Authors: **Walter Katz**

Title of proposal: **Deconstructing the Role of Police in the Enforcement of Segregation**

Since Minneapolis police officer Derek Chauvin murdered George Floyd at the intersection of 38th Street and Chicago Avenue on May 25, 2020, the public has learned that he was known as "an unusually rough officer" who had used similar force on other people before, but without consequences. In fact, on May 7, 2021, the Department of Justice filed a federal indictment alleging that in September of 2017, Chauvin violated the civil rights of a then-fourteen-year-old boy who Chauvin held by the throat and struck multiple times in the head with a flashlight and then "held his knee on the neck and the upper back of the teenager even after the teenager was lying prone, handcuffed, and unresisting, also resulting in bodily injury." According to local prosecutors, body camera footage showed Chauvin kneeling on the boy's back for 17 minutes despite pleas by the boy that he couldn't breathe. The Minneapolis Police Department (MPD) never held Chauvin accountable for this alleged assault and less than three years later, George Floyd was dead.

In isolation, it is perhaps easy to label Chauvin as a rogue officer or "bad apple." Unchecked police misconduct undermines trust and the legitimacy of policing and, thus, its ability to prevent and investigate crime.[1] When one steps back, though, a pattern emerges of a police force that not only harbored a "bad apple," but regularly exercised unchecked aggression against Black Minnesotans. This is not a unique experience, as other groups, like American Indians, also suffer police violence disproportionately in Minnesota and elsewhere.

Discipline following complaints by the public has been a rarity in Minneapolis. According to data maintained by the city, of more than 2,600 misconduct complaints filed with the Office of Police Conduct Review alleging misconduct by MPD personnel from the second quarter of 2014 to the first quarter of 2021, only 85 completed cases resulted in some form of demotion (1 case); letter of reprimand (45 cases); suspension (31 cases), or termination (8 cases).[2] According to *The New York Times,* Chauvin was the subject of 17 misconduct complaints during his nearly 19-year career as an officer but was never disciplined other than receiving two reprimands.[3]

Prior to the murder of George Floyd, researchers with the University of Minnesota's Center for Urban and Regional Affairs published results of interviews of 112 residents of North Minneapolis, a predominantly Black community, to examine their perceptions of safety and trust in the Minneapolis Police Department (MPD). Only 20% of residents felt that their neighborhood's safety was "good" or "very good." Thirty seven percent felt that MPD treated people with "dignity and respect" either "often" or "almost always." This tracks with national polling by Gallup in 2020 which found that four in ten Black Americans were "not too confident" or "at all confident" that they would be treated with dignity and respect in a police encounter.

Even more notably, only 18% of North Minneapolis residents believed that MPD respected their rights either "often" or "almost

---

[1] "For most agencies, an internal affairs function is a key mechanism for preventing — and, when necessary, disciplining — misconduct and thereby helping to maintain an agency's legitimacy." (U.S. Department of Justice. 2019. Law Enforcement Best Practices: Lessons Learned from the Field. Washington, DC: Office of Community Oriented Policing Services.)

[2] Data accessed June 27, 2021.

[3] Obtaining consistent data is one of the difficulties in accessing officer discipline history. The New York Times received a release of internal affairs summaries of seventeen complaints naming Chauvin, while the city's "Police officer public profile dashboard" lists 12 complaints. A database maintained by the Communities United Against Police Brutality lists 26 complaints against Chauvin in which three resulted in oral reprimands early in his career and two cases in letters of reprimand.

Racism and the Economy
focus on Criminal Justice

The Federal Reserve Banks of
Atlanta | Boston | Chicago | Cleveland | Dallas
Kansas City | Minneapolis | New York | Philadelphia
Richmond | San Francisco | St. Louis

always." The researchers found "most of our sample saw unjust and violent policing as part of the problem of inadequate safety in the neighborhood." Not only were Black males more likely to be stopped and searched, Black residents believed that MPD was misdirecting its efforts by "spending its time harassing residents, while leaving gun violence and other serious crimes unaddressed." In other words, residents are being both overpoliced and underpoliced.

