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Minority Note: Policing in America

Dedicated to our Officers and Soldiers.

"The police are the public and the public are the police; the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."

*Robert Peel*¹

Introduction

The public often "cast police as a necessary evil" rather than a welcome and indispensable "mechanism for empowering communities."² It is fair to state that the lion's share of police officers merely wishes to aid their communities.³ Yes, states and local governments bestow prodigious power on police officers.⁴ Officers will, as a result, "carry out the [following] tasks the pursuit of justice, the protection of individual liberties, and the battle against crime."⁵

The machinery of policing is an ineluctable vehicle to secure law and order.⁶ Notably, "[l]aw suffuses policing" and is typically a dispassionate referee when evaluating police activity.⁷ As opposed to the Kingdom of Sweden, the United States

¹ See *Sir Robert Peel's Nine Principles of Policing*, N.Y. TIMES, April 16, 2014, at A20 (available at: <https://www.nytimes.com/2014/04/16/nyregion/sir-robert-peels-nine-principles-of-policing.html>).

² See Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing – And Why it Matters*, 54 WM. & MARY L. REV. 1865, 1868 (2013) [hereinafter *The Good Cop*].

³ See Ivette Feliciano & Zachary Green, *Has policing in America gone too far?*, PBS NEWSHOUR (May 26, 2018, 4:01 PM), <https://www.pbs.org/newshour/show/has-policing-in-america-gone-too-far>.

⁴ See Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 762 (2012) (remarking that "[t]hey walk into houses and take property. They stop and detain individuals on the street. They arrest. And they kill. They do all these things in order to reduce fear, promote civil order, and pursue criminal justice.").

⁵ See Tracey Louise Meares, Tom R. Tyler & Jacob Gardener, *Lawful or Fair? How Cops and Laypeople Perceive Good Policing* 106 (Yale Law Sch., Public Law Working Paper No. 255), <https://ssrn.com/abstract=2116645d>; John Varghese, *Police Structure: A Comparative Study of Policing Models*, (May 12, 2010), <http://ssrn.com/abstract=1605290> (proffering that the police fulfill the following roles: watchman, law enforcer and service provider).

⁶ Varghese, *supra* note 5 (remarking that "policing rests on two broad principles: (1) [p]olicing by consent and (2) [p]olicing by law.").

⁷ See also *The Good Cop*, *supra* note 2, at 1867 (discussing that the evaluation of police behavior is "primarily about redressing the illegitimate exercise of power"); Meares, Tyler

of America (U.S.) does not have a centralized police force;⁸ instead, the U.S. has a decentralized police force. At any rate, bustling U.S. cities can be fraught with danger, and third-rate officers exist within the police community. For example, Vanity Fair remarked that “New York City always percolates with trouble every day people are raped and beaten” or vehicles plundered.⁹

Since the toppling of the World Trade Center, there has been a manifest rejigging of police duties. In reality, law enforcement agencies “have shouldered [a myriad] of new responsibilities”¹⁰ prompting pointed commentary from some public officials. By way of illustration, a former Dallas Police Chief remarked that America’s police “are being asked to do too much.”¹¹ In the post-9/11 world, “[l]ocal police responsibilities have mushroomed with an avalanche of new homeland security duties.”¹²

This Note takes a crack at unraveling policing in the U.S. by probing its inception, purposes, practices, and community relationships. Interestingly, the word police or *polis* in Greek means city.¹³ If truth be told, our police officers are given a “monopoly on the use of coercion to enforce laws and maintain order.”¹⁴ This Note will carve the

& Gardener, *supra* note 5, at 103 (noting that “[l]aw determines whether arrests are valid, whether searches are acceptable, and whether the officers’ actions are sanctioned.”).

⁸ Varghese, *supra* note 5 (remarking that the United States has “no national police force policing is organised on a state and local basis. The country has around 500,000 police officers and a total of 40,000 separate police forces, over half of which are simply one or two-man sheriffs’ offices in small towns [In fact,] many towns have auxiliary, part-time police officers, special duty and volunteer sheriff [deputies]”); *Decentralized Police Organizations*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/police/Decentralized-police-organizations>.

⁹ See Marie Brenner, *Incident in the 70th Precinct*, VANITY FAIR (Jan. 16, 2007, 12:00 AM), <https://www.vanityfair.com/magazine/1997/12/louima199712> (discussing the actions of a former New York City Police Department (NYPD) Officer Justin Volpe who was accused of assault for shoving a stick “into the rectum of Abner Louima” and who pleaded guilty to assault and was sentenced to thirty years for assault); Sean Gardiner, *A Low-Profile Prosecutor*, WALL STREET J. (July 4, 2014), <https://www.wsj.com/articles/how-loretta-lynch-federal-prosecutor-in-brooklyn-became-an-insider-at-the-highest-levels-of-law-enforcement-1404526807>.

¹⁰ See David A. Harris, *The War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post 9/11 America* 10 (Legal Studies Research Paper Series Working Paper No. 2007-4), <http://ssrn.com/abstract=1008927> (noting that the “FBI assumed the lead role in terrorism prevention and investigation”).

¹¹ See also Feliciano & Green, *supra* note 3 (noting a remark from then Dallas police Chief Dan Brown. He claimed that “[w]e’re asking cops to do too much in this country”); but see Brady Dennis, Mark Berman & Elahe Izadi, *Dallas police chief says ‘we’re asking cops to do too much in this country’*, THE WASHINGTON POST (July 12, 2016), <https://www.washingtonpost.com/news/post-nation/wp/2016/07/11/grief-and-anger-continue-after-dallas-attacks-and-police-shootings-as-debate-rages-over-policing/>.

¹² See Harris, *supra* note 10, at 7 (explaining that “state and local police in virtually any city now participate in joint terrorism task forces with their federal law enforcement counterparts”).

¹³ See *Ancient Policing*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/police/Decentralized-police-organizations>.

¹⁴ See Meares, Tyler & Gardener, *supra* note 5, at 106 (explaining that “[t]his idea famously underlies the Weberian notion of legitimacy in the exercise of police authority. Max Weber’s

subject-matter into seven parts. The first part takes stock of the onus on law enforcement, police discretion, and the impact of police practices on communities.

The second part will touch on the ancient origins and its present-day modus operandi. The third part presents a brief sketch of racism in law enforcement practices. In any event, institutional racism is a complex topic that will not be scrutinized in this Note. The fourth part deep-dives into community policing, a technique employed by nearly every American police force. On top of that, we will survey the Kansas City Experiments and the 2015 Investigations of the Ferguson Police Department.

