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Policing Through an American Prism

ABSTRACT. Policing practices in America are under scrutiny. Video clips, protests, and media coverage bring attention and a sense of urgency to fatal police civilian incidents that are often accompanied by broader calls for reform. Tensions often run high after officer involved shootings of unarmed civilians, and minority communities, law enforcement, and politicians bring different perspectives to both the individual events and broader policy issues. Collaborative reform, however, can build upon stakeholders' common ground—a concern for public safety, liberty, and equality. Achieving this goal requires a symbiotic relationship between the people and the police, where the relationship is based upon earned trust, a concept that dates back to Sir Robert Peel's Principles of Policing and underlies many modern community policing principles. Under the new administration, the federal government may no longer be a catalyst for police reform. Identifying and embracing the common ground will only become a more important path for police reform where individual cities, departments and communities look to chart a more effective path.

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INTRODUCTION: POLICING IN AMERICA

There is an intense focus on policing in America. Bracing headlines describe uses of force by police resulting in tragic deaths or serious injuries. In New York, Eric Garner was killed by a New York City Police Department (NYPD) officer who applied a chokehold while attempting to arrest Mr. Garner for selling loose cigarettes.[1] In South Carolina, a police officer shot Walter Scott in the back and killed him when Mr. Scott attempted to flee on foot following a car stop.[2] In Minnesota, an officer shot and killed Philando Castile, who was a driver sitting next to his girlfriend during a car stop.[3] In Texas, Yvette Smith was shot and killed seconds after opening her door for police officers who were responding to a call.[4] Other headlines capture deadly violence visited upon police officers in the line of duty. In Virginia, Ashley Guindon was shot and killed during her first shift as a police officer by a military veteran while responding to a domestic violence call.[5] In New York, a man walked up to the window of Rafael Ramos and Wenjian Liu's police car and opened fire, killing them at

1. At a news conference following Eric Garner's death, police commissioner William Bratton stated that "[a]s defined in the department's patrol guide, this would appear to have been a chokehold." Joseph Goldstein & Nate Schweber, *Man's Death After Chokehold Raises Old Issue for the Police*, N.Y. TIMES (July 18, 2014), http://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html [http://perma.cc/WHX5-MXFR]. The Office of the Chief Medical Examiner ruled Mr. Garner's death a homicide, concluding that the cause of Mr. Garner's death was "compression of the neck, chest compression and being laid flat on the ground while officers restrained him." Pervaiz Shallwani, *NYPD Officer's Chokehold Led to Staten Island Man's Death, Medical Examiner Says*, WALL ST. J. (Aug. 1, 2014), http://www.wsj.com/articles/staten-island-man-died-of-choke-hold-administered-by-nypd-officer-new-york-city-medical-examiner-1406922200 [http://perma.cc/2AV5-3TDJ]. The grand jury did not indict the police officer who restrained Mr. Garner. Evan Horowitz, *An Interpretation of the Grand Jury's Decision on Eric Garner's Death*, BOS. GLOBE (Dec. 4, 2014), http://www.bostonglobe.com/metro/2014/12/04/understanding-eric-garner-death-and-grand-jury-decision/s9uQPMvcKPD2mAmFy2ln9J/story.html [http://perma.cc/BR2P-5TSE].

2. Alan Blinder, *Mistrial for South Carolina Officer Who Shot Walter Scott*, N.Y. TIMES (Dec. 5, 2016), http://www.nytimes.com/2016/12/05/us/walter-scott-michael-slager-north-charleston.html [http://perma.cc/VPA4-ZJFC].

3. Christina Capecchi & Mitch Smith, *Officer Who Shot Philando Castile Is Charged with Manslaughter*, N.Y. TIMES (Nov. 16, 2016), http://www.nytimes.com/2016/11/17/us/philando-castile-shooting-minnesota.html [http://perma.cc/64PB-HYB6].

4. Tom Dart, *Former Texas Officer Who Fatally Shot Unarmed Woman Found Not Guilty*, GUARDIAN (Apr. 8, 2016), http://www.theguardian.com/us-news/2016/apr/07/fdaniel-willis-not-guilty-fatal-police-shooting-yvette-smith-texas [http://perma.cc/5JZH-VUAS].

5. Justin Jouvenal, Ian Shapira & Fredrick Kunkle, *Virginia Cop Fatally Shot 1st Day on Job; Army Sergeant Charged in Killing*, CHI. TRIB. (Feb. 28, 2016), http://www.chicagotribune.com/news/nationworld/ct-virginia-police-officer-killed-20160228-story.html [http://perma.cc/Z3PZ-YPDP].

point-blank range.[6] And a gunman targeting police shot and killed five officers in Dallas—Lorne Ahrens, Michael Krol, Michael Smith, Brent Thompson, and Patricio Zamarripa—as they patrolled a demonstration to protest police shootings of African-American men.[7] These examples are far from exhaustive.[8]

Although each fatal incident has unique circumstances, in many places, news of these tragedies is viewed through a historical lens of poor relations between police and minority communities.[9] Both local and national dimensions contribute to a climate of tension, anger, and fear in some communities; similar sentiments are also present among many in law enforcement.[10] The topic of

6. Benjamin Mueller & Al Baker, *2 N.Y.P.D. Officers Killed in Brooklyn Ambush; Suspect Commits Suicide*, N.Y. TIMES (Dec. 20, 2014), http://www.nytimes.com/2014/12/21/nyregion/two-police-officers-shot-in-their-patrol-car-in-brooklyn.html [http://perma.cc/6VM4-AWUM].

7. Manny Fernandez, Richard Perez-Pena & Jonah Engel Bromwich, *Five Dallas Officers Were Killed as Payback, Police Chief Says*, N.Y. TIMES (July 8, 2016), http://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html [http://perma.cc/4SMW-ADLB].

8. In 2016, there were 957 fatal shootings by officers, down slightly from 991 in 2015. Kimbriell Kelly et al., *Fatal Shootings by Police Remain Relatively Unchanged After Two Years*, WASH. POST (Dec. 30, 2016), http://www.washingtonpost.com/investigations/fatal-shootings-by-police-remain-relatively-unchanged-after-two-years/2016/12/30/fc807596-c3ca-11e6-9578-0054287507db_story.html [http://perma.cc/5GS9-LFCV]. Sixty-two police officers were shot and killed by civilians in 2016, which was up from thirty-nine officers killed in 2015. *Id.* According to the *Guardian*, 169 unarmed civilians were killed by police in 2016. Jon Swaine & Ciara McCarthy, *Young Black Men Again Faced Highest Rate of US Police Killings in 2016*, GUARDIAN (Jan. 8, 2017), http://www.theguardian.com/us-news/2017/jan/08/the-counted-police-killings-2016-young-black-men [http://perma.cc/3MNC-92VL]. Overall, firearm-related police deaths have been on a dramatic downward trend for the last thirty-five years, especially when adjusted for population growth. *See* Mark J. Perry, *Is There Really a 'War on Cops'? The Data Show that 2015 Will Likely Be One of the Safest Years in History for Police*, AEIDEAS (Sept. 9, 2015, 2:58 PM), http://www.aei.org/publication/is-there-really-a-war-on-cops-the-data-show-that-2015-will-likely-be-one-of-the-safest-years-in-history-for-police [http://perma.cc/WG79-B8TH] (analyzing data showing that 2013 and 2015 were two of the safest years for law enforcement, indicating a downward trend dating back to the Prohibition era).

9. See *infra* Section IV.B for examples of law enforcement leaders who are acknowledging the history of police abuses in minority communities. The existence of federal oversight over local police is itself one way that Congress has recognized America's history of police brutality. For example, the Rodney King beating was the impetus for the Police Accountability Act of 1991, the predecessor to 42 U.S.C § 14141, which authorized the U.S. Department of Justice to conduct pattern-or-practice investigations. *See* H.R. Rep. No. 102-242, at 135-38 (1991) (discussing the King incident and other examples of unlawful police conduct). For an account of clashes between communities of color and police during the Civil Rights Movement, see BARBARA HARRIS COMBS, FROM SELMA TO MONTGOMERY: THE LONG MARCH TO FREEDOM (2013).

10. A Pew survey conducted in 2016 found that ninety-three percent of officers say officers in their department have become more concerned for their safety as a result of "high-profile incidents involving blacks and the police." Rich Morin et al., *Behind the Badge*, PEW RES. CTR.

policing in America draws new urgency and attention due to viral video clips of individual police encounters and police reform movements such as Black Lives Matter. Policing practices are under scrutiny by the media, the public, politicians, the U.S. Department of Justice (DOJ), private litigants, and police departments. While the events surrounding each incident are different, they give rise to some common questions. Can we recalibrate police-community relations, where necessary, to better keep our communities and our law enforcement officers safe? Can we find a way to minimize use-of-force tragedies that may have grave individual and community costs and serve as flashpoints? Can we find common ground that provides a starting point for police reform where such reform is necessary?

As for common ground, it appears at first glance that the various stakeholders each come to the broader reform conversation with divergent interests. But, these divergences reflect not competing goals but mainly disagreements about which policing practices or tactics will best achieve common goals. The key stakeholders have a common interest in public and officer safety, and in effective police-community relations. The approach to reforming policing to improve both effectiveness and police-community relations is not one-size-fits-all. Departments use varying tactics to meet local priorities and evolving public safety challenges. Although there is no uniform approach, many police leaders have recognized that avoidable uses of force erode public trust[11] and in turn make communities less, not more, safe.[12]

Police use of force, however, is not the only area of police-community relations facing close scrutiny. Legally circumscribed stops are an essential police tactic, but aggressive stop-and-frisk policies that reach outside the bounds of lawful limits increase the frequency of citizen-police confrontations to cite an-

65 (Jan. 11, 2017), http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/01/06171402/Police-Report_FINAL_web.pdf [http://perma.cc/DR5T-J6GM]. Three-quarters of officers reported that interactions between police and blacks have become more tense. *Id.*

11. Policing experts and leaders recognize the need to reduce use-of-force incidents in order to maintain community trust. *See* Office of Cmty. Oriented Policing Servs., *Emerging Use of Force Issues: Balancing Public and Officer Safety*, INT'L ASS'N CHIEFS POLICE & U.S. DEP'T JUST. 7 (Mar. 2012), http://www.theiacp.org/portals/0/pdfs/emerginguseofforceissues041612.pdf [http://perma.cc/F2UC-5JBA] (characterizing inappropriate use of force as a breach of the public trust and emphasizing the importance of maintaining sensitivity to the resulting harms); Chuck Wexler, *Why We Need To Challenge Conventional Thinking on Police Use of Force, in Guiding Principles on Use of Force*, POLICE EXECUTIVE RES. F. 4 (Mar. 2016) [hereinafter *Guiding Principles*], http://www.policeforum.org/assets/30%20guiding%20principles.pdf [http://perma.cc/JTG5-UGDZ] ("Most police officers never fire their guns . . . [b]ut police chiefs tell us that even one bad encounter can damage trust with the community that took years to build.").

12. *Guiding Principles*, *supra* note 11, at 30 (concluding that rebuilding bridges of trust between police and the residents they serve will enhance both officer safety and community safety).

other example. Some of these practices have been the subjects of legal challenges.[13] The impact of these practices on police-community relations can be pronounced, particularly in some minority neighborhoods.[14] A high volume of unjustified stops can quickly build resentment for law enforcement and escalate tensions between the community and the police.[15] Additionally, if every police-civilian confrontation poses some danger, unnecessary confrontations pose unnecessary dangers.