These findings are consistent with surveys in other cities. For example, a study by researchers at Johns Hopkins University found a nearly identical pattern in a survey of 200 Baltimore residents in two neighborhoods struggling with gun violence. They found that residents were simultaneously worried about their safety and believed that the police conducted too many stops and searches rather than catching the people most responsible for crime in their neighborhood. These concerns correlate with finding by the Department of Justice pattern and practice investigation of the Baltimore Police Department which found "racially disparate impact is present at every stage of BPD's enforcement actions, from the initial decision to stop individuals on Baltimore streets to searches, arrests, and uses of force."

The Baltimore finding is similar to North Minneapolis residents who also reported verbal and physical abuse at the hands of the MPD to the University of Minnesota research team:

> Residents who reported frequent police stops also often described abusive treatment from officers, from verbal threats and degradation to physical assault. Roughly a third of our sample had directly experienced verbal abuse from officers (including profanity, racialized slurs, and screamed commands), while roughly one-fourth described physical abuse from police officers. Several recalled experiencing being shoved by officers, invasive pat-downs and body searches, tight handcuffs, guns pointed in their face, being held in the back of hot squad cars, and being given aggressive verbal commands such as "Shut the **** up!" Several Black men we spoke to recounted vivid memories of having their life "flash before their eyes" as they stared down an officer's handgun. Women of color also experienced verbal abuse, including, at times, after they called the police for help after experiencing gender-based, sexual, and intimate partner violence.

In the face of rough and abusive treatment, it should not be a surprise that only 20% of North Minneapolis interviewees agreed or strongly agreed that "the police department holds officers accountable for misconduct in the community." With these patterns in mind, I propose a suite of reforms, which are described in more detail below.

- Departments should **train all officers in de-escalation training**
- Law enforcement agencies should invest in **early intervention systems (EIS)**
- Local prosecutors should exercise greater **independent oversight over non-lethal force** that results in serious injuries
- Society and government must consider embarking on a long and difficult path of **transitional justice and truth seeking**

The origins of racialized policing

What do we know about why such experiences are so pervasive? Scholars and writers have identified the roots of the modern criminal justice system in the United States as linked to the maintenance of its racialized social order brought about by segregation. Keeping Black people in their place—literally and figuratively—was in some places policing's primary function.[4]

---

[4] Radley Balko, "There's overwhelming evidence that the criminal justice system is racist. Here's the proof," Washington Post, June 10, 2020. https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/.

Racism and the Economy
focus on **Criminal Justice**

The Federal Reserve Banks of
Atlanta | Boston | Chicago | Cleveland | Dallas
Kansas City | Minneapolis | New York | Philadelphia
Richmond | San Francisco | St. Louis

When people think of segregation, they typically conjure up images of the Jim Crow South. In reality, the scourge of segregation was much more widespread, and just as insidious outside the South. Many Northern cities, like Minneapolis, were somewhat integrated at the turn of the 20th Century. According to another team of researchers at the University of Minnesota, the Mapping Prejudice Project, racially restrictive deed covenants first appeared in Minneapolis in 1910 and then rapidly spread. The first such covenant stated that "premises shall not at any time be conveyed, mortgaged or leased to any person or persons of Chinese, Japanese, Moorish, Turkish, Negro, Mongolian or African blood or descent." According to the project researchers, such covenants also targeted Jews, but Black Americans were the primary target and were, as a result, "pushed into a few small areas of the city" -- such as North Minneapolis. By the 1940s, when such covenants were ruled unconstitutional, the damage had been done. Not only could Black Minnesotans not choose where to live, but they had fewer lending options, were more vulnerable to predatory lending and had to pay artificially higher costs because of the limited housing inventory available to Blacks.