The fifth part, moreover, will pore over Seattle's autonomous zone and its requisite background. The sixth part studies international law governing human rights, policing, and minority protection. This Note demonstrates that law enforcement is one of several available instruments, not the sole instrument, to remedy societal difficulties. Simply put, our police officers should employ their resources akin to a surgeon's scalpel rather than a weathered and dull hammer. A scalpel has to be sharpened or maintained so that it can be assiduously employed in times of need, as do our police officers.

Apprehending Policing in America

The law permits, restrains, and molds police activity and separates vigilantes from police officers.”¹⁵ Max Weber,¹⁶ a renowned German sociologist, opined that the government brandishes a monopoly over the authorized use of force to maintain order within society.¹⁷ Be that as it may, a phalanx of public controversies such as racial profiling, zero-tolerance policing, aggressive police stops, and covert surveillance likely have transpired because of police discretion.¹⁸ In the present climate, police officers guard public infrastructures and (e.g., airports, bridges, tunnels, nuclear reactors or

notion [propounded] that police were created to operationalize the state's legitimate monopoly on physical force. The police have a monopoly on power to enforce the law.” (quoting Max Weber, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 154 (Talcott Parsons ed., A. M. Henderson & Talcott Parsons trans., 1964)).

¹⁵ See *The Good Cop*, *supra* note 2, at 1865.

¹⁶ See Arthur Mitzman, *Max Weber*, *ENCYCLOPÆDIA BRITANNICA*, (June 10, 2020), <https://www.britannica.com/biography/Max-Weber-German-sociologist>.

¹⁷ See *The Good Cop*, *supra* note 2, at 1865.

¹⁸ See also *The Good Cop*, *supra* note 2, at 1865 (explaining that law enforcement noted that “their actions [were] necessary” in order to decrease violent offenses in communities and towns).

stadiums)¹⁹ benign facilities targeted by terrorists”.²⁰ These unsought responsibilities have resulted in austere cuts in the ranks of law enforcement agencies.²¹

The U.S.’s racial history has molded today’s police force.²² “[B]lacks, Latinos, and other minorities are more likely than whites to be subjected to consent search requests by police officers.”²³ Part III will discuss the roots of racism in law enforcement. Notwithstanding, the Reid Technique,²⁴ the “world’s most influential [law enforcement] training program” trains police officers when interacting with the public to utilize “demeanor as a guide to judge innocence and guilt.”²⁵ *Talking to Strangers* revealed that the Reid Technique was prone to error.²⁶ We must recall that police officers often work alone, are unsupervised, and may be employing the Reid technique.²⁷

Racism in the Ranks

Racial origin lives on as a striking factor in policing, and police officers, each year, kill an appalling number of individuals.²⁸ As stated by Sinyangwe, “the number of

¹⁹ See also Harris *supra* note 10, at 11 (explaining that “[a]ny city with a rail or bus system of any size has come to see those transit networks as vulnerable”); Fox Butterfield, *As Cities Struggle, Police Get by with Less*, N.Y. TIMES, July 27, 2004, at A10 (explaining that many police departments have been forced by the federal government to divert considerable resources into protecting critical infrastructure, “like guarding airports and water works,” against terrorism).

²⁰ See also Harris *supra* note 10, at 11 (noting that such facilities are: “synagogues, mosques, community centers, museums and landmarks”).

²¹ See Harris *supra* note 10, at 12; *but see also* Butterfield, *supra* note 19 (describing how many cities coping with budget shortfalls have found themselves forced to cut police officers from their police departments).

²² See Feliciano & Green, *supra* note 3 (explaining that “[p]olicing in the era of Jim Crow segregation in the south and ghettoization in the north was shaped by pretty strong racial politics during that period. And so in a lot of northern and western cities one of the major functions of policing was the ghettoization of black populations, the enforcement of racial borders both in terms of social behavior and actual geography.”).

²³ See Harris *supra* note 10, at 58 (discussing that “police officers use their discretion more often when they confront minority drivers than white drivers”).

²⁴ See *Interrogation Techniques*, OLR RESEARCH REPORT, <https://www.cga.ct.gov/2014/rpt/2014-R-0071.htm> (providing a concise description of the Reid technique).

²⁵ See also Malcolm Gladwell, *TALKING TO STRANGERS* 327 (2019) (elucidating that the Reid technique is “used in something like two-thirds of U.S. state police departments. The purpose of this book is to illustrate and provide factual evidence that we as humans do not know how to talk to strangers and that we follow the wrong clues.”); Feliciano & Green, *supra* note 5.

²⁶ See Gladwell, *supra* note 25, at 374-77.

²⁷ See *The Good Cop*, *supra* note 2, at 1869 (referencing the “realities of police discretion” in urban surroundings. Therefore, if officers are using the Reid Technique and are arriving at incorrect solutions this will likely hamper the purposes of law enforcement).

²⁸ See also *What’s behind racial disparities in American policing — and how to solve them*, PBS NEWSHOUR (June 3, 2020, 6:40 PM), <https://www.pbs.org/newshour/show/whats-behind-racial-disparities-in-american-policing-and-how-to-solve-them> (This interview was led by Senior National Correspondent Amna Nawaz who spoke with Art Acevedo, Houston’s chief of police, Tracey Meares, professor and founder of the Justice Collaboratory at Yale

people killed by police each year has not gone down since protest[s commenced] in 2014.”²⁹ “Race ha[s] always been central to the role that law enforcement play[s] in our society.”³⁰ Brown maintains that the first distinct American police system was slave patrols.³¹ Policing in the northern regions of the U.S. was shaped by “the Metropolitan Police Act of 1829, the philosophies of Sir Robert Peel”³² and London law enforcement agencies.

Whereas, policing in the southern regions of the U.S. did not model themselves after the British model because it “was not tenable for early forms of policing in the South.”³³ Nowadays, inexorable improvements in innovation, ordinances, and the evolution of societal standards have impacted American policing.³⁴ In the 1960s, officials carried out a series of evaluations, which determined that blacks endured divergent and forceful justice.³⁵ Another contemporaneous meta-analysis study discovered that the likelihood of arrest for minorities is “thirty percent higher than that

Law School and Samuel Sinyangwe of the group Campaign Zero); *Mapping Police Violence*, <https://mappingpoliceviolence.org> (This is a database of people killed by police since 2015.).

²⁹ See *What’s behind racial disparities in American policing — and how to solve them* (explaining that “[a]bout 1,100 people are killed by police each year. However, [p]olice killings in large cities have declined about 30 percent since 2013”).

