Changing Law Enforcement in the Trump Era

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Following the 1991 beating of Rodney King by Los Angeles Police Officers, "Congress empowered the federal government to police local law enforcement in 1994" in a statute known as 14141. Under this code revision, the Department of Justice (DOJ) could investigate allegations of misconduct and enforce systematic change; however, moves by the new executive administration have called this mission into question. The stakes are high in policing, especially in light of increasing abuses of police power – more specifically, the disproportionate abuse towards African-Americans and minorities. This paper will discuss the policies and groups in contestation over reforming law enforcement in the United States and assert that all reasonable parties desire accomplishing the same goal: safe communities and safe police officers.

By Shannon Luckman
WHAT IS THE LAW?

Near the end of the Obama administration, the President assembled a ‘Task Force on 21st Century Policing’ in response to recurring acts of violence between the police and civilians, most prevalently within minority groups. This task force was given the responsibility to review the current policies and practices of law enforcement agencies across the country (with the end goal of publishing their findings and recommending future development of policy and practice). In August 2016, the team released a six-pillar system in order to improve community trust and adherence to civil rights policies; also, it sought to improve officer training and safety. The recommendation: that the Obama administration implement the plan immediately and take necessary action alongside the DOJ (specifically, the Office of Community Oriented Policing Services (COPS)) to forward this agenda. However, the following year would directly challenge the effectiveness of these actions.

On February 9th, 2017, newly elected President Donald Trump issued an Executive order titled “Preventing Violence Against Federal, State, Tribal and Local Law Enforcement Officers”. This order aimed to increase penalties for crimes against all levels of law enforcement officers (LEOs), work with the DOJ to develop strategies to better protect LEOs and enforce all federal laws to enhance the protection and safety of LEOs. Additionally, this order delegates the Attorney General (AG) the power to prosecute individuals who commit crimes against LEOs to the fullest extent of the law. Also, the AG is allowed to coordinate multi-jurisdiction prosecution efforts, review federal laws for adequate support and protection of LEOs, make recommendations for further presidential legislation to define new crimes, increase penalties, and establish new mandatory sentences. Furthermore, the AG must develop an executive branch strategy to prevent violence against LEOs; also, evaluate all grant programs administered by the department.

Prompted by the mandates within the order, AG Jeff Sessions released a “Memorandum of Department Components and United States Attorneys”. The memorandum directs the deputy and associate AG’s to “review all Department activities – including collaborative investigations and prosecutions, grant making, technical assistance and training, compliance reviews, existing or contemplated consent decrees and task force participation.” In short, this directs DOJ staff to halt all police reform efforts until further notice.

Following this directive, one deputy AG filed a request to postpone the proceedings of an existing court case: United States v. Baltimore Police Department. The case was filed on behalf of the citizens of the United States over patterns of serious misconduct by the Baltimore Police Department (BPD). However, the two parties had already reached a court sanctioned resolution: a Consent Decree. Consent Decrees are a court ordered settlement to which both parties are in agreement – subject to the court’s approval. The specified decree detailed a policy overhaul of the BPD – composed by the DOJ and Baltimore Police and approved by the court. By 2017, the court had set a hearing for February 15th with an approval hearing on April 5th. The DOJ’s request to postpone as a result of Jeff Sessions’ memorandum was filed only two days prior on April 3rd.

OPPOSING PARTIES

At face value, the executive order issued by President Trump aims to investigate consent decrees and other forms of legislation reforming police departments, improving general officer safety – however, according to New York Times reporters Vanita Gupta and Corey Stoughton: “underlying the order is the Trump administration’s belief that efforts to align police practices with the constitution have compromised public safety and thrown police officers under the bus. This couldn’t be farther from the truth”.

Hence, to achieve
effective police reform, policy makers must focus on policing systems and practices, not individuals. Furthermore, “through reform, our policing systems must identify not just the roles and responsibilities of the police but [those] of the community as well”\(^9\). In addition, critics view deep racial tensions surrounding police execution of force as the underlying cause. Facing each other across an ever-widening chasm are the groups Black Lives Matter and Blue Lives Matter.