This same pattern played out in slightly different ways in cities across the United States. In St. Louis County, towns northwest of the city began to incorporate to maintain segregated schools and to not share their tax revenue with poor Black communities.[5] When poor Black families sought to move to suburbs and use Section 8 Housing Vouchers, municipalities passed zoning laws restricting new multifamily buildings. "[S]egregation practices (including racial steering and government loan practices), served to push African-American families into newly segregated suburbs in the inner ring surrounding St. Louis." (Fagan and Ash, 58-59.) In cities, like Minneapolis and St. Louis, Black populations were economically restricted to what became majority-Black communities cut off from meaningful opportunity, setting them on a path to concentrated poverty that persists today. The Mapping Prejudice Project found:

> [T]his physical segregation undergirds our contemporary racial disparities, which are particularly acute in Hennepin County.
>
> Separate is not equal. In the United States, racial segregation channels the flow of resources. Where you live determines access to community assets. Majority white neighborhoods have more parks and more generous tree cover. Communities of color have more environmental hazards like landfills and highways. They have less access to medical care, which translates into higher rates of infant mortality and premature births. Schools in these neighborhoods usually have fewer experienced teachers and less challenging curriculum. Some institutions beat the odds. But most struggle to maintain the resources necessary to meet the needs of their communities.

Today, Minneapolis has—at 25%—the lowest Black home ownership rate in the country, far below the 44% Black and 70% white homeownership rates nationwide. Poor neighborhoods with large Black populations, including the Near North, Phillips and Powderhorn (where George Floyd was murdered) neighborhoods, have the lowest life expectancy in the region. A 2016 Metropolitan Council study found that "gaps between our metro's Black and White residents' level of education, employment, poverty rates, and homeownership are particularly striking: the Twin Cities have the largest disparities across U.S. metros."

Data from the 2019 Survey of Consumer Finances (SCF) show that nationwide the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family.

According to a study by McKinsey, Black Americans are far more likely to have to go without sufficient resources to thrive:

- The median annual wage for Black workers is approximately 30 percent, or $10,000, lower than that of white workers.

- While Black workers make up 12.9 percent of the US labor force they earn only 9.6 percent of total US wages.

---

[5] Jeffrey Fagan and Elliott Ash, "New Policing, New Segregations: From Ferguson to New York," 196 Col. Law Rev. 33, 58 (2017). https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3067&context=faculty_scholarship

Racism and the Economy
focus on Criminal Justice

The Federal Reserve Banks of
Atlanta | Boston | Chicago | Cleveland | Dallas
Kansas City | Minneapolis | New York | Philadelphia
Richmond | San Francisco | St. Louis

- Nearly half of Black workers are concentrated in healthcare, retail, and accommodation and food service. The vast majority of Black workers within those industries are in lower-paying service roles rather than professional or managerial roles.

- One out of every five Black households is situated in a food desert, defined by the USDA as a low-income neighborhood with inadequate access to food.

- More than 53% of Black Americans are cost-burdened - meaning more than 30% of their gross income goes towards housing.

- According to FDIC data, nearly half of all Black households were unbanked or underbanked in 2017, compared to just 20 percent of white households.

- Black households are 2.4 times more likely than white households to live in urban census tracts that are simultaneously food deserts, medically underserved or facing a provider shortage, and characterized by high housing and transportation costs (exceeding 50 percent of the local median income).

As Yale law professor, Monica Bell, synthesized, the Black and poor experience is "one of profound marginalization, a social diminishment that—while not encapsulating the fullness of the African American experience—indicates that poor African Americans as a whole tend to have a social experience distinctive from those of other ethnic and class groups in the United States." This distinctive experience of disadvantage begets "a broader cultural structure of mistrust." (Monica C. Bell, "Police Reform and the Dismantling of Legal Estrangement," 126 Yale Law Rev. 2056, 2072 (2017).)