³⁰ See Robert A. Brown, *Policing in American History*, 16 DU BOIS REV.: SOC. SCI. RES. ON RACE 189, 189 (2019) (noting that “the history of American police strategies cannot be separated from the history of the Nation as a whole. Unfortunately, our police, and all of our other institutions, must contend with many bitter legacies from that larger history. No paradigm—and no society—can be judged satisfactorily until those legacies have been confronted directly”).

³¹ See Brown, *supra* note 30, at 190 (explicating that slave patrols “set the pattern of policing that Americans of African descent would experience throughout their history in America Enslaved and freed Blacks lived in fear as slave patrols operated with impunity in subjecting Blacks to stops, searches, physical beatings, detentions, re-enslavement, and lynching”).

³² See Brown, *supra* note 30, at 190; but e.g., *Sir Robert Peel’s Nine Principles of Policing*, *supra* note 1.

³³ See Brown, *supra* note 30, at 190 (explaining that “[t]he South required a form of policing that empowered both elites and poor Whites with the ability to deal with the institution of slavery” perhaps because “[i]n many towns and settlements, enslaved and freed Blacks outnumbered Whites”).

³⁴ See Brown, *supra* note 30, at 190 (declaring that “[b]lacks in America continue to experience different enforcement behavior as some police officers still behave in ways that reinforce economic and racial segregation, and injustice”).

³⁵ Compare Brown *supra* note 30, at 191 (“Findings from the U.S. President’s Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (1967) and the Kerner Commission (1968) were clear that relations between the police and minority communities were very poor”), with *The Good Cop*, *supra* note 2, at 1873-71.

of [w]hite suspects.”³⁶ These studies are germane because only by measuring our past behavior can we correct our future behavior.³⁷

*"Now has come the time for action,
Clear away all thought of faction,
Out from vacillating shame
Every man no lie contain,
Let him answer to his name –
Call the roll.”*³⁸

Examining Police-Community Relationships

A community is more than just a neighborhood or a local government.³⁹ Dirik reckoned that policing is not comprised of unknown citizens who like a shot appear and batter you when one transgresses the law. Instead, “[w]hen people know each other, they also understand what [i]s going on in that community.”⁴⁰ Community policing continues to evolve and is a concerted effort between law enforcement, local leaders, and the broader community to resolve community problems.⁴¹ Community policing consists of two fundamental, interdependent ingredients: community partnership and problem-solving.⁴² Simply put, community policing is the essence of a vibrant democracy.⁴³

³⁶ See Brown *supra* note 30, at 192 (“Kochel et al. (2011) conducted a rigorous meta-analysis of approximately forty studies using twenty-three different datasets spanning data collected between 1966 and 2004. Results from their meta-analysis revealed that a suspect’s race is a statistically significant factor in arrest outcomes, even when controlling for a suspect’s offense conduct, display of respect for the police, victim presence or preference, and other relevant legal and extralegal factors.”).

³⁷ See *Remarks of Senator John F. Kennedy at the Loyola College Annual Alumni Banquet*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY MUSEUM, <https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/baltimore-md-19580218> (These remarks occurred in Baltimore, Maryland, February 18, 1958, Kennedy stated “[l]et us not seek the Republican answer or the Democratic answer but the right answer. Let us not seek to fix the blame for the past – let us accept our own responsibility for the future”).

³⁸ *Id.*

³⁹ See BUREAU OF JUSTICE ASSISTANCE, UNDERSTANDING CMTY. POLICING: A FRAMEWORK FOR ACTION 14 (1994) (explaining that “[c]hurches, schools, hospitals, social groups, private and public agencies, and those who work in the area are also vital members of the community. [This includes visitors] for cultural or recreational purposes”).

⁴⁰ See Ezra Marcus, *In the Autonomous Zones*, N.Y. TIMES (July 1, 2020), <https://www.nytimes.com/2020/07/01/style/autonomous-zone-anarchist-community.html?searchResultPosition=1>; *Policing the Police*, PBS NEWSHOUR (June 28, 2016), <https://www.pbs.org/wgbh/frontline/film/policing-the-police/> (Sergeant Rasheen Peppers remarking that “if I wasn’t a guy who was part of the community, and I only came out just to do policing right that might be an issue. If someone trusted to tell me this information. So, you have to be a part of the community. You have to be a stakeholder[] in the community”).

⁴¹ BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at vii, 1.

⁴² See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 13.

⁴³ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 13.

For instance, the neighborhood police officer helps community members marshal “support and resources to solve problems and enhance their quality of life.”⁴⁴ Political leaders and government officials should recognize that to keep their communities safe. They must accept responsibility for both irresponsible and responsible behavior by their police forces.⁴⁵ Community policing works when “[c]ommunity members voice their concerns, contribute advice, and take action to address these concerns.”⁴⁶ A viable partnership forms between law enforcement and the community when community policing is in place. They can “address[] problems of disorder and neglect (e.g., gang activity, abandoned cars[,] and broken windows) that can eventually lead to serious crime”.⁴⁷ Trust is a precious cornerstone; however, that fuses “community partnership and problem[-]solving.”⁴⁸

The establishment and maintenance of trust is a hardwearing ballast of community policing.⁴⁹ Community policing props up law enforcement agencies’ capacity to foster a cooperative spirit that balances the public’s interest with individual rights.⁵⁰ Since the 1990s, some urban communities have experienced grave “problems with drugs, murders, and burglaries.”⁵¹ Some opine that the replacement of friendly foot patrol officers with police vehicles has lessened the effects of community policing.⁵²

The dawn of computers likely has contributed to downgrading the level of contact between police officers and their assigned communities.⁵³ Also, arbitrary patrolling has likely severed “the link between communities and police.”⁵⁴ Suppose one harkens back to slave patrols alluded to in Part III. Community policing endeavors to remold local law enforcement agencies to a point “beyond [societal and historical] problems.”⁵⁵ Community policing does not mean that law enforcement has ceded authority or that law and order are subordinated to a lesser rung.⁵⁶ Law enforcement agencies who

⁴⁴ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at vii.

⁴⁵ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 4 (explaining that “[c]ommunities must take a unified stand against crime, violence, and disregard for the law, and must make a commitment to increasing crime-prevention and intervention activities”).

⁴⁶ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at vii.

⁴⁷ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 4.

⁴⁸ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at vii (“Without trust between police and citizens, effective policing is impossible.”).

⁴⁹ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 15.

⁵⁰ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 15.

⁵¹ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 3-5 (proclaiming that “[c]ommunity policing offers a way for the police and the community to work together to resolve the serious problems that exist in [their] neighborhoods”).

