

THE IMPORTANCE OF POLICING

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This Article argues that, if effectively regulated, policing represents a fundamentally important social institution that advances the community interest in public safety, justice, equality, and the rule of law.

In recent years, a significant and growing body of legal scholarship has called for the shrinking of police responsibilities, the defunding of police budgets, or the complete abolition of local police departments. A countervailing body of scholarly literature has questioned the wisdom of some of these proposals, arguing that they could unintentionally make policing worse or have unintended public safety effects.

This Article enters this debate by affirmatively defending the importance of the institution of policing. It argues that effectively regulated policing is critical to the investigation of harmful criminal behavior, the responses to public safety emergencies, the deterrence of future harmful conduct, the physical protection of historically marginalized communities, and the rule of law.

However, policing can only serve these important functions if it is effectively regulated and accountable to the community it serves. Too often, the failure of policymakers to properly regulate police behavior has led to unaccountable policing agencies that regularly violate the constitutional rights of their constituents, particularly the rights of historically marginalized populations. However, that represents an ongoing regulatory challenge rather than an indictment of the fundamental importance of the institution of policing.

Understanding the importance of policing as a social institution has more than mere academic significance. As some scholars push for a fundamental reimagining of public safety, it is vital for these proposals to understand the value conferred by the institution of policing. Only by understanding the importance of policing can both

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abolitionists and reformers develop solutions that balance public safety and the protection of constitutional rights.

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I. INTRODUCTION

In the wake of the murder of George Floyd,¹ numerous community activists and civil rights leaders pushed policymakers to defund,² reimagine,³

1. Tim Arango et al., *Derek Chauvin Is Found Guilty of Murdering George Floyd*, N.Y. TIMES (June 25, 2021), <https://www.nytimes.com/2021/04/20/us/chauvin-guilty-murder-george-floyd.html> [<https://perma.cc/5R9U-XFHL>] (describing the verdict and explaining how the murder of Mr. Floyd set “off months of protests against the police abuse of Black people”).

2. E.g., Farah Stockman & John Eligon, *Cities Ask if It’s Time to Defund Police and ‘Reimagine’ Public Safety*, N.Y. TIMES (June 8, 2020), <https://www.nytimes.com/2020/06/05/us/defund-police-floyd-protests.html> [<https://perma.cc/83NW-7TWV>] (describing various calls for defunding after the murder of Mr. Floyd); Dionne Searcey, *What Would Efforts to Defund or Disband Police Departments Really Mean?*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/06/08/us/what-does-defund-police-mean.html> [<https://perma.cc/KKE7-PDVR>] (providing a primer on numerous demands to defund police in the summer of 2020 and noting that “[a]cross the country, calls are mounting from some activists and elected officials to defund. . . police departments”).

3. E.g., Petula Dvorak, *Don’t “Defund the Police.” Reimagine the Police.*, WASH. POST (June 11, 2020, 2:03 PM EDT), <https://www.washingtonpost.com/local/dont-defund-the-police->

or abolish police departments.⁴ They argued that the institution of policing is fundamentally broken and cannot be effectively regulated;⁵ decades of reforms have failed.⁶ Ultimately, activists and policymakers alike posit the only way to minimize the harm caused by policing, particularly the harm caused to communities of color and other historically marginalized groups, is to shrink the scope of police responsibilities or eliminate policing altogether.⁷

Following some of the largest protests in American history,⁸ political leaders in numerous large American cities responded. In June of 2020, a seemingly veto-proof majority of the Minneapolis City Council pledged to dismantle and abolish the city's police department.⁹ In August of 2020, the Austin City Council cut their police department's budget by around one-

reimagine-the-police/2020/06/11/9d827cd0-abe6-11ea-94d2-d7bc43b26bf9_story.html [https://perma.cc/MX8E-2HPK] (offering a proposal for "reimagining" public safety); *see also*, e.g., Cheryl Corley et al., *Examples of Reimagining Police Departments That Show Promise*, NAT'L PUB. RADIO (June 12, 2020, 5:03 AM ET), <https://www.npr.org/2020/06/12/875548066/examples-of-re-imagining-police-departments-that-show-promise> [https://perma.cc/8PS8-P6LN] (offering examples of communities that have reimagined policing in some significant way).

4. *See, e.g.*, Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [https://perma.cc/6TV2-VPU8] (supporting a full abolition of American police departments); Diane Goldstein & Jasson Perez, *Do We Need Police?*, NATION (Aug. 11, 2021), <https://www.thenation.com/article/society/police-reform-abolition> [https://perma.cc/HMF2-X8JA] (providing a debate between a supporter of police abolition and a former police officer opposed to abolition).

5. *See, e.g.*, Derecka Purnell & Marbre Stahly-Butts, *The Police Can't Solve the Problem. They Are the Problem.*, N.Y. TIMES (Sept. 26, 2019), <https://www.nytimes.com/2019/09/26/opinion/the-police-cant-solve-the-problem-they-are-the-problem.html> [https://perma.cc/7695-JLKV] ("We must reckon with the reality that the police are part of the problem and stop investing money, power and legitimacy in them.").

6. *See, e.g.*, Robert Klemko & John Sullivan, *The Push to Remake Policing Takes Decades, Only to Begin Again*, WASH. POST (June 10, 2021), <https://www.washingtonpost.com/investigations/interactive/2021/police-reform-failure/> [https://perma.cc/WP95-GABX] (describing the failure of major police reform efforts in numerous cities).

7. *E.g.*, Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, NEW YORKER (May 7, 2021), <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition> [https://perma.cc/F4CR-UYC6] ("The continuation of police abuse has reaffirmed the calls of some activists for an end to policing as we know it; for others, it has confirmed that the institution of policing should be abolished completely.").

8. Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [https://perma.cc/TC53-QPEQ] (estimating that between fifteen and twenty-six million Americans participated in these protests).