Political scientists Joe Soss and Vesla Weaver use the term "race-classed subjugated communities" (or "RCS") to describe overpoliced minority communities so "to call attention to the interweaving of race and class relations, especially as they concern . . . the activities of governing institutions and officials that exercise social control by means of coercion, containment, repression, surveillance, regulation, predation, discipline, and violence."[6] The 1970s and 1980s saw the emergence of new theories to combat disorder, such as "broken windows," which led to the police aggressively enforcing disorder and quality of life offenses. "In contrast to middle-class white communities, police in RCS communities visually and dramatically asserted control of the streets."[7]

Disorder-focused policing practices, often placed under the umbrella of so-called proactive policing, place an emphasis on enforcing low-level offenses through the use of misdemeanor arrests and citations that are later accompanied by community supervision as well as fines and fees that can have long-lasting impacts on residents of poor, urban communities. (Fagan and Ash at 34.) "The core preoccupation of policing became the elimination of disorder and the enforcement of codes against disordered people and places." (Soss and Weaver at 570.) Fagan and Ashe write that in New York such stops "rarely resulted in arrests or seizures or contraband. The few stops that did result in arrests rarely involved serious crimes, and few resulted in convictions or punishment." (Fagan and Ash 40.)

Concentration of punishment, as Professor Bell describes it, has community consequences. "They contribute to segregation by restraining mobility out of racially isolated and high poverty neighborhoods and by characterizing neighborhoods on the basis of police practice and reputation. They sharpen the normative contours of the ghetto, even structuring how people interact on a daily basis." (Monica C. Bell, "Anti-segregation Policing," 95 New York Univ. Law Rev. 650, 697 (2020).)

---

[6] Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race–Class Subjugated Communities,* 20 ANNU. REV. POLIT. SCI. 565, 567 (2017) https://www.annualreviews.org/doi/full/10.1146/annurev-polisci-060415-093825.

[7] *Id.* at 579.

Racism and the Economy
focus on Criminal Justice

The Federal Reserve Banks of
Atlanta | Boston | Chicago | Cleveland | Dallas
Kansas City | Minneapolis | New York | Philadelphia
Richmond | San Francisco | St. Louis

Whether the Black driver or pedestrian is guilty is often beside the point. Examining data from Ferguson and the Missouri Attorney General, Fagan and Ash found that black drivers were more likely to be stopped, disproportionately cited for traffic violations, and almost twice as likely to be arrested once stopped. "If there are such differences in suspect behavior leading to tickets or arrests, those behaviors are not described by the officers in official reports." Officers were also 1.67 times more likely to search vehicles of Black drivers than white drivers despite seizures of contraband being less likely for Black drivers. These disparities are not unique to Ferguson and are "pervasive" across the United States.

Such everyday encounters experienced by the individual, his or her relatives, friends, and neighbors at the hands of government systems that consistently dehumanize people living in high-poverty Black communities, leave them "structurally ostracized through law's ideals and priorities."[8] In this environment of aggressive policing that is intended to preserve order by securing white places from "unruly" Black intrusion and regulate disorder in Black communities, Black residents are left in a place of profound disadvantage when faced with excessive force utilized in pursuit of those aims:

> A combined municipal-state-federal legal architecture permits routine police violence by granting police discretion over when and how to arrest or deploy force in a wide variety of settings. This discretion allows police to target poor, Black, and brown people. Police violence effectively becomes justified force at various stages: when internal affairs dismisses a civilian complaint as insignificant, when a prosecutor refuses to file charges against the police, when a grand jury refuses to indict, and when the use of force is deemed reasonable and therefore justified in either a criminal or civil process.[9]

Proposals for accountable policing

This brings us back to the 2017 incident where Derek Chauvin beat a fourteen-year-old about the head with a flashlight and put a knee to his back for 17 minutes. The MPD didn't find anything wrong with that use of force. Chauvin was not only allowed to continue policing Minneapolis but to also train recruits fresh out of the academy as a field training officer. A study by The New York Times found that while Black residents make up about 20% of the Minneapolis population, they are 60% of subjects of acts of police use of force. "Since 2015, the Minneapolis police have documented using force about 11,500 times. For at least 6,650 acts of force, the subject of that force was black. By comparison, the police have used force about 2,750 times against white people." Similar disparities have been found in other cities, including Columbus, Ohio and Charleston, South Carolina. The MPD not only did not find Chauvin's conduct remarkable, but either did not recognize or find the department's overall disparities troublesome.