⁵² See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 6.

⁵³ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 6.

⁵⁴ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 6 (explaining that “[p]olice were instructed to change routes constantly, in an effort to thwart criminals”).

⁵⁵ See Brown, *supra* note 30, at 190 (“such as inefficiencies in dealing with crime, police misconduct and corruption, and poor police-minority community relations”).

⁵⁶ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 13 (noting that “tapping into the expertise and resources that exist within communities will relieve police of some of their burdens”).

engage in community policing are aware that collaborative teamwork with the broader community and sister agencies will shield their regions from felons.⁵⁷

The first bastion of defense against mayhem and criminality is community organizations.⁵⁸ Officers can procure valuable information about criminal actors when they get acquainted with their neighborhoods.⁵⁹ Individuals are likely motivated to help fight crime when they have recurrent good relations with their assigned police officers.⁶⁰ Some findings suggest that foot patrols boosted positive attitudes in their respective neighborhoods.⁶¹ Put differently, foot patrols likely are more conducive to maintaining better relationships with the community, while the forgotten days of randomized patrolling are likely ineffective.⁶²

A. Kansas City Experiments

As you amble around your neighborhood, do you sense that your neighborhood patrol officer is around the corner?⁶³ In the 1970s, the Kansas City Police Department (KCPD) was mulling over whether to follow Wilson's⁶⁴ preventive patrol tactic or assign patrols to hot spots.⁶⁵ The first batch of policing experiments by KCPD was inconclusive. Therefore, KCPD conducted another set of experiments, which was led by experimental criminologist Lawrence Sherman.⁶⁶ Sherman uncovered that

⁵⁷ See Harris, *supra* note 10, at 7.

⁵⁸ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 5 (quoting George L. Kelling, POLICE AND COMMUNITIES: THE QUIET REVOLUTION 2 (1988)).

⁵⁹ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 9.

⁶⁰ See *The Good Cop*, *supra* note 2, at 1865.

⁶¹ See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 10 (explaining that “foot patrols eased citizen fear of crime [and] persons living in areas where foot patrol w[ere] created perceived a notable decrease in the severity of crime-related problems”).

⁶² See BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 14 (explaining that “patrol officers are the lynchpins of law enforcement because they “are the primary providers of police services and have the most contact with community members”).

⁶³ See also Gladwell, *supra* note 25, at 297; BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at 7 (The Kansas City Preventive Patrol Experiment (Kansas City Experiments) “found that randomized patrolling had a limited impact on crime or citizens’ attitudes and caused police leaders to begin think about alternative ways to use their patrol personnel.”).

⁶⁴ See Gladwell, *supra* note 25, at 297 (“A century ago O. W. Wilson came up with the idea of preventive patrol [he believed] “having police cars in constant, unpredictable motion throughout a city’s street would deter crime.”).

⁶⁵ See Gladwell, *supra* note 25, at 298 (explaining that the KCPD hired George Kelling, a criminologist, who meticulously ran an experiment for a year and the results were inconclusive. “Kelling’s idea was to select fifteen beats from the southern part of the city and divide them into three groups. It was a big area: thirty-two square miles, 150,000 people, good neighborhoods and bad neighborhoods. One of the groups would be the control group. Police work would continue there as it always had. In the second neighborhood, Kelling would have no preventive patrol at all; police officers would respond only when called. In the third neighborhood, he would double and in some cases triple the number of squad cars on the street.”).

⁶⁶ See Gladwell, *supra* note 25, at 307 (“The first Kansas City [E]xperiment[s] discovered that preventive patrols w[ere] useless, that having more police cars driving around made no difference [and] [t]he second Kansas City [E]xperiment[s] amended that position [finding that] extra patrol cars *did* make a difference – so long as officers took the initiative and

“[a]ggressive patrols [were] supposed to be confined to places” where there was a high concentration of crime, otherwise known as hot-spot policing.⁶⁷ These practices should be examined alongside the conduct of the Ferguson Police Department.

B. Ferguson Police Practices

The 2015 Investigation of the Ferguson Police Department (FPD)⁶⁸ by the United States Department of Justice (DOJ) exposed a pattern of unlawful conduct which violated the United State Constitution and U.S. federal laws. Sadly, FPD police practices were molded by the City’s desire for increased capital instead of public safety.⁶⁹ The aforesaid practices sowed deep mistrust between the community and the FPD.⁷⁰ FPD officers reaffirmed “that revenue generation [was] stressed and that the message [came] from [the top].”⁷¹ Assessments and “promotions depend[ed] to an inordinate degree on the number of citations issued.”⁷²

FPD officers regarded community members as potential malefactors rather than partners in a joint effort to tackle crime and disorder.⁷³ At any rate, financial gain is not a suitable measure of success for policing.⁷⁴ Even so, FPD leadership was interested

stopped anyone they thought suspicious, got out of their cars as much as possible, and went out of their way to look for weapons. *Patroll[s] worked if the officers were busy.*) (emphasis added).

⁶⁷ See Gladwell, *supra* note 25, at 301; *The Good Cop*, *supra* note 2, at 1874 (noting that “deploying forces in geographically focused ways, such as hot[-]spot policing, can have a significant impact on crime”).

⁶⁸ See UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 1 (2015) (noting that “[t]he Civil Rights Division of the United States Department of Justice opened its investigation of the Ferguson Police Department on September 4, 2014”) (available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

⁶⁹ See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 2, 15.

⁷⁰ See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 2; *A Raw Scene as Ferguson Turns Violent*, N.Y. Times (Nov. 25, 2014), <https://youtu.be/Dt9-byUhPdg> (A video recording of a protest which turned violent in Ferguson, Missouri.).

⁷¹ See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 2 (noting that [t]he City’s emphasis on revenue generation ha[d] a deleterious effect on FPD’s approach to law enforcement).

⁷² See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 2.

⁷³ Compare UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68 at 2 (2015), with BUREAU OF JUSTICE ASSISTANCE, *supra* note 39, at vii (commenting that the police were not the “sole guardians of law and order, all members of the community become active allies in the effort to enhance the safety and quality of the neighborhoods”).