9. Dionne Searcey & John Eligon, *Minneapolis Will Dismantle Its Police Force, Council Members Pledge*, N.Y. TIMES (June 7, 2020), <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html> [https://perma.cc/8ZE8-XVVF].

third.¹⁰ And that same summer, Oakland city leaders pledged to cut the police budget roughly in half.¹¹ Indeed, around the end of the summer in 2020, media outlets touted the “historic victories” won by the police defunding and abolition movement across “a dozen municipal governments.”¹²

A few years later, the political conversation shifted substantially, as countervailing concerns about public safety¹³ led many cities to backtrack on their defunding or abolition promises.¹⁴ Minneapolis voters in 2021 rejected a ballot initiative that would have abolished the Minneapolis Police Department.¹⁵ By June 2023, Austin city leaders gave their police department its largest budget in city history.¹⁶ Meanwhile, in response to rising homicide rates and a series of apparent hate crimes targeting Asian Americans in Oakland, city leaders restored cuts to its police department and pledged additional funding increases in the future.¹⁷ As one media account put it, only

10. Meena Venkataramanan, *Austin City Council Cuts Police Department Budget by One-Third, Mainly Through Reorganizing Some Duties out from Law Enforcement Oversight*, TEX. TRIB. (Aug. 13, 2020, 6:00 PM CST), <https://www.texastribune.org/2020/08/13/austin-city-council-cut-police-budget-defund/> [<https://perma.cc/LE8M-GQ4Q>].

11. Rachel Swan, *Oakland Pledged to Cut Its Police Budget in Half. Then Homicides Surged*, S.F. CHRON. (Nov. 2, 2020, 8:16 PM), <https://www.sfchronicle.com/crime/article/Oakland-pledged-to-cut-its-police-budget-in-half-15689857.php> [<https://perma.cc/S3FZ-5KF>] (“Heeding the urgency of the Black Lives Matter movement, Oakland leaders committed over the summer to ultimately slash the Police Department’s budget in half, by about \$150 million.”).

12. Sam Levin, *The Movement to Defund Police Has Won Historic Victories Across the US. What’s Next?*, THE GUARDIAN (Aug. 15, 2020, 6:00 AM EDT), <https://www.theguardian.com/us-news/2020/aug/15/defund-police-movement-us-victories-wh-at-next> [<https://perma.cc/M7QL-M54H>].

13. See, e.g., Ernesto Londoño, *How ‘Defund the Police’ Failed*, N.Y. TIMES (June 16, 2023), <https://www.nytimes.com/2023/06/16/us/defund-police-minneapolis.html> [<https://perma.cc/BU9J-PTGA>] (describing how many of these efforts have “largely been abandoned,” and further stating, “[a]s crime surged during the early years of the coronavirus pandemic and officers left the police force in droves, Republicans seized on the debate to paint Democrats as being recklessly soft on crime”).

14. See J. David Goodman, *A Year After ‘Defund,’ Police Departments Get Their Money Back*, N.Y. TIMES (Oct. 10, 2021), <https://www.nytimes.com/2021/10/10/us/dallas-police-defund.html> [<https://perma.cc/7TXW-VH2L>] (“In cities across America, police departments are getting their money back.”).

15. Martin Kaste, *Minneapolis Voters Reject a Measure to Replace the City’s Police Department*, NAT’L PUB. RADIO (Nov. 3, 2021, 12:25 AM ET), <https://www.npr.org/2021/11/02/1051617581/minneapolis-police-vote> [<https://perma.cc/6QSV-NDLB>].

16. Paige Hubbard, *Proposed City of Austin Budget Gives APD Its Largest Allotment Ever*, CBS AUSTIN (July 20, 2023, 11:09 PM), <https://cbsaustin.com/news/local/proposed-city-of-austin-budget-gives-apd-its-largest-allotment-ever> [<https://perma.cc/WL8E-P95N>] (allocating a budget of \$476.5 million to Austin Police Department in 2023).

17. Zusha Elinson et al., *Cities Reverse Defunding the Police Amid Rising Crime*, WALL ST. J. (May 26, 2021, 5:58 PM ET), <https://www.wsj.com/articles/cities-reverse-defunding-the-police-amid-rising-crime-11622066307> [<https://perma.cc/2EY2-Z6GY>] (“After attacks on Asian-Americans and a rise in homicides in Oakland, Calif., city lawmakers in April restored

a few years after many policymakers made sweeping promises to defund or reimagine policing, many elected leaders, including leading Black mayors of some of the nation's largest cities, called for "refunding the police" to "crack down on lawlessness."¹⁸

This policy debate at the local level mirrors broader scholarly disagreement over the efficacy of police defunding and abolition.¹⁹ In recent years, a significant and growing body of legal scholarship has called for the shrinking of police responsibilities,²⁰ the defunding of police budgets,²¹ or the complete abolition of local police departments.²² A small body of scholarly literature has questioned the wisdom of these proposals, arguing that they

\$3.3 million of the \$29 million in police cuts, and the mayor is now proposing to increase the department's budget by \$24 million." It is also worth noting that other restoration efforts emerged in other large American cities like Baltimore, Los Angeles, and New York. *Id.*

18. Alex Seitz-Wald, *How Democrats Went from Defund to Refund the Police*, NBC NEWS (Feb. 6, 2022, 4:30 AM EST), <https://www.nbcnews.com/politics/politics-news/democrat-s-went-defund-refund-police-rcna14796> [<https://perma.cc/GXT8-59EN>].

19. For a more detailed analysis across numerous cities of how cities have pledged to defund but often failed to deliver on this promise long-term, see Fola Akinnibi et al., *Cities Say They Want to Defund the Police. Their Budgets Say Otherwise.*, BLOOMBERG (Jan. 12, 2021), <https://www.bloomberg.com/graphics/2021-city-budget-police-funding> [<https://perma.cc/UMD8-VVRU>].