While police reform efforts tend to focus on fatal encounters, including officer-involved shootings, it is a mistake to overlook uses of force which "only" result in injuries. "More than 400,000 people have been treated in emergency rooms because of violent interactions with police or security guards" since 2015, according to data from the Centers for Disease Control and Prevention according to reporting by the Marshall Project. Many agencies provide little data on injuries sustained by citizens or break them down by the type of force used.

While an officer has a duty to make an arrest for a violation of the law and to protect public safety, the force used must be "commensurate with the crime committed" and the resistance, if any, offered by the subject. While "police officers who use

---

[8] Bell at 2084–85.; see JESSE JANNETTA, JEREMY TRAVIS & EVELYN MCCOY, *Participatory Justice* 2 (2018), https://www.mobilitypartnership.org/file/1218816/download?token=C1cK2B4j.

[9] Amna A Akbar, *An Abolitionist Horizon for (Police) Reform,* 108 CAL. L. REV. 1781, 1791–92 (2020).

Racism and the **Economy**
focus on **Criminal Justice**

The Federal Reserve Banks of
Atlanta | Boston | Chicago | Cleveland | Dallas
Kansas City | Minneapolis | New York | Philadelphia
Richmond | San Francisco | St. Louis

'excessive' levels of force may in theory be criminally prosecuted for a range of offenses including homicide, manslaughter, and assault," there is a dearth of data on the prosecution of officers for non-lethal use of force. In reality, those instances of criminal liability for on-duty violence are rare.[10] (Stinson, et al. at 56.)

There are a number of measures that can and should be taken so that an officer who shows a penchant for excessive force can be stopped before he unjustifiably kills someone.

- Departments should **train all officers in de-escalation training.** "De-escalation is about changing the conversation on use of force from what is legally permissible... to what is the best outcome for the safety of the public and law enforcement personnel."[11] One recent study of a training developed by the Police Executive Research Forum (PERF) called Integrating Communications, Assessment, and Tactics (ICAT) training program found significant effects after the training with a 28.1% decrease in use of force incidents, a 26.3% decrease in civilian injuries and a 36.0% reduction in officer injuries.[12] Launching a successful effort to incorporate de-escalation requires linking policy to robust training, allowing time to adapt to the new training, setting an expectation that all supervisors adopt a culture of de-escalation, set up officers to succeed while setting expectations and incorporating robust review of force incidents, rewarding successful de-escalation efforts, and engaging the community, in part through, opening up data and transparency.

- Law enforcement agencies should invest in **early intervention systems (EIS).** A small percentage of officers are responsible for a disproportionate share of complaints. Unchecked misconduct of officers influences their peers and officer involvement in excessive use of force complaints is predicted by working in social networks or clusters with other officers involved with excessive force complaints. Thus it is important for agency leaders to identify and intervene when patterns of misconduct emerge. Early intervention systems with predictive capabilities seek to identify the emergency of troubling trends and "can be valuable supervisory management tools to increase agency accountability and help employees meet the agency's values and mission statement."[13] An effective EIS allows for supervisors to monitor their employee's performance and conduct, assist in the correction of performance and conduct, and increase confidence in the police agency. However, an EIS needs to look beyond sustained complaints and discipline. As we saw with Chauvin, his use of force in 2017 was not found out of policy. An EIS would flag not only the frequency of complaints and use of force, but also their nature.

---

[10] Police Integrity Lost: A Study Of Law Enforcement Officers Arrested, Philip Matthew Stinson, Sr., J.D, Ph.D., John Liederbach, Ph.D., Steven P. Lab, Ph.D., Steven L. Brewer, Jr., Ph.D., 2016, https://www.ojp.gov/pdffiles1/nij/grants/249850.pdf

[11] De-escalation training is defined here "as the range of verbal and non-verbal skills used to slow down the sequence of events, enhance situational awareness, conduct proper threat assessments, and allow for better decision-making, in order to reduce the likelihood of a situation escalating into a physical confrontation or injury." (See (U.S. Department of Justice. 2019. Law Enforcement Best Practices: Lessons Learned from the Field. Washington, DC: Office of Community Oriented Policing Services.)