⁷⁴ See Chuck Wexler, Mary Ann Wycoff & Craig Fischer, “Good to Great” Policing: Application of Business Management Principles in the Public Sector, U.S. DEP’T OF JUSTICE OFFICE OF CMTY. ORIENTED POLICING SERV., <https://cops.usdoj.gov/RIC/Publications/cops-w0767-pub.pdf> (noting that “the obvious definition of success is reducing crime The author goes on to describe the transformation that occurred within the ranks of the New York City Police Department. For instance, officers found an anonymous note posted on the bulletin board, Collins writes. “We’re not report takers, the note proclaimed. We’re the police. The note testified to the psychological shift when then-Police Commissioner William J. Bratton inverted the focus from inputs to outputs. Prior to Bratton, the NYPD assessed itself primarily on input variables—such as arrests made, reports taken, cases closed, budgets met—rather

in the accumulation of citations instead of “whether those citations [were] lawful [and] promote[d] public safety.”⁷⁵ A good case in point is the following encounters:

“In October 2012, [FPD] pulled over a[] man, claiming that his passenger-side brake light was broken. The driver happened to have replaced the light recently and knew it to be functioning properly. [A]ccording to the man’s written complaint, one officer stated, “let’s see how many tickets you’re going to get,” while a second officer tapped his Electronic Control Weapon⁷⁶ on the roof of the man’s car. The officers wrote the man a citation for “taillight/reflector/license plate light out.” They refused to let the man show them that his car’s equipment was in order, warning him, “don’t you get out of that car until you get to your house.”⁷⁷

Another July 2014 incident:

“A[n] [FPD] officer pulled over a truck hauling a trailer that did not have operating taillights. The officer asked for identification from all three people inside, including a man in the passenger seat who asked why. “You have to have a reason. This is a violation of my Fourth Amendment rights,” he asserted. The officer, who characterized the man’s reaction as “suspicious,” responded, “the reason is, if you don’t hand it to me, I’ll arrest you.” The man provided his identification. The officer then asked the man to move his cell phone from his lap to the dashboard, “for my safety.” The man said, “okay, but I’m going to record this.” Due to nervousness, he could not open the recording application and quickly placed the phone on the dash. The officer then announced that the man was under arrest for Failure to Comply. At the end of the traffic stop, the officer gave the driver a traffic citation, indicated at the other man, and said, “you’re getting this ticket because of him.” Upon bringing that man to jail, someone asked the officer what offense the man had committed. The officer responded, “he’s one of those guys who watches CNBC too much about his rights.” The man did not say anything else, fearing what else the officer might be capable of doing. He later told us, “I never dreamed I could end up in jail for this. I’m scared of driving through Ferguson now.”⁷⁸

on the output variable of reducing crime. Bratton set audacious output goals, such as attaining double digit annual declines in felony crime rates”).

⁷⁵ See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 22.

⁷⁶ See *Electronic Control Weapons*, Commonwealth of Mass., <https://www.mass.gov/electronic-control-weapons>; Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted Definitions*, <https://ucr.fbi.gov/leoka/2019/resource-pages/definitions>. (explaining that an electronic control weapon is an alternative designation for a taser); *Taser*, ENCYCLOPÆDIA BRITANNICA, (Feb. 20, 2018), <https://www.britannica.com/topic/TASER>.

⁷⁷ See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 17.

⁷⁸ See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 27.

The Kansas City Experiments personifies aggressive but constructive policing, whereas the 2015 Ferguson police practices embody what happens when aggressive policing goes awry.

An Inquiry of Autonomous Zones

Autonomous zones are not an avant-garde concept. Especially amidst the creation of new independent zones in “Richmond, V[irginia]; Philadelphia [, Pennsylvania] and New York City.”⁷⁹ Autonomous zones have a gnomic meaning. These zones typically are provisional and tend to be protest camps.⁸⁰ Autonomous zones have popped up because societal factions have snubbed America’s institutions and created communes when they lost faith in America’s efficacy.⁸¹ To illustrate, Dreamtime Village, which dubs itself “as a Permanent Autonomous Zone,” was founded in 1991 and still exists today.⁸² Granted that, “hippie commune[s] with lax sexual mores and free-wheeling drug use is what is often remembered”⁸³ there are a vast array of communes or autonomous zones.

A. Seattle’s Autonomous Zone

During the aftermath of George Floyd’s death, “the Seattle Police Department offered a concession: Officers would abandon their building, board up the windows and let the protestors have free rein outside.”⁸⁴ This concession resulted in the impermanent formation of Seattle’s Capitol Hill Autonomous Zone (CHAZ). According to Trooper Baillargeon, the Seattle Police Department likely made “[the protestors] a deal [to urge protestors to ruminate] before damaging property.”⁸⁵ Astonishingly,

⁷⁹ See Marcus, *supra* note 40 (noting that “activists have been transforming neighborhoods into short-lived protest camps for at least a century”).

⁸⁰ See Marcus, *supra* note 40 (commenting on the “[t]he term temporary autonomous zone [which] was popularized in 1991 by an anarchist theorist named Peter Lamborn Wilson”).

⁸¹ See Ashley Garcia, *Seattle’s protest is the latest in a long history of experimental living*, THE WASHINGTON POST (June 16, 2020), <https://www.washingtonpost.com/outlook/2020/06/16/seattles-protest-is-latest-long-history-experimental-living/> (discussing that “[w]hen it appears that incremental policy reform and elections are incapable of solving society’s needs, American have participated in alternative institution building to achieve immediate and comprehensive change”).

⁸² See Marcus, *supra* note 40.

⁸³ See Garcia, *supra* note 81 (remarking that “there was actually a diverse range of religious and spontaneous open-door communal houses”).

⁸⁴ See Mike Baker, *Free Food, Free Speech and Free of Police: Inside Seattle’s ‘Autonomous Zone’*, N.Y. TIMES (July 6, 2020), <https://www.nytimes.com/2020/06/11/us/seattle-autonomous-zone.html> [hereinafter *Free Food, Free Speech and Free of Police*]; News Wrap Seattle police clear ‘occupied zone’ after violence, PBS NEWSHOUR (July 1, 2020, 6:50 PM) <https://www.pbs.org/newshour/show/news-wrap-seattle-police-clear-occupied-zone-after-violence> (Seattle’s “Autonomous Zone” is discussed at 0:21).

⁸⁵ Zoom Interview with Trooper C. Baillargeon, Colo. State Patrol (Oct. 10, 2020).