At the same time, policing is a difficult and dangerous job. The men and women of law enforcement deal with very volatile and unpredictable human problems including domestic violence cases, drug-related violence, gang activity, widespread availability of illegal guns, and frequent encounters with persons in mental distress. Law enforcement officers regularly place themselves one emergency call away from tragedy and are charged with making split-second decisions with potentially grave consequences.

The job is difficult and the tensions in frayed police-community relations are real. Recognizing the need to share information regarding best practices, representatives of law enforcement and policing experts, such as the International Association of Chiefs of Police and the Police Executive Research Forum, the DOJ under President Obama, and community voices, coalesced around key policing approaches that they believed could enhance public trust and minimize community tension with appropriate regard for public and officer safety imperatives.[16] For example, President Obama's Task Force on Twenty-First Century Policing emphasized that "trust between law enforcement and the

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13. See *infra* notes 55-57, 71 and accompanying text for descriptions of recent lawsuits challenging police practices.

14. *See* Floyd v. New York, 959 F. Supp. 2d 540, 590 (S.D.N.Y. 2013) ("The NYPD has known for more than a decade that its officers were conducting unjustified stops and frisks and were disproportionately stopping blacks and Hispanics. Despite this notice, the NYPD expanded its use of stop and frisk by seven-fold between 2002 and 2011."); *infra* notes 66-70 and accompanying text. Fifty-two percent of the 4.4 million persons stopped by the NYPD from January 2004 to June 2012 were African-American. *Floyd*, 959 F. Supp. 2d at 558-59. Weapons were seized in 1% of the stops of black people and 1.4% of the stops of white people. *Id.* at 559. Contraband other than weapons were seized in 1.8% of stops of black people and 2.3% of stops of white people. *Id.*

15. *See* Wesley Lowery, Carol D. Leonnig & Mark Berman, *Even Before Michael Brown's Slaying in Ferguson, Racial Questions Hung over Police*, WASH. POST (Aug. 13, 2014), http://www.washingtonpost.com/politics/even-before-teen-michael-browns-slaying-in-mo-racial-questions-have-hung-over-police/2014/08/13/78b3c5c6-2307-11e4-86ca-6f03cbd15c1a_story.html [http://perma.cc/DY2U-KNCX].

16. *See PERF's 30 Guiding Principles on Use of Force*, *in Guiding Principles*, *supra* note 11, at 33-78 (defining thirty principles, developed by police executives, for reducing use-of-force incidents in order to protect police and public safety).

people they protect and serve is essential in a democracy."[17] Community-focused policing models are one way to enhance the bonds of trust and promote more effective policing.[18] In that model, the public looks to law enforcement to keep neighborhoods safe, and law enforcement looks to the public to actively aid them in their effort. This approach to policing is sometimes described as the "guardian mindset."[19] When that relationship between the police and the community breaks down, it can, in some cases, stem from or lead to a more aggressive style that emphasizes zero-tolerance policing and a so-called "warrior mindset."[20] In the latter scenario, the public safety mission may be more difficult to achieve.[21]

The relationship between law enforcement and the community also exists in a broader context. Properly conceived, law enforcement serves democratic goals. According to one foundational conception of policing—the Peelian principles—the police power derives from public consent and approval.[22] Although Peel's Principles are traced to England in 1829, this Feature evaluates the current landscape of police reform against these principles, which highlight the importance of democratic mechanisms and the public good. In his farewell address, President Obama observed that democracy does not require uniformity, but it does require a basic sense of solidarity.[23] The same is true in the Peelian framework of policing, which emphasizes the capacity of community-focused policing to serve our communities through well-calibrated practices and policies.

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17. Office of Cmty. Oriented Policing Servs., *Final Report of the President's Task Force on 21st Century Policing*, U.S. DEP'T JUST. 1 (May 2015) [hereinafter *Task Force on Policing*], http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [http://perma.cc/5AXU-F8PA]. The task force consisted of four police chiefs, one police union leader, a police academy leader, two academics, and four nonprofit leaders. *Id.*

18. See *infra* notes 114-116 and accompanying text for a discussion of one study that found improved community relations after community policing reforms were adopted.

19. *Task Force on Policing*, *supra* note 17, at 11-12.

20. *Id.* at 1.

21. *See* Kimberly Kindy, *Creating Guardians, Calming Warriors*, WASH. POST (Dec. 10, 2015), http://www.washingtonpost.com/sf/investigative/2015/12/10/new-style-of-police-training-aims-to-produce-guardians-not-warriors [http://perma.cc/V92D-Y6GD] ("Law enforcement culture should embrace a guardian mindset to build public trust and legitimacy. Toward that end, police and sheriffs' departments should adopt procedural justice as the guiding principle . . . to guide their interactions with the citizens they serve."); *Task Force on Policing*, *supra* note 17, at 11; (discussing guardian officer training of thousands of new recruits outside of Seattle).

22. *See infra* note 41 and accompanying text (discussing the "Legitimacy Principle").

23. *President Obama Farewell Address: Full Text*, CNN (Jan. 11, 2017, 11:43 AM), http://www.cnn.com/2017/01/10/politics/president-obama-farewell-speech [http://perma.cc/L8WT-VBPD].

In this Feature, I argue in favor of a democracy-reinforcing model of policing that revisits Peel's principles in the contemporary context. Part I sets out Peel's principles and draws parallels between their original application and their continuing relevance today. Part II considers certain of the key stakeholders who have an interest in police practices and reform, including minority communities, law enforcement, and politicians. It explores aspects of each of their perspectives to identify their respective interests and any common ground between them. Part III examines how Peel's Principles capture the common ground identified in Part II and connects this framework with community policing reforms that some jurisdictions have already started to implement. Part IV describes three different reform pathways that embrace Peel's vision of legitimacy and trust, paying special attention to how the Trump Administration might impact each of these approaches.

There is no perfect system of policing and no panacea capable of eradicating crime or the racial tensions that exist both within and outside of the policing context. This Feature, however, seeks to contribute to the national conversation on policing by considering how key stakeholders may move beyond an "us versus them" dynamic and may instead identify common ground that can light a path toward effective models of policing. When stakeholders focus on their common goals, they will recognize that community-centered policing built on an earned mutual trust not only promises tangible benefits for the safety of the public and of law enforcement officers, but also that this approach can positively affect the climate of police-community relations.

I. PEEL'S PRINCIPLES: THE FOUNDATION OF COMMUNITY POLICING

Peel's Principles were developed at the dawn of the first organized police department in London almost two-hundred years ago, and they took account of both the value of a formal police force and the people's skepticism about vesting that force with considerable quasi-military power that could threaten liberty if unchecked.[24] These principles offer guideposts for the ongoing national discussion about how to recalibrate our policies today.

24. RADLEY BALKO, RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES 29-30 (2013).

A. The Origin of Police Departments

Sir Robert Peel—the father of London's police force,[25] and later two-time Prime Minister of England[26]—is credited with the creation of the first modern police force in London in 1829.[27] Although he and his father pushed to create a police force in the preceding decades, British concerns about the consequences for the nation's history of civil liberties "had repeatedly killed the idea."[28] Indeed, many British citizens feared that a standing police force would undermine democracy by enabling the state to suppress protest or support unpopular rule.[29] Concerned about worsening conditions of crime in London, however, Peel obtained Parliament's approval to create the police force in 1829.[30]

In the face of considerable skepticism, Peel sought to make a formal police force acceptable to the public by setting out nine principles that every new officer was to follow.[31] These guidelines became known as Peel's Principles[32] and were intended to reinforce the notion that officers' primary responsibilities were both to fight crime *and* protect citizens' rights.[33] Peel's Principles were conceived as a conscious democratic limitation on police power. As I argue below, they still offer guidance for modern American police to follow today.

The earliest police forces in America faced similar skepticism. In the American colonies, professional British soldiers executed many of the same law en-

25. Joseph Goldstein & J. David Goodman, *A London Guide for 1 Police Plaza*, N.Y. TIMES (Apr. 15, 2014), http://www.nytimes.com/2014/04/16/nyregion/a-london-guide-for-1-police-plaza.html [http://perma.cc/P6D7-MJUN]. There is much debate around how much influence Peel actually had over early policies. *See, e.g.*, Susan A. Lentz & Robert H. Chaires, *The Invention of Peel's Principles: A Study of Policing 'Textbook' History*, 35 J. CRIM. JUST. 69 (2007) (casting doubt on the principles' origins and indicating how the principles may have been manipulated over time). Regardless of their origins, this Feature argues that the principles stand on their own as sound guideposts for modern policing.

26. *See History—Past Prime Ministers—Sir Robert Peel 2nd Baronet*, GOV.UK, http://www.gov.uk/government/history/past-prime-ministers/robert-peel-2nd-baronet [http://perma.cc/LXX4-R5DC].

27. BALKO, *supra* note 24, at 29.

28. *Id.* at 29.

29. *See Sir Robert Peel and the New Metropolitan Police*, NAT'L ARCHIVES, http://www.nationalarchives.gov.uk/education/candp/prevention/g08/g08cs2.htm [http://perma.cc/XH54-727G].

30. *Id.*

31. Sir Robert Peel, *Principles of Policing* (1829), *in* KENNETH J. PEAK & RONALD W. GLENSOR, COMMUNITY POLICING AND PROBLEM SOLVING: STRATEGIES AND PRACTICES 3 (2d ed. 1999).

32. *See* Goldstein & Goodman, *supra* note 25.

33. BALKO, *supra* note 24, at 29.

forcement functions that modern police do today.[34] This standing army was specifically cited as a grievance in the Declaration of Independence.[35] To the Founders, a police force posed a similar risk to democratic principles as standing armies did.[36] Having lived with an occupying force—and understanding its threat to liberty[37]—the Founding generation was not eager to trade one occupier for another.[38]

But to say that formal policing was not a concept familiar to the Founding generation is not to say that it would not eventually find a place firmly within our democratic traditions. In *Federalist No. 8*,[39] Alexander Hamilton described the competing principles of liberty and safety that would be weighed in a different context when cities sought to establish formal police forces. Americans have long sought to balance these principles. Perhaps one of the earliest examples from the early nineteenth century was that of the New York Police Department—the first modern-style American police department. New York police initially patrolled the streets unarmed and without uniforms because its founders worried that uniformed and armed officers would too closely resemble a military force that citizens would perceive as a threat to liberty.[40] Efforts to strike the balance between liberty and safety continue today.

B. Incorporating Peel's Principles into Current Police Reform

The Peelian framework for policing recognizes that improving public safety does not require the trampling of democratic values. In fact, effective policing reinforces democracy and liberty.

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34. *See id.* at xi.

35. *See* THE DECLARATION OF INDEPENDENCE para. 13 (U.S. 1776).

36. BALKO, *supra* note 24, at xi.

37. *See* THE FEDERALIST NO. 8, at 62 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("The violent destruction of life and property incident to war . . . will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they . . . become willing to run the risk of being less free.").

38. *See* THE DECLARATION OF INDEPENDENCE paras. 13, 14, 17 (U.S. 1776) ("[The King] has kept among us, in times of peace, Standing Armies without the Consent of our legislatures. He has affected to render the Military independent of and superior to the Civil power . . . protecting them, by a mock Trial . . . .").

39. *See* THE FEDERALIST NO. 8, *supra* note 37.

40. BALKO, *supra* note 24, at 30.

In the policing context, law and experience return time and again to the values of legitimacy, trust, and restraint. Peel captured these values in several of his principles, which balance safety with respect for liberty and equality:

"The ability of the police to perform their duties is dependent upon *public approval* of police existence, actions, [and] behavior . . . ."[41] I regard this as the Legitimacy Principle.