The Black Lives Matter group was formed by three black women in response to the tragic and shooting and consequent death of 17-year-old Trayvon Martin in Florida in 2012\(^2\); the social movement quickly gained momentum. The founders staged protests and rallies while lobbying for police reform bills, working with organizations like the NAACP and ACLU. In essence, the movement sought “to broaden the conversation to include all of the ways that black people are left powerless and deprived of civil and human rights”\(^10\). A system where such deprivation and discrimination are widely believed to exist is the criminal justice system. Black Lives Matter seek equality before the law, rejecting the subversive discrimination committed by law enforcement. This is exemplified by the deaths of Freddie Gray (Baltimore), Philando Castile (Minnesota), Alton Sterling (Louisiana) among others\(^9\).

As Sojourners reporter Ryan Hammill observes: “negative national reactions to the Black Lives Matter movement have come quickly and decisively, replete with slogans like ‘All Lives Matter’ and ‘Blue Lives Matter’\(^11\). Blue Lives Matter (a media organization run by retired police officers) was founded in response to what some law enforcement professionals believe was the unfair media framing of Ferguson PD Officer Darren Wilson. According to the case, Wilson shot and killed Michael Brown – a young black man suspected of stealing cigarettes from a convenience store\(^12\). According to the Blue Lives Matter website, this event (among others) motivated the formation of their organization and mission for police officer protection\(^13\). Backed by a mostly conservative population, Blue Lives Matter predominantly consists of white officers and politicians who believe officer safety is undervalued. Blue Lives Matter opposes what they claim is the spread of “false narrative of Black Lives Matter”\(^13\) that vilifies law enforcement.

There is a clear line drawn between blacks and whites concerning police brutality and reform, even within the protestant church: “While 82 percent of Black protestants believe that police killings are part of a pattern, 73 percent of white mainline protestants say the opposite – to them, Michael Brown, Eric Garner, Tamir Rice, Sandra Bland, Freddie Gray, and the hundreds of other unarmed black Americans killed by police are ‘isolated incidents’\(^14\).

VALUES

Both groups mentioned supra claim to advocate for equality before the law, democracy, and – of course – justice. Clearly, their approaches to resolving these issues vary greatly. Essential to understanding the value of each is noting the difference between power and authority. Authority is a matter of relationships, allegiances and associations “based upon the consent of those under it”\(^14\). Power, in contrast, is external – based on the use of force. Indeed, power becomes supreme when authority fragments\(^14\).
Historically, African-Americans have lived under the power of the government, not its authority. Indeed, inconsistencies between policing in predominantly black communities as opposed to white isn’t an “invented” idea. This fact is something that political analysts like Ta-Nehisi Coates urge American society to address. Coates highlights this in his work *The Myth of Police Reform*, stating that “when African American parents give their children ‘the talk’ they do not urge them to make no sudden movements in the presence of police out of a profound respect for the democratic ideal, but out of knowledge that police can, and will, kill them”. This perception, being fear concerning one’s own government – and law enforcers supposedly employed to keep ALL citizens safe – does not exemplify values of democracy and justice. The fact that white parents are not having these same conversations with their children proves that there is inequality before the law.

The United States is a federalist system and does enable the states, to a certain extent, to govern themselves. However, the federal supremacy clause in the constitution delegates to the federal government the responsibility of preserving the constitutional rights of its citizens. Asking the criminal justice system not to particularly target and oppress African-Americans is what Black Lives Matter and its associates advocate. The fact that this request must be made unveils existing undemocratic and bias structures within our government. Indeed, Black Lives Matter asks to consent to the authority – not power – of the government. To live in a true democracy.

As the aforementioned evidence reflects, the Trump Administration, GOP, and groups like Blue Lives Matter follow an ideology that is pro-nativism and white supremacy. Through exalting the position of the officer (and consequent respect due) above all else, they actively devalue the efforts of movements like Black Lives Matter. This suggests a tendency of the current AG and DOJ to forget their “obligation to ensure that law enforcement across the country is following the Constitution”. They see reforms that work to elevate minorities to the status of whites as ‘special treatment’ and fundamentally unequal. They see democracy as following the directives of the elected president and they see justice as prosecuting those in a lesser position of power to
the fullest extent of the law, while chalking up the mistakes of the powerful to a stressful work environment. They blame the systems' failings on the mistakes of the individual and maintain that states and municipalities are responsible for their own enforcement of constitutional civil rights.

