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Connecting the Silos: Reforming Police from the Inside, Out

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Abstract

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This thesis explores the topic of police reform by weaving the voices of reformists with the voice of a Delaware State Trooper. Their voices are given context through an exploration of Delaware history and the history of police. Topics that are covered in this thesis include interactions between police and the community, police discretion, racial bias in police, the political definition of police, Delaware history, housing history, wealth-inequity, unconscious bias, social work, and defund the police. By exploring all of these topics, the magnitude of the issue is revealed, and some solutions are posed. Given the evidence it is clear that There are small changes police can make in the meantime to help address the bias within their institution, but the change is dependent on society as a whole. There is a system of unconscious bias working within all institutions of the United States, and it is not until American society can address its history and change how it teaches, talks about, and frames conversations around racism that there will be a meaningful and long overdue change for entire communities in the United States.

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Introduction

Los Angeles, California—March 3, 1991. New York, New York—February 4, 1999. New York, New York—November 25, 2006. St. Louis, Missouri—December 20, 2011. New York, New York—July 17, 2014. Ferguson, Missouri—August 9, 2014. Baltimore, Maryland—April 12, 2015. Baton Rouge, Louisiana—July 5, 2016. St. Paul, Minnesota—July 6, 2016. Minneapolis, Minnesota—May 25, 2020. Each place and date are connected by one common thread: police brutality. Above are the places and dates where Rodney King, Amadou Diallo, Sean Bell, Anthony Lamar Smith, Eric Garner, Michael Brown, Freddie Gray, Alton Sterling, Philando Castile, and George Floyd were killed by police officers, inspiring local and national outrage, protests, and calls for reform. These are just a short list of the most communally recognizable instances of police brutality, and only represent a small fraction of the injustice experienced by communities on a daily basis.

There is no denying that there is a problem. It is a known, systemic problem that continually resurfaces as it has been repeatedly ignored and left unaddressed. The problem spans the country: from East Coast to West Coast, from North to South. The question at the center of this paper is not whether or not there is a problem. The central questions that need to be addressed are: where does the problem come from, how deep is the problem, how do we address the problem, and what organizations and institutions need to participate? This paper seeks to answer the questions posed above by conducting a case study based off the interviews with a Delaware State Trooper. The stories, experiences, and views of the State Trooper will be put in conversation with United States and Delaware history, sociological and political science theory, current reform initiatives, and some of the leading voices on criminal justice reform today.

The Delaware State Trooper interviewed throughout this paper—referred to as Trooper One—has been a part of the Delaware State Police for almost 21 years. In their tenure there, they have been “on patrol” for six years. During those years they participated in the Field Training Officer program, a program used to help recent academy graduates transition to the job, as both a Training Officer and as a program coordinator. For two years in the same time period they were also a TAC Officer (Training, Advisor, Counselor) for the Delaware State Police Training Academy. In 2002, they began participating in the SCUBA unit, and are still involved today. After seven years on patrol, they were promoted to the Troop 3 Criminal Investigation Unit—a unit that focuses primarily on issues of Domestic Violence. While a part of that Unit, Trooper One created and promoted a new Delaware Strangulation Statute that made Strangulation a felony instead of a misdemeanor. After four years of service in the Criminal Investigation Unit, Trooper One transferred to the Aviation Unit. The Aviation Unit offers police services, such as search and scouting functions, but is primarily used as a free medivac service. Trooper One first joined the Aviation Unit as a medic, but has since transitioned to the pilot position. Trooper Pilot is their current job title.

For full disclosure, I am related to Trooper One. Although I believe that I have been impartial in recounting Trooper One’s story, I understand that being fully impartial is impossible. Originally, to combat possible bias, I was going to interview other State Troopers. However, after the events of the summer of 2020, the Delaware State Police tightened the restrictions on State Troopers discussing their work outside of the organization, especially if their words were to be published. In order to speak with me and participate in the research, Trooper One had to receive approval from administrators. The change in policy and the need to get approval caused the other State Troopers to back out and decline participation.

Therefore, the first suggestion I would like to make for the Delaware State Police is to promote transparency and open conversation around topics like reform instead of closing itself off to the community. It has been long recorded that the police do not feel understood by the public.¹ However that will not change if there continues to be a wall of silence. If police do not feel comfortable opening themselves up to the public for conversation, or accepting critiques, there cannot be any meaningful change or progress. Aside from changing the new policy for the Delaware State Police on communication, it is also important that people who are in a similar position as myself make an effort to bridge the gap between police and community. By building some semblance of trust and understanding with even one person outside of the police, officers might become more open to the discourse coming from the broader public.

This paper is split into two sections. The first section makes multiple suggestions on what individual officers and police departments can be doing to address discrimination and racial bias within their organization. The goal for this section is to suggest ways the police can better their relationship with the community by addressing the biases within their institution. The section uses a case study of the Delaware State Police in Wilmington to illustrate some of the issues the police need to address, as well as other stories and commentary by Trooper One that illuminate other policies and areas for reform. However, the suggestions I make are complicated by the need to limit polices' role in society. There ultimately needs to be a reimagining of what the role of police should be, and a consensus among people in power on how to define that new role.

Thus, section two focuses on the need for American society to address the complex racial history that has contributed to the unconscious bias present in the Criminal Justice System and

¹ Douglas W. Perez, *The Paradoxes of Police Work: Walking the Thin Blue Line*, (Canada: Thomson Wadsworth, 1997), 60.

other institutions today. This section starts with a history of how politicians have defined the role of police in racially coded terms. It then transitions to the complex racial history Delaware has, and the lasting effects that not addressing it has caused. Following both sections is a discussion on theoretical explanations for why many of the issues have been entrusted to the police to address instead of other, more qualified institutions. Finally, I discuss how the police should be redefined and reimagined with special attention to the arguments for ‘defund the police.’ I argue that shifting the responsibilities of police to other institutions will save lives in the short run, but the long-term effects the Criminal Justice System has had on society will not be fully resolved until those other institutions, who share a similar system of unconscious bias, address their own history and biased practices.

Ultimately, there is no question that the Criminal Justice System is in need of a serious overhaul. There are small changes police can make in the meantime to help address the bias within their institution, but the change is dependent on society as a whole. There is a system of unconscious bias working within all institutions of the United States, and it is not until American society can address its history and change how it teaches, talks about, and frames conversations around racism that there will be a meaningful and long overdue change for entire communities in the United States.

Part I

As I started my research on the Delaware State Police, I did not know what I would uncover and what policies would be imperative to change. What I discovered was a group of practices that may work in theory, but fall short in practice. The best illustration of this is what I learned about the Delaware State Police's involvement in Wilmington, Delaware. What follows is a case study of Wilmington, Delaware, and how police addressed the high rate of crime in the early 2000s. The case study represents a window into the lives of police, and hopefully provides scenarios that inspire avenues for reform.

Wilmington, Delaware: Reforming Policing in High-Crime, Urban Landscapes

When I was in high school, I decided to take a trip to New York City to visit a friend who had recently moved there. The fastest and cheapest way to travel was to take the train from Wilmington, Delaware, straight to Penn Station. Excited to meet my friend and wanting to spend the most time possible with her, I booked my return trip on the latest train possible. Once I told my parents that I would be returning at 11:30 PM on Sunday night, they expressed concern and a slight frustration with me. The frustration coming from the fact that, because I booked my return so late, they would have to pick me up from the station themselves. They were scared and uncomfortable thinking of me being by myself in Wilmington so late at night.

The sentiment they shared with me is not uncommon for many people in Delaware. Is their sentiment warranted? Possibly. Around that same time, Wilmington had been ranked as one of the most dangerous small cities in America, some years even topping that list.² In 2014, there were 28 homicides and 135 shootings. The violent-crime rate was 1,625 per 100,000 people. According to the FBI's Uniform Crime Report—a report that tracks violent crime—at the time,

² Abigail Jones, "Murder Town USA (aka Wilmington, Delaware)," (New York City: Newsweek Magazine, 12/09/2014), <https://www.newsweek.com/2014/12/19/wilmington-delaware-murder-crime-290232.html>.

the national average was 368 per 100,000 people.³ Wilmington was ranked third out of 450 cities of similar size for violence that year.⁴

Before diving into a deeper discussion on police actions in Wilmington, there is one thing that needs to be made clear. There are many misconceptions that entire cities, neighborhoods, or communities participate in crime. This is false. In reality, the majority of people and the majority of neighborhoods do not participate in crime. In fact, across cities what police call ‘hot spots’ for crimes take up only three to six percent of a city’s geography but account for 50 percent of all crime. 20 to 25 percent of crime in cities typically comes from the most violent or ‘hottest’ one percent of people.⁵ Part of the issue today with police-community relations is that entire neighborhoods and communities are criminalized and surveilled when, in reality, the majority of residents are not breaking any laws. Throughout the paper when I say Wilmington, I am not meaning to generalize the experiences of the whole city or even certain communities. I use Wilmington so the reader does not become bogged down in the details of place. However, I would ask the reader to keep the specificity of place and crime in mind whenever they hear Wilmington.

How did Delaware respond to the crime problem in Wilmington? They, like many other cities, sent in the State Police to aid the Wilmington police in carrying out a “broken windows” theory of policing. “I know years back when Wilmington was having a bad violence problem,” recalled Trooper One. “They still do, but for some reason the governor said, ‘all right we’re going to send the State Police in there to do stuff.’ And the whole thing was to go in and write

³ Jones, “Murder Town USA.”

⁴ Jones, “Murder Town USA.”

⁵ Thomas Abt, *Bleeding Out: the Devastating Consequences of Urban Violence—and a Bold New Plan for Peace in the Streets*, (New York, NY: Basic Books, 2019), 195.

tickets, you know, arrest people. Go in and start to clean up the city.”⁶ The theory of broken windows policing comes from the concept that, in order to improve a neighborhood, the community needs to focus on details—like broken windows—that, when addressed, would improve the overall quality of the neighborhood. In practice, the police would “write people tickets and arrest people for everything that they’re doing wrong, so you can handle the little things to keep the big things from happening.”⁷

Broken windows policing, after a systemic review of twenty-eight approaches, was proven to produce modest results in lowering the rates of violent crimes. However, the way broken windows policing is implemented mattered when it came to police-community relations.⁸ According to crime researcher Thomas Abt, police who used problem-solving strategies to collaborate with communities had better results in reducing the rate of violent crimes and had less resistance to their presence from members of the community. On the other hand, when police used a “zero-tolerance” approach, the results were weaker, and the communities were highly resistant to the police presence.⁹

Trooper One has great disdain for broken windows policing, perhaps because of the way they saw it implemented in Wilmington. “I know this officer. When he would go into Wilmington, if someone jaywalked across the street he would run them down, corner them, and write them a ticket for it,” Trooper One said. “It did not matter what he saw or did. There was just no discretion. You arrest everyone for everything.”¹⁰ Based on the description Abt gave of

⁶ Interview with Trooper one, conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷ Interview with Trooper one, conducted by Lynden Fausey via Zoom on 9/10/2020.

⁸ Abt, *Bleeding Out*, 204.

⁹ Abt, *Bleeding Out*, 204.

¹⁰ Interview with Trooper one conducted by Lynden Fausey on 9/10/2020.

the various ways to implement broken windows policing, the description Trooper One gave fits into the latter, less effective form.

“I don’t agree with [broken windows policing] at all,” Trooper One continued. “I think it just criminalizes everyone. You end up irritating more people than you should, criminalizing more people than you should, writing more tickets for people than you should, and getting more people in the system that don’t need to be there...I feel for the people that are in that neighborhood; the police are just harassing them all the time.”¹¹ As a result, the police and various neighborhoods in Wilmington have a strained relationship, even now, after the State Police are no longer in Wilmington. In September of 2020, the Delaware legislature voted to create the Community Police and Engagement Subcommittee, a committee that would look into building a bridge between the police and the communities they serve.¹² So far, the subcommittee has reached no conclusions or taken any action.

The strained relationship between the police and the Wilmington community—as well as other communities across the state—has led to a significant issue: the police have been delegitimized in the eyes of the community. In his book *Bleeding Out*, Thomas Abt dissects the concept of legitimacy by splitting it into two categories: legitimacy of effectiveness and legitimacy of fairness. Effectiveness is judged “by whether the primary purpose of the law—maintaining public safety and order—is achieved.”¹³ In other words, effectiveness is dependent on how often officers keep people safe from harm. Fairness, as defined by Abt, is “both formal

¹¹ Interview with Trooper one conducted by Lynden Fausey on 9/10/2020.

¹² Amy Cherry, “LEO subcommittee: Better training, education, health treatment needed for police officers to improve community relations,” (Wilmington, DE: WDEL, Delaware’s News radio, Sept. 24, 2020) https://www.wdel.com/news/leo-subcommittee-better-training-education-mental-health-treatment-needed-for-police-officers-to-improve-community/article_f6c0b2c6-fe8e-11ea-b79c-afcfb318d980.html.

¹³ Abt, *Bleeding Out*, 105.

and informal; it relates to both processes and results.”¹⁴ In order for the police to be considered fair, they need to be faithful to the letter and spirit of the law so that their behavior is predictable and the community can trust their decision making process.¹⁵

If either the legitimacy of effectiveness or legitimacy of fairness has been breached in any way, then it can lead to what criminologists call “legal cynicism.” Legal cynicism is the belief that the Criminal Justice System is incompetent, illegitimate, and unresponsive to the needs of the citizens they are supposed to be serving.¹⁶ There are widespread surges of legal cynicism after high profile incidents, an example being the murder of George Floyd; however, research has also shown legal cynicism can occur at a local level. At the local or individual level, legal cynicism develops through mundane or repeated interactions with officers that shift the views of a person or community. Something as small as a single instance of rude behavior could damage the perceived legitimacy of police.¹⁷

Putting this theory in the context of the use of broken windows policing in Wilmington, it is not surprising that the community-police relations need special attention. The effectiveness of broken windows policing was low, but not zero. According to the Delaware Statistical Analysis Center’s report on crime in Wilmington from 2010-2014, the crime rate of violent offenses decreased from 59.3 per 1,000 population to 48.0 per 1,000 population.¹⁸ For the most part, over the four-year period studied, crime decreased in all categories, excluding the year of 2011 when crime increased slightly for violent offenses, serious property offenses, and other property or

¹⁴ Abt, *Bleeding Out*, 106.

¹⁵ Abt, *Bleeding Out*, 106.

¹⁶ Abt, *Bleeding Out*, 108.

¹⁷ Abt, *Bleeding Out*, 112.

¹⁸ Jim Salt and Eric Rager, “Crime in Delaware: 2010-2014 Wilmington Supplement,” (Wilmington, DE: Delaware Statistical Analysis Center), 1.

social offenses.¹⁹ Yet, the police seem to fall short on the fairness aspect of legitimacy. Being arrested or fined for minor offenses, such as jaywalking, and being constantly surveilled or, as Trooper One put it “harassed” because of mundane, minor violations would provide probable cause for the legal cynicism the state of Delaware is still exploring today.

