Arts & Humanities

Policing the Police

Jeffrey Fagan, a professor of law at Columbia Law School and a professor of epidemiology at the Mailman School of Public Health, is a leading American criminologist who studies policing and race. We asked him to assess the relationship between police and minority communities and suggest how it might be improved.

By
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Mike Stone / Reuters

Mistrust of police in African-American communities seems to be more pronounced than ever. Is it growing?

We all know the names — Eric Garner, Walter Scott, Laquan McDonald, Freddie Gray. The mistrust has exploded into the national consciousness after a series of high-profile deaths, many of them caught on video. But it's always been there. In the 1980s, the General Social Survey found a big gap in trust of the police between

Black people and white people. Further back, the Kerner Commission, which assessed the causes and consequences of the urban riots of the 1960s, found that outbreaks in cities including Newark, Los Angeles, and Detroit were sparked in nearly every case by an incident of police abuse. Deep anger had built up toward the police based on what people in the Black community perceived as historical maltreatment.

What are the major problems in policing today?

There's greater emphasis on pursuing low-level crimes and disorder, using fairly aggressive tactics. People who are suspected of minor crimes are often automatically arrested rather than fined or given a warning. Cities around the country have embraced a model sometimes called "broken windows" policing, and with it a variety of tactics that include "stop and frisk," the theory being that combating low-level offenses prevents more serious crime. Also, the way police interact with citizens can be harsh and disrespectful, and often uses racialized language. These stories are widely shared in the Black community. It's hard to statistically pinpoint the use of force, but certainly the crowd-sourced data we have on police shootings suggests that this has been going on throughout the past decade.

You appeared as an expert witness in *Floyd v. City of New York*, the case that ended the city's controversial "stop and frisk" program. How did that practice begin?

The idea of an investigative stop goes all the way back to what's called the common-law right of inquiry. Police have always had the right to stop someone and say, hello, how are you, what are you doing here? You're not always obligated to answer, but police certainly have the right to ask. In 1968, the US Supreme Court set the legal standard for these stops: police need only be able to articulate a reasonable suspicion that a person has committed or is about to commit a crime. If they have a reasonable suspicion that the person is armed, they can also pat the person down. The practice grew quite a bit in the 1980s during the war on drugs, and in the 1990s it expanded further as police departments adopted broken-windows policing. In short, a tactic that had been used fairly judiciously by police became weaponized, and the brunt of that fell on Black communities. In *Floyd*, the court found the city's program unconstitutional in practice because it disproportionately focused on Blacks and Hispanics, and too often officers lacked the reasonable suspicion that the law

required. In 90 percent of stops, the police came up empty-handed.

In his 2016 campaign, President-elect Donald Trump said that stop and frisk succeeded in New York and should therefore become national policy. Constitutional considerations aside, did the program reduce crime?

The evidence is tenuous. There are studies — including a few I worked on — that suggest that stop and frisk had a very minor effect. But recent research shows that a more selective use of stop and frisk, in which police follow the higher legal standard of probable cause rather than reasonable suspicion, is more likely to deter crime, since more of the people being stopped will actually be criminals. That said, given everything we know empirically, it would certainly be a wrong-headed national policy.

How did the expansion of stop and frisk affect police relations with minority communities?

People who were already suspicious of the police tipped over the edge into complete alienation and cynicism. That has severe consequences for society. Police are heavily dependent on communities to help them investigate crimes. They need citizens to identify witnesses, testify in court, serve on juries, and so forth. The more you alienate a community through harsh policing tactics, the less likely people are to get involved, and that threatens the security of everyone. Listen, there's a reason kids say "Don't snitch": they don't feel the police act in the best interests of the neighborhood. In addition to alienation, we've also observed that young men who have been stopped and treated harshly by the police experience mental-health problems including posttraumatic stress, anxiety, and insomnia.

Many people, particularly members of minorities, believe that police officers are seldom called to account for improper or illegal actions. Is that perception accurate?

Police discipline suffers from a lack of transparency. I suspect that people might have a bit more trust in the police if they were able to see how the officers who they report violated their rights are punished within the department. Also, legal barriers to obtaining personnel records make it impossible to test the bad-apple theory, which holds that a small number of officers commit the bulk of improper acts. And prosecutions are rare, because police work closely with prosecutors. Police also work under the doctrine of "qualified immunity," meaning that they are generally

protected from civil or criminal liability as long as they are acting within the expected conduct of their jobs.

If you were designing the New York Police Department from the ground up, where would you start?

First, I'd reconsider the criteria for recruitment. There's probably a skill set needed for the modern era that not all the members of the current corps have: cognitive skills for discerning risk and suspicion; temperamental skills like the ability to regulate one's conduct and see certain interactions as behavioral problems to be managed rather than personal affronts — skills that would help officers conduct everyday policing in a way that diminishes tension. We need people who are more acutely aware of the law and how it works. I would pay police more and would be more aggressive with firings and promotions.

FBI Director James Comey claimed that a "viral-video effect" is discouraging officers from fighting crime, for fear that they'll be accused of using excessive force. Does the viral-video effect really exist?

I haven't seen any evidence of it. Police shootings have gone up since 2014. If anything, police seem to have become a little more aggressive. In any case, what would it mean to the public if the police did take a step back? New York went through a short-lived experiment in de-policing at the end of 2014 and early 2015 in a protest against Mayor Bill de Blasio's supposed lack of support. The police virtually stopped writing tickets and making arrests for low-level quality-of-life crimes. Total arrests dropped by more than half. Crime rates didn't go up. So even if there were a viral-video effect, it might not embolden bad guys to go out and commit crimes.

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