[12] Robin S. Engel, Ph.D.Nicholas Corsaro, Ph.D.Gabrielle T. Isaza, M.S.Hannah D. McManus, M.S., International Association of Chief of Police (IACP) / University of Cincinnati (UC) Center for Police Research and Policy, "Examining the Impact of Integrating Communications, Assessment,and Tactics (ICAT) De-escalation Training for the Louisville Metro Police Department: Initial Findings," 2020. The research was supported by Arnold Ventures (formerly the Laura and John Arnold Foundation). The findings and recommendations presented within this report are from the authors and do not necessarily reflect the official positions or opinions of Arnold Ventures (AV), the IACP, or the Louisville Metro Police Department (LMPD). https://www.theiacp.org/sites/default/files/Research%20Center/LMPD_ICAT%20Evaluation%20Initial%20Findings%20Report_FINAL%2009212020.pdf.

[13] U.S. Department of Justice. 2019. Law Enforcement Best Practices: Lessons Learned from the Field. Washington, DC: Office of Community Oriented Policing Services.

- Local prosecutors should exercise greater **independent oversight over non-lethal force** that results in serious injuries. While local prosecutors regularly review fatal officer involved shootings, they are far less likely to engage in non-lethal use of force unless the law enforcement agency decides that a criminal review is merited. This sporadic oversight can lead to unchecked excessive force that can mushroom into a full-blown crisis with not only line personnel but also leadership facing federal prosecution—as occurred in Los Angeles County in 2013. "Legitimacy crumbles when civilians are treated unfairly and the public is left with the conclusion that police agencies are not accountable."[14] Developing the capability of a local prosecutor to independently investigate or review misconduct investigations will create greater assurance that an officer will be held accountable where appropriate. Fair and Just Prosecution recommends the creation of "an independent unit for internal investigations staffed with senior prosecutors and experienced investigators."

- More broadly, society and government must consider embarking on a long and difficult path of **transitional justice and truth seeking.** As Ladisch and Roccatello explain:

    In the field of transitional justice, the aim of institutional reforms is to establish and develop civic trust between citizens and state institutions by transforming institutions that are abusive, apply discriminatory policies, and defend partisan or elite interests into agencies that uphold and respect the rule of law, protect human rights, serve the public at large, and thereby safeguard democracy. These reforms should include measures for changing the underlying culture of law enforcement, while also addressing larger institutional failings. In the US, such reforms should both address systemic police brutality and seek to create a new relationship between law enforcement and citizens based on trust and shared responsibility that helps prevent violent interactions from occurring in the first place.[15]

None of the interventions described here will individually alter the landscape of policing. An environment where community members bestow the police with legitimacy and seek officers out as their protector from crime demands trust. The effort to build that trust is not the responsibility of community members, but of the government. "Segregation creates a dynamic in which communities that are largely Black and largely poor are viewed as in need of 'special' forms of governance. People across groups actually tend to want roughly the same types of service from the police, but segregation obscures this fact and gives police departments a justification for taking radically different approaches to the treatment of human life based on the intersection of race, class, and space." (Bell at 732-33.) Overcoming not only the historical legacy of segregation, but the present conditions they have given rise to, is a task that requires a central role for police reform. Policing must disentangle itself from the enforcement of segregation and focus on the public safety needs of the communities it serves.

---

[14] W. Katz, "Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force," 128 Harv. L. Rev. F. 235 (2015).

[15] Virginie Ladisch and Anna Myriam Roccatello, ICTJ, "The Color of Justice: Transitional Justice and the Legacy of Slavery and Racism in the United States," 2021. https://www.ictj.org/sites/default/files/ICTJ_Briefing_TJ_US_Race.pdf.