“[CHAZ] functioned with the tacit blessing of the city.”⁸⁶ In fact, Seattle city employees helped rearrange blockades “and [supplied] portable toilets.”⁸⁷

The protestors listed the following demands:⁸⁸ “defund the [Seattle] Police Department; fund community health; and drop all criminal charges against protestors.”⁸⁹ Despite this, the city of Seattle dismantled CHAZ after several individuals were shot and killed in the area.⁹⁰ A number of protestors aligned with the Black Lives Matter⁹¹ movement rallied in CHAZ. This movement has been the subject of numerous debates and political fodder. Alicia Garza penned the phrase “our lives matter in [a] July 2013 Facebook post entitled “a love letter to black people.”⁹² Patisse Cullors, Garza’s friend, amended the aforesaid phrase and created the tag: “#BlackLivesMatter.”⁹³

The Black Lives Matter (BLM) movement did not reach the masses until August 9, 2014, the shooting of Michael Brown by an FPD Officer.⁹⁴ FPD police practices were discussed in Part IV(B). According to Cobb, BLM is likely a countermodel to the Southern Christian Leadership Conference⁹⁵ established by Martin Luther King Jr.⁹⁶ According to Garza, “[t]he model of the black preacher leading people to the promised

⁸⁶ See *Free Food, Free Speech and Free of Police*, *supra* note 83; Marcus, *supra* note 40 (explaining that “the mayor of Seattle, initially praised the zone as “predominantly peaceful”).

⁸⁷ See Mike Baker, *Shootings Test Viability of Seattle’s Protest ‘Autonomous Zone’*, N. Y. TIMES (last updated July 23, 2020), <https://www.nytimes.com/2020/06/22/us/seattle-autonomous-zone-chop-shootings.html?searchResultPosition=6> [hereinafter *Shootings Test Seattle’s Viability*].

⁸⁸ See *Free Food, Free Speech and Free of Police*, *supra* note 83 (There were five demands listed on a nearby fence and thirty demands published online.)

⁸⁹ See *Free Food, Free Speech and Free of Police*, *supra* note 83; Marcus, *supra* note 40.

⁹⁰ See also Marcus, *supra* note 40 (expounding that “[a]ll told, four people have been shot”); *Shootings Test Seattle’s Viability*, *supra* note 87.

⁹¹ See *Black Lives Matter*, ENCYCLOPÆDIA BRITANNICA, (Aug. 13, 2020), <https://www.britannica.com/topic/Black-Lives-Matter>.

⁹² See Jelani Cobb, *The Matter of Black Lives*, THE NEW YORKER, (Mar. 7, 2016), <https://www.newyorker.com/magazine/2016/03/14/where-is-black-lives-matter-headed>; *but see also* Daniel Taylor, *Morning Start: #BlackLivesMatter started with a love letter*, VERNON MORNING STAR, (June 2, 2020), <https://www.newyorker.com/magazine/2016/03/14/where-is-black-lives-matter-headed> (quoting Alicia Garza as saying “[w]e don’t deserve to be killed with impunity. We need to love ourselves and fight for a world where black lives matter. Black people, I love you. I love us. We matter. Our lives matter.”).

⁹³ See Cobb, *supra* note 92.

⁹⁴ See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68, at 5, 27, 29, 79, 80 (2015); John Eligon, *No Charges for Ferguson Officer Who Killed Michael Brown, New Prosecutor Says*, N.Y. Times (July 30, 2020), <https://www.nytimes.com/2020/07/30/us/michael-brown-darren-wilson-ferguson.html>.

⁹⁵ See *Southern Christian Leadership Conference*, ENCYCLOPÆDIA BRITANNICA, (Oct. 12, 2020), <https://www.britannica.com/topic/Southern-Christian-Leadership-Conference>.

⁹⁶ See Cobb, *supra* note 92.

land is [not] working right now.”⁹⁷ As stated by Cobb, BLM has laid out a “thirteen-point statement which calls for an ideal of unapologetic blackness.”⁹⁸

It seems that BLM is attempting to address a multitude of issues encompassing being a minority or black in America. Matters such as police reform, gender, and sexual equality are BLM’s current topics. Garza maintained that, “we [are emulating] the labor movement [by] organizing people at the bottom.”⁹⁹ For that reason, other salient issues may rise to the proverbial surface for manifestation by BLM acolytes. Concomitantly, without a leader or published and accessible principles,¹⁰⁰ BLM’s message can be supplanted by nefarious or overzealous disciples.

The *Rockland County Times* described a 2014 ‘Millions March’ in New York City where protestors from disparate groups yelled out, “What do we want? Dead cops! When do we want it? Now!”¹⁰¹ Political leaders and media outlets attributed this chant and the current anti-police climate to BLM.¹⁰² This foreshadows the tumultuous rise or fall of the BLM movement. The BLM movement was an enduring symbol in Seattle’s Capitol Hill Autonomous Zone, but only time will tell if the BLM movement will endure.

Law Enforcement Agencies Obey International Law

International human rights law, international treaties,¹⁰³ and international custom¹⁰⁴ regulate police conduct. For example, the Vienna Convention on Consular and Diplomatic Relations restricts police power when they are engaged in the arrest or detention of aliens.¹⁰⁵ The International Court of Justice (ICJ) has deliberated over

⁹⁷ See Cobb, *supra* note 92 (commenting that protestors booed when Jesse Jackson attempted to speak to protestors in Ferguson, they “saw him as an interloper”).

⁹⁸ See Cobb, *supra* note 92 (explaining that “in affirming that black lives matter, we need not qualify our position [and] also espous[ing] inclusivity, because to love and desire freedom and justice for ourselves is a necessary prerequisite for wanting the same for others”).

⁹⁹ See Cobb, *supra* note 92.

¹⁰⁰ Compare Southern Christian Leadership Conference, <https://nationalsclc.org/about/>, with Black Lives Matter, <https://blacklivesmatter.com/about/>, and Southern Poverty Law Center, <https://www.splcenter.org/about>.

¹⁰¹ See also *Believe your ears? NYC protesters chant for “dead cops”*, *Rockland Cty. Times* (Dec. 13, 2014), <https://www.rocklandtimes.com/2014/12/13/believe-your-ears-nyc-protesters-chant-for-dead-cops/> (technological advancements may call into question the veracity of this video recording) (available at: https://www.youtube.com/watch?v=dj4ARsrxrZh8&feature=emb_logo).

¹⁰² See Cobb, *supra* note 92.

¹⁰³ See also *The Good Cop*, *supra* note 2, at 1867 (noting that “[t]here are local ordinances and internal department administrative regulations, too. And these bodies of law do not even encompass those rules providing for police qualification and training, those pertaining to police management and organization, and laws regarding access to information about the police. There has been very little scholarship about the vast majority of these laws.”); Harmon, *supra* note 4, at 795-808 (discussing the supplementary bodies of law that regulate police activity).

¹⁰⁴ See LORI FISLER DAMROSCH, LOUIS HENKIN, SEAN D. MURPHY & HANS SMIT, *INTERNATIONAL LAW CASES AND MATERIALS* 975 (5th ed. 2009).