Once the legitimacy of a criminal justice agency has been lost, it becomes extremely difficult to reinstate. Lack of legitimacy creates a catch-22 effect: in order to improve safety, there must be trust, and to improve trust, there must be safety.²⁰ Trooper One noted the lack of trust they experienced, and how it affected the way police do their jobs. “Sometimes there’s a shooting and no one is willing to talk to police about it,” they said. “[Police] can’t find who did the shooting if no one talks about it. I mean, I can’t fault them for not talking to police, but, in the same sense, nothing’s going to change.”²¹ Trooper One does not blame the citizens for being unwilling to speak with police—whether out of fear for the police or out of fear of retaliation from other sources—but it does speak to the challenges of regaining trust in a community that has been deeply harmed by the ongoing actions of police officers. The common thread between instances where the legitimacy of fairness and the legitimacy of effectiveness have been compromised is discretion. The next section of this study will discuss how discretion has played into the mistrust of police, and how to address the complex issue.

Addressing Discretion

Discretion is rightfully a hot topic in police reform today. Police officers have large amounts of discretion in their job, especially in stopping, ticketing, and arresting citizens. Some of the ways in which police use their discretion causes a rift between police and entire

¹⁹ Salt and Rager, “Crime in Delaware,” 1.

²⁰ Abt, *Bleeding Out*, 118.

²¹ Interview with Trooper 1 conducted by Lynden Fausey via Zoom on 9/10/2020.

communities. The amount of discretion police should have has been a central focus for reformists, as many instances of police brutality have occurred as a result of the discretion that police officers had in each given situation. There are also valid concerns about how the amount of discretion police officers have has contributed to the racial disparities seen in the Criminal Justice System today.

Racial bias is very hard to study empirically, so there is no definite answer to the degree in which officers discriminate. However, a recent report by political scientist Dean Knox et. al. discovered that administrative records might mask and dramatically underestimate the amount of racial bias experienced by communities.²² The report is centered around solving one fundamental issue—“the inevitable statistical bias that results from studying racial discrimination using records that are themselves the product of racial discrimination.”²³ This issue emerges from two factors that cannot be recorded: mediation and selection.²⁴ It is impossible to know the number of individuals and the physical characteristics of the individuals that were not stopped by police; only the characteristics of the individuals who were stopped are on record.²⁵ As a result, the majority of policing scholars do not seek to estimate the population treatment effects—the effects that individual actions can have over an entire community—rather, they focus on the effects on an individual level.²⁶

The analysts aimed their study at determining the population treatment effects other studies have excluded by creating a model that produces “bias-corrected results.”²⁷ They applied

²² Dean Knox, Will Lowe and Jonathan Mummolo, “Administrative Records Mask Racially Biased Policing,” *American Political Science Review*, 114, no. 3 (2020): 619.

²³ Knox et. al., “Administrative Records Mask Racially Biased Policing,” 619.

²⁴ Knox et. al., “Administrative Records Mask Racially Biased Policing,” 619.

²⁵ Knox et. al., “Administrative Records Mask Racially Biased Policing,” 619.

²⁶ Knox et. al., “Administrative Records Mask Racially Biased Policing,” 620.

²⁷ Knox et. al., “Administrative Records Mask Racially Biased Policing,” 619.

their new model to stops and arrests conducted by the New York Police Department (NYPD) between 2003 and 2013. The data suggested that, while analyses that did not account for bias concluded that 10 percent of uses of force against black and Hispanic citizens were discriminatory, the bias-corrected results estimated that the true amount is about 39 percent.²⁸

Not only are encounters where police stop and arrest individuals discriminatory, one study suggests that police have a lower threshold for using force or shooting black citizens in comparison to white citizens.²⁹ The study evaluates the difference in fatality rates of White and Black civilians shot by police in nine localities.³⁰ It relies on the premise that fatal shootings are more likely to be justified shootings, so the non-fatal shootings are more likely to be unnecessary uses of force.³¹ In every locality the study looked at, Black civilians were less likely to die if shot by police than White civilians. White civilians had a 52 percent probability of dying while Black civilians' probability dropped by 19 percentage points to 33 percent.³² In other words, their results imply that "police would not have shot at 166 Black civilians had they been White from the 497 Black civilians shot in [their] nine localities over the years."³³

There is a clear and known connection between discretion and racial bias in the Criminal Justice System. Yet, it has been hard to find valuable ways to limit discretion among officers. This is largely because of the nature of the law. The law is intentionally vague and requires interpretation at every level—whether in the court system or on the streets.³⁴ Hypothetically, discretion is not controversial if it is used to promote justice and is considered by the community

²⁸ Knox et. al., "Administrative Records Mask Racially Biased Policing," 620.

²⁹ Tom Clark, E. Cohen, Adam Glynn, M Owens, Anna Gunderson and Kaylyn Jackson-Schiff, "Are Police Racially Biased in the Decision to Shoot?" (2020), 1-26.

³⁰ Clark et. al., "Are Police Biased in the Decision to Shoot?" 2-3.

³¹ Clark et. al., "Are Police Biased in the Decision to Shoot?" 2-3.

³² Clark et. al., "Are Police Biased in the Decision to Shoot?" 19.

³³ Clark, et. al., "Are Police Biased in the Decision to Shoot?" 22.

³⁴ Perez, *The Paradoxes of Police Work*, 53.

to align with the interests of the community.³⁵ However, in practice, the bias of police can obscure their ability to use discretion for the promotion of justice. In legal terms, the use of characteristics, such as race or neighborhood, to arrest people are considered “arbitrary and capricious” reasons.³⁶ That arbitrary use of power is a central problem people have with police, as the use of it mars the core goal of justice within the legal system.

In a study on what leads to arrest and what does not, Donald Black and other sociologists determined that there are four main factors that control a police officer’s decision.³⁷ The first, and the factor that controls the decision the most, is the strength of the evidence against the offender.³⁸ Logically, the more evidence there is against a suspect the more likely the officer is to arrest. Next, with evidence being equal, the degree of the offense makes a difference.³⁹ People are more likely to be arrested for a major offense like burglary compared to a minor violation like shoplifting. The third factor that comes into play is the degree of separation between the suspect and the victim.⁴⁰ Most scenarios where the suspect and victim had regular interactions the offender was less likely to be arrested.

The three factors listed above are not controversial uses of discretion; however, the fourth factor is where many people find the most issue. The fourth factor that affects decision-making is attitude.⁴¹ If police see someone as cooperative and believe that they “defer to the power of the police,” the police tend to go easier on them. Many police have coined this “the attitude test”—passing means you are treated reasonably, failing means you are in trouble.⁴² Although there are

³⁵ Perez, *The Paradoxes of Police Work*, 53.

³⁶ Perez, *The Paradoxes of Police Work*, 54.

³⁷ Perez, *The Paradoxes of Police Work*, 55.

³⁸ Perez, *The Paradoxes of Police Work*, 55.

³⁹ Perez, *The Paradoxes of Police Work*, 56.

⁴⁰ Perez, *The Paradoxes of Police Work*, 56.

⁴¹ Perez, *The Paradoxes of Police Work*, 57

⁴² Perez, *The Paradoxes of Police Work*, 57.

many logical and defensible aspects of discretion, the use of “the attitude test” and other arbitrary and capricious methods for determining arrests dramatically decreases the legitimacy of fairness of the police as well as the Criminal Justice System. However, as former police officer Dr. Douglas Perez notes, discretion “poses another paradox for our consideration. It is necessary and some would say impossible to do without. Yet as soon as it is exercised, the police will be accused of misappropriating powers.”⁴³ The following real-world examples from Trooper One will help to explore this paradox.

Trooper One posed a scenario while discussing the topic of discretion. In the Delaware State Police policy, it says that if an officer stops someone who is “wanted” or has a warrant out on them, the officer must arrest them. However, one in seven people are wanted in Delaware, and about half of those people are wanted for minor violations—like having failed to pay a court fine. So, stopping someone on the roadway with a warrant for failure to pay a court fine would technically require police officers to detain the person and take them to court. As the officer does this, they would have to call someone to tow and impound the persons’ car because they are not allowed to leave the car unattended on the roadway. They would take the person to court and wait a few hours with them until they can go before a judge. At that point, the judge asks them to pay the fine, and, if the person does not have enough money to pay the full fine, they must set up a payment plan. A lot of times, the person will pay with whatever money they have on them (in the example given the amount was \$20) and they are released with the promise of following the new payment plan they set up. Then the person must find a ride to the tow yard where their car is and pay to get their car back. The scenario is further complicated if the stop and arrest takes

⁴³ Perez, *The Paradoxes of Police Work*, 58.

place after normal court hours. In that scenario, the person would need to spend a night in jail until the court opens the next morning.⁴⁴

In the scenario above, it is clear that arresting the person after the initial traffic stop is more trouble than it is worth. The officer, after transporting and waiting with the person they arrested has little to show for their time. The court fee, which caused the whole scenario, still is not paid, and the officer has been distracted by the incident when they could have been doing more productive things with their time. The person they arrested is certainly worse off. They have lost a day while waiting to be seen, and have been burdened with more debt because of the impounding of their car and other legal fees. In this scenario, allowing the officers to have some discretion, or the option to not arrest, is helpful.

The same applies to how officers choose to implement broken windows policing. Trooper One mentioned that the officers, in carrying out broken windows policing, lack a certain amount of discretion in their decision making. If you see someone jaywalking, you have to write them a ticket. However, this is not fully true. There have been examples of broken windows policing that work and are received well by the community *because* the officers communicate with residents, problem-solve, and use their own discretion to work through issues. This is an important distinction, as it strikes a balance between “tough” and “soft” on crime. As Abt discusses the balance, he notes that “neither ‘tough’ nor ‘soft’ approaches to crime have a monopoly on effectiveness.”⁴⁵ In fact, the cities who have had success in lowering rates of urban violence has used some combination of both touch and soft on crime approaches. Punishment by

⁴⁴ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁴⁵ Abt, *Bleeding Out*, 81.

itself has not worked. Neither has prevention.⁴⁶ To conclude, the effectiveness of any policing strategy is about balance, a balance that could be provided by a police officer's use of discretion.

On the other side of this double-edged sword, a situation can be worsened by an officer's use of discretion. Trooper One worked in the Criminal Investigation Unit, and, because of this, said that they "didn't have a whole lot of discretion with that. It was kind of separated into 'was there a crime committed or was there not a crime committed.' If not, then I got to find a resolution to it."⁴⁷ However, in terms of free time or when officers are not responding to a call, that changes. "The real discretion comes from 'what am I going to do now?'" Trooper One said. "Am I going to go out and look for traffic tickets? Am I going to go patrol this neighborhood for some reason? Am I going to go get a sundae... or a Diet Coke?"⁴⁸

What the officers decide to do with their time can directly affect the community and their views of police officers. Starting with the first option—looking for traffic tickets—one can see how looking for tickets and being motivated to look for something more in each traffic stop can be detrimental. "What you choose to do on a traffic stop, that's a whole other can of worms," said Trooper One. "Some people just want to write a ticket and go on. Some people want to find drugs."⁴⁹ It is the latter that is more detrimental. It is a simple fact that anyone driving more than a few blocks is likely to commit a traffic violation of some kind. If officers are looking for drugs, they can stop almost any vehicle they want off the pretenses of a traffic stop and, upon further investigation, come up with some premise to then search the vehicle.⁵⁰ This is partially because there are no significant constraints on police discretion when it comes to searching for drugs.

⁴⁶ Abt, *Bleeding Out*, 81.

⁴⁷ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁴⁸ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁴⁹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁵⁰ Michelle Alexander, *The New Jim Crow: mass Incarceration in the Age of Colorblindness*, (New York, NY: The New Press, 2012), 66-67.

Such policy, or lack of policy, is a remnant of the original War on Drugs.⁵¹ This interaction between police and citizen is very invasive, and can seem unwarranted to the person being stopped. Depending on the officer and how they are treating the citizen, such interactions could contribute to the individual's and the communities' feelings of legal cynicism.

Furthermore, using discretion and repeatedly deciding to patrol specific neighborhoods can negatively affect community relations. Again, this is largely dependent on how the officers choose to patrol the neighborhoods. If, for example, the officer follows the 'tough' version of broken windows policing, it could lead to communities feeling more like they are being occupied than served. There are even cases where the way officers have patrolled has caused members of neighborhoods to "'assume the position' when a patrol car pulls up, knowing full well that they will be detained and frisked no matter what."⁵² An unspoken principle in both of these cases is the concept of implicit or explicit bias—whether based on race or based on socioeconomic status. The police, because of their unchecked discretion, have the ability to decide who and what areas to target.⁵³ They chose which car to pull over, which car to search, which neighborhood to patrol in, and what people to call out. Overwhelmingly, and as demonstrated in the discussion of racial bias studies, the people police choose to target are African Americans or members of underserved communities. In the two scenarios listed above—the traffic stops and the neighborhood patrol—the legitimacy of fairness has been injured by the use of an officer's discretion and a larger divide has formed between the officer and the community they serve.

⁵¹ Alexander, *The New Jim Crow*, 60.

⁵² Alexander, *The New Jim Crow*, 157.

⁵³ Alexander, *The New Jim Crow*, 155.

Possible Solutions Police Can Implement

There are multiple potential solutions for addressing the issues associated with discretion. One is simple and requires no significant policy changes. This solution is increased accountability or the perception by police officers that their actions will undergo more scrutiny. In a study on modern police tactics and the prospects for reform, researchers studied the ways a change in NYPD policy affected officers' likelihood to stop suspects.⁵⁴ The effectiveness of procedural changes on officers' likelihood to stop suspects was measured by the "hit rate" of their stops.⁵⁵ The "hit rate" is essentially the number of successful stops. It is a measure of how often officers found the suspicious item, like drugs or an illegal weapon, they suspected they would find.⁵⁶ The study looked at the change the NYPD made to their controversial "Stop, Question, and Frisk" policy. The procedural change they implemented was requiring officers to provide a "thorough, narrative description to superiors justifying the reasons for stops."⁵⁷

The results showed that, despite the common belief that procedural changes would not be productive, officers were "highly responsive" to the new rules on supervision.⁵⁸ The researchers attribute the results to the perceived level of increased supervision on any officer's decision-making.⁵⁹ Out of the interviews the researchers conducted with officers, many cited the fear of being scrutinized or sanctioned as the reason they used more conservative tactics.⁶⁰ Once in place, the new procedure decreased the total number of weapon stops and increased the hit rate

⁵⁴ Jonathan Mummolo, "Modern Police Tactics, Police-Citizen Interactions and the Prospects for Reform," *The Journal of Politics*, 80, no. 1, (2017): 1-28.