20. See generally Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1637 (2021) (arguing for reductions or elimination of policing of disorderly conduct offenses); Rachel Moran, *Doing Away with Disorderly Conduct*, 63 B.C. L. REV. 65 (2022) (arguing for police to do away with enforcement of disorderly conduct offenses); Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471 (2021) (arguing for the removal of police from the enforcement of traffic codes).

21. See generally Taleed El-Sabawi & Jennifer J. Carroll, *A Model for Defunding: An Evidence-Based Statute for Behavioral Health Crisis Response*, 94 TEMP. L. REV. 1 (2021) (supporting defunding police and reinvesting resources in non-police responses to mental health crises); Rick Su et al., *Defunding Police Agencies*, 71 EMORY L.J. 1197 (2022) (criticizing anti-defunding bills where states have attempted to prevent localities from reducing police budgets and discussing the troubling manner that localities determine police budgets); Jessica M. Eaglin, *To "Defund" the Police*, 73 STAN. L. REV. ONLINE 120 (2021) (discussing some of the confusion surrounding the use of the phrase "defund" the police and recognizing a socially contextualized meaning of the phrase).

22. See generally Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020) (calling for broader scholarly efforts to diminish the scope and scale of policing; taking more seriously the call to dismantle the institutions of police and prisons); Eaglin, *supra* note 21 (summarizing different typologies of defunding approaches); ALEX S. VITALE, *THE END OF POLICING* (2017) (supporting the abolishment of policing as we know it); Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199 (2022) (reviewing Mariame Kaba's book and explaining how the abolition framework can influence legal scholarship); Meghan G. McDowell & Luis A. Fernandez, *'Disband, Disempower, and Disarm': Amplifying the Theory and Practice of Police Abolition*, 26 CRITICAL CRIMINOLOGY 373 (2018) (supporting and amplifying calls for police abolition).

could unintentionally make policing worse or have grave public safety effects.²³

Throughout this debate, surprisingly little academic literature has comprehensively explained the fundamental importance of policing as a social institution. This Article argues that, if effectively regulated, policing represents a critically important social institution that can advance the community interest in public safety, justice, equality, and the rule of law. Policing presently serves at least five valuable functions in American society. First, effective policing supports the investigation of harmful conduct and facilitates public accountability for community harm through the justice system.²⁴ Second, police serve a vital role as frontline emergency responders to situations involving imminent risk of physical injury or death.²⁵ Third, effective policing deters socially harmful behavior that will exist in virtually any society.²⁶ Fourth, police agencies are currently the primary agents for enforcing traffic laws in the United States—a role that could theoretically diminish in the future but, at present, remains extensively intertwined with the institution of policing.²⁷ And fifth, law enforcement is integral to the rule of law, as well as the protection of historically marginalized groups.²⁸

Policing can only serve these important functions if it is effectively regulated and accountable to the community it serves. Too often, the failure of policymakers to properly regulate police behavior has led to unaccountable policing agencies that regularly violate the constitutional rights of their constituents, particularly the rights of historically marginalized populations.²⁹ However, that represents an ongoing regulatory challenge rather than an indictment of the fundamental importance of the institution of policing. Understanding the importance of policing as a social institution has more than

23. See generally Stephen Rushin & Roger Michalski, *Police Funding*, 72 FLA. L. REV. 277 (2020) (arguing that reducing police funding may have unintended harmful consequences, including reducing office safety, increasing crime, impairing internal discipline, harming recruitment and retention of officers, incentivizing other forms of harmful police conduct, and moving the delivery of public safety to the private market); Roger Michalski & Stephen Rushin, *Federal (De)Funding of Local Police*, 110 GEO. L.J. ONLINE 54 (2021) (breaking down the delivery of funding from the federal government to local police departments in more detail and concluding that defunding of police would require collective action by thousands of individual local law enforcement agencies); Stephen Rushin, *The Challenges of Police Defunding and the Reimagining of Public Safety*, 69 WAYNE L. REV. 55 (2023) (outlining some difficulties communities will face in trying to defund, abolish, or reimagine policing).

24. See *infra* Part II.A.

25. See *infra* Part II.B.

26. See *infra* Part II.C.

27. See *infra* Part II.D.

28. See *infra* Part II.E.

29. See Brandon Hasbrouck, *Unshielded: How the Police Can Become Touchable*, 137 HARV. L. REV. 895 (2024) (reviewing JOANNA SCHWARTZ, *SHIELDED: HOW THE POLICE BECAME UNTOUCHABLE* (2023)).

mere academic significance. As some scholars push for a fundamental reimagination of public safety, it is vital for these proposals to understand the value conferred by the institution of policing. Only by understanding the importance of policing can both abolitionists and reformers develop solutions that balance public safety and the protection of constitutional rights.

This Article proceeds in three parts. Part I provides a background on the characteristics of modern policing in the United States. This part provides a brief demographic breakdown of American police departments and describes the scope of responsibilities that police officers currently fill across the country. Part II considers the important roles that police departments serve. Then, Part III walks through some of the implications of these arguments for the ongoing debates about defunding, abolition, and the reimagination of public safety.

II. MODERN AMERICAN POLICE

Some of the first American police departments, as we understand them today, originated in Boston, Massachusetts, and New York, New York.³⁰ As Gary Potter has argued, once established, these early police departments have “been intimately tied not to the problem of crime, but to exigencies and demands of the American political economy.”³¹ Early American police departments handled a wide range of social responsibilities, often far removed from public safety. “Along with arresting offenders, the police ... returned lost children by the thousands, shot stray dogs, enforced sanitation laws, inspected boilers, took annual censuses, and performed myriad other small tasks.”³² Police became both “city servants” and “crime-control officers.”³³

30. William Francis Walsh & Jean-Paul Brodeur, *Early Police in the United States*, ENCYC. BRITANNICA (last updated Aug. 28, 2024), <https://www.britannica.com/topic/police/Early-police-in-the-United-States> [https://perma.cc/8LC7-BFGF]. It is worth noting that some abolitionists have argued that policing is irredeemably rooted in white supremacy and slave patrols in the American South. See Spencer Bokart-Lindell, *Three Reasons This Time Is Different from Ferguson*, N.Y. TIMES (June 4, 2020), <https://www.nytimes.com/2020/06/04/opinion/george-floyd-ferguson.html> [https://perma.cc/YSY4-UZCU] (“[M]odern policing evolved in the South and in certain parts of the Northeast from slave patrols, which deputized white Americans to police enslaved people, limit their movement, quash insurrections and execute black people who resisted capture.”). No doubt, in the American South, prior to the Civil War, slave patrols were an early form of policing in the United States. However, the modern American institution of policing has more complicated origins.