GOVERNMENT POLICY

The technical implications of the executive order and memorandum are clear as all fourteen existing consent decrees will be reexamined by the DOJ (although, the request to halt the approval of the Baltimore PD consent decree was not granted by the court). The memorandum is also missing key components that make up effective policing strategy; protecting the most vulnerable, working hard to earn and maintain trust, treating people fairly, and using as little coercion as possible. These key values, shown to be of vital importance under the Obama administration via civil rights investigations and reforms, are missing from the newly issued memorandum.

More than technical implications, the ethical impositions of Sessions’ memorandum are startling. Sessions indicates that he doesn’t understand that a pattern of individual misconduct indicates a failing in the system; in his memorandum he states: “the misdeeds of individual bad actors should not impugn or undermine the legitimate and honorable work that law enforcement officers and agencies perform in keeping American communities safe.” Renowned professor William Edward Deming reflects this idea “through his 85/15 rule, which says that 85 percent of the problems in any organization are system-related while only 15 percent are worker related.” This concept explains that the misconduct of officers is reflective of failings within the system; consequently, failing officers (the actions of individual officers within the institution can delegitimize and demonize the entirety of law enforcement). In conclusion, the repair of trust between police and community is essential for the safety of both. Indeed, by claiming that the federal government has no obligation to uphold these constitutional goals suggests an abdication of their duty to the American people.

There is a clear lack of focus on bias reduction and de-escalation training within law enforcement — something that Obama’s preceding efforts explicitly emphasized. Put simply, “the conviction that public safety is best when applied fairly and without unnecessary coercion is glaringly absent from the current administrations’ agenda.” According to Sessions memorandum, “it is not the responsibility of the federal government to manage non-federal law enforcement agencies.” However, the memorandum itself indicates “a deeper misunderstanding of the federal government’s role with respect to local and state law enforcement” through avoidance of discussing issues like bias reduction.

The Constitution mandates the federal government ensure fair and effective policing and adherence to civil rights policies. The DOJ’s 69 former investigations of police departments around the nation have addressed systematically abusive practices — all of these investigations, “have made for better policing in communities served by law enforcement.” In short, adherence to the constitutional protections from government oppression “depend on the department fulfilling its obligations in this continuous effort, using any and all tools at its disposal to achieve the fulfillment of civil rights.”

FEDERALISM:
a mixed or compound mode of government, combining a general government with regional governments in a single political system

NATIVISM:
a policy of favoring native inhabitants as opposed to immigrants
GOVERNMENT CAPACITY FOR PROGRESS

Federal reform is essential to address issues like unconstitutional stops, searches, seizures, and excessive and retaliatory force. Aforementioned, the federal government has the authority to investigate and enact reforms; this power was delegated to them by Congress in 1994\textsuperscript{20}. Additionally, the process of writing and enacting a consent decree is an arduous process. Before a consent decree can be considered, the court must find an explicit pattern of unconstitutional practice among police officers; in short, misconduct must be evident. Many of the DOJ’s findings and the resulting recommendations are based on problems that departments and officer unions have already identified – and subsequent reforms were welcomed. Such “evidence” is noted by the New York Times: “the department’s findings in Baltimore and Chicago were based on a review of hundreds of interviews and tens of thousands of pages of documents that detailed departmental policies”\textsuperscript{21}. The DOJ has a statutory obligation to protect the civil rights and liberties of African Americans, Latino, LGBTQ and other marginalized communities via investigations and mandatory reforms\textsuperscript{22}. The Department’s capacity to follow this obligation is not inhibited; rather, the current administration is voluntarily neglecting their duty by rescinding reforms like consent decrees.

INFLUENCES OF CIVIL SOCIETY

While the federal government cannot micromanage individual communities, local governments can work to ensure that their policing practices are constitutional. Organizations like the ACLU and NAACP continue to work in communities to hold police accountable for civil rights violations through legal action and lobbying for reform. These types of engagements can supplement local action in the absence of federal reform.