"Police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain public respect."[42] I regard this as the Trust Principle.

"Police seek and preserve public favor, not by catering to public opinion, but by constantly demonstrating absolutely impartial service to the law . . . by ready offering of individual service and friendship to all members of society without regard to their race or social standing" and "the police are the public and the public are the police . . . ."[43] I regard these as the Equality and Community Principles.

The final Peelian Principle is particularly significant in the context of today's pressing challenges. "Police should use physical force to the extent necessary to secure observance of the law or to restore order *only* when the exercise of persuasion, advice and warning is found to be insufficient . . . ."[44] I regard this as the Restraint and Sanctity of Life Principle.

Peel's notion of policing places responsibility on both the community and the police. When there is trust between law enforcement and the community, the community benefits because law enforcement officers place primacy on the community's wellbeing and understand the weight of their responsibility. Police, in turn, benefit from working in a community that appreciates their role in promoting safety and actively supports that common goal.

These principles are democratic because they bind the police to the communities they serve and affirm certain fundamental values. The Legitimacy Principle and Community Principle support democratic participation because police work requires public approval and participation. This mutual respect is tied to law enforcement's commitment to remain within its designated role, bounded by the Restraint and Sanctity of Life Principle. Through the Trust Principle, officers' duty to enforce the law serves the larger goal of maintaining public respect, which contributes to a dynamic in which the police can enlist

41. *The Roots of Policing: Sir Robert Peel's 9 Principles*, CLEVELAND.COM (June 8, 2016), http://www.cleveland.com/metro/index.ssf/2016/06/the_roots_of_policing_sir_robe.html [http://perma.cc/Q5L9-WG4S] (quoting Principle 2) (emphasis added).

42. *Id.* (quoting Principle 3).

43. *Id.* (quoting Principles 5 and 7).

44. *Id.* (quoting Principle 6) (emphasis added).

the public's cooperation to guard public safety. Officers must balance competing responsibilities: the duty to protect the people's liberty and the power to take that liberty away. Together, Peel's Principles require participation and accountability, in a process where liberty and equality are fundamental. While community members and the police bring different experiences and perspectives to the question of public safety, community-supported policing is itself a democratic process that is designed to guard the liberty of the community by enforcing the law. Approaches to policing will vary from place to place, but both the public and law enforcement stand to benefit from Peel's framework.

Peel's Principles are as relevant today as they were in 1829. Of course, there have been competing interpretations of which principles are central to the Peelian model of policing.[45] A comparison of these analyses suggests that there is no clear consensus on which principles are most fundamental to the Peelian philosophy.[46] For example, some scholars argue that a centralized, military-style structure is one of the most integral components of Peel's model.[47] Other interpretations, however, focus on the Community, Legitimacy, and Trust Principles, and argue that they track modern community policing principles.[48] Keith Williams notes that modern police departments have adopted Peel's Principles wholesale in their mission statements and policies.[49] Professor Julia Scott has discussed the applicability of Peel's Principles to the post-9-11 law enforcement reality.[50]

Moreover, some commentators have argued that Peel's Principles are disconnected from modern-day policing. One critic argues that because the principles are too broad, they can be wielded in defense of undemocratic police practices.[51] Although it is true that principles can be invoked in support of

45. *See* Julia E. Scott, *Evolving Strategies: A Historical Examination of Changes in Principle, Authority and Function To Inform Policing in the Twenty-First Century*, 83 POLICE J. 126, 129-31 (2010) (comparing and contrasting four different compilations of Peel's Principles).

46. *Id.* at 132.

47. *Id.* at 143.

48. *Id.*

49. *See* Keith L. Williams, *Peel's Principles and Their Acceptance by American Police: Ending 175 Years of Prevention*, 76 POLICE J. 97, 110-19 (2003) (comparing the modern mission statements of five major U.S. police departments to Peel's Principles).

50. *See* Tom Tyler, *Police Discretion in the 21st Century Surveillance State*, 2016 U. CHI LEGAL F. 579, 604 (tying Peel's principles to recent research results that support the value of popular legitimacy of police); *cf.* Scott, *supra* note 45, at 155-60 (arguing that certain aspects of community policing are not effective in post-9-11 America but recognizing the importance of a generally democratic approach to policing in this climate).

51. *See* Ian Loader, *In Search of Civic Policing: Recasting the 'Peelian' Principles*, 10 CRIM. L. & PHIL. 427, 431 (2016) (noting that Bill Bratton invoked Peel in defense of stop-and-frisk, and advocating a move away from the principles).

competing views or interpretations, just because some have invoked Peel to defend questionable policing practices does not mean the principles are inherently problematic, or should be abandoned altogether. Principles are fundamental precisely because they capture core values, and consequently, they tend to be expansive. Elaborations, interpretations, and more granular refinements are necessary and welcome. Peel's Principles acknowledge tension between the value of law enforcement and the liberty of those who are policed. That recognition is valuable, and awareness of it, as well as the important competing concerns, provide important context for policing. Indeed, a case can be made that Peel's guideposts are arguably more necessary now to law enforcement agencies nationwide in a diverse, eclectic American society faced with a more complex set of structural problems.

II. THE PROBLEM THROUGH DIFFERENT LENSES

Given the variety of stakeholders and perspectives on the state of police-community relations in America, is Peel's vision of foundational principles practical? The framework assumes the existence of some common ground; otherwise, the Trust, Equality and Community, Legitimacy, Restraint, and Sanctity of Life principles cannot be realized. I argue that despite having different perspectives, the public, police, and policymakers all share a common goal: to establish a well-trained, managed, and accountable police force that effectively guards public safety. To reach this common goal, public discussion must be candid. All stakeholders must be willing to engage the legitimate concerns of other interested groups and even to understand the origins of concerns that they may initially regard with skepticism. In this Part, I consider this common goal from the perspective of three key stakeholder groups. No group is a monolith, and members of each of the groups described below may oppose the project of police reform for a variety of reasons, or have different views about how it could be accomplished or even whether it is necessary. The following perspectives represent some common concerns raised by certain of those groups who have added their voices to the national discussion, but are by no means comprehensive or exclusive.

A. A Minority Community Perspective

Many communities of color have deep concerns about the role of racial bias in police interactions.[52] In many communities, there are also concerns about

52. *See, e.g.*, Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 890 (2004) (finding that unarmed, innocent African

the frequency and degree of police encounters and about uses of force,[53] resulting in a significant trust deficit with their local law enforcement.[54] While this is not true in every community, residents in many minority communities believe that some police attribute suspicion merely because of one's presence in a neighborhood or one's race.[55] Those who are stopped by police without justification may face inconvenience, indignity,[56] or worse. At the same time, some of these communities also suffer from high crime that threatens individuals' or even an entire neighborhood's public safety.

In these communities, paradoxically, the need for concerted and aggressive policing to reduce serious crime rates may exacerbate tensions, even if well-intended. New York City's stop-and-frisk policy, which was found unconstitutional by a federal district court,[57] is one example of aggressive policing that eroded community trust without making communities safer when compared to less intrusive options. The violent crime rate in New York City was already in decline when stop-and-frisk began around 2002.[58] That year, police stopped

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Americans "may easily become the targets of intense visual surveillance by both police officers and the lay public" and that police officers "may tie individual Black targets to a group-based suspicion").

53. *See, e.g.*, Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 540-41 (2014) (finding that implicit dehumanization of black children predicts racially disparate police use of force against black children); L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 OHIO ST. J. CRIM. L. 115, 126-28, 135-43 (2014) (demonstrating that even in the absence of intentional animus, a white officer's concern with appearing prejudiced can actually lead to racially disparate outcomes, and the perceived hypermasculinity of black males can lead to racial violence).

54. *See infra* note 62.

55. In New York City, during the ascent of stop-and-frisk policies from 2004 to 2009, officers checked a box indicating that the person stopped was in a "High Crime Area" more often than any other reason (except "Furtive Movements") for a stop. Floyd v. New York, 959 F. Supp. 2d 540, 574 (S.D.N.Y. 2013). Being in a high crime area was, in fact, a weak indicator of criminal activity, and "stops were 22% more likely to result in arrest if 'High Crime Area' was *not* checked." *Id.* at 575.

56. *Id.* at 555 ("It is simply fantastic to urge that [a frisk] performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a 'petty indignity.'" (quoting Terry v. Ohio, 392 U.S. 1, 16-17 (1968))).

57. *Id.* at 667 (holding that NYPD's stop-and-frisk practice violated the plaintiffs' Fourth and Fourteenth Amendment rights).

58. Max Ehrenfreund, *Donald Trump Claims New York's Stop-and-Frisk Policy Reduced Crime. The Data Disagree.*, WASH. POST (Sept. 22, 2016), http://www.washingtonpost.com/news/wonk/wp/2016/09/22/donald-trump-claims-new-yorks-stop-and-frisk-policy-reduced-crime-the-data-disagree [http://perma.cc/233F-9H9R].

New Yorkers 97,296 times.[59] In 2011, at the peak of stop-and-frisk, the NYPD made 685,724 stops.[60] Fifty-three percent of individuals stopped were black, thirty-four percent were Latino, and eighty-eight percent were innocent.[61] Unnecessary contacts recovered a statistically low ratio of weapons, but had pronounced effects in minority communities, where conflict and mistrust between the public and the police appeared intractable.[62] A 2014 Pew Research Center survey found that seventy-one percent of white people expressed a great or fair amount of confidence in local police to treat black and white people equally, compared to just thirty-six percent of black people.[63] Because these stops were not adequately calibrated to suspected wrongdoing, the policy deflected resources and built distrust in ways that made both life in these communities and policing more difficult.[64] Most of all, the policy did not make communities safer. After the abrupt end of stop-and-frisk in 2013, the rate of homicide continued to decline as it had before and during the practice.[65]

One first-person account illustrates the point. On his eighteenth birthday, Nicholas Peart, a black teenager from New York, was stopped and frisked by

59. *Stop-and-Frisk Data*, N.Y.C.L. UNION, http://www.nyclu.org/content/stop-and-frisk-data [http://perma.cc/HD49-MD5M].

60. *Id.*

61. *Id.*

62. Combined data from 2011 to 2014 that measures Americans' confidence in police showed that fifty-nine percent of white people have "a great deal or quite a lot of confidence in the police," compared with thirty-seven percent of black people. Frank Newport, *Gallup Review: Black and White Attitudes Toward Police*, GALLUP (Aug. 20, 2014), http://www.gallup.com/poll/175088/gallup-review-black-white-attitudes-toward-police.aspx [http://perma.cc/X358-8ER5]. Tom Tyler, Jeffrey Fagan, and Amanda Geller's work on police legitimacy has found that "people who have more contact with the police evaluate their later contacts as less fair and lawful, in turn leading to a corrosive influence of contact upon the psychological judgments underlying legitimacy." Tom R. Tyler, Jeffrey Fagan & Amanda Geller, *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, 11 J. EMPIRICAL LEGAL STUD. 751, 776 (2014).

63. Bruce Drake, *Divide Between Blacks and Whites on Police Runs Deep*, PEW RES. CTR. FACT TANK (Apr. 28, 2015), http://www.pewresearch.org/fact-tank/2015/04/28/blacks-whites-police [http://perma.cc/AS24-AXHJ].

64. Tyler, Fagan, and Geller's study further found that "higher legitimacy is related to lower levels of criminal behavior and also demonstrate that cooperation with the police is greater when legitimacy is high." Tyler et al., *supra* note 63, at 775; *see also* Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 263 (2008) (finding in a study of New York City that legitimacy, which is linked to the fairness of police procedures, shapes cooperation); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement*, 20 PSYCHOL. PUB. POL'Y & L. 78, 89 (2014) (finding that legitimacy has a role in shaping compliance and in building social capital).