⁵⁵ Mummolo, "Modern Police Tactics," 10.

⁵⁶ Mummolo, "Modern Police Tactics," 10.

⁵⁷ Mummolo, "Modern Police Tactics," 2.

⁵⁸ Mummolo, "Modern Police Tactics," 1.

⁵⁹ Mummolo, "Modern Police Tactics," 8.

⁶⁰ Mummolo, "Modern Police Tactics," 18.

to 3.5 percent.⁶¹ The report concluded that procedural and institutional changes will create desirable outcomes for police-citizen interactions in the future, which is true to a certain extent. The positive effects of the intervention were more pronounced in white communities compared to minority communities, and the new change did not lower the racial disparities in the rate of stops. The issue of discretion-based racial bias still remained.⁶²

Despite the study demonstrating that accountability or perceived accountability can help, the methods that the police currently use are not that effective. There are already procedural checks in place, like body cameras, that have not fulfilled their promised potential. A study from Campbell Collaboration concluded that “body-worn cameras do not have clear or consistent effects on most officer or citizen behaviors.”⁶³ Wearing cameras does not significantly reduce officers’ use of force, arrest activities, or “proactive or self-initiated activities.”⁶⁴ Other researchers on the subject, like Dr. Rashawn Ray, have suggested revamping how we hold officers accountable. Ray argues that policing needs serious structural changes, and those changes should start with restructuring the payouts for police misconduct. This extends to dealing with the “‘above the law’” mentality of police officers who use deadly or unnecessary force frequently.⁶⁵ Ray recommends using police department insurances to replace taxpayer money concerning civilian payouts for police misconduct, allowing departments to identify “bad apples” and hold them accountable.⁶⁶ On the other hand, the Campbell Collaboration study

⁶¹ Mummolo, “Modern police Tactics,” 13.

⁶² Mummolo, “Modern Police Tactics,” 22.

⁶³ Cynthia Lum et. al., “The Impact of Body-worn Cameras in Policing,” (Oslo, Norway: The Campbell Collaboration, Sept. 2020), 1.

⁶⁴ Lum et. al., “The Impact of Body-worn Cameras in Policing,” 1.

⁶⁵ Rashawn Ray, “Bad Apples Come from Rotten Trees of Policing,” (Brookings: May 2020).

⁶⁶ Rashawn Ray, “Bad Apples Come from Rotten Trees of Policing.”

concluded that changes in accountability would not be productive. Instead, limiting the discretion officers have is the best way to prevent unruly actions.⁶⁷

Another solution would be reducing the amount of discretion officers have while also adjusting some of the police policies so that some of the benefits of discretion are not lost. Without discretion, the police lose the ability to be lenient with the people they are detaining and lose a certain amount of efficiency, as shown in the previous example with the person who had a warrant because of a court fine. The best way to resolve this Catch-22 would be to adjust the policy to allow for this same amount of leniency. Perhaps, instead of having to bring in anyone who has a warrant against them, only bring in people who have warrants related to violent crimes. In a larger sense, the police and politicians would have to work in tandem to a) reorganize certain police policies and b) change some of the laws that expand police discretion. Some examples of this would be certain traffic laws. Police are authorized to stop people who are “failing to track properly between lanes, failing to stop at precisely the correct distance behind a crosswalk, failing to pause for precisely the right amount of time at a stop sign, or failing to use a turn signal at the appropriate distance from an intersection.”⁶⁸ Such traffic violations are mistakes that everyone makes and almost no one pays attention to. These strict rules that are enforceable by the police are what give police the ability to use discretion at any given time. If these rules are taken out, the police will lose the power to detain people for any arbitrary or capricious reasons.

Accountability and limiting discretion are both valuable strategies, but in order to work properly they should be working in tandem. It is impossible to fully limit someone’s discretion. The nature of a police officer’s job, as Trooper One puts it, is “mak[ing] decisions constantly all

⁶⁷ Lum et. al. “The Impact of Body-worn Cameras in Policing,” 2.

⁶⁸ Alexander, *The New Jim Crow*, 67.

day long.”⁶⁹ Police officers will continue to do this; regardless of what is done to limit their discretion or decision-making processes, they are still free agents whose jobs require them to make decisions based on the situations they are in. It is impossible to prepare everyone for every possible scenario. Trooper One described his experience with the decision-making aspect of the job as a learning experience. “I did make a lot of bad decisions early on because I was just trying to make decisions and these situations were completely foreign to me. At first it was just making a decision that wasn’t wrong and then slowly transitioning to making a good decision. And then, after about two years on I could make the best decision for the situation.”⁷⁰ Police need to have accountability for the bad decisions they make early on in order to shape them into officers that will always make the best decision. Officers need to be held accountable for serious breaches of policy, but they also need to be held accountable for the small, bad decisions they make so they do not add to legal cynicism of communities and do not develop the bad habits that lead to more major breaches. If officers are able to learn from their mistakes, it can form them into officers who can make the best decision for each situation with whatever level of discretion that they have.

This is a simple concept to implement, and something the Delaware State Police can improve on. When Trooper One first started with the Delaware State Police, they did not have much guidance. After Trooper One graduated from the Academy, they underwent a twelve-week Field Training program.⁷¹ In the program, each new recruit undergoes two weeks of ride-along training with a Field Training Officer where they only observe. “We didn’t ride along with anyone before we got to the Academy,” Trooper One said. “Really, that is the first time we’re

⁶⁹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷⁰ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷¹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

ever in a police car riding around or anything. It's kind of nerve wracking."⁷² After the first week, the recruits began to assist the Field Training Officer in handling complaints, and were given daily 'grades' on how they conducted themselves.⁷³ After the initial two weeks, the recruit spent another four weeks with a new Field Training Officer, where they slowly received more trust and responsibility.⁷⁴ Then, they made one final switch and spent six weeks with yet another Field Training Officer; this time, they had all responsibility and the Field Training Officer observed.⁷⁵ After the program, most recruits pass and can do their work on their own. Trooper One noted that there were a few occasions where the field training was extended for recruits who did not get good enough reports, but that outright failure was "rare."⁷⁶

Although it is valuable to have this type of training, Trooper One voiced concerns about consistency and attitude. From their experience as a recruit, their three Field Training Officers were vastly different in approach and attitude. Trooper One said their first Field Training Officer was very hands-on and informative.⁷⁷ However, on their first night with the second Field Training Officer, the Officer said "whatever you do, give me a bad evaluation. I'm tired of being a Field Training Officer. Give me a bad review, no matter what you do, so I don't have to do this anymore."⁷⁸ Trooper One later learned, once they was assigned to Troop 3, that the officer had "a reputation of being a little over the top with stuff."⁷⁹ After learning this, Trooper One had to reevaluate what they learned from that Field Training Officer.

⁷² Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷³ Interview with Trooper on conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷⁴ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷⁵ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷⁶ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷⁷ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷⁸ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁷⁹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

While talking about what Trooper One would recommend the Delaware State Police change, the Field Training program was at the top of the list, partially because they recognize the importance of training in those first weeks. “We don’t have enough Field Training Officers and a lot of the Field Training Officers don’t necessarily want to be Field Training Officers,” Trooper One said. “And we don’t have a whole lot of training for the Field Training Officers.”⁸⁰ Without people who want to do the job, or are properly trained to do the job, there is little guidance for the new recruits in the most nerve-wracking period in their new careers. Trooper One described the experience as overwhelming:

“You’re got all new equipment, you’re wearing a vest; everything is brand new to you. Everything that’s going on the radio you listen to, but it’s hard for you to understand what’s going on. You go to complaints and you don’t really understand how to write it up, you don’t understand how to do anything with it.”⁸¹

It is crucial to have the right people giving the proper training to the overwhelmed individuals. At that point in time, they do not have the where-with-all to process the new information and make smart decisions. Trooper One knows having that guidance is crucial. “The most important thing,” Trooper One said. “Would probably be to have more dedicated Field Training Officers, people that are interested in it, and just have them doing it all the time.”⁸² Creating these new job positions could help the Delaware State Police guide their new recruits into making better decisions, earlier.

The other issue for the Delaware State Police is having continued guidance and more accountability. Once Field Training ended, Trooper One was sent to Troop 3. Trooper One then met his Sergeant, a man who had been on the force for 26 years, who gave him his three rules. The rules were: 1) There’s no such thing as pursuit, 2) Don’t bring anyone back to the Troop

⁸⁰ Interview with Trooper one conducted by Lynden Fausey via Zoom on 10/13/2020.

⁸¹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁸² Interview with Trooper one conducted by Lynden Fausey via Zoom on 10/13/2020.

after three o'clock in the morning, and 3) "Don't ask me any questions, you get paid big bucks to be a Trooper, so make a decision."⁸³ Still not feeling comfortable making decisions, doing the paperwork, and finding things to do throughout the shift, Trooper One was lost. Luckily, other people on the shift helped them out. "Other people in the shift took me aside and said 'hey, get everyone's phone number and if you have any questions, call us. Don't worry about what Sergeant said. So call us and we'll help you out with stuff.'"⁸⁴ Even with the help of fellow Troopers, Trooper One was left largely to his own devices because "you don't want to call people every time you go to anyone's house."⁸⁵

The lack of guidance and leadership from the Sergeant is problematic for many reasons. New recruits, who still do not feel prepared for the job, are thrown into situations they do not know how to deal with. As Trooper One noted earlier, they did not feel fully prepared until they had two years' worth of experience on the job.⁸⁶ The time period before recruits feel comfortable on the job is crucial—it is when they will learn the most and develop the practices they will use and could teach other recruits one day. This period is when it is most important to continue training, guiding, and scrutinizing when necessary so that the routines and practices each officer has are not detrimental to the community.

Trooper One did this on a much smaller scale as a Field Training Officer. Whenever they were training someone, they would make them do as much as possible. "I would pretty much put them in a situation and always talk about what they did, what they could have done, and what was actually going on there," Trooper One said.⁸⁷ Besides discussing every decision and

⁸³ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁸⁴ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁸⁵ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁸⁶ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁸⁷ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

situation the new recruit made, Trooper One would have them observe other officers on duty if they thought the other officers were handling interesting situations. Their goal was, for when the new recruits left training, to have the recruits say “I’ve seen this. I’ve seen this before. I’ve had something like this before.” This is in stark contrast to what Trooper One was saying once they left field training: “I’ve never seen this before. I have no idea what’s going on.”⁸⁸ Finally, if there was free time, Trooper One would fill it with discussions on ethics, stories from their own experience and what to do in them, and how to apply policy to real-world situations.⁸⁹ This in-depth mentorship and guidance is what needs to be consistently implemented throughout the program. Hands-off approaches are not sufficient anymore if the police want to regain their legitimacy of fairness in the eyes of their communities. If the Delaware State Police can systematize a new, longer approach to Field Training, they will hopefully begin to see an improved relationship with the community.

Related to solutions centered on accountability and guidance, the police academy should move its focus away from physical and tactical training to more interpersonal training. According to many sociological studies on police, it is estimated that only around 8% of police work is spent enforcing the law, the rest are just “routine details” that are not crime related.⁹⁰ This fact and his own experience lead former police officer Dr. Douglas Perez to conclude that “standard police training is focused on a very narrow part of the job.”⁹¹ Police training

⁸⁸ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁸⁹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

⁹⁰ Perez, *The Paradoxes of Police Work*, 2.

⁹¹ Perez, *The Paradoxes of Police Work*, 3.

emphasizes law enforcement over what police are doing the majority of the time: maintaining order through social, not physical, coercion.⁹²

During one interview session, Trooper One recounted their time in the academy. The training in the Academy was a 24-week program where recruits would live in a dormitory from Monday until Friday; they were only allowed to go home on the weekends.⁹³ Trooper One described the first few days as “just chaos. That’s all they do. They throw stuff around, do stuff to you so you don’t sleep and there is no structure to the days.”⁹⁴ After those first days, they gained some structure by incorporating classroom time into each day. The typical day went as follows: 1) recruits would wake up at around 5:30 am to do their morning physical training, 2) recruits would prepare for inspection and be punished with more physical labor if they did not meet expectations, 3) recruits would attend 50-minute classes throughout the day, taking ten-minute breaks after each class to do more physical training, 4) recruits would participate in afternoon physical training, 5) recruits would attend tactical boxing at night, 6) recruits prepare for bed, each night at about 1 o’clock in the morning.⁹⁵ Many recruits were sent to the hospital because of the intense physical training. Some because of injuries sustained while doing tactical boxes, others because they developed rhabdomyolysis—a condition caused by injury or overexertion that causes the muscle fibers to break down and release Myoglobin into the blood

⁹² For further reading, see Roge Karma, “We train police to be warriors—and then send them out to be social workers,” *Vox.com*, July 31, 2020, <https://www.vox.com/2020/7/31/21334190/what-police-do-defund-abolish-police-reform-training>.

⁹³ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

⁹⁴ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

⁹⁵ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

stream, which can cause kidney failure if not treated.⁹⁶ Trooper One reported that they broke their knuckles and nose while in tactical boxing.⁹⁷

Trooper One did note that they found training valuable on three fronts: dealing with sleep deprivation, building camaraderie, and navigating a high stress environment.⁹⁸ They see all three categories above as core aspects to building a better police officer, and thought that the training weeded out those that could not adjust to those aspects of the job.⁹⁹ It could be productive to keep some aspects of the schedule, physical training, and environment, but the level at which the State Police have it at currently is counterproductive to the time recruits spend in the classroom learning about other important aspects of the job. During the classroom time, recruits would learn about anything from emergency vehicle operations to first responders to criminal law and traffic law; all of which were required by the state.¹⁰⁰ They would also have guest speakers on specialty topics like “multicultural stuff...dealing with mentally handicapped people, dealing with people that are mentally ill;” all of which were not required by the state.¹⁰¹ There are two issues that emerge with this. The first is that the unrequired classroom training deals with the interpersonal training officers could utilize every day. Interpersonal training should be emphasized, and training should be consistent. Next, because of the physical and mental strain, many recruits slept through the classes. “Because everyone’s falling asleep,” Trooper One said. “[Teachers] said we were so ignorant.”¹⁰² They justified their sleeping by saying, because they

⁹⁶ National Institute for Occupational Safety and Health, “Rhabdomyolysis,” The National Institute for Occupational Safety and Health, April 22, 2019, <https://www.cdc.gov/niosh/topics/rhabdo/default.html>.

⁹⁷ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

⁹⁸ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

⁹⁹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

¹⁰⁰ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

¹⁰¹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

¹⁰² Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

were going to be punished anyway in that ten-minute period after class, they would do whatever they needed to keep going.

There needs to be a better balance between both sides, especially since the work of a police officer is less about law enforcement and more about maintaining order and community relations.¹⁰³ With the state of the police-community relationship across the United States, it is clear that the police have not been training their recruits to handle situations in a way that leaves individuals with a positive impression of the police. One small change they could make, during training and beyond, is training prospective officers in other types of persuasion besides force.