¹⁰⁵ See also Harmon, *supra* note 4, at 802 (noting that there are “dozen[s of] statutes that regulate police searches, electronic surveillance, and access to private information”);

three cases¹⁰⁶ on the treatment of aliens imprisoned by U.S. law enforcement. Traditionally, “international law holds that [international] law governs the relationship between [S]tates and that [S]tates are the only subjects of international law.”¹⁰⁷ So, how do domestic U.S. law enforcement agencies get entangled in the domain of international law?

Well, “[i]nternational human rights law is binding on all States and their agents, including law enforcement officials.”¹⁰⁸ International human rights law is binding because of a founding soft law document and several international human rights treaties.¹⁰⁹ Those instruments are the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹¹⁰ and the International Covenant on Civil and Political Rights (ICCPR).¹¹¹ Generally,

Vienna Convention on Consular Relations, art. 36, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 (ratified on Nov. 24, 1969).

¹⁰⁶ See *Vienna Convention on Consular Relations* (Para. v. U.S.), Provisional Measure, 1998 I.C.J. Rep. 248 (Apr. 9); *LaGrand Case* (Ger. v. U.S.), Judgment, 2001 I.C.J. Rep. 466 (June 27); *Avena and Other Mexican Nationals* (Mex. v. U.S.), Judgment, 2004 I.C.J. Rep. 12 (Mar. 31); DAMROSCH, HENKIN, MURPHY & SMIT, *supra* note 104, at 453 (“A central issue in these cases was that U.S. law enforcement personnel repeatedly failed to advise clients upon their arrest of the right to have their consulate notified, a right contained in Article 36 of the Vienna Convention on Consular Relations.”).

¹⁰⁷ See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 57 (6th ed. 2003).

¹⁰⁸ See International Human Rights Standards for Law Enforcement, United Nations High Comm’n for Human Rights Ctr. for Human Rights, <https://www.ohchr.org/Documents/Publications/training5Add1en.pdf>.

¹⁰⁹ See The United Nations Human Rights Treaty System, United Nations Human Rights Office of the High Comm’r, <https://www.ohchr.org/documents/publications/factsheet30rev1.pdf>.

¹¹⁰ See International Covenant on Economic, Social and Cultural Rights, art. 2, Oct. 5, 1977, S. Treaty Doc. 95-19, 993 U.N.T.S. 3 (not ratified by the United States of America) (The ICESCR is not applicable in the U.S. because the treaty has not been ratified).

¹¹¹ See International Covenant on Civil and Political Rights, art. 36, Dec. 19, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171 (ratified by the United States of America on June 8, 1992) (Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en#EndDec); *but see also* Convention on the Elimination of All Forms of Racial Discrimination against Women, art. 36, Mar. 1, 1980, 1249 U.N.T.S. 13 (not ratified by the United States of America); International Covenant on the Elimination of All Forms of Racial Discrimination, art. 7, Mar. 7, 1966, S. Treaty Doc. 95-18, 660 U.N.T.S. 195 (ratified by the United States of America on Oct. 21, 1994 with reservations upon signature and ratification); Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277 (ratified by the United States of America on November 25, 1988); International Convention for the Protection of All Persons from Enforced Disappearance, Dec. 20, 2006, 2716 U.N.T.S. 3 (not ratified or signed by the United States of America); The Convention on the Rights of Persons with Disabilities, Dec. 13, 2006, 2515 U.N.T.S. 3 (not ratified by the United States of America) (Convention on the Rights of Persons with Disabilities is not applicable in the U.S. because the treaty has not been ratified); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 2220 U.N.T.S. 93 (not ratified or signed by the United States of America); Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3 (not ratified by the United States of America); Convention Against Torture and Other Cruel, Inhuman or Degrading

human rights are the “right[s] of [all] humans [and w]e are entitled to them simply because we are human beings [and these rights] emanates from the inherent dignity of the human person.”¹¹²

Human rights treaties are remarkable because they are ‘living instruments.’ Living in the sense that these treaties are for individuals and States.¹¹³ The “International Bill of Rights” is formed by three principal instruments: the UDHR,¹¹⁴ the ICCPR, and the ICESCR.¹¹⁵ Article VI of the U.S. Constitution makes treaties the supreme “[l]aw of the Land.”¹¹⁶ Though, the U.S. Supreme Court has given treaties “the status of directly enforceable federal law.”¹¹⁷

To sum up, whether U.S. police officers¹¹⁸ have violated human rights treaty obligations depends on whether said treaties are deemed ‘self-executing.’¹¹⁹ Relatively few human rights treaties are applicable within U.S. jurisdiction. In Part I, we mentioned an NYPD officer who shoved a stick into a detainee’s rectum.¹²⁰ This behavior subjected the U.S. national to cruel, inhuman, or degrading treatment, and the insertion of the rod into his rectum, this violated the U.S. Constitution and the ICCPR.¹²¹ In Part

Treatment or Punishment, art. 11, Feb. 4, 1985, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (ratified by the United States of America on October 21, 1994).

¹¹² See U.N. Charter art. 55; Universal Declaration of Human Rights art. 1.

¹¹³ See DAMROSCH, HENKIN, MURPHY & SMIT, *supra* note 104, at 122 (remarking that the “term treaty is used generally to cover the binding agreements between subjects of international law that are governed by international law”).

¹¹⁴ See also *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735 (2004) (The U.S. Supreme Court declaring that “because the Declaration was nonbinding at its inception, it could not “establish the relevant and applicable rule of international law,” in that instance, whether arbitrary arrest violated the law of nations”); DAMROSCH, HENKIN, MURPHY & SMIT, *supra* note 104, at 977 (The “[UDHR] is not a treaty; it was not adopted as a treaty and was never submitted by states to their respective ratification process. At the time of [the UDHR’s] adoption, Eleanor Roosevelt said: It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or of legal obligation U.S. courts have declined to accord the Declaration the status of a treaty”).

¹¹⁵ See DAMROSCH, HENKIN, MURPHY & SMIT, *supra* note 104, at 975 (remarking that the Charter of the United Nations vaguely promotes human rights).

¹¹⁶ Constitution of the United States, <https://constitution.congress.gov/constitution/article-6/> (quoting Article 6 of the U.S. Constitution, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”).

¹¹⁷ See also *Foster v. Neilson*, 27 U.S. 253 (1829); *INS v. Stevic*, 467 U.S. 407 (1984); *Haitian Refugee Center, Inc. v. Gracey*, 502 U.S. 1122 (1992); and LORI FISLER DAMROSCH & SEAN D. MURPHY, *INTERNATIONAL LAW CASES AND MATERIALS* 692 (5th ed. 2009).