31. Gary Potter, *The History of Policing in the United States*, ECU ONLINE (2013), <https://onenation502.org/wp-content/uploads/2020/08/eku-the-history-of-policing-in-use.pdf> [https://perma.cc/H67Q-7XM9].

32. Eric H. Monkkenon, *History of Urban Police*, 15 CRIME & JUST. 547, 554 (1992).

33. *Id.*

The institution of American policing has also changed substantially over the centuries. As Professor Franklin E. Zimring explained, for much of early American history, police departments were “often close to ... hermetically sealed organization[s] in the dictionary meaning” in that they were “almost impervious to outside influences.”³⁴ But this has changed as departments professionalized in the mid-to-late twentieth century.³⁵ This professionalization process has been assisted by a number of major regulatory changes that occurred around this time.

First, in the mid-twentieth century, the U.S. Supreme Court handed down several pivotal criminal procedure rulings that created incentives for police departments to comply with the Constitution.³⁶ In 1961, the Supreme Court held in *Mapp v. Ohio* that evidence obtained by police in violation of the Constitution should generally be inadmissible in state criminal courts.³⁷ This ruling meant that failures by police to follow the Fourth and Fifth Amendments could result in trial court judges denying the admission of evidence procured from these constitutional violations.³⁸ Theoretically, this creates incentives for police to comply with the Constitution when conducting searches, seizures, or custodial interrogations.³⁹ During this same time, the Supreme Court also handed down transformational regulations of police interrogation procedures in *Miranda v. Arizona*,⁴⁰ as well as numerous other criminal procedure cases that sought to more heavily regulate police conduct.⁴¹ At least some studies suggest that these judicial attempts to regulate

34. FRANKLIN E. ZIMRING, *THE CITY THAT BECAME SAFE: NEW YORK'S LESSONS FOR URBAN CRIME AND ITS CONTROL* 103 (2011).

35. STEPHEN RUSHIN, *FEDERAL INTERVENTION IN AMERICAN POLICE DEPARTMENTS* 40 (2017) (“During the mid-twentieth century, policing went through a period of professionalization that increased cooperation and coordination between local agencies.”).

36. *See Mapp v. Ohio*, 367 U.S. 643 (1961); *Miranda v. Arizona*, 384 U.S. 436 (1966).

37. 367 U.S. at 655.

38. *See id.* at 657–60.

39. *See* Tonja Jacobi, *The Law and Economics of the Exclusionary Rule*, 87 NOTRE DAME L. REV. 585, 588 (2013) (“[E]xclusion is a penalty intended to deter police from future violations . . .”).

40. 384 U.S. at 478–79 (requiring police officers, under the Fifth Amendment, to issue four prophylactic warnings to any suspect undergoing custodial interrogation).

41. *See, e.g., Edwards v. Arizona*, 451 U.S. 477, 484–85 (1981) (requiring police to cease interrogation once the accused expresses a desire to have counsel present during a custodial interrogation unless and until counsel has been made available or accused initiates further communication); *Tennessee v. Garner*, 471 U.S. 1, 11 (1985) (limiting the use of deadly force in apprehending a suspect to certain circumstances where police have probable cause to believe suspect is a threat of serious physical harm, either to the officer or others).

police conduct likely contributed to at least some level of reform across local police departments.⁴²

Second, in the mid-twentieth century, the Supreme Court also resurrected the previously dormant federal statute that empowered litigants to bring lawsuits against police officers and their employers for violations of the Constitution.⁴³ In *Monroe v. Pape*, the Court held that an individual could recover under 42 U.S.C. § 1983 for violations of constitutional rights committed by Chicago police acting in their capacity as police officers, even if their conduct was not formally permitted by local law or policy.⁴⁴ In the years that followed, the Court further expanded opportunities for private litigants to bring suit against not just police officers that violate their constitutional rights, but also municipalities, in the event the municipality caused the constitutional violation through their deliberate indifference.⁴⁵ These rulings created new financial liabilities for departments that failed to adequately regulate officer behavior. A body of empirical evidence has raised questions about the size of the deterrent effect of this kind of private litigation,

42. See, e.g., William C. Heffernan & Richard W. Lovely, *Evaluating the Fourth Amendment Exclusionary Rule: The Problem of Police Compliance with the Law*, 24 U. MICH. J.L. REFORM 311, 337–38 (1991) (“The most significant relationship was that between in-service training and knowledge of the law. As has been often noted, *Mapp* led to an expansion in police training programs”); Myron W. Orfield, Jr., *The Exclusionary Rule and Deterrence: An Empirical Study of Chicago Narcotics Officers*, 54 U. CHI. L. REV. 1016, 1054 (1987) (interviewing officers about the effect of the Exclusionary Rule and finding that “adherence to the [F]ourth [A]mendment by individual officers, and the institutional reforms reinforcing that adherence, have been and are likely to remain tied to the exclusionary rule”); Bradley C. Canon, *Is the Exclusionary Rule in Failing Health? Some New Data and a Plea Against a Precipitous Conclusion*, 62 KY. L.J. 681, 714, 726 (1974) (arguing, in part, that “there clearly has been a significant increase in the use of search warrants by police in comparison to the period prior to *Mapp*” and “a good many of the findings support a positive inference—that the rule goes far toward fulfilling its purpose”). *But cf.* Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 675 (1996) (arguing that “the requirement of warnings undoubtedly causes some suspects to avoid cooperating with their interrogators, police have successfully adapted their practices to the legal requirements of *Miranda* by using conditioning, deemphasizing, and persuasive strategies to orchestrate consent to custodial questioning in most cases”).