Another significant aspect of community/police dysfunctionality is “media pitting”. Media plays a pivotal role in engendering animosity between communities and police – this also reflects the lack of cohesion between Black Lives Matter and Blue Lives Matter\textsuperscript{23}. Some police departments publicize their awareness of this: for example, former Richmond, California Police Chief Chris Magnus protested against police brutality in 2014. Magnus, a white man, simply held a sign reading “Black Lives Matter”. The reaction was immediate; the Richmond Police Officers Association identified Magnus as a traitor for ‘politicking’ in uniform\textsuperscript{11}. In response Magnus stated, “I’d do it again. The idea that Black Lives Matter is something that I would think we should all be able to agree on”\textsuperscript{11}.

AN AMERICAN SOLUTION

The contestation exists over the misconception that oversight and reform are anti-police values. Conversely, they serve to greatly improve safety for all parties involved. An expanding solution can be found in the implementation of community policing practices. Community policing was defined by the DOJ in 2007: firstly, that it must foster “a partnership of police and citizens to involve the whole community in strategies to promote greater public safety”. Secondly, to “identify and effectively address the underlying conditions that give rise to crime and disorder”. Lastly, to “transform the organization to respond to community needs more effectively”\textsuperscript{24}. Current Richmond Police Chief Allwyn Brown adequately summarized the sentiment, stating that “it’s the idea of a collective... that community safety is not

\textit{Sessions indicates that he doesn’t understand that a pattern of individual misconduct indicates a failing in the system.}

\textsuperscript{23} It is relevant to reiterate that all parties involved advocate for safer communities and safer police.
Reducing crime does not require unconstitutional policing; Richmond reflects this in its successful implementation of community-based policies. In 2006, the city suffered 42 homicides — this increased to 47 in 2007. Long considered the murder capital of the bay area, the city instituted community-based policing policies and saw a dramatic decrease in homicide rates (11 in 2014) and instances of enforcement through power by police; trust between community and officials increased through “[creating] more open access, more transparency”.

Effective community policing is achieved through several practices. Ryan Hammill identifies two contributing factors being hiring more officers of color and instilling “a mindset that each officer has to have that ‘I’m not different than this community, but I’m a part of it’”. When officers become a point of contact for members of their community, trust between police and the public increases — consequently, trust between police and the public and the safety of both increases. The goal of police departments should be to prevent arrests and incarcerations. As expressed by senior Richmond police officer Anthony Campbell: “we try to instill in the mindset of our officers that it is a failure of the system — of which we are part — when we have to make an arrest”. Campbell goes on to say that when an arrest is made it is an indication that “we either got there too late or we were not paying enough attention to hear the cry”. According to Campbell, there are recognizable signs that a crime will be committed long before it occurs; if an arrest must be made it suggests that the police department was not monitoring their community effectively.

Community policing is “the ultimate proactive measure” — it increases safety for everyone: police officers as well as the community. The conversation does not illicit polarization — in fact, it can serve to unite both parties together:

The affirmation that ‘Black Lives Matter’ should not be cheapened with chiding calls to say ‘All Lives Matter’ — after all, this country has demonstrated a particular inability to care about black lives. But the slogans arising out of Ferguson, Staten Island, and elsewhere are not threats to blue lives or to effective policing. In point of fact, these calls can make for safer cops and safer streets. We’d be fools not to pay attention.

Indeed, the ideals embodied through enacting community policing policies could give rise to an idyllic America. Though clear racial lines have been drawn by policies in place today, shifting the focus from ‘reforming the police’ to ‘reforming policing practices’ will create safer communities and protect police officers. Reforming practices to increase community involvement, rebuild trust and ensure oversight of police action, reaffirm American values of collaboration and teamwork. Involving the public with the police in community oriented ways and diversifying police forces will help establish a more openly multiracial society. From a broad perspective, seeing a reflection of a country’s population in their government and institutions exemplifies the very point of democracy. Above all, ensuring that officers and departments are abiding the law and preserving civil rights secures citizens equality under the law.


5 U.S. Constitution, Article VI § 2


12 United States, Congress, “Department of Justice Report Regarding the Criminal Investigation Into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson.” Department of Justice Report Regarding the Criminal Investigation Into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson, The Department of Justice, 2015.