¹¹⁸ See International Human Rights Standards for Law Enforcement, *supra* note 108, at 3.

¹¹⁹ See DAMROSCH, HENKIN, MURPHY & SMIT, *supra* note 104, at 1045.

¹²⁰ See Brenner, *supra* note 9; Gardiner, *supra* note 9.

¹²¹ See International Covenant on Civil and Political Rights, art. 7, Dec. 19, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171 (ratified by the United States of America on June 8, 1992) (Article 7 states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”).

IV(B), we considered an October 2012 incident in Ferguson, Missouri.¹²² This conduct likely violates Article 9(1) of the ICCPR because the FPD officers arbitrarily detained nationals.

How can international human rights law lance the shield of sovereignty and regulate U.S. police activities? Well, the U.S. consented to the application of international human rights law by signing and ratifying the ICCPR, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Prevention and Punishment of the Crime of Genocide, making these treaties the ‘supreme Law of the Land.’ The U.S. is responsible, as well, for the actions of its police officers because law enforcement agencies function as organs¹²³ of the U.S. government. We must recall police officers “are creatures of [the] law and are trained in it. [They] are not [trained] lawyers.”¹²⁴ Since police officers mingle with civic and political rights or social and economic rights,¹²⁵ states are responsible for recruiting, training, and monitoring their law enforcement agents.

Conclusion

The forces of law and order have always embodied both promise and suffering. This Note likely demonstrates that law enforcement is one of the many edged arrows in a State’s quiver for solving societal difficulties. The aforementioned police brutality or the pervasive abuse of police discretion peppered throughout the 105-page report by the DOJ described in Part IV(B) should not exist in a policing framework that embraces community policing. The situation in America may look bleak to external law enforcement agencies. Mainly due to the seemingly ubiquitous protests and the anti-police climate that have latched onto the BLM movement’s coattails.

George Floyd’s death, which was likely due to inadequate police conduct, catapulted police practices and BLM to almost every American citizen’s lips. Though the data suggests that police kill blacks more than other ethnic groups, institutional racism is a complex topic that has been reviewed by various scholars. This Note did not scrutinize institutional racism. Be that as it may, there are individuals everywhere throughout American society who are racist, sexist, or xenophobic. Nonetheless, the U.S., as a whole, has instituted and supported a legal and law enforcement system that has embedded checks and balances against institutional racism. One can see an example of this at work with the 2014 Investigation of the Newark Police

¹²² See UNITED STATES DEPARTMENT OF JUSTICE, *supra* note 68.

¹²³ See *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 4 (noting that “[t]he conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other function, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State” (quoting Int’l Law Comm’n, Rep. on the Work of Its Fifty-third Session, U.N. Doc. A/56/10, at 43 (2001)).

¹²⁴ Compare *The Good Cop* *supra* note 2, at 1883, with Meares, Tyler & Gardener, *supra* note 5, at 139 (noting “[p]olice, unlike some members of the public, are not everyday lawyers, but, rather, experts. They strive to conform their behavior to a set of norms and scripts heavily influenced by formal law.”).

¹²⁵ See *Evolution of Human Rights*, COUNCIL OF EUR., <https://www.coe.int/en/web/compass/the-evolution-of-human-rights>.

Department,¹²⁶ or the 2015 Investigation of the Ferguson Police Department recounted in Part IV(B).

These DOJ investigations of U.S. law enforcement agencies are indicative of the U.S.'s policy against racism and its compliance with its international obligations under the International Covenant on Civil and Political Rights or the International Covenant on the Elimination of All Forms of Racial Discrimination and, notably, its obligations under the United States Constitution. These investigations or findings continue to take place by the 'Civil Rights Division' within the DOJ. As former President Kennedy stated, there is no 'right or wrong answer,' but we must ask why.... Why is a law enforcement officer choking a citizen to death or sticking a rod into a citizen's rectum?

Why are blacks killed more than other ethnic groups? The observations made by Malcolm Gladwell make one wonder at the effectiveness of U.S. police officer training. Is a police officer assuming that a person who looks away is untrustworthy? What about a person with a fidgety knee during a late-night traffic stop? What about a person with an urge to smoke a cigarette while conversing with a police officer? What about the person who does not show emotion at a murder scene? These questions and behaviors all come back to one focal topic 'human interaction.' Every day, police officers engage with their communities. Consequently, they must be briefed and trained on deftly engaging with different societal sectors, cultures, groups, and individuals.

States are obligated under international law to train their judges, police officers, or security forces. The International Human Rights Standards for Law Enforcement specifies that "restraint is to be exercised in the use of force."¹²⁷ A seemingly redundant rule for law enforcement or security forces. Yet, the abuse of police discretion continues to be uncovered. Human rights are the inherent dignity of the human person. Law enforcement has been clothed with the sacred responsibility to respect and protect this human dignity that resides within our fellow citizens.

¹²⁶ See UNITED STATES DEPARTMENT OF JUSTICE, INVESTIGATION OF THE NEWARK POLICE DEPARTMENT 1 (2014) (available at https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf).

¹²⁷ International Human Rights Standards for Law Enforcement, *supra* note 108, at 7.

S U M M A R Y

Although, northern police departments mimicked their brethren, across the Atlantic Ocean, in Great Britain. Policing in southern U.S. states was forged on the backs of slaves. This is likely startling news for the uninitiated. At the outset of this Note, the burden of law enforcement is laid bare, especially in the post-9/11 world. An officer's perspective is needed but is sometimes drowning amidst the pool of transgressions or officer-involved shootings. This Note endeavors to describe American police history, practices, and autonomous zones. This Note does not tackle institutional racism. It touches, though, on why law enforcement yields to international law. The community policing concept is encapsulated and juxtaposed with the Ferguson Police Department (FPD). It also unearths that autonomous zones are not neoteric gatherings coughed into existence by renegades and antigovernment neophytes. What's more, it probes the Black Lives Matter Movement for its genesis, indelible message, and purposes. This Note conducts a deep dive into community policing and cascades through its secondary and tertiary effects. It recognizes the palpable concession that technology has robbed some communities of its friendly foot patrols and congenial dialogues between officers and members of the community. This Note then demonstrates what policing should and should not look like by perusing the Kansas City Experiments and the FPD. The culmination briskly surveys international legal norms.

Keywords: Autonomous zones, community policing, U.S. police practices.