43. See 42 U.S.C. § 1983.

44. See 365 U.S. 167 (1961).

45. See *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978) (“Our analysis of the legislative history of the Civil Rights Act of 1871 compels the conclusion that Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies.”) (emphasis in original); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989) (“We hold today that the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.”).

in part because of municipal indemnification policies,⁴⁶ budgeting practices,⁴⁷ the qualified immunity doctrine,⁴⁸ municipal insurance coverage,⁴⁹ and the outsourcing of policy development to private third parties.⁵⁰ Nonetheless, there is evidence to suggest that, while far from perfect, section 1983 contributed to some meaningful reform and professionalization among American police.⁵¹

Third, by the late twentieth century, Congress enacted new, more expansive regulations of local police departments. In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, which included a provision giving the U.S. Attorney General the authority to seek equitable relief against police departments engaged in a pattern or practice of unlawful misconduct.⁵² Congress passed this measure as a response to the beating of

46. See, e.g., Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 936 (2014) (“Between 2006 and 2011, in forty-four of the seventy largest law enforcement agencies across the country, officers paid just .02% of the dollars awarded to plaintiffs in police misconduct suits.”).

47. See, e.g., Joanna C. Schwartz, *How Governments Pay: Lawsuits, Budgets, and Police Reform*, 63 UCLA L. REV. 1144, 1192 (2016) (“My study reveals, however, that having agencies pay money out of their budgets toward settlements and judgments does not necessarily impose a financial burden on those agencies.”).

48. See, e.g., William Baude, *Is Qualified Immunity Unlawful?*, 106 CALIF. L. REV. 45, 44, 88 (2018) (noting that “[t]he doctrine of qualified immunity operates as an unwritten defense to civil rights lawsuits brought under 42 U.S.C. § 1983,” and ultimately arguing that “the doctrine lacks legal justification, and the Court’s justifications are unpersuasive”). See generally Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2 (2017) (documenting how qualified immunity affects courts’ decision-making process and ultimately concluding that this judicially created doctrine fails to serve its intended purpose).

49. For a comprehensive review of this topic, see generally John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV. 1539 (2017).

50. See generally Ingrid V. Eagly & Joanna C. Schwartz, *Lexipol: The Privatization of Police Policymaking*, 96 TEX. L. REV. 891 (2018) (documenting the rise of Lexipol policies in American police departments and assessing the risks that accompany development).

51. See, e.g., Lynda G. Dodd, *The Rights Revolution in the Age of Obama and Ferguson: Policing, the Rule of Law, and the Elusive Quest for Accountability*, 13 PERSP. ON POL. 657, 660 (2015) (“As Charles Epp has detailed so superbly in *Making Rights Real*, this rise in litigation under Section 1983 created pressure for professional reforms in police departments across the country during the 1980s, and, he argues, this growth in ‘legalized accountability’ helped significantly reduce police use of force in the United States.”) (citing CHARLES R. EPP, *MAKING RIGHTS REAL: ACTIVISTS, BUREAUCRATS, AND THE CREATION OF THE LEGALISTIC STATE* (2009)).

52. See Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3191 (2014) (“[I]n an effort to address the need for mandatory reform in American police departments, Congress passed 42 U.S.C. § 14141 as part of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA),” giving the Attorney General the “authority to seek injunctive and equitable relief to force police agencies to accept reforms aimed at misconduct.”).

Rodney King,⁵³ and congressional conclusions that existing mechanisms like section 1983 failed to give private litigants adequate opportunities to seek equitable relief against police departments after *Los Angeles v. Lyons*.⁵⁴ In practice, this has resulted in the Department of Justice conducting numerous formal investigations across the country resulting in dozens of settlement agreements to overhaul policing practices in cities like Los Angeles, Washington, D.C., Seattle, New Orleans, Cincinnati, Detroit, Minneapolis, and Pittsburgh, among other cities.⁵⁵ While resource constraints⁵⁶ and politics⁵⁷ limit the deterrent effect of this measure, it has no doubt had a considerable impact in promoting police reform in agencies across the country.⁵⁸

Admittedly, this only addresses some of the significant regulatory changes that have occurred in the last century in American policing. For much of American history, police were not permitted to be part of labor unions.⁵⁹ But starting around the mid-twentieth century, police departments across the country began to unionize in large numbers,⁶⁰ and today the majority of American police are part of unions that often negotiate with municipalities on matters like wages, benefits, and other terms or conditions of employment.⁶¹

53. See *id.* at 3209 (“Many writers claim that the Rodney King incident ignited concerns about widespread misconduct in the LAPD and built political support for the passage of § 14141.”).

54. See *id.* at 3206–07; *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (“Absent a sufficient likelihood that he will again be wronged in a similar way, Lyons is no more entitled to an injunction than any other citizen of Los Angeles . . .”).

55. See Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1343, 1347 (2015) (“[M]any of the nation’s largest police departments including Los Angeles, Detroit, Seattle, Albuquerque, Newark, Pittsburgh, Cincinnati, Washington D.C., and New Orleans have undergone or are currently undergoing this sort of [structural reform litigation] . . .”).

56. See *id.* at 1415 (“Another potential drawback of § 14141 is that the federal government simply lacks the resources necessary for aggressive enforcement.”).

57. See Rushin, *supra* note 52, at 3235–36 (describing this phenomenon as “political spillover”).

58. See David L. Douglas, *Department of Justice Consent Decrees as the Foundation for Community-Initiated Collaborative Police Reform*, 20 POLICE Q. 322, 322, 326 (2017) (arguing that section 14141 consent decrees “constitute a compendium of best practices for constitutional, effective, community-oriented policing,” and emphasizing the reforms achieved in large cities like New Orleans, Baltimore, and Cleveland).