In his book *The Paradoxes of Police Work: Walking the Thin Blue Line*, Dr. Perez illustrated the disconnect between individual activity and the level of force an officer uses by describing how police officers normally react to a nonviolent situation. The example Perez gave was one in which police were called by an elderly shop owner who was concerned over kids loitering outside his store. No arrestable offense has been committed, but the shop owner is in fear of the possibility of a crime.¹⁰⁴ In order to ‘de-escalate’ the situation, the officer “will intimidate the kids into leaving” by threatening arrest or by using threatening tones that promise future punishment.¹⁰⁵ Although this is an “effective and efficient” approach, there is no need to turn to coercive power—the use of threats to get desired behavior—in this situation.¹⁰⁶ It is the approach that will lead to negative perceptions of the police by putting into question their legitimacy of fairness because of polices’ exaggerated and unnecessary reaction.

Instead of using coercive power in this situation, police officers should be trained to use exhortative power. Exhortative power, or exhortation, is a tactic of negotiation that “involves

¹⁰³ Perez, *The Paradoxes of Police Work*, 3.

¹⁰⁴ Perez, *The Paradoxes of Police Work*, 8.

¹⁰⁵ Perez, *The Paradoxes of Police Work*, 8

¹⁰⁶ Perez, *The Paradoxes of Police Work*, 8.

convincing a person that the behavior [one] desires is good, right, just, smart, [or] best.”¹⁰⁷ Police officers and other people use this tactic every day while talking to children, family, friends, or coworkers. However, police do not receive formal training in this tactic to ensure more successes across a variety of people. Perez argues that using exhortation is critical to officers because “citizens do not resent being exhorted...it is not the source of anti-police sentiments.”¹⁰⁸ Although it can be more time consuming, using exhortation first, or more often, would help improve communication of police with citizens and how communities view police.

Finally, another solution that could work in combination with the previous suggestions would be to assign officers to use their free time to develop a relationship with or help restore a community they serve often. It would be necessary to reimagine and redefine what the police’s job is and what society expects them to do. This solution also could be applied to Wilmington in an effort to improve community-police relations there. Studies have shown that physical disorder—like litter, graffiti, overgrown lots, etc.—make a block twenty-five times more likely to experience chronic crime.¹⁰⁹ Therefore, actively addressing the physical disorder of a neighborhood could be classified as preventing crime or maintaining order. Police, instead of figuratively ‘cleaning up’ a neighborhood, could fight crime by literally cleaning up a neighborhood. As Trooper One noted, police have the most discretion in deciding what to do in their free time. If police could be motivated to serve previously over-policed and underserved communities in that free time instead of simply patrolling them, it could improve community relations dramatically.

¹⁰⁷ Perez, *The Paradoxes of Police Work*, 28.

¹⁰⁸ Perez, *The Paradoxes of Police Work*, 29.

¹⁰⁹ Abt, *Bleeding Out*, 88-89.

Trooper One, while discussing the pressure police are put under by politicians, said that “police don’t have the tools to clean up the neighborhoods. The police’s tool is arrest, that’s the only tool we have.”¹¹⁰ If given the option and the resources to go into communities and improve the façade of a neighborhood, it could be another tool in the polices’ arsenal. In terms of improving community relations, having police interact with and help improve the physical appearance of the community might make the police seem like less of an occupying force and more like a part of that community. Police presence is necessary in order to deter crimes from occurring, but how they are present in communities currently shows a major disconnect from the community. Changing the police presence in communities can reduce crime while also bridging the gap between community and police.

In addition, restoring the community could also rebuild the legitimacy of fairness that policies like broken windows policing destroyed. Abt firmly believes that “a lasting peace cannot be achieved without improvements in the perceived fairness of criminal justice institutions, especially police.”¹¹¹ The best way to improve the perceived fairness would be to rethink the order of actions of police. If residents see that help is offered first and that punishment is a last resort, they are more likely to support law enforcement efforts.¹¹² Not only would communities be seeing punishment last, they would be seeing something other than punishment coming from the police. Having police in communities every day, actively helping residents and improving physical appearances, would be a step towards putting prevention and rehabilitation before punishment.

¹¹⁰ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

¹¹¹ Abt, *Bleeding Out*, 14.

¹¹² Abt, *Bleeding Out*, 86.

This approach should also be focused on the communities and areas that have the highest crime rates. As mentioned before, crime takes place in small subsections of a city. Employing this policy widely could improve community relations, but it is the areas that need the most immediate help that should be focused on. Across the policy spectrum, evaluations indicate that focused anti-crime strategies are the ones most likely to be successful; this is true of policing as well. If law enforcement concentrates their resources and communicates clearly with the public about their intentions and goals, deterrence of crime becomes much more efficient.¹¹³ Echoing Abt, Perez also believes focused deterrence is what police officers need to work on when they are on their beats. “One way to work a beat,” writes Perez. “and to deal with the limitations of the system is to know who the would-be-bad-guys are.”¹¹⁴ With the implementation of focused, rehabilitative community policing, there is potential to deter crime and improve community relations. In section two, I will address this problem further. The question remains whether the public should take away some tools and give new tools to the police, or simply take away tools and put them in the hands of those who are more experienced with that type of work.

Like many multifaceted problems, police reform requires multifaceted solutions. Police, like Trooper One, are often overwhelmed by their work because they feel that they are trying to fix the problem alone.

“The things we’re trying to fix are things that I see as societal problems. We live in a society that isn’t going to support people who live in the poor neighborhoods. The police really have no control over what goes on in those neighborhoods. I think it comes down to the politicians. They say ‘hey, we’re going to clean up this neighborhood. We’re going to send the police out and get them, and we’re going to clean up the neighborhood.’ And that’s not, it’s not what the police can do.”¹¹⁵

¹¹³ Abt, *Bleeding Out*, 74.

¹¹⁴ Perez, *The Paradoxes of Police Work*, 20.

¹¹⁵ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

This is not an uncommon sentiment for police to have. Police are often discouraged by the ineffectiveness of the Criminal Justice System. They see, sometimes on a daily basis, that people employed to help poor communities like teachers, social workers, health providers, and others are consistently overworked and strapped for resources. Officers themselves receive the same message from society as these workers do, “people in poor communities are not valued, and, by association, neither are their work with such people.”¹¹⁶ There is a societal change that needs to happen, one that has begun through the work of the Black Lives Matter movement, but one that still needs work from multiple sectors to really come to fruition. In the following section, this study will dive deeper into the history of police, the intersection of police work with the public and private sectors, and a theoretical framework that describes the communalities between other institutions and the police. Finally, the next section seeks to illuminate a path forward.

¹¹⁶ Abt, *Bleeding Out*, 119.

Part II

“You may have heard the talk of diversity, sensitivity training, and body cameras. These are all fine and applicable, but they understate the task and allow the citizens of this country to pretend that there is real distance between their own attitudes and those of the ones appointed to protect them. The truth is that the police reflect America in all of its will and fear, and whatever we might make of this country’s criminal justice policy, it cannot be said it was imposed by a repressive minority. The abuses that have followed from these policies--the sprawling carceral state, the random detention of black people, the torture of suspects--are the product of democratic will. And so to challenge the police is to challenge the American people who send them into ghettos armed with the same self-generated fears that compelled the people who think they are white to flee the cities and into the Dream. The problem with the police is not that they are fascist pigs but that our country is ruled by majoritarian pigs.”

--Ta-Nehisi Coates, excerpt from *Between the World and Me*

Whose Job is it?

When asked what the worst part of the job was, Trooper One told one story of a victim who, later on in life, became involved with the Criminal Justice System multiple times. The first time Trooper One met the victim, she was fourteen years old.¹¹⁷ She had called to report that her mother's boyfriend, who had recently moved into the house, had been having sex with her. As Trooper One tried to gather evidence and the prosecutors tried to find witnesses to testify, both experienced difficulties dealing with the girls' mother.¹¹⁸ Trooper One speculated that it was because she blamed the daughter for messing up the relationship she had with her boyfriend. The mother's noncooperation resulted in "a big blow up," causing social and family services to get involved. "It ended up being a disaster," said Trooper One. "The guy got very minor charges. He wasn't even charged with rape."¹¹⁹

The next time Trooper One met the girl was three years later. She was 17, and her mother had called the police on her because she was "out of control."¹²⁰ Trooper One did not say what the girl was doing; instead, they described it as "completely self-destructive behavior."¹²¹ The story of the fourteen-year-old girl who did not find justice is not an anomaly. In their work with the Criminal Investigation Unit, Trooper One was seeing a pattern emerge.

"When things don't go well. It really destroys them emotionally...And there's really, it's very difficult to do anything about it. You know, you try and do the best you can, but some situations...that's the worst you can see. When you're seeing it down the road, you're still handling the complaints from the 14-year-old when she's older. It's sad to see that go full circle."¹²²

¹¹⁷ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

¹¹⁸ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

¹¹⁹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

¹²⁰ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

¹²¹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

¹²² Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

This is not an uncommon narrative. In fact, this narrative surfaces often in popular culture, most notably in lawyer and advocate Bryan Stevenson's book *Just Mercy*.

Although not the main narrative of his book, Stevenson tells the story of one of the inmates he worked with named Mr. Jenkins. Stevenson was trying to get a new trial for Mr. Jenkins on the grounds that Mr. Jenkins' mental illness was not mentioned or addressed in his previous trial.¹²³ Mr. Jenkins' father was murdered before he was born, and his mother died of a drug overdose shortly after he was born. He was put into foster care, where he lived in 19 different foster homes before he turned eight.¹²⁴ At a young age, he was showing signs of an intellectual disability and other cognitive impairments stemming from "organic brain damage."¹²⁵ When he was ten years old he was placed with a foster family that regularly abused him, until he went to the authorities and was sent back to foster care.¹²⁶ Mr. Jenkins' health declined, he began using drugs and alcohol, and at the ripe age of seventeen he was kicked out of foster care because "he was deemed incapable of management."¹²⁷ During a psychotic break, he stabbed a man to death who he believed to be a demon, was put on trial, and was sentenced to death.¹²⁸

The story of Mr. Jenkins is a more extreme example than the example Trooper One gave, but it does illustrate the points at which there could have been interventions that would have changed the narrative. In the story told by Trooper One, there is a clear lack of psychological support for the girl from both her family and trained professionals. In Mr. Jenkins' story, there is

¹²³ Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption*, (New York, NY: Spiegel & Frau, 2014), 198.

¹²⁴ Stevenson, *Just Mercy*, 197.

¹²⁵ Stevenson, *Just Mercy*, 197.

¹²⁶ Stevenson, *Just Mercy*, 197.

¹²⁷ Stevenson, *Just Mercy*, 197.

¹²⁸ Stevenson, *Just Mercy*, 197-198.

that same lack of psychological and familial support, but there are multiple points at which the system has failed him. Starting when he was born, had his mother been able to receive help, instead of being criminalized, he may not have entered foster care in the first place. While in foster care, had he received the mental support, or had he been able to find a stable home, his mental health issues might have been addressed sooner. Had there been more checks into the backgrounds of the families, he may not have ended up in an abusive situation. Had the foster care system had the knowledge and resources—whether internal or external—he may not have ended up on the street. Had he not been experiencing a psychotic break on the street, the man he killed might still be alive.

Of course, that is all conjecture. There is no telling if any of those steps might have changed Mr. Jenkins' life or his outcome. The only intervention Mr. Jenkins received was from the law, and the intervention came down as a form of punishment. One essential question remains: who should have intervened earlier? These seemingly simple questions have a multitude of answers that are dependent upon how we define the duty of the police in our society.

Dr. Perez argues that “any realistic discussion of police work must begin with this central reality; no group of cops, no police department’s administration, no gathering of criminologists, no city council, no municipal community, not even the entire American political structure can agree upon precisely what the function of the police should be.”¹²⁹ This stems from the three sometimes conflicting views of the goal of the police: law enforcement, order maintenance, and service.¹³⁰ In many cases, law enforcement and order maintenance are conflicting, as the implementation of one could cause an interruption of the other. On the other

¹²⁹ Perez, *The Paradoxes of Police Work*, 1.

¹³⁰ Perez, *The Paradoxes of Police Work*, 4.

hand, service is so broad as to encompass almost everything. Most importantly, to focus on one is to ignore the other two.¹³¹ There is a limited amount of time and money, and it becomes impossible to spend an adequate amount on all three and make them successful services within a single organization.

Trooper One has experienced this contradiction in their own work. “It’s kind of a strange feeling,” said Trooper One. “You know, some people don’t like you. And some people are very appreciative of what you do, but I don’t think either side understands what police officers do.”¹³² On one hand, people who appreciate the police seem to place their role in the law enforcement realm. However, in doing so, they tend to create a caricature of the job.

“I think the people that are really appreciative think that you’re always out there getting the bad guy. They think, you know, you’re out there getting the evil guy who’s lurking in the bushes, ready to jump out at night and break into someone’s house. And that’s not really what we do. There’s no clear distinction between good and evil. A lot of times, who’s getting arrested and who the defendant or who the victim is swaps each day. There’s no clear distinction between who was right and who’s wrong. It’s just who you have to arrest that day.”¹³³

On the other hand, Trooper One perceives the other side as falling short of their duty towards public safety and service; instead, they believe that the police focus too much on enforcement. The other side consists of people “that just don’t want us around, or they think that we’re just there to harass people.”¹³⁴ Trooper One believes there is a misconception that arresting individuals is just further criminalizing them. Although they noted that there is “a certain amount of truth to it,” they said that there is not much.¹³⁵ Of course, there are people who represent a middle ground. Yet, Trooper One said that they “don’t hear from them too much.”¹³⁶ Therefore,

¹³¹ Perez, *The Paradoxes of Police Work*, 6.

¹³² Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/15/2020.

¹³³ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/15/2020.

¹³⁴ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/15/2020.

¹³⁵ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/15/2020.

¹³⁶ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/15/2020.

the messages most policemen receive from society are in direct conflict with each other as well as with the realities of being a police officer.

Without clear definition of their role, police officers are often turned to in most situations where there is some sort of conflict with little regard to their knowledge or ability to solve issues across a broad spectrum of scenarios. It is necessary for local communities as well as state and federal officials to clearly define the role they want police to have in their society and to re-enforce the reimagined role within the police and the community. In order to fully understand what the police's new role should be, it is necessary to see how the dominant view on police roles has changed over time.

