

# SECTION IV

## Crime and (In)Justice

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# Police Homicides: The Terror of “American Exceptionalism”

*Robert Aponte and Hannah Hurrelle*

## The Problem

Police-on-civilian homicides have become a critical social issue in the US in recent years due to newly emerging information on the parameters of the problem and the often egregiousness of the killings. Key to the heightened attention is the increasingly widespread recording and sharing of these gruesome killings via cell-phone cameras, social media, and police cameras. Particularly disturbing is the virtual impunity from sanctions accorded nearly all such shooters, along with the startling frequency of the shootings in the US, as compared with other advanced societies.

Over 1,000 persons have been killed by police annually in the US in recent years, with nearly all shot to death, and the remainder tasered, beaten, or otherwise slain. In the first 24 days of 2015, 59 persons were killed by police in the US, whereas only 55 persons were correspondingly slain in the UK in the last 24 years. Similar imbalances exist compared with other advanced nations (e.g., Germany, Japan, Canada, France, and Denmark) in both absolute and relative numbers. While a proportion of the US shootings may have been justified (e.g., suspects pointed weapons or shot at police), most involved lesser provocations and the vast majority could have been avoided if the developing de-escalation techniques had been employed.

Although more Whites than Blacks are slain by police, the role of racism in the killings of many Blacks is evident from their substantially disproportionate numbers, and from the comparatively trivial nature of their provocations. Overall, Blacks are between two and three times as likely to be killed than Whites. Latinos/Native Americans are also disproportionately slain, though at lower rates than Blacks. But, the problem goes well beyond racism. Non-Hispanic Whites in the US are still 26 times as likely to be killed by police than citizens

in Germany of any race or racial background. The greater probability of Whites getting shot in the US is consistent with data on police shootings in other advanced nations – civilians are far more likely to be shot in the US.

The killings in the US are also related to an array of factors, uniquely American, which facilitate the carnage and undermine accountability. For one, the US is the only nation where there are more guns than people. This amount of firepower makes police more fearful, thereby eliciting defensive aggressiveness. Worse, major lethal military hardware (tanks, etc.) have been distributed to police agencies, which foster even more violence. There is the code of silence (police feeling that they cannot inform on colleagues), limited immunity (laws/union contracts providing rights to police under fire for shootings, etc.), thereby stifling investigations), training highly skewed toward violence, and the enormous deference accorded to police, especially by prosecutors – who often enjoy collegial relations with police and are often reluctant to prosecute even the most egregious killings. Rather, “justice” is provided via major lawsuit payouts – millions yearly. Yet, even in the payouts, many of the entitled are shortchanged.

## **The Research Evidence**

Until recently, few sources of reliable police shooting data were available. Fortunately, led by “The Counted,” a series in the British progressive daily, the *Guardian*, followed by the *Washington Post’s* own series, solid data are now available, although primarily for 2015–2018. The federal government is reportedly constructing such a data set, but none has yet emerged.

Current (2019) estimates of the disproportionate killings of Blacks over Whites are 2.5 killings of Blacks for every killing of Whites. Blacks are also twice as likely as Whites to be slain while unarmed. Under the largely abandoned ‘stop and frisk’ policies, Blacks and Latinos were far more frequently detained, but far less likely to be carrying contraband. In Chicago, ethnographic work in courtrooms found many police, judges, and attorneys engaging in virulent racist talk. That city’s police killed 92 civilians between 2010 and 2015, 80 percent of whom were Black, though Blacks comprised only 30 percent of the city’s population. From another angle, Harvard researchers found that police-inflicted injuries on civilians across the country, measured by emergency room visits between 2001 and 2014, revealed a Black victimization rate 4.9 times that of Whites’. More recently, evidence of police racism surfaced when thousands of racist memes originating

from police officers throughout the country were found on social media. Philadelphia, for example, has moved to fire 13 officers for the offenses, with other cities poised to follow.

Guns are widely seen by experts as the most salient single factor in the rates of police killings in the US, compared with other advanced nations. The US is the most armed society on earth – the only one to contain more guns than people. National surveys have long produced data on gun ownership by household and state or region. Harvard researchers have shown that where gun ownership is high, police kill more civilians than in low ownership areas. For example, in the high-ownership states of Alabama, Georgia, Idaho, Kentucky, and Louisiana, there were an astounding 3.6 times as many lethal shootings by police than in such low-ownership states as Connecticut, Hawaii, and Massachusetts. Correspondingly, civilian killings of police were 3.0 times as numerous in the high-ownership areas. Consequently, despite typically conservative leanings, many police organizations oppose liberal gun-ownership laws.