59. See Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 734–36 (2017) (providing a comprehensive summary of the history of police unions, including a description of the limited unionization in the past).

60. See *id.* at 736 (“Unions finally succeeded in gaining a lasting foothold in American police departments in the late 1960’s . . .”).

61. See also Stephen Rushin, *Police Arbitration*, 74 VAND. L. REV. 1023, 1037 (2021) (“Roughly two-thirds of American police officers are part of labor unions that bargain collectively with their employers over wages, benefits, and other conditions of employment.”).

Undoubtedly, American policing underwent considerable transformation and professionalization throughout the twentieth century.

While more professionalized than in the past, the modern institution of policing remains highly decentralized across thousands of largely local police agencies. Based on the most recent census of American law enforcement agencies conducted by the Bureau of Justice Statistics, there are approximately 17,541 state and local police agencies that employ around 787,565 sworn law enforcement officers across the country.⁶² The majority of these officers work in the nation's 11,824 municipal police departments, mostly in small and mid-sized agencies that employ under 500 officers.⁶³ While the number of sworn officers has increased slightly over the last decade,⁶⁴ this increase has failed to keep up with population growth. Over the last decade, the number of sworn police officers per 100,000 residents has dropped from 251 to 241.⁶⁵ Many of these are full-time officers, although a significant number of smaller departments employ large numbers of part-time officers.⁶⁶

Much like their eighteenth and nineteenth century predecessors, modern police departments take on a wide range of responsibilities. An analysis by the *New York Times* from 2020 attempted to understand how police in New Orleans, Montgomery County, Maryland, and Sacramento allocate their time.⁶⁷ It found that these officers spent only around 4% of their time in aggregate responding to violent crimes, as compared to around 29%-31% responding to other crimes, including property crimes.⁶⁸ These officers spent anywhere from 7%-18% of their time proactively patrolling their communities, and anywhere from 13%-19% of their aggregate time enforcing traffic code.⁶⁹ Thus, it would be fair to say that police today do far more than merely respond to public safety emergencies and crimes of violence. Police

62. ANDREA M. GARDNER & KEVIN M. SCOTT, BUREAU JUST. STAT., NCJ 302187, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2018—STATISTICAL TABLES 1 (Oct. 2022).

63. *See id.* at 4, 8 (providing in Table 1 a breakdown of police employees by agency type and showing in Table 4 that around 62% of all sworn officers work in agencies that employ fewer than 500 officers).

64. *See id.* at 1 (showing these statistics in Figure 1).

65. *Id.* at 7 (showing these statistics in Figure 2).

66. *See* Rushin & Michalski, *supra* note 23, at 294–96 (providing detailed data on the number of part-time officers employed by many American police departments and noting the geographical distribution of part-time officers in smaller or more rural communities).

67. Jeff Asher & Ben Horwitz, *How Do the Police Actually Spend Their Time?*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html> [<https://perma.cc/RAT4-ZKKA>].

68. *Id.*

69. *Id.*

also enforce traffic code, respond to some mental health emergencies, enforce property laws, respond to juvenile delinquency, and much more.

In part because police take on such varied roles in modern society, most large police departments serving communities have specialized units or groups of officers tasked with carrying out specialized tasks.⁷⁰ Most police departments serving communities with at least 100,000 residents have specialized units for responding to or investigating sexual assaults, mental health crises or interventions, child abuse or endangerment, domestic violence, gangs, terrorism, juvenile crimes, human trafficking, and bias or hate crimes, among other types of specialized public safety circumstances.⁷¹ At the same time, even though police do not exclusively respond to serious crimes, it is important to recognize that a substantial number of sworn law enforcement officers in the United States are dedicated primarily to the investigation and clearing of serious crimes. In total, somewhere between 11%-15% of all full-time sworn police officers at the state and local level work as detectives, depending on the size of the agency.⁷²

Much as the scope of policing responsibilities has changed over the decades, so too has the demographic composition of police departments. The racial composition of American policing has also gradually changed over time. In recent years, the percentage of white police officers has steadily declined, falling from 78.5% in 1997 to only 68.6% in 2020.⁷³ The number of Black officers has held steady around 12% for decades, while the percentage of Hispanic officers has steadily increased from around 8% in 1997 to over 14% in 2020.⁷⁴ This means that as of 2020, around one in three officers in the United States is Black, Hispanic, or identifies as part of another non-white racial group.⁷⁵ The percentage of women officers has slowly increased in recent years, going from around 10% in 1997 to nearly 14% in 2020.⁷⁶

Admittedly, this only provides a *very* brief history of the evolution of policing in the United States. Entire articles could be, and have been, written on the topic.⁷⁷ Since this Article is focused primarily on the importance of policing in modern America, a limited background is necessary—although it

70. See Colby Dolly et al, *Considerations for Specialized Units*, NAT'L POLICING INST. (2024), <https://www.policinginstitute.org/wp-content/uploads/2024/01/Specialized-Units-COP-S-and-NPI.pdf> [<https://perma.cc/2X93-ZMEE>].

71. SEAN E. GOODISON, BUR. JUST. STAT., NCJ 305187, LOCAL POLICE DEPARTMENTS PERSONNEL 2020 12 (NOV. 2022).

72. See *id.* at 10.

73. *Id.* at 5.

74. *Id.*

75. *Id.*

76. *Id.* at 4.

77. See, e.g., Edward A. Flynn, *Miranda and the Evolution of Policing*, 10 HARV. L. & POL'Y REV. 101 (2016).

just scratches the surface of the long and winding history of policing in the United States.