65. Ehrenfreund, *supra* note 58.

police and found himself on the ground with a gun pointed at him.[66] Police checked his identification and then left.[67] On another occasion, two police officers stopped, frisked, and handcuffed him.[68] They also took his key, tried to enter his apartment, searched his shoes and socks, and then eventually let him go.[69] According to Peart, these baseless stops "changed the way [he] felt about the police," because the possibility of being stopped and having a gun pointed at him by an officer became an unwelcomed fact of life.[70]

Limiting policing practices to lawful stops in minority neighborhoods, however, is not the same as asking police to abandon those neighborhoods and stop policing there altogether. My own personal experience reinforces this important distinction. I grew up in a section of the Bronx, New York where police presence was essential. When I was in high school, another student working just blocks from my apartment was killed in a store robbery. A deep concern about public safety permeated the neighborhood. My mother regularly urged me not to take the shortest route home because it required walking through a long alleyway that was considered unsafe in the 1980s. The proximity to danger was real and required constant alertness. I understood then, as I do now, the important role that police play in public safety.

At the same time, I also experienced the impact of unwarranted encroachments on liberty. In the early 1980s, my close friend and I were stopped while he was driving his car in front of his Bronx apartment building. When the officer stopped the car with two black teens in a residential section of the Bronx, he asked what we were doing there, and my friend indicated that he lived in the building directly across from us. When we asked why we had been stopped, the officer said that it was due to a broken taillight. The car, however, had no broken light. Because of the absence of any lawful justification for the stop, and in light of the factually unsupportable proffered justification, my friend and I both drew the conclusion that our race motivated the stop.

As a lawyer, I have also represented residents of public housing who were plaintiffs in a case seeking to require the New York Police Department to respect their constitutional rights to remain free of illegal stops and arrests.[71] The case challenged the practice of stopping public housing residents during so-

66. Nicholas K. Peart, *Why Is the N.Y.P.D. After Me?*, N.Y. TIMES (Dec. 17, 2011), http://www.nytimes.com/2011/12/18/opinion/sunday/young-black-and-frisked-by-the-nypd.html [http://perma.cc/W6R7-AHYN].

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Davis v. City of New York, 959 F. Supp. 2d 427, 430 (S.D.N.Y. 2013).

called "vertical sweeps"—police patrols in stairwells, hallways, and public spaces.[72] At the same time, my clients also wanted to be protected by law enforcement—protected and respected. To my clients, there was nothing inconsistent about these dual goals.

Minority communities share a desire for effective policing. Even where crime is a problem, however, communities want law enforcement that is adequately trained, supervised, or disciplined where appropriate, and any approach to policing that does not manifest respect for members of the community or too readily and unnecessarily permits uses of force remains a concern.

B. A Law Enforcement Perspective

Like many minority communities, law enforcement officers typically also want to increase public safety in the communities they serve. Most officers who attend police academies around the nation do so to serve and protect.[73] Policing is a dangerous and stressful job, which requires split-second life-and-death judgments that can be difficult to assess in hindsight. Officers are the government's first-responders to the broadest array of social problems. When other societal structures fail, the police must still answer calls for assistance. Moreover, the line officer does not create police policies, but must follow them and implement those set by police leadership and politicians. If those policies prove unpopular on the streets, line officers are the ones who bear the brunt of the community's response. On top of these challenges, the police live with the consequences of pressures on law enforcement budgets for training and equipment[74] and political pressures about crime trends and spikes.[75]

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72. This same practice had led to the fatal shooting of Akai Gurley in New York. *See* Joseph De Avila & Rebecca Davis O'Brien, *Shootings Stir Concerns About 'Vertical' Patrols*, WALL ST. J. (Feb. 5, 2016), http://www.wsj.com/articles/shootings-stir-concerns-over-vertical-patrols-1454721849 [http://perma.cc/6JHZ-9LP5] (describing the circumstances of Akai Gurley's killing).

73. Anthony J. Raganella & Michael D. White, *Race, Gender, and Motivation for Becoming a Police Officer: Implications for Building a Representative Police Department*, 32 J. CRIM. JUST. 501, 505-06 (2004) (finding that most recruits in a small NYPD sample joined for altruistic and practical reasons).

74. *See* Office of Cmty. Oriented Policing Servs., *The Impact of the Economic Downturn on American Police Agencies*, U.S. DEP'T JUST. 12, 20 (Oct. 2011), http://www.ncdsv.org/images/COPS_ImpactOfTheEconomicDownturnOnAmericanPoliceAgencies_10-2011.pdf [http://perma.cc/3VSW-FRJ6] (analyzing how police department budget cuts have caused understaffing and failure to respond to certain service calls).

75. *See, e.g.*, Pervaiz Shallwani & Mark Morales, *NYC Officials Tout New Low in Crime, but Homicide, Rape, Robbery Rose*, WALL ST. J. (Jan. 4, 2016), http://www.wsj.com/articles/nyc-officials-tout-new-low-in-crime-but-homicide-rape-robbery-rose-1451959203 [http://perma.cc/D57X-PSVF]; Tasha Tsiaperas & Naomi Martin, *Rising Crime, Heavy Criticism Won't Get*

Many officers feel that the public does not understand all of the challenges of their job. In a recent Pew survey of police officers, eighty-six percent of officers said that the public does not understand the challenges and risks they face too well or at all.[76] Notably, forty-two percent of white and Hispanic officers say the public does not understand the dangers at all, compared to twenty-nine percent of black officers.[77] Former New York City Police Commissioner Bill Bratton noted that the current climate is counterproductive: "My officers spent much of the fall [of 2015] being accused of terrible, untrue things. They were shouted at, spat upon, even assaulted. Two were assassinated for nothing more than being cops."[78] In many situations, the acts of one officer or a group of officers are attributed to every officer.[79] And, through all of this, the responsibility to protect the public does not cease.

Aware of the distance that exists between some police officers or departments and the communities they are sworn to protect, some law enforcement officials across the country have supported the idea that they should not be judged solely on crime statistics, but also on the quality of the relationships their departments have with local communities.[80] At an October 2016 meeting of the International Association of Chiefs of Police (IACP), Terrence Cunningham, IACP president and police chief of Wellesley, Massachusetts, stated that law enforcement needs to "acknowledge and apologize for the actions of the past and the role that our profession has played in society's historical mistreatment of communities of color."[81] He called this admission a "first step" and said that "by working together, we can break this historic cycle of mistrust and

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Dallas Police Chief Fired—Yet, DALL. MORNING NEWS (Apr. 1, 2016), http://www.dallasnews.com/news/crime/2016/04/01/rising-crime-heavy-criticism-wont-get-dallas-police-chief-fired-yet [http://perma.cc/48A6-YTLQ].

76. Morin et al., *supra* note 10, at 27.

77. *Id.*

78. *Police Commissioner Bratton's Remarks at Queens Black History Month Discussion Panel*, N.Y. POLICE DEP'T NEWS (Feb. 24, 2015) [hereinafter *Police Commissioner Bratton's Remarks*], http://nypdnews.com/2015/02/police-commissioner-brattons-remarks-at-queens-black-history-month-discussion-panel [http://perma.cc/6FXL-MYVD].

79. *See* D.K., *What the Cops Say*, ECONOMIST (Apr. 27, 2015), http://www.economist.com/blogs/democracyinamerica/2015/04/policing-america [http://perma.cc/32TW-LL4D] (interviewing a police officer who says that "[t]he media take one incident and they magnify it to the point where people think that must be all law enforcement and it really hurts officers").

80. *See* Tom Jackman, *U.S. Police Chiefs Group Apologizes for 'Historical Mistreatment' of Minorities*, WASH. POST (Oct. 17, 2016), http://www.washingtonpost.com/news/true-crime/wp/2016/10/17/head-of-u-s-police-chiefs-apologizes-for-historic-mistreatment-of-minorities [http://perma.cc/KU48-UKTG].

81. *Id.*

build a better and safer future for us all."[82] On more than one occasion, former Commissioner Bratton likewise acknowledged that "the relationship with the police has been ruptured" in communities of color.[83] He has also stated that "[t]he best parts of American history would have been impossible without the police. Many of the worst parts of black history would have been impossible without the police, too."[84]

These law enforcement officials have influence in their community, but not all share their views. A 2017 Pew survey of police officers found that sixty percent of white and Hispanic officers believe police have excellent or good relations with the black communities they serve, compared to thirty-two percent of black officers.[85] Although perceptions of police-community relations vary widely inside and outside of law enforcement, more than nine in ten officers agree that it is important for an officer to "know the people, places, and the culture in the areas where they work in order to be effective at their job."[86] This knowledge should include training and reflection on the ways in which race and tactics may affect or inform the police-community dynamic. The majority of police are committed to doing their job well, and believe that understanding the community is a key part of achieving that goal.

C. A Political Perspective

Politicians also want effective police in the communities they represent. Responding to the flashpoints between communities and police, many political leaders across the country increasingly see the need to reassess the American approach to policing. For example, from 2015-2016, thirty state legislatures passed laws related to body-worn cameras,[87] and at least twenty-seven states and the District of Columbia now have laws requiring mental health training

82. *Id.*

83. *Police Commissioner Bratton's Remarks*, *supra* note 78.

84. Pervaiz Shallwani, *Commissioner: NYPD Must Face Hard Truths, but so Must Critics*, WALL ST. J. (Feb. 24, 2015), http://www.wsj.com/articles/nypd-must-face-hard-truths-but-so-must-its-critics-commissioner-william-bratton-says-1424822589 [http://perma.cc/W8QC-YHE7].

85. Morin et al., *supra* note 10, at 53.

86. *Id.* at 48.

87. *Body-Worn Cameras Interactive Graphic*, NAT'L CONF. ST. LEGISLATURES (Aug. 30, 2016), http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx# [http://perma.cc/VK5J-GSHB].

for police, crisis intervention teams, or both.[88] These political leaders want public safety achieved quickly. They must navigate the politics of racial fissures, budgetary pressures, labor negotiations,[89] and the tragic incidents that can dominate media cycles, mobilize protests, and threaten political offices.[90] One advocate for reform blends both law enforcement and political experience. As a seven-term Congressman with thirty years of law enforcement experience, Congressman Dave Reichert has expressed a feeling of urgency about police reform:

> This has got to be a priority; otherwise this country is going to collapse into some serious chaos in our cities—not just between police and community, but divided by race, divided by economic status . . . . Let's not burn down the city but work together to go through the process to find the truth, to hold people accountable, and improve the training and our hiring process and go about this in the correct way.[91]
>
> I've had my throat cut with a butcher knife. I've been in situations where it's life and death. I've held the hand of a person who is grasping for their last breath. I've collected body after body of little girls on the street. I come at this from a whole different world. Unless you're a cop, you don't get it.[92]
>
> When you have a diverse community, police officers need to be sensitive to every one of those diverse issues in communities. They should know how to interact, talk and get training in how to build a relationship with people of all walks of life.[93]

Another sign that there may be an emerging space for discussions about ways to improve police-community relations came in the wake of the killing of Philando Castile. Following the incident, Senator Tim Scott, a Republican and one of two black members of the Senate in the 114th Congress, gave a speech

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88. *Law Enforcement Overview*, NAT'L CONF. ST. LEGISLATURES (Dec. 16, 2016), http://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx#2 [http://perma.cc/E764-AUTM].

89. For a detailed history of police unions and their role in police reform, see Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. (forthcoming 2017).

