, 2020), <https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca> [<https://perma.cc/3QJ3-HTVW>].

worse than a return to normality.”³ She urges us to consider the pandemic as “a portal, a gateway between one world and the next” and proposes that “[w]e can choose to walk through it, dragging the carcasses of our prejudice and hatred, . . . [o]r we can walk through lightly, with little luggage, ready to imagine another world. And ready to fight for it.”⁴ With respect to the future of policing, the articles in this Symposium issue take up Roy’s challenge to “imagine another world.”

For a brief moment, a country with less policing seemed tantalizingly possible. In the first few months of the pandemic, arrests rates dropped⁵ and there were significant efforts to release people from prisons and jails, which saw some of the worst COVID outbreaks in the country.⁶ But the silver lining of the pandemic was short lived and those initial and encouraging trends have since faltered. Instead, arrests and incarceration rates in jails are on the rise and declines in prison population have stagnated,⁷ reinforcing the need to imagine a future that does not depend on police for safety, security, and justice.⁸

The articles in this issue present bold visions, but also pragmatically address the significant barriers to transforming policing. As Professor Paul Butler poignantly noted during the Symposium’s keynote address, there is a significant gap between what is *constitutional* and

³ *Id.*

⁴ *Id.*

⁵ See Shaila Dewan, Vanessa Swales & Neil Vigdor, *Police Tread Lightly as Pandemic Spreads*, N.Y. TIMES (Mar. 22, 2020), <https://www.nytimes.com/2020/03/22/us/coronavirus-police.html> [<https://perma.cc/2UNX-8ZWV>]; Zusha Elinson & Ben Chapman, *Coronavirus Pandemic Changes Policing, Including Fewer Arrests*, WALL ST. J. (Mar. 27, 2020, 5:30 AM), <https://www.wsj.com/articles/coronavirus-pandemic-changes-policing-including-fewer-arrests-11585301402> [<https://perma.cc/Q6JE-3WXR>].

⁶ JASMINE HEISS, OLIVER HINDS, EITAL SCHATTNER-ELMALEH & JAMES WALLACE-LEE, VERA INST. OF JUST., *THE SCALE OF THE COVID-19-RELATED JAIL POPULATION DECLINE* 1, 1 & 5 n.2 (2020), <https://www.vera.org/downloads/publications/the-scale-of-covid-19-jail-population-decline.pdf> [<https://perma.cc/H3CT-HG67>]; Eddie Burkhalter et al., *Incarcerated and Infected: How the Virus Tore Through the U.S. Prison System*, N.Y. TIMES (Apr. 10, 2021), <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html> [<https://perma.cc/2X2M-QGL2>].

⁷ *Local Jail Populations in the U.S. on the Rise Again, State Prison Population Declines Level Off, as COVID Spreads Throughout the Prison System*, VERA INST. JUST. (Jan. 27, 2021), <https://www.vera.org/newsroom/local-jail-populations-in-the-u-s-on-the-rise-again-state-prison-population-declines-level-off-as-covid-spreads-throughout-the-prison-system> [<https://perma.cc/8SLN-SLBX>].

⁸ See Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1843–44 (2020); Katherine Beckett, Forrest Stuart & Monica Bell, *From Crisis to Care*, INQUEST (Sept. 2, 2021), <https://inquest.org/from-crisis-to-care> [<https://perma.cc/3ELJ-J6TY>].

what is *just*.⁹ In this respect, the solution to racialized and gendered police violence may not exist within current legal doctrines. As others have pointed out, and as Professor Butler reminds us, policing as it exists today is functioning exactly as it was designed to—and our laws reflect as much.¹⁰

The articles in this Symposium edition present new and innovative approaches to addressing old problems. In her Article, *Officer-Created Jeopardy: Broadening the Time Frame for Assessing a Police Officer's Use of Deadly Force*,¹¹ Professor Cynthia Lee tackles the problem of how juries are instructed in police use of force cases where police conduct increased the risk of the deadly confrontation. In criminal prosecutions of police who use deadly force, Professor Lee argues that courts should instruct juries to consider the preshooting conduct of the officer. This Article adds to the burgeoning scholarly conversation about police violence and accountability.

Several of the articles in this Issue present new lenses through which to examine the intersection of police, masculinity, and race. In his Article, *Intersectionality, Police Excessive Force, and Class*,¹² Professor Frank Rudy Cooper examines the way new class structures prompted new police structures that are reflected in the ways that different neighborhoods are policed, depending on the race and class of the geographical area. He urges a more intersectional analysis of policing as a necessary component of reform conversations.

Likewise, Professor Stephen Rushin, in his Article, *Masculinity in Policing: The Need to Recruit More Women in American Police Departments*,¹³ advances the proposition that greater gender representation on police forces is an important component of rethinking and transforming police culture. After providing a descriptive account of women in the police force—and the lack thereof—Professor Rushin

⁹ Paul Butler, Keynote Address at the George Washington Law Review Symposium: Addressing the Crisis in Policing Today (Oct. 23, 2020).

¹⁰ See Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1478 (2016); Alice Ristroph, *The Constitution of Police Violence*, 64 UCLA L. REV. 1182, 1188 (2017); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 128–31, 162–63 (2017).

¹¹ Cynthia Lee, *Officer-Created Jeopardy: Broadening the Time Frame for Assessing a Police Officer's Use of Deadly Force*, 89 GEO. WASH. L. REV. 1362 (2021).

¹² Frank Rudy Cooper, *Intersectionality, Police Excessive Force, and Class*, 89 GEO. WASH. L. REV. 1452 (2021).

¹³ Stephen Rushin, *Masculinity in Policing: The Need to Recruit More Women in American Police Departments*, 89 GEO. WASH. L. REV. 1512 (2021).

offers pragmatic ways that police departments may undertake the important work of recruiting and retaining more women.

Professor Jordan Blair Woods, in his Article, *Destabilizing Policing's Masculinity Project*,¹⁴ also urges a more robust and critical framework for understanding masculinity and policing, one that draws on postmodern feminism and queer theory. This novel framework offers a promising approach to better evaluate and reflect on the entrenched views of masculinity in policing today.

Finally, two articles reflect on the ways that current legal and cultural frameworks perpetuate the problems with policing. In his Article, *Suspicionless Policing*,¹⁵ Professor Julian A. Cook interrogates the ways in which recent Supreme Court cases condone aggressive stop and frisk practices that disproportionately impact communities of color and undermine the relationship between police and the communities they are supposed to serve.

Professor Eric J. Miller, in his Article, *Knowing Your Place: The Police Role in the Reproduction of Racial Hierarchy*,¹⁶ explores how the police act as vigilantes on behalf of white people and with the purpose of excluding Black people from white spaces. Professor Miller makes the compelling case that police actions reflect the enforcement of racialized norms related to “who belongs where.”¹⁷

Taken together, these articles offer new insights and perspectives about police culture, racialized and gendered violence, and reform. Although the year 2020 was unlike any other, these articles offer hope for a brighter future that reimagines the role and purpose of policing.

¹⁴ Jordan Blair Woods, *Destabilizing Policing's Masculinity Project*, 89 GEO. WASH. L. REV. 1527 (2021).

¹⁵ Julian A. Cook, III, *Suspicionless Policing*, 89 GEO. WASH. L. REV. 1568 (2021).

¹⁶ Eric J. Miller, *Knowing Your Place: The Police Role in the Reproduction of Racial Hierarchy*, 89 GEO. WASH. L. REV. 1607 (2021).

¹⁷ *Id.* at 1628.