The policies and changes the Delaware State Police could be making to improve their relationship with the community and their ability to do their job have already been discussed. It is important to discuss what the broader community and state could be doing to improve the Criminal Justice System as well. The police represent the enforcement side of the law—they are the side of the law that emphasizes deterrence, arrest, and even punishment. The police are the “tough” response to crime. For too long, having a “tough” response to crime has been emphasized while “soft” policies have been overlooked and undervalued. Approaches that are “soft on crime” fall into the prevention and intervention categories and are typically run by other actors and leaders in communities, both private and public. There are many soft on crime approaches that already exist and are successful. Fixing the Criminal Justice System does not entail creating something new necessarily; it entails funding and reinvigorating the institutions and programs already in existence that could restore the balance between the hard and soft approaches to crime.

As mentioned earlier in Part One, neither tough nor soft approaches to crime are effective on their own—it is only when they work in concert that they show results in reducing crime. Yet, politicians have systemically emphasized being ‘tough’ on crime over other strategies for crime fighting. Looking at the history of how politicians have defined and implemented criminal justice policies can explain the state of our current Criminal Justice System.

Defining the Police: 1950-2000

Although the history of police is vast, focusing on the definitions created throughout the Civil Rights Movement and War on Drugs can better explain the shaping and structure of modern police. The popular term ‘law and order’ first appeared in the late 1950s, mostly uttered by southern governors and law enforcement officials as they tried to stir-up white opposition to the Civil Rights Movement.¹³⁷ From its inception on, the term ‘law and order’ has become a coded message that contains racist undertones despite being race neutral on its surface. There have even been some conservative political strategists who “admitted that appealing to racial fears and antagonisms was central to this strategy, though it had to be done surreptitiously.”¹³⁸ President Nixon is one politician who knowingly followed this strategy.¹³⁹ His successful presidential campaign has been widely attributed to his ability to indirectly campaign on racial issues while using “coded antiblack rhetoric.”¹⁴⁰

Nixon and many Southern politicians may have planted the seeds that would grow our current Criminal Justice System, but it was under the politicians of the late twentieth century that the Criminal Justice System seen today took shape. According to sociologist Andrea Flynn, the

¹³⁷ Alexander, *The New Jim Crow*, 50.

¹³⁸ Alexander, *The New Jim Crow*, 56.

¹³⁹ Ava Duvernay and Jason Moran, *13TH*, USA, 2016.

¹⁴⁰ Alexander, *The New Jim Crow*, 56.

Criminal Justice System in the United States today is “not an accident of history but rather a direct result of the increasingly harsh incarceration policies implemented over the last three decades.”¹⁴¹ These harsh policies were heavily racialized, and mostly a response to the socioeconomic issues, public opinion, and political discourse in the 1970s and 1980s. Multiple studies site the collapse of urban labor markets and industrial jobs during the 1970s as the birth of the new system of mass incarceration.¹⁴² The resulting “poverty and ‘chronic joblessness’” that plagued the Northeast and Midwest left black neighborhoods under police scrutiny.¹⁴³ At the same time, social activism and disorder added to the anxiety and resentment from working-class whites, which drove them into supporting conservative politicians who preached tough-on-crime policies.¹⁴⁴

This same time period is where the rhetoric around the “War on Drugs” emerged. Although Nixon originally called for the War on Drugs, he never proposed any dramatic changes to drug policy.¹⁴⁵ It was not until Ronald Reagan took office that serious changes to drug policy took shape.¹⁴⁶ Reagan, like Nixon, used “colorblind rhetoric” on crime, welfare, and taxes that both white and black supporters alike clearly understood as having racial dimensions, though it would be impossible to prove.¹⁴⁷ Reagan also became president in a time where the United States would have to navigate the economic and social issues caused by deindustrialization. In one study, cited by Michelle Alexander in her book *The New Jim Crow*, a surveyor reported that more than 70 percent of all African Americans working in metropolitan areas held blue-collar

¹⁴¹ Flynn, *Hidden Rules*, 108.

¹⁴² Flynn, *Hidden Rules*, 116.

¹⁴³ Flynn, *Hidden Rules*, 116.

¹⁴⁴ Flynn, *Hidden Rules*, 117.

¹⁴⁵ Alexander, *The New Jim Crow*, 60.

¹⁴⁶ Alexander, *The New Jim Crow*, 61.

¹⁴⁷ Alexander, *The New Jim Crow*, 61.

jobs as late as 1970.¹⁴⁸ In 1987 deindustrialization had caused the industrial employment of black men to plummet to 28 percent.¹⁴⁹ Alexander goes on to argue that the limited employment opportunities among inner-city residents “created economic desperation, leading some to sell drugs.”¹⁵⁰ Local, State, and Federal governments had to address these issues, and they repeatedly chose to use tough approaches instead of socially informed strategies.

Specifically with the War on Drugs, law enforcement was given almost complete control on how it was enforced while many drug treatment programs were defunded. After the war on drugs was initiated, the Justice Department announced it would cut the number of agents assigned to investigate and prosecute white-collar crimes in half and shift their attention to street crime and drug-law enforcement.¹⁵¹ Consequently, funding for police skyrocketed while agencies responsible for drug treatment and prevention had their funding dramatically reduced. The budget of the National Institute on Drug Abuse had their funding reduced from \$274 million in 1981 to \$57 million in 1984.¹⁵² The Department of Education’s antidrug fund was also cut from \$14 million to \$3 million.¹⁵³

Why would politicians and lawmakers respond the way they did? As one senator explained, it was a form of distraction and deflection. One senator argued that “if we blame crime on crack, our politicians are off the hook. Forgotten are the failed schools, the malign welfare programs, the desolate neighborhoods, the wasted years. Only crack is to blame. One is tempted to think that if crack did not exist, someone somewhere would have received a Federal

¹⁴⁸ Alexander, *The New Jim Crow*, 64-65.

¹⁴⁹ Alexander, *The New Jim Crow*, 64-65.

¹⁵⁰ Alexander, *The New Jim Crow*, 65.

¹⁵¹ Alexander, *The New Jim Crow*, 62.

¹⁵² Alexander, *The New Jim Crow*, 63.

¹⁵³ Alexander, *The New Jim Crow*, 63.

grant to develop it.”¹⁵⁴ This pattern of deflection and scapegoating continued even after the War on Drugs declined in popularity.

The American government continued to defund social programs while contributing more to law enforcement and prisons heading into the 1990s. In 1992, presidential candidate Bill Clinton continued to push law and order and tough-on-crime policies, running on a vow that he “would never permit any Republican to be perceived as tougher on crime than he.”¹⁵⁵ Clinton lived up to his word by signing into effect the Crime Bill of 1994 while simultaneously limiting the reach of the welfare system, especially for people involved with the Criminal Justice System. The Crime Bill of 1994 contained the “three strikes and you’re out” law which created new federal crimes, a mandated life-sentence for some ‘three-strikers,’ and authorized over \$16 billion for state prison, local prison, and police force expansion.¹⁵⁶ Also in his time in office, Clinton signed the “Personal Responsibility and Work Opportunity Reconciliation Act,” which replaced Aid to Families with Dependent Children (AFDC) with a block grant to states called Temporary Assistance to Needy Families (TANF).¹⁵⁷ TANF has a five-year limit on welfare and food stamps for anyone who has been convicted of a felony drug offense—including offenses as simple as possessing Marijuana.¹⁵⁸ The Personal Responsibility and Work Opportunity Reconciliation Act severely limited who could receive aid and how long they could receive aid.

¹⁵⁴ Alexander, *The New Jim Crow*, 67.

¹⁵⁵ Alexander, *The New Jim Crow*, 71.

¹⁵⁶ Jo Ann Harris, “‘Three Strikes’ Law,” The United States Department of Justice Archives, The United States Department of Justice: March 13, 1995, <https://www.justice.gov/archives/jm/criminal-resource-manual-1032-sentencing-enhancement-three-strikes-law>.

¹⁵⁷ The Centre of Public Impact, “The 1996 Personal Responsibility and Work Opportunity Reconciliation Act in the US,” The Centre of Public Impact, BCG Foundation: October 30, 2017, <https://www.centreforpublicimpact.org/case-study/personal-responsibility-and-work-opportunity-reconciliation-act-the-clinton-welfare-reform>.

¹⁵⁸ Alexander, *The New Jim Crow*, 72; to see specific amounts of Marijuana for each state, please visit <https://www.drugtreatment.com/expose/marijuana-felony-amounts-by-state/>.

It is still a huge hurdle to needy families seeking help today. Finally, under Clinton's tenure but not of his direct doing, politicians reduced public housing funding by 61 percent while boosting the budget for corrections by 171 percent, effectively making prisons the main housing program for the urban poor.¹⁵⁹

Over the past 70 years, politicians have repeatedly placed the Criminal Justice System above other social programs in the United States. In many instances, they have done this while also implementing laws and policies that discriminate against African Americans and those in the lowest financial bracket. Regardless of intention, politicians have defined police and the Criminal Justice System as the primary caregivers of society; however, as shown in Part One, police do not have the tools to address the issues they have been given responsibility for. This all has resulted in the inequities seen in American society today. This history and the inequities of American society is reflected in Delaware today.

Delaware: A Reflection of American Society

In many ways, Delaware's view on police and welfare is reflective of the nation's view. This is a pattern made visible through the many forms of institutional racism that have gone unaddressed for decades. Delaware has a mixed history when it comes to race relations. They have been at the forefront of progress and have been a source of frustration. This history is illuminated by Delaware's involvement with *Brown v. Board of Education* (1954) and how Delaware citizens reacted to integration.

Delaware has a complex history in relation to education and school segregation—a history that was partially redeemed with the progressive work of judges in Delaware. After the Civil War, Delaware did not take responsibility for educating its black citizens. Instead, “blacks

¹⁵⁹ Alexander, *The New Jim Crow*, 72.

were pretty much left to their own devices as far as education was concerned.”¹⁶⁰ With organization, the black community of Delaware built eighty-one schools; however, without the proper funding the schools lacked resources, decent lighting, and plumbing.¹⁶¹ When the state began to invest in the education of all its citizens, they did not do so equally. Throughout the entire state there was only one black high school.¹⁶² As a result, black adults had, on average, finished 7.2 years of school compared to the over 10 years of their white peers by 1950.¹⁶³

Many Delaware residents knew there needed to be a change, so they went to the courts. The challenges came in two cases: *Bulah v. Gebhart* (1952) and *Belton v. Gebhart* (1952). *Belton v. Gebhart* (1952) stemmed from parents who were frustrated about traveling 20 miles round trip to send their children to the only high school with black students in Delaware despite having white-only schools close to their home.¹⁶⁴ *Bulah v. Gebhart* (1952) was an argument for the state to provide bussing. Sarah Bulah, a parent living in Hockessin, Delaware, had to transport her daughter to school despite the fact that busses carrying white children would pass her house every day.¹⁶⁵ Both cases were consolidated into *Belton v. Gebhart* (1952) and argued by Louis Redding—Delaware’s first black attorney.¹⁶⁶ Ultimately, the lower court ruled in favor of the plaintiffs and ordered for the immediate admittance of the plaintiff’s children in school.¹⁶⁷

¹⁶⁰ Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide*, (Berryville, VA: Berryville Graphics Inc.: 2017, 68.

¹⁶¹ Anderson, *White Rage*, 68.

¹⁶² Anderson, *White Rage*, 68.

¹⁶³ Anderson, *White Rage*, 68.

¹⁶⁴ Cheyrl Brown Henderson, Deborah Dandridge, John Edgar Tidwell, Darren Canady, Vincent Omni, “Belton v Gebhart,” Brown v Board of Education: The Untold Stories, University of Kansas Libraries, 2018, <https://brown65.the74million.org/beltonvgebhart>.

¹⁶⁵ Henderson et. al., “Belton v Gebhart,” 2018.

¹⁶⁶ Henderson, “Belton v. Gebhart,” 2018.

¹⁶⁷ Henderson, “Belton v Gebhart,” 2018.

Although Delaware had some integration before *Brown v. Board of Education* (1954), this decision did not apply broadly. This led to further litigation by Redding as well as the involvement of the NAACP.¹⁶⁸ The Delaware Supreme Court affirmed the decision of the lower courts, stating that the conditions in the separate schools were unequal and, until the inequalities were addressed, it would be necessary to allow black children the opportunity to attend white schools.¹⁶⁹ The court left the door open for resegregation by not overturning the rule of “separate but equal” established in *Plessy v. Ferguson* (1896).¹⁷⁰ Yet, they strategically passed that question to the Supreme Court, arguing in their opinion that only the Supreme Court could overturn their old precedent. *Belton v. Gebhart* (1952) would go on to become one of the five cases bundled into *Brown* (1954).¹⁷¹ The Delaware Supreme Court opinion and the facts of the two cases provided Chief Justice Earl Warren with key justification for his ruling in *Brown* and his rejection of the “separate but equal” doctrine.¹⁷²

The Delaware Court’s ruling helped in integrating school systems around the United States, yet there was still resistance to change within the state. Delaware was one of the first states to experience white reactionary backlash following *Brown*.¹⁷³ The resistance came in 1954, when the Milford Board of Education admitted a small group of black students.¹⁷⁴ About 1,500 people came to the high school chanting “Keep our schools white!” and “Dynamite the schools!” as they occupied the school’s auditorium. It got to the point where the Milford school

¹⁶⁸ Henderson, “Belton v Gebhart,” 2018.

¹⁶⁹ *Gebhart v. Belton*, 91 A.2d 137, (Del.1952).

¹⁷⁰ *Gebhart v. Belton* 91 A.2d 137, (Del.1952).

¹⁷¹ Brett Gadsden, *Between North and South: Delaware, Desegregation, and the Myth of American Sectionalism*, (Philadelphia, PA, University of Pennsylvania Press: 2013), 6.

¹⁷² Gadsden, *Between North and South*, 6.

¹⁷³ Anderson, *White Rage*, 82.

¹⁷⁴ Gadsden, *Between North and South*, 6.

board had to cancel classes until further notice.¹⁷⁵ The entire Milford school board then resigned from their positions, and a new school board took over. This new school board announced that they were going to expel all of the black students that had been integrated into the high school.¹⁷⁶ On the heels of *Cooper v. Aaron* (1958), the Supreme Court case that ruled that schools must advance school integration “with all deliberate speed,”¹⁷⁷ the mass resistance seen in Milford became Delaware legislatures’ justification for delaying school integration for twelve years.¹⁷⁸

Once school integration eventually began, Delaware used other, less explicit avenues for alienating its black citizens. Housing discrimination was commonplace throughout Delaware—both in the forms of public and private practices. When examining the history of housing across the United States, Delaware is highly reflective of the national sentiments.

In his book *The Color of Law*, attorney Richard Rothstein explains how the government and private entities have determined the layout of American housing. There were multiple ways federal, state, and local government had a direct effect on the places people could inhabit. Federally, as populations began to grow rapidly, the government implemented public housing that was explicitly segregated.¹⁷⁹ The public housing facilities for black residents were poorly constructed in areas along railroad tracks and shipbuilding areas whereas the white housing was constructed closer to white residential areas, sturdy, and made to be permanent.¹⁸⁰ In addition, the Federal Housing Administration (FHA) created amortized mortgages to promote homeownership nationwide, but the zoning and redlining practices they used made black citizen

¹⁷⁵ Gadsden, *Between North and South*, 114.