90. Former New York City Mayor David Dinkins lost his reelection bid following racially fraught incidents that amplified police-community tensions in Brooklyn. *See* Janet Cawley, *Giuliani Defeats Dinkins in Down-to-Wire New York Mayor's Race*, CHI. TRIB. (Nov. 3, 1993), http://articles.chicagotribune.com/1993-11-03/news/9311030172_1_rudolph-giuliani-mayor-david-dinkins-black-vote [http://perma.cc/CB4M-79WX].

91. Rachael Bade, *The GOP's Top Cop*, POLITICO, May 14, 2015, at 1, 12.

92. *Id.*

93. *Id.*

on the Senate floor about his personal history with the police.[94] He asked his colleagues to "[i]magine the frustration, the irritation, the sense of a loss of dignity that accompanies each of those stops" and recounted how, even as an elected official, he had been stopped seven times by law enforcement in one year.[95] Kamala Harris, the former Attorney General of California and now United States Senator from that state, is another politician who has demonstrated her commitment to developing better law enforcement policies. Senator Harris stated that "what we have to do is . . . get to the point of having a dialogue that understands that we have many common principles across these racial lines and start from that point . . . . [L]aw enforcement more than anybody to do its job needs to have the trust of the community it polices."[96] Strong political disagreements remain, but there is some indication of a bipartisan recognition of the need for some reforms.

Although these and many other politicians have demonstrated commitment to police reform, President Donald Trump has signaled that he favors aggressive policing tactics, including what he has called nationwide stop-and-frisk.[97] Moreover, in November 2015, Senator Ted Cruz chaired a Senate Judiciary subcommittee hearing titled "The War on Police," during which he characterized the Obama Administration's treatment of police use of force as creating "a culture where the men and women of law enforcement feel under siege."[98] Presi-

94. David Weigel, *On the Senate Floor, Black GOP Senator Talks of Disrespect from Police*, WASH. POST (July 13, 2016), http://www.washingtonpost.com/politics/on-the-senate-floor-black-gop-senator-talks-of-disrespect-from-police/2016/07/13/db67c7de-4949-11e6-bdb9-701687974517_story.html [http://perma.cc/G79B-ABHU].

95. Conor Friedersdorf, *The Senate's Only Black Republican Opens Up About Being Mistreated by Cops*, ATLANTIC (July 15, 2016), http://www.theatlantic.com/politics/archive/2016/07/the-senates-only-black-republican-opens-up-about-being-mistreated-by-police/491435 [http://perma.cc/8EXT-JS57].

96. *Curbing Crime: When Being Tough Isn't Enough*, NAT'L PUB. RADIO (July 25, 2011), http://www.npr.org/2011/07/25/138674201/curbing-crime-when-being-tough-isnt-enough [http://perma.cc/K852-JY6U].

97. *See* Katie Reilly, *Donald Trump Proposes Nationwide Use of Stop-and-Frisk*, TIME (Sept. 21, 2016), http://time.com/4503315/donald-trump-stop-frisk [http://perma.cc/7L55-RGF6]. When the Southern District of New York found the policy unconstitutional in 2013, de Blasio did not appeal the ruling and settled the case. Press Release, Office of the Mayor, Mayor de Blasio Announces Agreement in Landmark Stop-And-Frisk Case (Jan. 30, 2014), http://www1.nyc.gov/office-of-the-mayor/news/726-14/mayor-de-blasio-agreement-landmark-stop-and-frisk-case [http://perma.cc/4QZV-U5RH].

98. Sylvan Lane, *Ted Cruz: Obama Administration Is Waging a "War on Police,"* DALL. MORNING NEWS (Nov. 17, 2015), http://www.dallasnews.com/news/politics/2015/11/17/ted-cruz-barack-obama-war-on-police [http://perma.cc/NAF2-CBUX].

dent Trump's Attorney General Jeff Sessions further stated that "law enforcement . . . has been unfairly maligned and blamed."[99]

Moving forward, policies under President Trump's Administration are likely to galvanize views on both sides of the national debate. Nonetheless, even Attorney General Sessions says that he believes mutual respect between police and communities is essential, and that community policing has proven to work to some degree.[100] At a meeting with six law enforcement leaders in his hometown, Speaker of the House Paul Ryan "said he doesn't want to federalize police practices," but supported de-escalation training and preparation of communities for incidents "when the worst happens."[101] If politicians can agree that the safety requires public approval—adherence to the Legitimacy and Trust Principles—they should find themselves supporting those policies favored by the communities they serve.

III. THE FUTURE OF POLICE REFORM: COMMON GROUND

Effective and enduring reform requires all stakeholders to recognize that they are working toward the same goals: promoting public safety effectively, but not at the expense of civil rights or liberty. The recent attention on how to balance these goals means that now it is even more important that we work toward a new and more constructive paradigm—one built on trust. Doing so requires stakeholders to resist the temptation to focus on their differences and instead to recognize that they share the same goals.

I argue that returning to the Peelian principles, which frame policing as the democracy-enforcing exercise it originally aspired to be, can help the various stakeholders do this. Stakeholder groups disagree about the details, degree, and method of reform. All groups, however, agree that certain democratic values—the Trust, Legitimacy, and Equality principles—are values that no stakeholder should be willing to compromise. There is no doubt that different groups define these concepts differently. But the more fundamental the values, the less significant the differences might be. At the very least, these common values provide a place where negotiations can begin.

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99. *Transcript: Jeff Sessions's Prepared Remarks at His Attorney General Hearing*, N.Y. TIMES (Jan. 10, 2017), http://www.nytimes.com/2017/01/10/us/politics/sessions-remarks-transcript.html [http://perma.cc/2MJU-6N7X].

100. *Id.*

101. Frank Schultz, *Police Chiefs, Rep. Ryan, Talk About Preventing Police Shootings*, JANESVILLE GAZETTE (Jan. 17, 2017), http://www.gazettextra.com/20170117/police_chiefs_rep_ryan_talk_about_preventing_police_shootings [http://perma.cc/86G7-STLC].

President Obama's Task Force on Twenty-First Century Policing embraced this approach. The Task Force, established by an executive order,[102] was created to strengthen community policing and enhance trust between law enforcement and the communities they serve. Recognizing the interests at stake, the Task Force brought together different groups—law enforcement professionals, community leaders, and policy experts, among others—to provide a holistic view of the today's policing challenges.[103] The Task Force introduces pillars of twenty-first century policing that significantly resemble Peel's principles in the nineteenth century. For example, the first "pillar" on which reform rests is "trust and legitimacy."[104] Another pillar is "[c]ommunity [p]olicing [and] [c]rime [r]eduction."[105] The Task Force recommends that rather than seeing themselves as "warriors," police should embrace a "guardian" mindset and set out to protect their communities.[106]

There are compelling case studies from cities around the country in which successful policing improves public safety alongside legitimacy, trust and sanctity of life. For example, following a major reform effort in 2013, Camden, New Jersey saw a fifty-two percent drop in homicides over the last three years,[107] alongside a forty-two percent decrease in excessive force complaints.[108] Although some residents still do not approve of the police and cite harassment for minor infractions, others have reported increased interaction with the community and safer streets.[109] In October 2016, police officers in Camden, New Jer-

102. Exec. Order No. 13,684, 79 Fed. Reg. 76,865 (Dec. 18, 2014).

103. *Task Force on Policing*, *supra* note 17, at v (listing a community organizer, police organization leader, and legal scholars among task force members).

104. *Id.* at 9.

105. *Id.* at 41.

106. The warrior model of policing is a militaristic style that emphasizes battle, whereas the guardian officer's goal is to treat individuals humanely and with respect. *See* Kindy, *supra* note 21 (discussing guardian officer training of thousands of new recruits outside of Seattle); *Task Force Policing Report*, *supra* note 17, at 11 ("Law enforcement culture should embrace a guardian mindset to build public trust and legitimacy. Toward that end, police and sheriffs' departments should adopt procedural justice as the guiding principle . . . to guide their interactions with the citizens they serve.").

107. Demarco Morgan, *Camden Police Emphasize Community Relations, Non-Lethal Force*, CBS NEWS (Jul. 8, 2016, 8:02 PM), http://www.cbsnews.com/news/camden-new-jersey-police-emphasize-community-relations-non-lethal-force [http://perma.cc/XDA3-5R2T].

108. Tom Jackman, *De-Escalation Training To Reduce Police Shootings Facing Mixed Reviews at Launch*, WASH. POST (Oct. 15, 2016), http://www.washingtonpost.com/local/public-safety/de-escalation-training-to-reduce-police-shootings-facing-mixed-reviews-at-launch/2016/10/14/d6d96c74-9159-11e6-9c85-ac42097b8cco_story.html [http://perma.cc/7F5N-XBRS].

109. Kate Zernike, *Camden Turns Around with New Police Force*, N.Y. TIMES (Aug. 31, 2014), http://www.nytimes.com/2014/09/01/nyregion/camden-turns-around-with-new-police-force.html [http://perma.cc/W7AR-RLET].

sey arrested a man, reportedly high on drugs, who was threatening another man in a restaurant with a knife.[110] The responding officers could have quickly resorted to the use of force, even deadly force, in these circumstances because the man posed a danger to the public and the officers. The officers, however, were trained in de-escalation techniques and instead walked with the man for several city blocks, clearing pedestrians ahead of him and telling other responders to stand by, as he wildly waved his knife at them.[111] The officers defused a tense situation and eventually arrested the man, employing some force through the use of a taser, not a gun.[112] Had the police officers not been trained to deescalate dangerous situations and used that training effectively in the field, this could have been another incident where use of force resulted in a tragedy. But here, the officers exercised restraint and focused on the sanctity of life. As one law enforcement leader explained, restraint can reduce so-called "lawful but awful" incidents where the use of force may be justified under the law but tragic nevertheless.[113]

Data are somewhat limited because these kinds of institutional and cultural changes are notoriously difficult to measure. But there is evidence that legitimacy, trust, and equality will help officers do their jobs effectively. According to a Police Executive Research Forum (PERF) national survey of 282 police agencies that implemented some form of community policing, more than ninety percent of agencies reported improved police-citizen cooperation, increased involvement of citizens, increased information from citizen to police, and improved citizen attitudes toward police.[114] Almost eighty percent of agencies reported reduced police-citizen physical conflict.[115] One limitation of this survey is that some departments have integrated some aspects of community policing more fully than others.[116] But the community policing model has shown prom-

110. Jackman, *supra* note 108.

111. *Id.*

112. *De-Escalation Training: Could These Tactics Diminish Racially Charged Police Shootings?*, INSIDE EDITION (Dec. 7, 2016, 4:07 PM EST), http://www.insideedition.com/headlines/20330-de-escalation-training-could-these-tactics-diminish-racially-charged-police-shootings [http://perma.cc/98QA-GG4Z].

113. Chuck Wexler & Scott Thomson, *Making Policing Safer for Everyone*, N.Y. TIMES (Mar. 2, 2016), http://www.nytimes.com/2016/03/02/opinion/making-policing-safer-for-everyone.html [http://perma.cc/7HAW-DD3P].

114. Lorie Fridell, *The Results of Three National Surveys on Community Policing*, *in* COMMUNITY POLICING: THE PAST, PRESENT, AND FUTURE 39, 44-45 (Lorie Fridell & Mary Ann Wycoff eds., 2004).