III. IMPORTANCE OF POLICING

This Part identifies five critical functions served by police. First, police play a vital role in investigating, solving, and clearing hundreds of thousands of crimes each year, including a substantial number of violent crimes like homicides, rapes, robberies, and aggravated assaults. In doing so, police provide prosecutors with the evidence necessary for criminal charges. Without someone taking on this important investigative function, the system could not secure justice for crime victims. Second, police act as first responders to thousands of dangerous public safety emergencies. In a nation with more guns than people⁷⁸ and constitutional limits on firearm regulations,⁷⁹ these types of public safety emergencies are more common in the United States than in some other developed countries. Without armed police to respond to these kinds of public safety circumstances, no comparable arm of the government could adequately protect vulnerable members of the public. Third, a growing body of empirical evidence has demonstrated a link between certain police tactics and the reduction of crime. While policing is, by no means, the only variable that influences crime rates, the empirical evidence strongly suggests that some policing tactics may disrupt situational incentives of would-be offenders and reduce (rather than merely displace) crime.⁸⁰ Fourth, police are currently integral to the enforcement of traffic codes in the United States. Without enforcement of these traffic laws, the empirical evidence suggests that the United States may experience even higher rates of automobile accidents, injuries, and deaths.⁸¹ And finally, this

78. Nicholas Kristof, Opinion, *A Smarter Way to Reduce Gun Deaths*, N.Y. TIMES (Oct. 26, 2023), <https://www.nytimes.com/2023/01/24/opinion/gun-death-health.html> [<https://perma.cc/VP78-8JTA>] (referring to the United States as “a country that already has more guns than people”).

79. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008) (holding unconstitutional under the Second Amendment a District of Columbia ban on possessing an assembled and armed handgun inside of a home without the presence of a trigger locking mechanism); *McDonald v. City of Chi.*, 561 U.S. 742 (2010) (holding generally that the Second Amendment was incorporated through the Fourteenth Amendment and similarly prevented states and localities from violating the right to keep and bear arms).

80. See Anthony A. Braga et al., *Focused Deterrence Strategies and Crime Control: An Updated Systematic Review and Meta-Analysis of the Empirical Evidence*, 17 CRIMINOLOGY & PUB. POL’Y 205, 208–09 (2018) (“The available empirical evidence suggests [focused deterrence police] strategies generate noteworthy violence reduction impacts and should be part of a broader portfolio of crime reduction strategies.”) [hereinafter *Focused Deterrence*].

81. See Stefan Bauernschuster & Ramona Rekers, *Speed Limit Enforcement and Road Safety*, 210 J. PUB. ECON., Apr. 2022, at 11.

Part concludes by arguing that these various and important functions of American police make them a necessary component of any democratic society dedicated to the rule of law.

Before discussing these various functions of policing, it is important to acknowledge the limits of these claims. This Part does not claim that policing is the *only* institution that could provide the benefits discussed below. For example, just as there is evidence that certain police tactics can reduce crime, so too there is evidence that other social interventions may similarly help reduce crime.⁸² Further, while police are currently responsible for the bulk of traffic enforcement in the United States, we could imagine other non-police entities carrying out some of these responsibilities in a manner that generates some of the same public safety benefits.⁸³ But as discussed in more detail in the subparts that follow, many of the benefits currently derived from policing may be difficult to replicate without some law enforcement agency. This underscores the fundamental importance of policing to modern American society—and the significant hurdles facing police abolitionists.

A. *Investigative Function*

To begin with, police officers play a critical role in investigating crimes, identifying suspects, and facilitating criminal prosecutions. Around 75% of all officers in large and mid-sized police departments have some sort of investigative capabilities.⁸⁴ Admittedly, some recent studies have persuasively demonstrated that police take on numerous tasks, including some largely unrelated to their role as first responders and investigators of criminal behavior.⁸⁵

Nevertheless, it is simultaneously true that police departments across the country “spend a significant portion of their budgets on investigative activities, whether those activities occur within a specialized detective’s unit or amongst officers carrying out investigative activities in their regular patrol

82. See, e.g., Lauren J. Krivo, *Reducing Crime Through Community Investment: Can We Make It Work?*, 13 CRIMINOLOGY & PUB. POL’Y 189, 189–90 (2014) (stating “[t]hese basic views about the sources of neighborhood crime pose a serious problem for developing policies to reduce crime because they suggest that solutions rest in resolving intractable problems such as poverty and economic disadvantage” and discussing research on non-police interventions to reduce rates of community crime).

83. See generally Woods, *supra* note 20 (providing a detailed defense of removing police from some types of traffic enforcement).

84. Heather Prince et al., *Effective Police Investigative Practices: An Evidence-Assessment of the Research*, 44 POLICING: INT’L J. 683, 683 (2021) (saying this statistic applies to departments with 100 or more officers).

85. See Asher & Horwitz, *supra* note 67 (showing how police spend their time across a handful of agencies that provide this kind of information).

duties.”⁸⁶ In doing so, police departments clear hundreds of thousands of criminal offenses each year. In 2021, there were 769,182 violent crime incidents and 904,447 violent offenses reported in the United States by 12,939 law enforcement agencies that submitted National Incident-Based Reporting System (NIBRS) data, covering 70% of the total population.⁸⁷ These numbers included around 104,573 rape incidents, 133,516 robbery incidents, 15,004 homicide incidents, and 516,089 aggravated assault incidents.⁸⁸ During this same year, these same reporting agencies completed around 251,616 arrests for aggravated assault, 33,945 arrests for robbery, 17,763 arrests for rape, and 8,989 for murder.⁸⁹

While clearance rates by police may have declined for some crime categories over recent decades,⁹⁰ the best data suggests that police continue to clear most murders and non-negligent homicides, around one-third of all reported rapes and robberies, and about one-half of aggravated assaults.⁹¹ This means that, in the aggregate, police contribute to the identification of hundreds of thousands of perpetrators of violent crimes every year through clearing around 500,000 violent crimes and over one million property crimes.⁹² To the extent that society maintains a vital interest in identifying perpetrators of serious criminal offenses, incapacitating those that present a high risk of danger to society,⁹³ rehabilitating individuals who have committed criminal

86. Prince et al., *supra* note 84.

87. *National Incident-Based Reporting System (NIBRS) Details Reported in the United States*, FED. BUREAU OF INVEST. CRIME DATA EXPLORER, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> [<https://perma.cc/HV7L-UXFH>] (select “2021” from “Year Select”).