¹⁷⁶ Gadsden, *Between North and South*, 122-123.

¹⁷⁷ *Cooper v. Aaron* 358 U.S. 1.

¹⁷⁸ Anderson, *White Rage*, 82.

¹⁷⁹ Rothstein, *The Color of Law*, 17.

¹⁸⁰ Rothstein, *The Color of Law*, 5.

ineligible for those mortgages.¹⁸¹ Without those mortgages, Rothstein argues, “the effective cost of African American housing was greater than that of similar housing in white neighborhoods, leaving owners with fewer resources for upkeep.”¹⁸² If the property values decreased, so did the assets of black homeowners.

On a more local and private level, tactics like blockbusting and restrictive covenants contributed to private forms of housing discrimination. Many local real estate agents throughout the country practiced blockbusting. They would go into white neighborhoods and warn the area that a “‘Negro invasion’ was imminent and that it would result in collapsing property values.”¹⁸³ The owners would then sell their houses to the agents at discounted prices. The agents then ran advertisements in the papers advertising to African American buyers, who would, out of desperation, purchase the homes at inflated prices.¹⁸⁴ On the other hand, restrictive covenants were the work of entire communities. Neighborhoods would create a contract for each of their households that stated that the owner could not sell their house to a person of color.¹⁸⁵ There is one instance where a family broke the contract. The case, known as *Shelley v. Kraemer* (1948), worked its way up to the Supreme Court. The Supreme Court ruled that restrictive covenants themselves were not illegal or in violation of the U.S. Constitution, but it would be a violation if an actor of the state enforced it.¹⁸⁶ This ruling provided little relief to black citizens. Even though the restrictive covenants were not enforceable, they were still permitted to exist.

Aside from the practices listed above, one of the largest detriments to free or non-discriminatory housing was the tolerance of violence against black citizens by the state and local

¹⁸¹ Rothstein, *The Color of Law*, 50.

¹⁸² Rothstein, *The Color of Law*, 50.

¹⁸³ Rothstein, *The Color of Law*, 12.

¹⁸⁴ Rothstein, *The Color of Law*, 12.

¹⁸⁵ *Shelley v. Kramer* No. 334 U.S. 1 (1948).

¹⁸⁶ *Shelley v. Kramer* No. 334 U.S. 1 (1948).

police. Rothstein states that “during much of the twentieth century, police tolerance and promotion of cross burnings, vandalism, arson, and other violent acts to maintain residential segregation was systemic and nationwide.”¹⁸⁷ In the greater Philadelphia area—and only minutes away from the Delaware border—there were 213 violent incidents directly related to residential segregation recorded in the first six months of 1955.¹⁸⁸ These incidents ranged from move-in violence, normally perpetrated by neighbors, to white teenagers defending an imaginary boundary they believed black residents should not cross.¹⁸⁹ Police were unable to identify many suspects in these attacks, which, as Rothstein notes, “is improbable” because of the sheer amount of crimes that occurred.¹⁹⁰ In some cases, police would be standing idly by as violence occurred or be a part of the violence. In almost all cases, the only people indicted were the black families being attacked and the people who sold the black family their house.¹⁹¹

Delaware still has measurable effects from their state and local, public and private practices that have contributed to racial segregation. Below is a graph of the racial make-up of the state of Delaware in the year 2000.¹⁹² The graph is broken down by Delaware as a whole, the three counties in Delaware, and the two major cities in Delaware: Dover and Wilmington.

¹⁸⁷ Rothstein, *The Color of Law*, 143.

¹⁸⁸ Rothstein, *The color of Law*, 147.

¹⁸⁹ Rothstein, *The Color of Law*, 147.

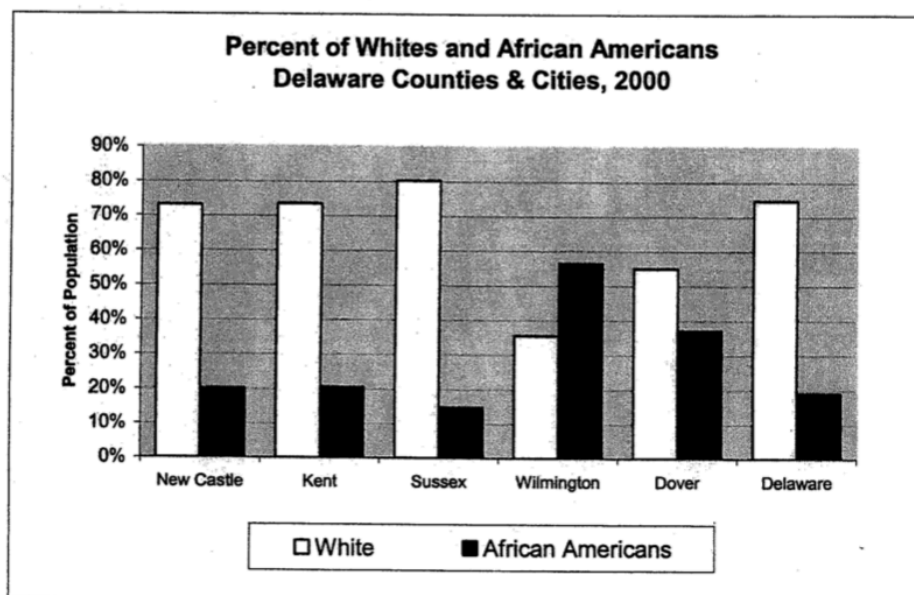
¹⁹⁰ Rothstein, *The Color of Law*, 147.

¹⁹¹ Rothstein, *Th Color of Law*, 145-147.

¹⁹² This data comes from an extensive report done by the University of Delaware titled “Delaware Analysis of Impediments to Fair Housing.”

Figure 1

Exhibit III-8



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Overall, Delaware is about 75% white and 20% African American. That ratio is proportional in all three counties, and relatively proportional in the city of Dover. However, looking at Wilmington, there is a disproportionate number of African Americans in the city—about 60 percent—compared to their representation of the state overall. Interestingly, despite the fact that Wilmington is in New Castle County, New Castle County is about 20% African American. This suggests that there is a disproportionate amount of white people living in the surrounding area of Wilmington.

The graph above is not uncommon for many northeast states and cities. In many Northeastern cities, African Americans were “deliberately excluded from desirable neighborhoods via redlining, blockbusting, restrictive covenants, and other forms of public and private discrimination.”¹⁹⁴ Delaware was no exception. A three-judge panel in Delaware made

¹⁹³ Steven Peuquet and Leland Ware, “Delaware Analysis of Impediments to Fair Housing,” (Newark, DE: Center for Community Research and Service, 2003), 16.

¹⁹⁴ Abt, *Bleeding Out*, 40.

sure to note the problem of housing segregation in Delaware in the school desegregation case *Evans v Buchanan* (1978).¹⁹⁵ Aside from discussing school segregation, the Court found that “racial discrimination in the sale or rental of private housing in New Castle County was widespread, was tolerated or encouraged by the real estate industry, and was sanctioned by state officials.”¹⁹⁶ The evidence showed that racially restrictive covenants continued to be recorded in some deeds in Delaware until 1973.¹⁹⁷

In that same study of the impediments to fair housing choice in Delaware, the investigation—which covered the entire state—revealed residential segregation in all three of Delaware’s counties.¹⁹⁸ Wilmington had the highest level of segregation, a condition “that has remained virtually unabated over the past 30 years.”¹⁹⁹ Unlike redlining, blockbusting, and restrictive covenants, the housing discrimination in Delaware now is less overt. Instead, minority apartment seekers are told that units are unavailable when they are still on the market, or they are directed to areas where other minorities live.²⁰⁰ White homeowners are also shown neighborhoods where all the residents are white.²⁰¹ The only way Delaware legislature addressed the issue of racial segregation was to create a “Delaware Fair Housing Act” as an extension of the federal Fair Housing Act of 1968. They even created an extension of the Delaware Fair Housing Act for Wilmington specifically, naming it “Wilmington’s Fair Housing Ordinance.” Yet, both acts only extended the FHA to apply to discrimination for marital status and age, none of which addressed the issue of race.²⁰²

¹⁹⁵ Peuquet and Ware, “Delaware Analysis of Impediments to Fair Housing,” 6.

¹⁹⁶ Peuquet and Ware, “Delaware Analysis of Impediments to Fair Housing,” 6.

¹⁹⁷ Peuquet and Ware, “Delaware Analysis of Impediments to Fair Housing,” 6.

¹⁹⁸ Peuquet and Ware, “Delaware Analysis of Impediments to Fair Housing,” 2.

¹⁹⁹ Peuquet and Ware, “Delaware Analysis of Impediments to Fair Housing,” 2.

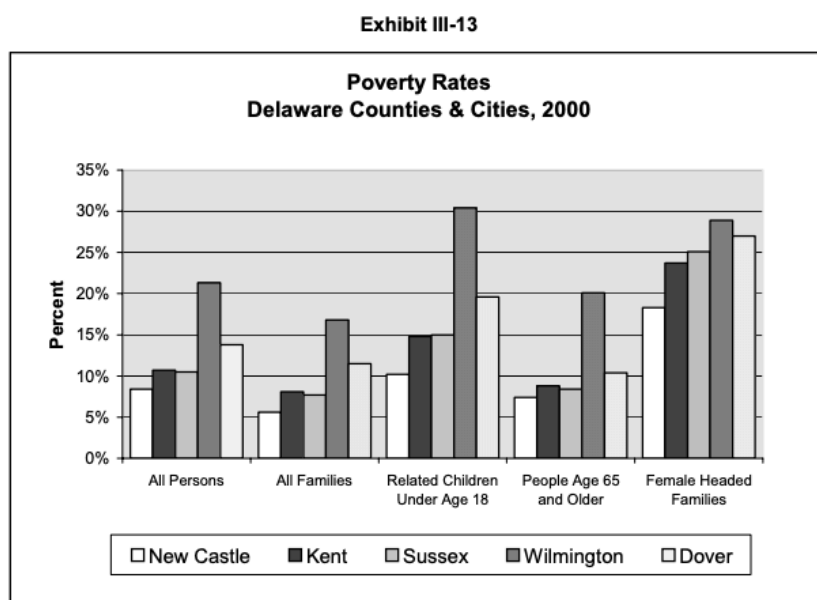
²⁰⁰ Peuquet and Ware, “Delaware Analysis of Impediments to Fair Housing,” 2.

²⁰¹ Peuquet and Ware, “Delaware Analysis of Impediments to Fair Housing,” 2.

²⁰² Peuquet and Ware, “Delaware Analysis of Impediment to Fair Housing,” 7-8.

Not addressing the housing issue head-on has had other implications for Wilmington. Below is a graph of poverty rates in Delaware, broken out by locale and demographic categories.

Figure 2



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The graph of poverty rates shows a consistently higher rate of poverty for Wilmington compared to Dover and the three other counties in Delaware. In some cases, like the measure of people over the age of 65, the rate of poverty is two times higher in Wilmington than all other sections of the states.

Discriminatory practices such as redlining, blockbusting, and predatory or subprime lending have created a system that prevents families from building on assets, accruing wealth, and creating opportunity. The severely reduced ability of African American families to accrue wealth because of these practices is partially responsible for the urban landscapes we see across the United States today. In sociologist Patrick Sharkey's book, "Stuck in Place," Sharkey demonstrates that such practices have contributed to the fact that "70 percent of African

²⁰³ Peuquet and Ware, "Delaware Analysis of Impediments to Fair Housing," 20.

Americans living in the nation's poorest neighborhoods today are from families who lived in the same communities in the 1960s."²⁰⁴ With such damning evidence of these damaging practices, it is concerning that there has been little action to directly address the issues.

Even today, these ongoing issues associated with housing discrimination are permitted by the Supreme Court. In a recent Supreme Court Case, *Parents Involved in Community Schools v. Seattle School District No. 1* (2007), parents were challenging the practice of the school districts in Seattle and Louisville of taking into account the students' race when considering what public school to place them in.²⁰⁵ The school districts wanted to keep the racial balance of the schools in a predetermined range so there would be equal distribution across schools.²⁰⁶ The Supreme Court ruled against this, their justification being that "because neighborhoods in Louisville and Seattle had been segregated by private choices...school districts should be prohibited from taking purposeful action to reverse their own resulting segregation."²⁰⁷ In sum, they ruled that school segregation could not be rectified if it was a result of private housing decisions and not of state action. Echoing the decision in *Shelley* (1948), people can continue to discriminate without consequence as long as they are not actors of the state, and state actors cannot combat that discrimination if it is private.

The lack of action by local, state, and federal actors that is seen in a variety of institutions in the United States is troubling. Instead of remedying the ongoing consequences of discriminatory policies and practices, American society has, in some instances, even taken away avenues that could remedy the negative effects. These actions can be partially explained by

²⁰⁴ Abt, *Bleeding Out*, 41.

²⁰⁵ *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

²⁰⁶ *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

²⁰⁷ Richard Rothstein, *The Color of Law: A Forgotten History of how our Government Segregated America*, (New York, NY, Liveright Publishing Corporation: 2017), XIV.

political science and sociological theories on the American society's views on poverty, otherness, and criminal justice.

A Theoretical Explanation

What emerges from a review of national and Delaware history is a constant devaluing of the lives of people in underserved communities. Instead of giving aid to communities that need it, politicians opted to shift the blame from themselves to the people within these communities. Instead of giving aid, politicians gave money to the police who were meant to patrol and contain entire communities. Their decision to do so aligns with and promotes the political science theory known as the cultural poverty. There are two essential and conflicting views on poverty: Systemic poverty and Cultural poverty. Systemic poverty is the theory that racism, systemic mistreatment, housing segregation and financial discrimination have caused and contributed to the poverty in the United States today.²⁰⁸ This view has been exhibited in this paper so far by the discussion of the systems in the United States and Delaware that have contributed to the demographics of present-day Wilmington and other urban cities. Cultural poverty theorizes that the actions and attitudes of the poor ensured their continued poverty and the poverty of their children. People who believe in this theory tend to place the blame of poverty on the failures of the individual, whose behaviors and values put them in a “self-perpetuating world of dependence.”²⁰⁹ The view of cultural poverty was popularized in the 1960s, and began to take hold in the 1970s, just around the time when the damaging criminal justice policies detailed earlier were taking hold.²¹⁰

²⁰⁸ Michael Katz, *The Undeserving Poor: America's Enduring Confrontation with Poverty*, (New York: Oxford University Press, 2013), 10.