115. *Id.*

116. Gary Cordner, *The Survey Data: What They Say and Don't Say About Community Policing*, *in* COMMUNITY POLICING: THE PAST, PRESENT, AND FUTURE, *supra* note 114, at 59, 65 ("[P]olice agencies have tended to adopt a relatively modest version of community policing .... In-

ise and can be tailored to different community needs. In the following Part, I describe three different approaches to community-centered police reforms, all of which have had successes in reducing crime and improving trust.

IV. PATHWAYS TO REFORM

If stakeholders have some shared goals and common interests in reform that reduce crime and improve trust, the next question is how to pursue those reforms. Here, I analyze three pathways: a formal DOJ investigation, collaboration with the DOJ Office of Community Oriented Policing Services (COPS) office, and a do-it-yourself model.

The key stakeholders play varying roles under the different pathways, and their roles and contributions underscore the need for democratic accountability. For any reform to succeed, police leaders need to demonstrate why it is important and credibly articulate the benefits to the rank-and-file officers who will be charged with incorporating the new practices into their everyday shifts. Likewise, policy directives without effective training from able instructors and measurement of adherence are unlikely to succeed.[117] The community also provides invaluable insight that may not be obvious to the police department or to lawmakers dealing with policies on paper. Engagement with the community through surveys, town halls, and meetings can rebuild trust and increase the probability that communities will remain engaged in developing solutions, cooperating in implementation, and focusing on effectiveness. Durable reform requires the buy-in of effected constituencies to sustain and advance improvements in both policing and police-community relations.

As I discuss further below, although all of these pathways require buy-in from multiple stakeholders, one distinction between the first pathway (a DOJ investigation) and the latter two (collaboration with the DOJ COPS office and the do-it-yourself pathway) is which stakeholders *initiate* the reform effort and what their respective roles may be. The former pathway typically—though, not always—relies on the DOJ to initiate the effort, and the latter two pathways typically rely on other stakeholders to initiate the effort. Writing at the start of the Trump Administration, it is difficult to predict precisely what his administration will do with respect to police reform. But there are some early indications that under his administration, the DOJ will be less likely to initiate inves-

creases in the implementation of internal organizational aspects of COP have outpaced the adoption of most forms of citizen participation.").

117. *Re-Engineering Training on Police Use of Force*, POLICE EXECUTIVE RES. F. 61 (Aug. 2015), http://www.policeforum.org/assets/reengineeringtraining1.pdf [http://perma.cc/AAC5-2DTD] (describing how the credibility of trainers is one of the most important components of training).

tigations to catalyze reforms.[118] The Trump Administration's approach will prove significant, too, for the COPS collaborative reform pathway since that approach is also driven by the DOJ. If the DOJ retreats, consistent with some early statements of the Administration's leadership, then the do-it-yourself pathway—which depends on other stakeholders recognizing their shared interest in reform—will become more important.

A. DOJ Pattern-or-Practice Investigations: The Challenge and Opportunity

In the Obama Administration, the DOJ invested significant resources into pattern-or-practice investigations. Across the country, the DOJ investigated police departments to determine if they were engaged in a pattern or practice of constitutional violations and, if so, to require negotiated reforms to their policing practices in order to better defend values of equality, accountability and community engagement and safety.[119] Since his appointment, Attorney General Sessions's views on the topic have become more concrete. In its consent decree negotiations with Baltimore, the DOJ requested a ninety-day delay,[120] citing an attorney general memorandum that, among other things, states, "It is not the responsibility of the federal government to manage non-federal law enforcement agencies."[121] The DOJ pattern-or-practice cases "begin with investigations of allegations of systemic police misconduct and, when the allegations

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118. At his confirmation hearing as nominee for Attorney General, Senator Jeff Sessions stated that consent decrees are "not necessarily a bad thing," but that "these lawsuits undermine the respect for police officers and create an impression that the entire department is not doing their work consistent with fidelity to law and fairness, and we need to be careful before we do that." John Fritze, *Jeff Sessions Voices Concern About Uses of Consent Decrees for Police*, BALT. SUN (Jan. 10, 2017), http://www.baltimoresun.com/news/maryland/politics/blog/bal-jeff-sessions-voices-concern-about-use-of-consent-decrees-for-police-20170110-story.html [http://perma.cc/3727-Q5VZ]; *see also* Kevin Rector, *Trump, the Self-Styled 'Law and Order' Candidate, Could Change Tone on Policing, Federal Oversight*, BALT. SUN (Nov. 9. 2016), http://www.baltimoresun.com/news/maryland/politics/bs-md-trump-criminal-justice-20161109-story.html [http://perma.cc/DHU9-3PUX] (speculating that a Trump Administration would decrease enforcement of consent decrees).

119. *How Department of Justice Civil Rights Division Conducts Pattern-or-Practice Investigations*, U.S. DEP'T JUST., http://www.justice.gov/file/how-pp-investigations-work/download [http://perma.cc/N4PX-5DEM].

120. Kevin Rector, *Justice Department Asks Court for 90-day Pause to 'Review and Assess' Baltimore Police Consent Decree*, BALT. SUN (Apr. 3, 2017), http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-consent-decree-pause-20170403-story.html [http://perma.cc/REA2-MX2T].

121. Memorandum from the Attorney General for Heads of Department Components and United States Attorneys (Mar. 31, 2017), http://www.justice.gov/opa/press-release/file/954916/download [http://perma.cc/JNX4-EEUZ].

are substantiated, end with comprehensive agreements designed to support constitutional and effective policing and restore trust between police and communities."[122] These DOJ investigations are one nexus where the stakeholders discussed in Part II collide and collaborate. Several times during the Obama Administration, following a police shooting or fatality of a civilian in custody, the tragedies became both local and national media events. Families and community leaders protested and called for an investigation.[123] In some cases, the community and/or political leaders may call for police resignations; in other cases, political leaders may even find themselves under similar pressure.[124] And, in a few of these cases, the DOJ opened an investigation.[125]

Some political leaders have invited a DOJ investigation in response to policing controversies. In Baltimore, then-Mayor Stephanie Rawlings-Blake stated that the DOJ's federal review would help to reform her city's police depart-

122. Civil Rights Div., *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, U.S. DEP'T JUST., http://www.justice.gov/crt/file/922421/download [http://perma.cc/2HJ8-A46Y].

123. *See* Leonard Greene & Victoria Bekiempis, *Family of Ramarley Graham, 18-Year-Old Shot by a Cop in the Bronx, Tells U.S. Attorney's Office To Quit the 'Foot Dragging,'* N.Y. DAILY NEWS (Feb. 1, 2016, 6:41 PM), http://www.nydailynews.com/new-york/bronx/family-demands-justice-bronx-police-shooting-victim-article-1.2516127 [http://perma.cc/2PTN-WBJ7]; Jaeah Lee, *The Texas Trooper Who Pulled Over Sandra Bland Was Just Indicted*, MOTHER JONES (Jan. 6, 2016), http://www.motherjones.com/mojo/2016/01/texas-trooper-sandra-bland-indicted-perjury-encinia [http://perma.cc/32M7-W7NX]; David Lohr, *Alton Sterling's Family Demands Action from Baton Rouge Officials*, HUFFINGTON POST (Jan. 4, 2017, 7:07 PM EST), http://www.huffingtonpost.com/entry/alton-sterling-protesters-demand-action_us_57eae080e4b024a52d2b5514 [http://perma.cc/Z9DF-2FDP].

124. *See* Emily Harris, *Charlotte Protesters Demand Mayor's Resignation over Black Man's Slaying*, REUTERS (Sept. 27, 2016, 12:01 PM EST), http://www.reuters.com/article/us-usa-police-charlotte-idUSKCN11X0A0 [http://perma.cc/BAB5-V3H9] (reporting on community protests for the resignations of the police chief, mayor, and lawmakers following a police killing of Keith Scott); Matt Pearce, *Ferguson Police Chief Steps Down; Official Calls It 'Long Overdue,'* L.A. TIMES (Mar. 11, 2015), http://www.latimes.com/nation/la-na-ferguson-police-chief-20150311-story.html [http://perma.cc/8JZ8-JT6T] (reporting the resignation of the Ferguson police chief and city manager).

125. For example, the DOJ opened an investigation in Ferguson following Michael Brown's killing, and in Baltimore after Freddie Gray died in police custody. *See* Press Release, U.S. Dep't of Justice, Justice Department Announces Findings of Two Civil Rights Investigations in Ferguson, Missouri, http://www.justice.gov/opa/pr/justice-department-announces-findings-two-civil-rights-investigations-ferguson-missouri [http://perma.cc/YAN8-Q352] (announcing results of civil rights investigations into the Ferguson police department and the shooting of Michael Brown); Mark Puente, *After Freddie Gray Death, U.S. Starts Civil Rights Probe of Baltimore Police*, BALT. SUN (May 8, 2015), http://www.baltimoresun.com/sports/bs-md-justice-announce-20150508-story.html (discussing the DOJ's probe of the Baltimore Police Department following Freddie Gray's death).

ment,[126] and even her political opponents agreed that a "binding federal review" would "repair" the "fractured relationship" between police and the minority community.[127] Likewise, a spokesman for Chicago Mayor Rahm Emanuel welcomed the DOJ's engagement to "restore trust" in the Chicago Police Department and improve the city's "system of police accountability."[128] Indeed, as part of its investigation, the DOJ engages with the public, civic and religious leaders, police officers, both rank-and-file and leadership, police unions, and activists.[129]

The first stage of the DOJ's investigation is the preparation of a findings report, which assesses systemic deficiencies that contribute to unconstitutional patterns or practices in the police department.[130] Following a findings report, the DOJ typically seeks a consent decree under court order. The decree is often grounded in community policing principles. Echoing Peel, the DOJ has explained, "Community policing is democracy in action. It requires the active participation of local government, civic and business leaders, public and private agencies, residents, churches, schools, and hospitals. All who share a concern for the welfare of the neighborhood should bear responsibility for safeguarding that welfare."[131]

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126. *See* Luke Broadwater, *Baltimore Mayor Seeks Federal Investigation of Police Department*, BALT. SUN (May 6, 2015), http://www.baltimoresun.com/news/maryland/politics/bs-md-ci-doj-partnership-20150506-story.html [http://perma.cc/FPM4-437C] (reporting that the mayor had asked the Justice Department to conduct a full-scale civil rights investigation).

127. *Id.* Commenting on a federal court's entry of a Consent Decree requiring appointment of a monitor and judicial supervision of the agreement, which sets out a framework for reform of the Baltimore Police Department, Mayor Pugh stated that the Judge's approval was "a great victory for the citizens of Baltimore as well as our Police Department." Kevin Rector, *Federal Judge Approves Baltimore Policing Consent Decree, Denying Justice Department Request for Delay*, BALT. SUN (Apr. 7, 2017), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-consent-decree-approved-20170407-story.html [http://perma.cc/E32J-WCYB]. Similarly, Police Commissioner Kevin Davis said, "We expect that this process will lead us to the goal we all share: a Baltimore Police Department that leads the progress of the policing profession." *Id.*

128. Sari Horwitz, Ellen Nakashima & Wesley Lowery, *Justice Department Will Investigate Practices of Chicago Police*, WASH. POST (Dec. 6, 2015), http://www.washingtonpost.com/news/post-nation/wp/2015/12/06/justice-department-will-launch-investigation-into-practices-of-chicago-police [http://perma.cc/99UG-FEZH].

129. Civil Rights Div., *Investigation of the Baltimore Police Department*, U.S. DEP'T JUST. 4 (Aug. 10, 2016), http://www.justice.gov/opa/file/883366/download [http://perma.cc/TVF6-ZMT4].