The code of silence is a long known strategy among police to shield wrong-doing from scrutiny, whereby fellow officers must never report misbehavior by colleagues. Numerous police have testified to its widespread influence, including Frank Serpico of the NYPD, whose exploits were popularized in a film bearing his name. Violations of the norm can bring repercussions from ostracism to abandonment in dangerous circumstances. A recent survey of nearly 1,000 randomly selected police from 121 agencies found that over half agreed that police often turn a blind eye to wrongdoing by colleagues. Over 60 percent even disagreed with the idea that police always report *serious criminal* violations. Relatedly, the long established expression “testilying” denotes the not uncommon practice of lying in court to avoid providing damaging evidence. Regarding retaliation, two Chicago police officers helped the FBI bring down a rogue colleague and, in the aftermath, were so badly treated by their colleagues that they sued and won a \$2 million award. The increase in recordings of these incidents has uncovered wrongdoing that would previously have been shielded by code-inspired dishonesty.

There is also virtual immunity from accountability. Despite thousands of killings from 2005 to 2015, only 54 officers were charged for any of the killings. A variety of factors facilitated this. Records clearly show that juries are reluctant to convict police officers and that prosecutors are slow to charge them. Generally, those charged had been video-recorded, shot unarmed suspects in the back, or, in rare instances, had other police testify against them. Still, most of the defendants were acquitted, had the charges dropped, or faced reduced charges, sometimes leading to

## AGENDA FOR SOCIAL JUSTICE

clean criminal records. Among those fired, many were rehired by other police agencies. Whatever the outcome, the individual shooters are never required to pay fees for court costs, lawsuits, etc.

Laws and, especially, police union contracts provide enormous protections to police under investigation. In Maryland, police who have killed are allowed 10 days before they are required to speak with investigators; 13 other states have similar laws. Union contracts mandate similar provisions in other areas. Reuters' investigation of 82 police union contracts found that police disciplinary records were routinely erased after periods ranging from 6 months to 3 years. Half of the contracts allowed for the accused officers to view all forms of evidence against them prior to providing their account of the incident. Complaints were often time-limited, and were seldom sustained. Of 1,000 complaints lodged in Chicago in 2016, only one resulted in a disciplinary finding.

Efforts to modify such protections are fiercely fought by the unions. While police have to be certified (essentially, licensed), decertifying police is difficult, even when they face substantial disciplinary action. Those actually decertified in one area can typically reenter law enforcement in another area. Efforts to establish a registry of decertified officers over several decades have languished due to union pressures.

Typically, shootings result in lawsuit payouts, as the sole form of "justice" or "accountability" that is available to survivors. For example, between 2004 and 2014, Chicago expended some \$521 million in payouts. Between 2011 and 2014, New York paid out some \$348 million, and \$101 million was paid by Los Angeles from 2002 to 2011. Other cities have also paid out millions.

Standard police training strongly overemphasizes techniques of violence and begets fear and readiness to strike. Recruitment videos often feature shoot-outs, SWAT teams, and militarized equipment. After years of excess military hardware being distributed to police agencies, research determined that possession of the weaponry alone furthered police violence. In addition, a national police agency revealed that police typically receive only 8 hours of de-escalation training, but over 100 hours of training in firearms and fighting techniques. By contrast, European police are trained to use violence as a last resort. They spend far more time on de-escalation training, and they conform to the European Convention on Human Rights. This standard holds that violence can be used only when "absolutely necessary." This contrasts with the US standard which allows for violence when officers have a "reasonable belief" that suspects pose a threat.

## Recommendations and Solutions

Policy options to deal with the problem face numerous obstacles, beyond the complexity of the issues alone. For example, the vast majority of shooters are neither state nor federal officers; they are local police. Not only do the states have their own laws on these issues, but the hundreds of thousands of jurisdictions employing the shooters also have varying rules and guidelines, and typically they are not well funded. In the largest cities, where the heart of the problem lies, police unions are often extremely powerful, protective of their membership, and resentful of reforms. Overall, judges, juries, and prosecutors are typically very pro-police and many are overtly racist.

The multiplicity of police agencies, estimated at 18,000 strong, is a serious obstacle to reform. Most other western nations have national systems, which extend to budgetary items, rather than having hundreds of autonomous agencies scattered throughout the country. National systems allow for easy implementation of national standards on police practices, unlike the case in the US. But the financing factor is also quite serious. To raise capital, strapped agencies, like that in Ferguson, Missouri, where major civil disturbances occurred after a questionable shooting, often turn to issuing large-scale summonses, even for the most minor infractions. These campaigns poison police–community relations. Standards for hiring or retaining police are also undermined under the fiscal constraints. Many of the police officers charged in shootings, for example, should never have been hired due to their existing checkered pasts. Clearly, the need for adequate distribution of resources across police agencies is substantial and the shortfall contributes to the carnage. There are certain policies that are needed:

1. A national standard: First off, it is clear that a national policy must be established stating the conditions in which police officers may shoot at suspects legally. Such a proposal was introduced by a congressman as early as 2000, though it never passed. This cannot wait. All experts agree on the keen need for such a policy. California recently adopted the first such policy in the nation. From January 2020, California police are no longer permitted to use deadly force when circumstances make a shooting seem “reasonable.” Rather, they will be permitted to shoot only when “necessary.” Such a policy may retain a measure of subjectivity, but it is a necessary step in the right direction.
2. Training in de-escalation: Clearly among the major prevailing topics in the profession is de-escalation. Increasingly popular, the

## AGENDA FOR SOCIAL JUSTICE

technique has had positive results for many agencies that have tried it. Worries that de-escalation might endanger police officers have not been borne out. Implementing a national mandate to increase de-escalation training is imperative.

3. Special prosecutors: Every police shooting case should be assigned a special prosecutor. This would counteract the biases of local district attorneys who have to prosecute police officers with whom they have friendly relations. The extra expenses could be borne by the federal government. Local prosecutors are unlikely to object, since this reform would reduce the inevitable conflicts produced by their loyalty to the police and their commitment to professional standards. Police unions might well object, but it would be difficult for them to argue that only local prosecutors should oversee indictments of their members.
4. The code of silence must be broken. Hotlines for providing anonymous tips, monetary rewards, and positive recognition for those willing to speak up, and real penalties for police perjury, would all help enormously. Though some would resist such measures, few would argue publicly that the code somehow serves the public good. In fact, many police officers would welcome the alleviation it would offer them, since fear of retaliation is the key reason they cooperate with the code.
5. Transparency (more than just cameras): Police cameras must be made available to all police agencies and their use nationally mandated. While they are not foolproof, they have repeatedly provided clarity to contentious descriptions of police–civilian encounters. Footage must also be made public if they are to serve their purpose. Just as urgent is the necessity of a federal mandate stopping police from interfering with civilians recording police–civilian encounters, save where the civilian is truly interfering with the police action.
6. Shooting in cars: Shooting at people in cars who are not clearly endangering anyone should be forbidden. As far back as 1972, New York police banned this practice. In the near half century since the ban, no police officer has ever been seriously hurt by someone in a car. Yet, many innocent passengers have been maimed or killed by police shooting at cars. Many agencies still allow this unjustified practice. It must be stopped.
7. SWAT and militarization: The militarization of the police needs to be reversed. Evidence shows that the war-like weaponry underlying militarization, provided by the federal government, fosters violence, while there are no cases in which the military hardware has saved lives. SWAT raids were initially created for

rare, hostage-holding situations. But, over time, they have been used almost exclusively in drug raids, which typically yield little of law enforcement value. They frequently yield only small stashes of drugs and low level dealers. Many innocents have been needlessly slain in such raids and police officers have occasionally been killed in them. SWAT team raids should either be banned or be severely curtailed and well regulated.

8. Reporting gun drawings: In recent research, it was found that in police departments that have officers report each time they draw their guns, but do not shoot, police–civilian killings were lower than elsewhere. The policy was reportedly well accepted. Hence, it should be mandated.
9. Lone police: Police who encounter suspects while working alone should be required to call for reinforcements or for advice from senior officers before advancing on a suspect. Overall, about half of the shootings target suspects holding guns, but only about one third of lone-officer shootings involve suspects holding guns. Moreover, killings by lone officers are four times as likely to involve unarmed suspects as when officers are grouped. This is a serious overrepresentation and warrants mandating the policy.
10. Other circumstances: When a suspect has no weapon, shootings should be prohibited. At least 100 unnecessary killings in 2015 involved such unarmed suspects. Likewise, suspects armed with weapons other than guns should not be shot. These weapons have little potential for killing police except when the suspect and the officer are in very close proximity. Finally, suspects fleeing on foot should not be shot unless there is credible evidence that the suspect will kill or assault if not stopped.

## **Conclusion**

The problem of police shootings is complex and a wide variety of policy shifts will be necessary to reduce the carnage. A number of recommendations suggested here have been tried and show signs of change and success. Most importantly, de-escalation techniques have been increasingly adopted by police departments, including those of Camden (NJ), Chicago (IL), Dallas (TX), Denver (CO), Los Angeles (CA), Minneapolis (MN), New York City (NY) and Salt Lake City (UT). Dallas, for example, experienced a drop of nearly 20 percent in use-of-force incidents after implementing de-escalation. Salt Lake City went two years without a single shooting after they began their program, and excessive force complaints fell from 65 to 15 in three years after

Camden began their version. Other reforms being tried may also be having a positive impact. In fact, if the current trend holds, preliminary figures suggest that 2019 may produce at least 80–85 fewer police-on-civilian shooting deaths than 2018, a significant and welcome decrease.

### Key Resources

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