²⁰⁹ Katz, *The Undeserving Poor*, 10.

²¹⁰ Katz, *The Undeserving Poor*, 11.

The theory of cultural poverty is closely related to the idea that there is ‘deserving’ and ‘underserving’ poor. In his book *The Undeserving Poor: America’s Enduring Confrontation with Poverty*, Michael Katz traces the belief of undeserving versus deserving poor through more than two hundred years of American history.²¹¹ Throughout that time, Americans have drawn lines separating individuals into categories based on arbitrary distinctions to decide the question of who is deserving. The belief of who is deserving and who is undeserving has shifted over time. “At times,” writes Katz. “Men—allegedly drunk and lazy—have dominated; at other points, women—unmarried mothers, especially women of color—have been the focus...and African Americans often have found themselves included as well.”²¹² Whichever group belonged to the undeserving category was met with public disdain and little welfare or aid to help their situation.

Distinguishing people into the categories of deserving and undeserving might explain the lack of action on the part of the government and individuals to counter discriminatory policies. It also could have been a contributing factor to the actions the government did take in tackling poverty. In many cases, instead of sending aid to underserved communities, the government criminalized certain behaviors. Young black men elicited harsh local ordinances that criminalized joblessness and other characteristics out of their control. In the late twentieth century, instead of supplying support, training, or work, jobless black men were being incarcerated.²¹³ Their incarceration, according to Katz, signified “more than any rhetoric their place among the undeserving poor.”²¹⁴ Incarceration and the theory of the undeserving poor seem to work together to form a cycle. People are incarcerated for their position in life, and, when released, are in an arguably worse position than before because they solidified themselves

²¹¹ Katz, *The Undeserving Poor*, Introduction, page X.

²¹² Katz, *The Undeserving Poor*, (1-2)

²¹³ Katz, *The Undeserving Poor*, 9.

²¹⁴ Katz, *The Undeserving Poor*, 9.

as undeserving. Poverty, crime, policies, and police have all contributed to the issues present in the Criminal Justice System today.

Katz' theory connects directly to how sociologists explain the nature of how the Criminal Justice System works in practice. In sociologist Donald J. Black's book *The Behavior of Law*, he details how stratification and morphology affect how the law works. Stratification is the "vertical" aspect of social life.²¹⁵ In essence, it is the difference between the wealthy and higher ranked in a particular society and the poorer and lower ranked members. Black argues that "Law varies directly with stratification," and that relationship helps explain the quantity and style of the law.²¹⁶ Black, essentially stating what has been recognized by many before him, says that wealthier people have a legal advantage. The quantity of law varies directly with rank, with citizens who have higher ranks having more law than those with lower ranks. People with less wealth "are less likely to call upon law in their dealing with one another, and, when they do, they are less successful."²¹⁷ Not only do the wealthier utilize the law more and have more successful outcomes, they receive fewer punitive sentences and, when they are punished, receive lighter sentences.²¹⁸

Black separates law into two categories: downward law and upward law. Upward law is when someone of higher rank commits a crime against someone lower ranked, while downward law has someone of lower rank committing a crime against someone who is a higher rank than them.²¹⁹ In addition, when someone of lower rank commits a crime against someone of higher rank, it is upward deviance. The opposite is considered downward deviance. In all cases—

²¹⁵ Donald J. Black, "Stratification," *The Behavior of Law*, (Bingley, Emerald: 2010), 11.

²¹⁶ Black, "Stratification," 13.

²¹⁷ Black, "Stratification," 17.

²¹⁸ Black, "Stratification," 21 and 29.

²¹⁹ Black, "Stratification," 17.

whether a complaint, an arrest, a prosecution, a lawsuit, a conviction, an award of damages, or a punishment—upward deviance is more seriously punished than downward deviance.²²⁰ This dichotomy also explains the style of law used, with downward law being more penal than upward law.²²¹ People who have committed a crime against someone of higher rank than themselves are more likely to be punished for their conduct than if it were the opposite scenario. In the opposite scenario, with the victims rank below the offender's, upward law is more compensatory.²²²

Morphology works hand-in-hand with stratification. Morphology refers to the horizontal aspects of social life, focusing on networks of interaction, intimacy, and integration.²²³ Black argues that the “radial location” of a person or group can be a privilege or disadvantage when it comes to law.²²⁴ The more integrated a person is into a society and a community, the more likely it is that the law will be lenient on them. Echoing his argument of people with lower rank having less law, Black also observed that “all else constant, an offense between two employed men is more likely to result in legal action than an offense between two who are unemployed, one between two socialites more than one between two transients.”²²⁵ The more integrated into society one is, the more likely they are to utilize the law.

Black also created two categories of crimes that dramatically affected outcomes: Centrifugal deviance and Centripetal deviance. Centrifugal deviance is when a crime is committed by someone integrated into society against someone considered marginal to

²²⁰ Black, “Stratification,” 21.

²²¹ Black, “Stratification,” 21.

²²² Black, “Stratification,” 29.

²²³ Donald J Black, “Morphology,” *The Behavior of Law*, (Bingley, Emerald: 2010), 37.

²²⁴ Black, “Morphology,” 48.

²²⁵ Black, “Morphology,” 49.

society.²²⁶ Centripetal deviance is the opposite, with the crime being committed from an

‘outsider’ against an ‘insider.’²²⁷ Black came to this conclusion about centripetal deviance:

“In every way, a marginal man is more vulnerable to law; by comparison, an integrated man has an immunity. A marginal man is more likely to have a lawsuit brought against him, for example, more likely to have the police called against him, to be stopped and questioned by the police, to be arrested, prosecuted, or to lose his case, to have heavy damages demanded for him, or to be severely punished. His bail is higher, he is less likely to be placed on probation or otherwise diverted from punishment, less likely to appeal his case, to win a reversal if he does appeal, or to be released on parole.”²²⁸

Across the entire justice system, people seen as marginal to society are more likely to be defined as criminals or delinquents regardless of whether they are. They receive more harassment by police, higher rates of arrest and punishment, and experience a completely different side to the justice system than those that are viewed as integrated or perceived as having a higher rank.

It is important to emphasize that it may not matter whether a person is in fact marginal to society or is measurably of lower rank; what matters is that the majority of society *perceives* them in that way. Just as society distinguishes between the ‘deserving’ and ‘undeserving’ poor, it distinguishes between the ‘deserving’ and ‘undeserving’ of justice, mercy, compensation, and punishment. Here is where the issue emerges: if this philosophy underlies every decision in the Criminal Justice System, how do we reform the Criminal Justice System without reforming society at large?

Overall, the history of the United States as well as the sociological and political science theories illustrate how conscious bias can turn into systemic unconscious bias within individuals and institutions. Across disciplines, historians, sociologists, and political scientists point toward the tactics and decisions of the political leaders and media as influential to creating the societal

²²⁶ Black, “Morphology,” 50.

²²⁷ Black, “Morphology,” 50.

²²⁸ Black, “Morphology,” 51.

issues today. According to Michelle Alexander, all relevant research suggests that “racial bias in the drug war was inevitable, once public consensus was constructed by political and media elites that drug crime is black and brown.”²²⁹ Richard Rothstein echoes the same sentiment in his claim that “racially segregated, poverty-stricken ghettos that exist in inner-city communities across America would not exist today but for racially biased government policies for where there has never been meaningful redress.”²³⁰ Most importantly, the images emerging from this time period reinforced individuals’ biases especially around crime. The end result was an unconscious bias that made crime and blackness “synonymous in a carefully constructed way that played to the barely subliminal fears of darkened, frightening images flashing across the television.”²³¹ The laws, unconscious biases, and lack of redress have created what sociologist Todd Clear describes as a system “that produces the very social problems on which it feeds...It is the perfect storm.”²³²

Where do we go from here: Defund, Redefine, Reimagine

How, then, do we address police reform if the issues stem from not just within police departments but from society as well? There are two keys to this. First, intervening in the cycle that the police and mass incarceration have created. Second, by addressing the unconscious bias of the individuals and institutions that will take over some of the police’s current responsibilities. As the first section of this paper focused more on what police can do immediately to provide relief, this section will only touch on intervening in the cycle. The focus here is on how society needs to prepare for this shift.

²²⁹ Alexander, *The New Jim Crow*, 135.

²³⁰ Rothstein, *The Color of Law*, 244.

²³¹ Anderson, *White Rage*, 104.

²³² Flynn, *Hidden Rules*, 108.

The cycle of incarceration perpetuated by the police has three unintended consequences that generate inequality. Those three consequences are invisible inequality, cumulative inequality, and intergenerational inequality. The invisible inequality stems from the nature of incarceration—since it is intentionally designed to be outside mainstream society, the hardships faced by inmates and even people who have been released from prisons is largely unknown by people not involved in it. Therefore, in public policy the social and economic well-being of the incarcerated population is overlooked.²³³ Cumulative inequality encompasses the diminishing social and economic opportunities that result from being incarcerated.²³⁴ This is important, as those who have their opportunities diminished are normally people who are already the most socioeconomically disadvantaged.²³⁵ Finally, intergenerational inequality describes the phenomenon where the effects of imprisonment extend to the family members of incarcerated individuals.²³⁶

This cycle, that creates the problems that feed it, needs to be broken by addressing these issues of inequality directly. One promising solution became popular during 2020. According to an article written by Rashawn Ray of the Brookings Institute, ‘defund the police’ is a solution that has been consistently found to reduce crime through establishing education equity and work infrastructure.²³⁷ Although defund the police has many meanings—varying between individuals—the following analysis is based off the meaning Ray relies on throughout the article. He writes:

²³³ Bruce Western and Becky Pettit, “Incarceration and Social Inequality,” *Daedalus* 139 no. 3, (Summer, 2010), 12.

²³⁴ Western and Pettit, “Incarceration and Social Inequality,” 12-13.

²³⁵ Western and Pettit, “Incarceration and Social Inequality,” 13.

²³⁶ Western and Pettit, “Incarceration and Social Inequality,” 14.

²³⁷ Rashawn Ray, “What does ‘defund the police’ mean and does it have merit?” *Brookings*, (Brookings: June 19, 2020), <https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/>.

“Throwing more police on the street to solve a structural problem is one of the reasons why people are protesting in the streets. Defunding police—reallocating funding away from police departments to other sectors of government—may be more beneficial for reducing crime and police violence.”²³⁸

What he does not explicitly say above, he notes later in the article. Instead of having police solve structural problems, the government should be investing in other programs and professionals that have the expertise and tools to solve those problems.²³⁹ This is most true for people with addictions or mental health issues who have repeatedly been criminalized and stigmatized by the police and media representatives.²⁴⁰

I agree with and support this version of defund the police. However, instead of only funding preventative and de-escalation services, it is also important to shift money to the programs that provide redress for the people who have been affected by the unintended consequences of the Criminal Justice System. The approach Ray wrote about limits contact with police and therefore would prevent incarceration and the consequences associated with involvement in the Criminal Justice System. However, it does not address the issues being faced by people already involved in the system. If the system is feeding itself, it is most important to break that cycle with preventative and rehabilitative practices. Directing large portions of the money to programs or initiatives geared toward helping those who are still being affected by the system needs to be a priority.

Although many police have spoken out against defund the police, it might be more related to name than principle. While speaking with Trooper One about the defund the police movement, they expressed concerns about what it would mean for their wages and job

²³⁸ Ray, “What does ‘defund the police’ mean and does it have merit?” 2020.

²³⁹ Ray, “What does ‘defund the police’ mean and does it have merit?” 2020.

²⁴⁰ Ray, “What does ‘defund the police’ mean and does it have merit?” 2020.

security.²⁴¹ However, aside from money concerns, they also expressed similar sentiments to supporters of defund the police. “It seems like everyone who wants their issue to be heard goes to the police and says, ‘you need to do this,’” said Trooper One. “You do get to a point where you’re over saturated with the training. It seems like everyone and their brother wants us to do something for them. There are already 100 things on the plate and things we need to pay attention to. It can be overwhelming.”²⁴² Trooper One feels as though the police are the first and only place people turn toward to solve their issues, which is not necessarily incorrect. Data has shown that 9 out of 10 calls for service are for nonviolent encounters centered around social interactions that have gone awry.²⁴³ With menial tasks interrupting them throughout the day, police officers cannot efficiently focus their energy into solving violent or major crimes (something that is their specialty alone). Having other government actors take over some of their conflict resolution responsibilities, like social workers or mental health professionals, would free up their time and resources.

It is important to emphasize, however, that the institutions that are asked to take up the responsibility must be sufficiently prepared for what they are charged with doing. Trooper One said that having social workers answer calls, specifically calls to domestic residences, “would be helpful.”²⁴⁴ Trooper One also suggested that police officers shadow social workers for a week as part of their training. “I can tell you,” said Trooper One. “It took me years to figure out what the hell social workers do. It wasn’t until I worked with them as a detective that I really understood.”²⁴⁵ This is a vital connection if police, or emergency personnel in general, are asked

²⁴¹ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

²⁴² Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/1/2020.

²⁴³ Ray, “What does ‘defund the police’ mean and does it have merit?” 2020.

²⁴⁴ Interview with Trooper one conducted by Lynden Fausey via Zoom on 10/13/2020.

²⁴⁵ Interview with Trooper one conducted by Lynden Fausey via Zoom on 10/13/2020.

to divert calls to social workers. It would be helpful for police, too, to know how to handle certain scenarios if they are called into a situation where a social worker would have been more productive. This is a very real possibility as there is a shortage of social workers in many counties in Delaware. Trooper One noted that, at this point in time, for it to be successful the state would need to “double the amount of social workers.”²⁴⁶ According to Trooper One, there are sometimes not enough social workers to run their own programs. The Victim Services program, for example, does not have enough social workers to stay on call “after hours.” After hours, the police would take over the victim services duty.²⁴⁷ This was an issue, as the lack of communication between the two left officers with little understanding of how to do the job. Trooper One said, “the officers don’t know what to do, so they don’t end up doing anything.”²⁴⁸ This, of course, can be solved by increasing funding. Adding more money will allow the state to create jobs and invest into the recruitment of social workers. However, it is worth noting that, before the shift of responsibility is made, the state should ensure they have adequately staffed each institution.

On top of the issues with manpower, there is another issue that is harder to solve and must be addressed. It is imperative that the institutions taking on new responsibilities are prepared to acknowledge and address their own history of prejudice and discrimination. In an effort to address these concerns, social workers would have to think about their involvement in the Criminal Justice System. Cameron Rasmussen, a social worker and Professor at Columbia University, argues that, since social work is so closely tied to police and criminal justice, social

²⁴⁶ Interview with Trooper one conducted by Lynden Fausey via Zoom on 10/13/2020.

²⁴⁷ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/22/2020.