130. *Id.*

131. Bureau of Justice Assistance, *Understanding Community Policing: A Framework for Action*, U.S. DEP'T JUST. 4 (1994), http://www.ncjrs.gov/pdffiles/commp.pdf [http://perma.cc/F7TE-5LQL].

One example where the DOJ promoted this approach to policing was in Ferguson, Missouri. According to the DOJ's findings report in Ferguson, officers had targeted the African American community for years as a way to generate revenue for the city[132]—an approach wholly at odds with community policing and equality. The consent decree that the DOJ subsequently entered into with the City of Ferguson required the police to engage with the community in a different way. The DOJ met with residents before issuing the findings report, and residents expressed their concerns to the city at city town halls.[133] Because consent decree negotiations between the city and DOJ were private, the community placed special emphasis on the public fairness hearing before the consent decree was approved.[134] Although the City Council initially voted to amend the consent decree plan, the DOJ filed a lawsuit against Ferguson, pressuring the City Council to approve the measure.[135] While the process in Ferguson was not the picture of collaboration, stakeholder participation built buy-in and momentum. Even Ferguson's attorney, while still refusing to acknowledge that the department's conduct was illegal, said it was best for the city to turn its attention to reforms rather than litigation.[136]

Cleveland is another example where the DOJ has drawn upon Peel's principles. The DOJ findings report acknowledged that the Cleveland Police Department made important changes to its use-of-force policies, but also provided specific ways in which Cleveland could continue to move forward with improvements to its policies and training.[137] In the settlement agreement that

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132. *See* Civil Rights Div., *Investigation of the Ferguson Police Department*, U.S. DEP'T JUST. 6 (Mar. 4, 2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report_1.pdf [http://perma.cc/ZL8M-8WH8] ("The confluence of policing to raise revenue and racial bias thus has resulted in practices that not only violate the Constitution . . . but also undermine community trust.").

133. Camille Phillips, *Activists, Ferguson Residents, Call for Public Hearing Once Consent Decree Is Filed*, ST. LOUIS PUB. RADIO (Dec. 3, 2015), http://news.stlpublicradio.org/post/activists-ferguson-residents-call-public-hearing-once-consent-decree-filed [http://perma.cc/982E-3RJD].

134. *Id.*

135. Laura Wagner, *Ferguson City Council Accepts Consent Decree Worked Out with Justice Department*, NAT'L PUB. RADIO (Mar. 15, 2016), http://www.npr.org/sections/thetwo-way/2016/03/15/470598733/ferguson-city-council-accepts-deal-with-justice-department [http://perma.cc/JH7B-XUFH].

136. Rachel Lippman, *Federal Judge Approves Ferguson Consent Decree*, ST. LOUIS PUB. RADIO (Apr. 19, 2016), http://news.stlpublicradio.org/post/federal-judge-approves-ferguson-consent-decree [http://perma.cc/DA7G-TMG4].

137. *See* Civil Rights Div., *Investigation of the Cleveland Division of Police*, U.S. DEP'T JUST. 1 (Dec. 4, 2014), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf [http://perma.cc/V9MQ-ZE59]

followed, the Cleveland Police Department agreed to policies that require officers to "use de-escalation techniques whenever possible and appropriate, *before* resorting to force,"[138] train officers to recognize individuals suffering from medical or mental conditions,[139] and create a Mental Health Response Advisory Committee.[140] All of these provisions foreground the lives of community members and, as stated in the second sentence of the settlement agreement, view "a strong relationship that is built on mutual trust and respect" as necessary to achieving the goal of officer and public safety. Mayor Frank Jackson had a key role in driving the process, and the community has a large role moving forward. Mayor Jackson called on the DOJ to investigate the police department and has the trust of community leaders, one of whom stated that "[i]f Jackson hadn't been around to grab the bull by the horns, this agreement might not have happened."[141] While negotiating the consent decree, the city solicited community input through written reports and listening sessions.[142] The negotiated consent decree calls for a thirteen-member Community Police Commission with representatives from corporate boardrooms, churches, the police union, a professional association of black officers, and community groups.[143] Some community members contend that the consent decree should not have been signed until the judge heard directly from stakeholders,[144] but a prominent civil rights attorney praised the deal and urged patience and persistence.[145]

The DOJ investigations come with their own challenges, however. The process can be disruptive to local police forces, as these investigations are time-

(noting that the department had "taken some steps to improve the Division's use of force policies and procedures" but still had a "need for sustainable reform").

138. Settlement Agreement at 12, United States v. City of Cleveland, No. 1:15-cv-01046-SO (N.D. Ohio May 26, 2015) (emphasis added), http://www.clearinghouse.net/chDocs/public/PN-OH-0008-0008.pdf [http://perma.cc/DQ4S-NG8K].

139. *Id.*

140. *Id.* at 34.

141. Leila Atassi, *Cleveland Consent Decree on Police Use of Force Could Define Mayor Frank Jackson's Legacy*, CLEVELAND.COM (May 28, 2015, 6:45 PM), http://www.cleveland.com/cityhall/index.ssf/2015/05/cleveland_consent_decree_on_po.html [http://perma.cc/XH4V-2394].

142. Eric Heisig, *Federal Judge Approves Cleveland Consent Decree, Calls It a 'Good, Sound Agreement,'* CLEVELAND.COM (June 12, 2015, 11:23 AM), http://www.cleveland.com/court-justice/index.ssf/2015/06/federal_judge_overseeing_cleve.html [http://perma.cc/P662-853Z].

143. Henry J. Gomez, *Cleveland Consent Decree Provides Blueprint for Long-Elusive Police Reforms: The Big Story*, CLEVELAND.COM (May 26, 2015, 9:17 PM), http://www.cleveland.com/metro/index.ssf/2015/05/cleveland_consent_decree_provi.html [http://perma.cc/JX2V-SN4M].

144. Heisig, *supra* note 142.

145. Gomez, *supra* note 143.

consuming. For example, investigations can last well over a year,[146] and the settlement negotiation process may proceed for many months after that.[147] Additionally, ongoing law and order obligations do not cease while the investigation proceeds, though department leadership must divide its attention to meet the considerable demands of the investigation. Not only is that investigation expensive, but remedies can also be expensive to implement and require significant additional funding, as they often entail multi-year commitments, including data collection, a monitoring team, and new infrastructure.[148] These costs must be weighed in context, including the cost of maintaining the status quo.

Significantly, the immediate future for DOJ investigations under President Trump is uncertain. The U.S. Attorney General has discretion over whether to initiate and pursue these investigations.[149] As mentioned above, there are early reports that Attorney General Jeff Sessions may have little appetite to do so.[150] At the "The War on Police: How the Federal Government Undermines State and Local Law Enforcement" Senate Judiciary Committee meeting, Senator Sessions stated, "There is a perception, not altogether unjustified, that this Department, the Civil Rights Division, goes beyond fair and balanced treatment, but has an agenda. That's been a troubling issue for a number of years, frank-

146. *See, e.g.*, Civil Rights Div., *supra* note 129, at 14.

147. For example, the Newark Police Department reached a settlement almost two years after the findings report was issued. Press Release, U.S. Dep't of Justice, Information about the Department of Justice's Consent Decree with the Newark Police Department (Feb. 24, 2017), http://www.justice.gov/usao-nj/information-about-department-justice-s-consent-decree-newark-police-department [http://perma.cc/57ZV-LYPD].

148. *See* Simone Weichselbaum, *The Problems with Policing the Police*, TIME, http://time.com/police-shootings-justice-department-civil-rights-investigations [http://perma.cc/L63E-QQLX] ("[O]fficials have railed at the high cost of the Justice Department's reform plans, including the multi-million-dollar fees paid to the monitors who make sure local officials comply with federal mandates.").

149. 42 U.S.C. § 14141 (2016).

150. Jonathan Smith, former head of the DOJ's Special Litigation Section, which handles pattern and practice investigations, has stated that he predicts the new Trump Administration DOJ will reverse some recently adopted legal positions and "withdraw to nonpartisan and uncontroversial investigations." Alice Speri, *As Attorney General, Jeff Sessions Would Destroy the DOJ's 'Crown Jewel,'* INTERCEPT (Jan. 10, 2017, 10:07 AM), http://theintercept.com/2017/01/10/as-attorney-general-jeff-sessions-would-destroy-the-dojs-crown-jewel [http://perma.cc/G2L5-UZ6N]. Law Professor Jonathan Turley forecasted, "The Justice Department is likely to be one of the most transformed departments in the cabinet in a Trump administration, and with an Attorney General Sessions, you'd obviously see a very strong law-and-order figure at the top." Eric Lichtblau, *Jeff Sessions, as Attorney General, Could Overhaul Department He's Skewered*, N.Y. TIMES (Nov. 18, 2016), http://www.nytimes.com/2016/11/19/us/politics/jeff-sessions-donald-trump-attorney-general.html [http://perma.cc/TDY3-F257].

ly."[151] Even if the DOJ no longer prioritizes pattern-or-practice investigations during President Trump's administration, stakeholders and leaders committed to reform can nevertheless pursue the other pathways, and they can mine existing consent decrees from previous DOJ investigations for core subject matter areas for those reforms. Progress will depend on the will and creativity of these local and state law enforcement leaders working together with their communities and political leaders.

B. DOJ Community-Oriented Policing Service Collaborative Review

Even in the absence of pattern-or-practice investigations, the DOJ has another mechanism for supporting police reform efforts. The DOJ's COPS works with law enforcement to build trust with local communities and implement policing best practices through technical assistance and a collaborative review process.[152]

The COPS model is distinct from the pattern-or-practice investigative authority of the DOJ in a few important respects. In a COPS collaborative review, participation is voluntary and is initiated by police departments rather than the DOJ, which means that these reviews only happen when police departments recognize that they have a shared interest with the DOJ and other stakeholders in reform.[153] In COPS reviews, the DOJ's recommendations are not binding, but police departments must demonstrate a commitment to significant reform.[154] Thus, whereas some perceive the DOJ's formal investigations as fundamentally critical of police, COPS reviews are often seen as more collaborative with police.

In COPS reviews, the COPS office conducts a detailed assessment of the department, including data and records analysis, interviews, observation, and research.[155] The COPS office then issues a series of assessment reports and rec-

151. Subcomm. on Oversight, Agency Action, Federal Rights and Federal Courts, *Online Video: The War on Police: How the Federal Government Undermines States and Local Law Enforcement*, U.S. SENATE (Nov. 17, 2015), http://www.judiciary.senate.gov/meetings/the-war-on-police-how-the-federal-government-undermines-state-and-local-law-enforcement [http://perma.cc/NTJ8-YWMQ].

152. Office of Cmty. Oriented Policing Servs., *Collaborative Reform Initiative for Technical Assistance*, U.S. DEP'T JUST. (June 2016), http://cops.usdoj.gov/pdf/technical_assistance.pdf [http://perma.cc/6SZY-SNM2].