²⁴⁸ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/22/2020.

workers must make an active effort to create and implement anti-carceral solutions.²⁴⁹ Anti-carceral solutions, opposed to carceral solutions that rely on social control and white supremacy, are solutions that support the health and sustainability of individuals and communities.²⁵⁰ In order to move away from enforcing the same biased structure as the Criminal Justice System, it is important for social workers separate themselves from carceral solutions while addressing their own history.

Social work, like police work, is an institution that has been used to enforce white supremacy and other problematic ideology. In its early years, social work's main goal was to assist immigrants in adjusting to American society and "'teach' immigrants how to assimilate."²⁵¹ Later, during the Progressive era, the founders of social work advocated for eugenics and the forced sterilization of people with "undesirable traits" such as unmarried women, the mentally ill, and racial minorities.²⁵² Finally, extending to the 1970s, social workers led the movement which forcibly removed indigenous children from their families and placed them in government run boarding schools in an effort to "Europeanize" them.²⁵³ Rasmussen argues that, in concert with critical race theorists, "we must uproot these ideologies—white supremacy, anti-Black racism, colonialism, cisheteropatriarchy—that undergird the foundation of the U.S., guide the practices of carceral systems and permeate the ethos of social work."²⁵⁴ In other words, today social work—whether in policy or practice, knowingly or unwittingly—

²⁴⁹ Cameron Rasmussen and Kirk James, "Trading Cops for Social Workers Isn't the Solution to Police Violence," *Truthout*, (Truthout: July 17, 2020), <https://transformharm.org/trading-cops-for-social-workers-isnt-the-solution-to-police-violence/>.

²⁵⁰ Leah Jacobs, Mimi Kim, Darren Whitfield, Rachel Gartner, Meg Panichelli, Shanna Kattari, Margaret Downey, Shanté McQueen and Sarah Mountz, "Defund the Police: Moving Towards an Anti-Carceral Social Work," *Journal of Progressive Human Services*, 32:1, 3.

²⁵¹ Jacobs et. al., "Defund the Police," 4.

²⁵² Jacobs et. al., "Defund the Police," 4.

²⁵³ Jacobs et. al., "Defund the Police," 4.

²⁵⁴ Rasmussen, "Trading Cops for Social Workers Isn't the Solution to Police Violence," 2020.

promotes an almost imperceptible everyday violence against those that do not fit the “ideal” of society. Social workers, mostly unconsciously, promote a similar form of social control based in White Supremacy that police do. The only difference is its level of violence, consequences, and visibility.

Social work is just one of many examples of institutions that will need to examine their own practices and adjust for their own biases while accepting more duties. Health care providers, specifically those for mental health, are also going to be tasked with addressing the biases and inequalities in their own systems. Besides the inaccessibility to adequate health and mental health support because of the expenses associated with services, health institutions have a problematic history with race. The infamous Tuskegee study—the study in which doctors purposefully misled participants (mostly black men) in their study, infected them with syphilis, and never gave them adequate treatment for the disease—is one of many examples.²⁵⁵ The medical fields participation in the eugenics movement, forced sterilizations, and the management of mental institutions are a few others.

Currently, perhaps a result of a history marred by racial bias, the health care system still shows signs of biased treatment towards minorities and women. In a Johns Hopkins study, researchers looked at the disparities in treatment for symptoms of stroke. They concluded that “women were 33 percent more likely to be misdiagnosed and minorities were 20 to 30 percent more likely to be misdiagnosed, suggesting gender and racial disparities may play a role.”²⁵⁶

²⁵⁵ Centers for Disease Control and Prevention, “The Tuskegee Timeline,” *Centers for Disease Control and Prevention*, (U.S. Department of Health and Human Services: March 2, 2020).
<https://www.cdc.gov/tuskegee/timeline.htm>.

²⁵⁶ David E. Newman-Toker et. al., “ER Doctors Commonly Miss More Strokes Among Women, Minorities and Younger Patients,” *Johns Hopkins Medicine*, (John Hopkins University: April 3, 2014),
https://www.hopkinsmedicine.org/news/media/releases/er_doctors_commonly_miss_more_strokes_among_women_minorities_and_younger_patients.

Those that were misdiagnosed—either with an ear infection, migraine, or no diagnosis—all had strokes in the following week that resulted in serious disability or even death.²⁵⁷ Black patients are also less likely to be referred for advanced cardiac care when they come to the Emergency Room with chest pains. And, when non-white individuals complain of pain generally, they are less likely to be believed and receive less adequate pain treatment.²⁵⁸ Finally, minorities are much more likely to be misdiagnosed with psychiatric conditions.²⁵⁹ Overall, the implicit bias in the health care system has led to individuals who identify as minorities having fewer procedure, less diagnostic tests, lower quality medical care, and worse medical outcomes than their white counterparts.²⁶⁰

The disparities in care have led to a mistrust of the health care system that is similar to the mistrust of the Criminal Justice System. In a qualitative study entitled “More than Tuskegee: Understanding Mistrust about Research Participation,” researchers cited the mistrust as “a primary barrier to participation in medical research among participants” in the study.²⁶¹ The mistrust, they argue, comes from the historical events—like the Tuskegee study—and the reinforcement of discriminatory practices used by the health care system today.²⁶² The mistrust

²⁵⁷ Newman-Toker et. al., “ER Doctors Commonly Miss More Strokes Among Women, Minorities, and Younger Patients,” 2014.

²⁵⁸ Khiara M. Bridges, “Implicit Bias and Racial Disparities in Health Care,” *ABA*, (American Bar Association: 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/#:~:text=NAM%20found%20that%20%E2%80%9Cracial%20and,physicians%20give%20their%20black%20patients.

²⁵⁹ American Psychiatric Association, “Mental Health Disparities: African Americans,” (American Psychiatric Association: 2017) 1-4.

²⁶⁰ Bridges, “Implicit Bias and Racial Disparities in Health Care,” 2021.

²⁶¹ Darcell Scharff et. al., “More than Tuskegee: Understanding Mistrust About Research Participation,” *Journal of Healthcare for the Poor and Underserved* 21, no. 3, 2010, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4354806/>.

²⁶² Scharff, “More than Tuskegee,” 2010.

was expressed by each focus group across all socioeconomic statuses.²⁶³ The way in which African American patients repeatedly receive differential treatment than their white counterparts, as explained above, destroys the perceived legitimacy of the organization. The mistrust parallels the mistrust of the Criminal Justice System. The unconscious bias of the healthcare system, like with social workers, manifests itself differently. It is, therefore, imperative to address the unconscious bias in this system, as well as others, in order to successfully transfer responsibilities from police to healthcare workers.

Whether in the United States' political system, in its housing system, in its public services, in its health institutions, or in its private practices, there is a system of unconscious bias that reflects the bias of the Criminal Justice System. Although there are varying levels of visibility and varying levels of negative effects, the system of unconscious bias in all institutions needs to be addressed along with the reforms of the Criminal Justice System. It seems that reformation of the police comes from within and without—mostly through a collaborative and encompassing effort to reform other systems and policies in order to reimagine the police and their role in our society. Through a combination of limiting police abilities, redirecting their responsibilities to professionals who would be more equipped to handle those situations, and major policy changes in healthcare, education, housing, and welfare, there is a chance to improve the police and Criminal Justice System. However, it is important to stress the need for addressing the unconscious biases that works within individuals, institutions, and systems. It might save lives in the short-run to redirect responsibilities to other institutions, but, in the long-run, if these other institutions and individuals do not confront their own racial bias the issues we see in society today will persist.

²⁶³ Scharff, "More than Tuskegee," 2010.

During an interview, Trooper One asked a poignant question: “how do you expect the police not to be racist in a racist society?”²⁶⁴ This question has stuck with me since they posed it. Police are very literally enforcers. They enforce the laws created by society and, if that society has created laws and practices embedded with racial undertones, they are guaranteed to have racial bias in enforcement. Although the police have discretion when enforcing laws, their discretion can be skewed by the racially biased imagery, discussion, and perspective of American society. Shifting the responsibilities of enforcement from police to other institutions might make a difference in how the system is enforced, but the new institutions will still be enforcing a racist system. This is in no way meant to excuse the actions of police; in their position of power they should be making a conscious effort to combat their own institution’s bias and their own unconscious bias. The police should be held accountable for their actions, but it should not stop there. Other people and institutions in positions of power need to be held accountable for their part in shaping the inequalities in the Criminal Justice System today as well. In order to make a real difference, society must shift the responsibility of enforcement away from police while simultaneously addressing the systemic and structural issues that plague American society.

One concrete step American society can take to address the unconscious biases present in its institutions is to change how schools and professors teach about racism. Instead of teaching about racism like it is a concept of the past that ended when the Civil Rights Act of 1964 was signed it needs to be taught as a continually evolving concept. Instead of only teaching about racism in its most blatant forms, it is imperative to teach about how it permeates invisibly and unconsciously in everyone. Instead of teaching about racism like it is a flaw within an individual,

²⁶⁴ Interview with Trooper one conducted by Lynden Fausey via Zoom on 9/10/2020.

it needs to be characterized as a flaw of society that is supported and perpetuated by entire communities and institutions. Teaching about racism in this way provides individuals the tools and education necessary to perceive and diagnose issues that they would have missed otherwise. It could provide more consensus on the most prominent racial issues society faces today, their causes, and how to fix them moving forward.

This section has tracked systemic biases, both conscious and unconscious, that have accrued over the years that bias the Criminal Justice System, and society, we participate in every day. All of these biases follow the pattern sociologist Donald Black described. Although Black was studying the Criminal Justice System, his analysis of how it works is largely reflective of how other institutions in America work. If you are lower in rank, or deemed more marginal to society, your outcomes are almost certainly going to be worse. Whether it is through racial bias in the Criminal Justice System, the inability to get a mortgage or loan for a house, the inability to accrue wealth, the inability to choose where to live or what school your child attends, or the inability to get the respect and attention of those in society that are designed to help you, there is a system that permeates across the United States that makes it hard for the poor, the underprivileged, and people of color to succeed and overcome their current status. We can address the issues in the Criminal Justice System to the best of our ability, but, in the end, it is American society that needs to address its history, how it thinks, and how it treats its own members before there will be a meaningful difference.

Summary and Final Suggestions

As I have demonstrated throughout this paper, there are structural changes the police can make to improve their job performance and their relationship with the community. Better training, continued training, practicing new and better skills for conflict resolution, repairing communities they have previously occupied, and expanding communication with the public are all valid solutions. Each will begin to repair some of the damage that has already been done, and prevent further damage in the future. Each will begin to restore the perception of legitimacy and fairness of the Criminal Justice System.

However, the police cannot act alone. Although the police hold the majority of the responsibility for the issues seen today in the Criminal Justice System, American society has allowed, even encouraged, their actions. Society must reimagine the role of police in each community. There must be a new definition for what it means to be a police officer—specifically one that limits their powers. Then, once the police have been redefined, it is necessary to provide them with tools and training to ensure they are doing their job correctly.

I believe the polices' role should be limited to public safety, while other organizations should focus primarily on order maintenance. Police should focus on investigating and solving crimes that have already occurred, and arresting perpetrators when the state of public safety has been breached . Other institutions and organizations can handle the order maintenance side: speeding tickets, keeping the peace, disengaging nonviolent conflicts. Most importantly, the police need to be in constant conversation with the other organizations—they need to be willing and able to step in if necessary, whether if a situation becomes worse or if there is a lack of manpower. Yet, given my status as a white, middle-class, and rural dwelling citizen, my opinion should not carry as much weight. I have had little to no contact with the police or Criminal

Justice System, and, although I do not mean to put the work of redefining the police onto the group of people who have experienced a larger amount of their negative effects, their voices and opinions on the matter should be given more attention.

Although communities should be reimagining the role of police in their area, it is ultimately up to politicians to implement that new definition. Society can reimagine the police however they want, but what matters is that politicians actually create the laws and policies tailored to that new definition. Police are a branch of and face of each state and government. Police are referred to as “an everyday conduit of state power” that is inherently political because they determine “who gets protected, punished, or left to fend for themselves.”²⁶⁵ Police are significant factors in how states exercise their powers. Not only are they significant, they are the most common way citizens come into contact with the state and government power.²⁶⁶ As police are the most wide-spread branch of the government, it is the governments job to change their role.

In addition, politicians must rethink the policies and laws that were created that, whether intentionally or unintentionally, have had negative consequences for underserved communities. As scholars like Richard Rothstein, Michelle Alexander, Carol Anderson, Andrea Flynn, and Western and Pettit have demonstrated in their studies, racially biased laws, policies, and practices have contributed to the current state of inequality in the United States. It is those racially discriminatory government policies that “were essential to producing concentrated poverty in many communities of color.”²⁶⁷ It is those racially discriminatory policies that permitted and encouraged police to target those same communities of color, leading to an unjust

²⁶⁵ Knox et. al., “Administrative Records Mask Racially Biased Policing, 621. See also Perez, *Paradoxes of Police Work*, Introduction.

²⁶⁶ Clark et. al., “Are Police Biased in the Decision to Shoot?” 1.

²⁶⁷ Abt, *Bleeding Out*, 216.

justice system that perpetuates the same inequalities that feed into it. Creating policies that not only aim to stop that cycle but to compensate for the injustices the discriminatory policies have already caused is imperative when trying to make forward progress.

Finally, as individuals and institutions, we must address the system of unconscious bias that persists in our society. As demonstrated by the theories of Michael Katz and Donald Black, American society tends to sort people into categories of deserving and undeserving based off of the traits American society deems as desirable. Those deemed as marginal to society or of lower rank are less likely to receive aid, assistance, and justice. Conversely, they are ignored, punished more, and treated more harshly than their counterparts. Katz' and Black's theories try to explain how society works, but they do not suggest that society is incapable of change. Changing how society discusses race, class, gender, and other socially stigmatized characteristics can change the narrative so that all citizens, regardless of their personal characteristics, can be treated fairly, given more opportunity, and achieve an overall improved quality of life.

How American society defines, discusses, and frames topics like racism comes from both education and the media. Adjusting how people think about racism—transitioning to a definition that includes more than the typical individualized and blatant forms of racism—would help people diagnose, understand the consequences of, and solve the chronic unconscious racism seen in almost every institution and system in the United States today. People need to be taught and need to acknowledge that unconscious actions can negatively affect others even if those consequences are unintended. The only way forward is through acknowledgement and adjustment.

In summary, there are small changes police can make immediately to help address the bias within the Criminal Justice System, but the change must ultimately come from society as a whole. It is essential for politicians to implement the policies and laws necessary to shape police in the new image communities create of them while also providing meaningful redress to communities who have historically been discriminated against by the old policies. There is a system of unconscious bias working within all institutions of the United States, and it is not until American society can address its history, provide meaningful remedies to past and current transgressions, and change how it talks about and frames conversations around racism, that there will be a meaningful change for entire communities in the United States.

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