153. *Id.*

154. *Id.*

155. *Id.*

ommendations over the course of many months.[156] COPS collaborative reform is specifically focused on issues that may affect public trust.[157]

Understanding that the COPS office can provide support for those who seek reform, Ed Lee, the mayor of San Francisco and the city's former police chief, began the collaborative reform process in February 2016.[158] The assessment process included dialogue with community members in listening sessions, forums, and one-on-one interviews.[159] The mayor's office and governmental representatives, as well as public agencies, provided staff and resources to the process as well.[160] The final assessment report issued in October 2016 found racial disparities in stops[161] and uses of deadly force,[162] as well as a lack of accountability measures.[163] After the report was released, Mayor Lee announced that the city would "accept and implement every single recommendation."[164] The recommendations cover all of the Peelian principles, from trust—"[San Francisco Police Department] should take an active and direct role in community engagement at the neighborhood level"[165]—to restraint—"[t]he SFPD should work with the Police Commission to obtain input from the stakeholder groups and conduct an after-action review [of the use-of-force policy] . . . to identify ways to improve input and expedite the process in the future for other policy development."[166] As noted in the assessment report, "[t]he

156. *Id.*

157. *Id.*

158. Vivian Ho, *U.S. Justice Department Urges Changes in SFPD After Fatal Shootings*, S.F. CHRON. (Oct. 12, 2016), http://www.sfgate.com/bayarea/article/U-S-Justice-Department-urges-changes-in-SFPD-9966886.php [http://perma.cc/D9MV-MV6B]; *Mayor Lee Administers Comprehensive Police Department Reforms*, OFF. MAYOR, http://sfmayor.org/police-reforms [http://perma.cc/5SGS-E76E].

159. Office of Cmty. Oriented Policing Servs., *Collaborative Reform Initiative: An Assessment of the San Francisco Police Department*, U.S. DEP'T JUST. 3 (Oct. 2016) [hereinafter *San Francisco Reform*], http://ric-zai-inc.com/Publications/cops-wo817-pub.pdf [http://perma.cc/4F8H-ELV7].

160. *Id.*

161. *Id.* at 71.

162. *Id.* at 37.

163. *Id.* at 245.

164. James Queally & Joe Mozingo, *Feds Fault San Francisco Police for Violence Against Minorities and Recommend 272 Reforms*, L.A. TIMES (Oct. 12, 2016), http://www.latimes.com/local/lanow/la-me-ln-san-francisco-police-bias-20161012-snap-story.html [http://perma.cc/SF2X-TF4B].

165. *San Francisco Reform*, *supra* note 159.

166. *Id.* at 38.

input of multiple persons across the range of San Francisco communities contributed immensely to the assessment process."[167]

There are other examples of the value of the COPS pathway for some jurisdictions. The Las Vegas Police Department (LVPD) was the first agency to complete the collaborative review process, which it first initiated in 2011.[168] In the COPS Office's final report of the department, investigators found that the LVPD had implemented ninety percent of the DOJ's seventy-five recommendations, which included new use-of-force policies and de-escalation training.[169] Police killings have also decreased from twenty-five in 2010 to sixteen in 2014, a decline that many attribute to the reform effort.[170]

Even so, COPS reviews require substantial investments of time and supervisor attention and recommendations typically require local commitment to provide resources for reforms. This pathway may endure as DOJ faces some pressure to render some assistance where future flashpoints may erupt. Even if President Trump's DOJ shrinks its role in initiating formal investigations, that does not necessarily mean that it would also shrink its role in supporting COPS reviews, though the future in this area is also uncertain.

C. Do-It-Yourself Pathway

Observing the impact of use-of-force incidents on other jurisdictions, police departments and political leadership may decide to take steps to make sure their department is embracing best practices. These jurisdictions may seek to avoid a Ferguson moment. Other jurisdictions may find themselves at the center of use-of-force flashpoints and will have to respond to the facts on the ground with or without DOJ support. Others may face litigation or threats of litigation and may choose or be ordered to resolve the litigation. Reform is possible in these situations. Often the impetus for change emerges from a crisis when concerns from various stakeholders boil over. These tragedies – as well as the public outcry and the threat of a DOJ investigation and/or private litigation – often spur a police force to undertake reform.

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167. *Id.* at 3.

168. Adam Geller, *Could Training Stem Police Shootings? Las Vegas Is a Test*, LAS VEGAS SUN (June 20, 2015), http://lasvegassun.com/news/2015/jun/20/could-training-stem-police-shootings-las-vegas-tes [http://perma.cc/V3LQ-MLDR].

169. Press Release, Office of Cmty. Oriented Policing Servs., Justice Department Releases the Final Report on the Collaborative Reform Process with Las Vegas Metropolitan Police Department (May 21, 2014), http://www.cops.usdoj.gov/Default.asp?Item=2718 [http://perma.cc/7VYY-Q5Q8].

170. Geller, *supra* note 168.

Without these catalysts or outside pressure, it may be difficult for some police departments to invest in the demanding process of reform, though some accept this challenge. Acknowledging the need for change without such a clear impetus is hard, but the frequency of videos of fatalities, concerns about bias, and outcry in many communities call for an honest assessment of whether reform is needed. Given the likelihood that the DOJ may not be as proactive in initiating investigations in the Trump Administration as it was in the Obama Administration, communities that acknowledge the need for reform may choose to be self-starting. Even during a Trump Administration, stakeholders' shared interests can endure, and the friction exposed or created by the recent election may create an even greater need to strengthen trust between police and communities.

For example, in Chicago, the DOJ issued a report finding constitutional violations in the Chicago Police Department prior to President Trump's inauguration. Mayor Rahm Emanuel expressed his commitment to reform, regardless of the new administration's policies, stating that "the Chicago Police Department . . . is already on the road to reform, and there are no U-turns on that road."[171] There is uncertainty but also the possibility of embracing promising models of reform with or without a federal impetus.

There are communities that have already been successful in rolling out reform without outside pressure from DOJ. For example, in Dallas, the police department self-initiated department reforms that dramatically transformed its practices.[172] Historically, Dallas "had a higher per-capita rate of police-involved shootings than New York, or Los Angeles."[173] After the 2012 police shooting of James Harper and the protests that followed, Chief David Brown announced the Dallas Police Department's commitment to community policing reforms.[174] More trainings, new de-escalation policies, and the release of police data led to a decrease in both crime rates and excessive force complaints.[175] While department leadership advanced reform, the community input was also an important factor.

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171. Dan Hinkel, Bill Ruthhart & David Heinzmann, *Justice Report Questions Emanuel Police Changes*, CHI. TRIB. (Jan. 13, 2017), http://www.chicagotribune.com/news/local/politics/ct-chicago-police-justice-department-rahm-emanuel-20170113-story.html [http://perma.cc/RXT5-828T].

172. Christopher I. Haugh, *How the Dallas Police Department Reformed Itself*, ATLANTIC (July 9, 2016), http://www.theatlantic.com/politics/archive/2016/07/dallas-police/490583 [http://perma.cc/GM77-MSDQ].

173. *Id.*

174. *Id.*

175. *Id.*

Even well-oiled organizations ask for help, such as for outsiders to check on their practices. Just as the DOJ can provide an outside perspective on best practices, lawyers and consultants can also provide an objective assessment of departmental policies and procedures. Private litigants can also act as catalysts for change.[176] Recently, the NYPD issued a report discussing its efforts to reform its "Numbers-Driven Organization," including the "stop, question and frisk" policies challenged in litigation, through community-focused engagement and targeting resources toward known, serious crimes.[177] The NYPD also agreed to pay a seventy-five million dollar settlement in a lawsuit alleging that hundreds of thousands of summonses were issued without a legal basis.[178] In that case, private litigants pushed for reforms and negotiated a settlement that requires the city to reiterate its ban on arrest quotas.[179] Politicians, citizens, and departments have actionable roles to play in reform, which is both possible and necessary at the local and state level.

The Police Executive Research Forum (PERF), an independent nonprofit police research and policy organization comprised of police officials, academics, and federal government leaders, is an excellent resource for best practices.[180] At a recent PERF meeting, roughly two hundred of the nation's most prominent police chiefs, DOJ officials, and White House officials met in our nation's capital to discuss how their departments can adopt new policing initiatives.[181] Top officials from the nation's largest police departments "were urged to implement new training and departmental policies that supporters believe[d] could lead to a decrease in the number of fatal shootings by officers each year."[182] Broad themes within these best practices also holistically combine Peelian principles

176. See *supra* notes 55-57, 71 and accompanying text for a description of the *Floyd* and *Davis* lawsuits challenging police practices.

177. *Tackling Crime, Disorder and Fear: A New Policing Model*, N.Y.C. POLICE DEP'T 4-5 (2016), http://home2.nyc.gov/html/nypd/html/home/POA/pdf/Tackling_Crime.pdf [http://perma.cc/9RVM-7U4N].

178. Benjamin Weiser, *New York City To Pay up to $75 Million over Dismissed Summonses*, N.Y. TIMES (Jan. 23, 2017), http://www.nytimes.com/2017/01/23/nyregion/new-york-city-agrees-to-settlement-over-summonses-that-were-dismissed.html [http://perma.cc/G9ZU-HMLE].

179. *Id.*

180. The Police Executive Research Forum website provides numerous resources and publications. *See Free Online Documents*, POLICE EXECUTIVE RES. F., http://www.policeforum.org/free-online-documents [http://perma.cc/FRM9-4D6U].

181. Wesley Lowery, *Police Chiefs Consider Dramatic Reforms to Officer Tactics, Training To Prevent So Many Shootings*, WASH. POST (Jan. 29, 2016), http://www.washingtonpost.com/news/post-nation/wp/2016/01/29/police-chiefs-consider-dramatic-reforms-to-officer-tactics-training-to-prevent-so-many-shootings [http://perma.cc/QHC8-98SV].

182. *Id.*

of legitimacy and restraint—putting the sanctity of human life at the heart of everything a police department does, having police departments hold themselves to higher standards than those set by the law, and reminding agencies of the need to be transparent in providing information following use-of-force incidents.[183]

Reforms are long-lasting when police departments commit themselves to constantly training officers on the latest policing practices and monitoring adherence. Whether or not there is a DOJ consent decree, a department's success in implementing reforms will ultimately be determined over time and on a case-by-case basis. Without a catalyst like the DOJ, change will only happen when people recognize their common ground from which to move forward. Police departments can and do share ideas of how best to implement reforms before a tragic shooting occurs. And cities can look to DOJ consent decrees and assessment reports reached in other cities to understand what reforms should be implemented. Committed local and state politicians can lead reform projects regardless of what the federal role may or may not be in the Trump Administration. A proactive approach may not only save a department from becoming the next tragic headline, but could also saves lives, avoid unrest, and promote greater cooperation in service of more effective policing.

CONCLUSION: AN AMERICAN MOMENT

Policing is dangerous, and no amount of reform will completely eliminate the risks that police officers face or change the fact that tragic police-encounter deaths will occur. In too many places, the current state of police-community relations serves both the community and the police poorly. The hope is that by adopting reforms, police-community relations can improve and police officers will reduce the likelihood that excessive force will be used and lower the likelihood of tragedy. When tragedies or flashpoints erupt, a foundation of community trust and goodwill can calm tensions and lower the temperature. The images that flash across our screens understandably lead some to despair. But stakeholders from all perspectives can benefit by focusing on the common ground—improving public safety, which can be achieved through an embrace of Peel's principles and the correlated community policing tactics. For police officers, reform represents an opportunity to improve their ability to serve their communities more safely and effectively, and to gain or regain the faith of those whom they swear to guard and serve. For political leaders, reform offers a chance to ensure both that the communities they represent are protected by effective and fair policing, and that the police in those jurisdictions are able to

183. *Guiding Principles*, *supra* note 11, at 25-26.

secure the trust of the communities and employing best practices. And for communities, reform is a chance to heal wounds, protect constitutional rights, and start anew. The federal role in police reform under President Trump may change, but the facts on the ground remain the same. Some police departments, cities, and communities will embrace the do-it-yourself self-reform option, which does not rely on the federal government to initiate or drive the reform process. Because it is difficult to reform without some catalyst, private reform litigation may also play a role. Regardless of the particular catalyst or pathway to reform, it can help improve police-community relations. That, in turn, often leads to a safer community, and that seems worth the effort from every perspective.





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