88. *Id.* (select options from “Crime Select” dropdown).

89. *Arrest Offense Counts in the United States*, FED. BUREAU OF INVEST. CRIME DATA EXPLORER, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest> (select “2021” from “Year Select” dropdown).

90. See Philip J. Cook & Ashley Mancik, *The Sixty-Year Trajectory of Homicide Clearance Rates: Toward a Better Understanding of the Great Decline*, 7 ANN. REV. CRIMINOLOGY 59, 64–65 (2024) (showing in Figure 1 and Tables 1 and 2 the significant decline in homicide clearance rates reported by American law enforcement agencies between the 1960s and 2020). *But cf.* Thomas L. Scott et al., *Variability of Crime Clearance Among Police Agencies*, 22 POLICE Q. 82, 83–84 (2019) (demonstrating the long-term stability in some categories of clearance rates).

91. See *Percent of Offenses Cleared by Arrest or Exceptional Means*, FED. BUREAU OF INVEST. UNIF. CRIME REPS. (2019), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-25> [<https://perma.cc/HB4W-97F7>] (showing the clearance rate, as an example, in 2019 of 61.4% for murder and nonnegligent manslaughter, 32.9% for rape, 30.5% for robbery, and 52.3% for aggravated assaults).

92. See *id.* (showing that 45.5% of the estimated 1,105,563 violent crimes and 17.2% of the estimated 6,203,201 property crimes were cleared by arrest or exceptional means in 2019).

93. See generally Steven Shavell, *A Model of Optimal Incapacitation*, 77 AM. ECON. REV. 107 (1987) (noting “[o]ne of the functions of the criminal sanctions of imprisonment . . .

acts,⁹⁴ advancing society's interest in retribution,⁹⁵ and deterring future similar wrongdoing,⁹⁶ police can help advance these objectives.

Further, the comparatively high rates of crime in the United States, particularly violent crimes like homicide, make this investigative function critical. As of 2015, the U.S. homicide rate was around seven times higher than other high-income countries,⁹⁷ with firearm homicide rates considerably higher at around twenty-five times larger than peer countries across the globe as of 2010.⁹⁸ Other crime rates are similarly higher in the United States as compared to other peer countries. For example, one study found rates of assaults were up to thirteen times higher in the United States than some other European countries.⁹⁹ And rates of robberies in the United States were between 2.5 and 9.9 times higher than European peer countries.¹⁰⁰

Thus, more so than other highly developed countries, the United States arguably has a more pressing demand for the professional investigation of criminal conduct. And as currently constructed, American law enforcement officers are the primary party responsible for the investigation and clearing of these offenses prior to criminal prosecution.

is to prevent individuals from doing harm by removing them from the population" and then referring to this as the "incapacitative function of sanctions").

94. See Francis T. Cullen, *It's Time to Reaffirm Rehabilitation*, 5 CRIMINOLOGY & PUB. POL'Y 665, 665 (2006) (Asserting that even at a time of apparent shifting punishment strategies, "the public remained supportive of rehabilitation both generally and for juveniles. Over the years, with some modest variation, this finding has been replicated repeatedly."). See generally D.A. Andrews & James Bonta, *Rehabilitating Criminal Justice Policy and Practice*, 16 PSYCH., PUB. POL'Y, & L. 39 (2010) (arguing that rehabilitative interventions to crime may be more supported by empirical evidence and produce lower rates of recidivism).

95. See Monica M. Gerber & Jonathan Jackson, *Retribution as Revenge and Retribution as Just Deserts*, 26 SOC. JUST. RSCH. 61, 62 (2013) ("Why do people call for the harsh punishment of criminal offenders? The guiding motivation seems to be a desire for retribution, which is defined *inter alia* as the support of punishment to restore justice and balance in society . . ."). The article further provides a literature review on the perceived social importance of retribution as a justification for criminal punishment. *Id.*

96. See generally Raymond Paternoster, *How Much Do We Really Know About Criminal Deterrence?*, 100 J. CRIM. L. & CRIMINOLOGY 765 (2010) (providing a comprehensive review of the history of deterrence theory, the debates about the usefulness of criminal punishment in advancing deterrence, and a discussion about our now-existing knowledge of deterrence).

97. Erin Grinshteyn & David Hemenway, *Violent Death Rates in the US Compared to Those of the Other High-Income Countries, 2015*, 123 PREVENTATIVE MED. 20, 22 (2019) (detailing statistics as of 2015).

98. Erin Grinshteyn & David Hemenway, *Violent Death Rates: The U.S. Compared with Other High-Income OECD Countries, 2010*, 129 AM. J. MED. 266, 270 (2016).

99. See Ineke Haen Marshall, *How Exceptional is the United States? Crime Trends in Europe and the US*, 4 EUR. J. ON CRIM. POL'Y & RSCH. 7, 14 (1996) (listing in Table 2 the United States as having 424 assaults per 100,000 residents, compared to some European countries as low as thirty-one and thirty-four in Ireland and Italy, respectively).

100. See *id.* (showing the United States with a robbery rate of 257, compared to European counterparts that ranged between twenty-six and one hundred and four).

B. Emergency Responder Function

Next, police play an important role as emergency responders to thousands of situations each year that present immediate risks of serious bodily injury or death. Again, the emergency responder function of law enforcement is particularly acute in the United States because of our comparatively high rate of crime,¹⁰¹ particularly violent crime,¹⁰² and firearm ownership relative to other countries.¹⁰³

It is admittedly difficult to assess the exact number of emergency responses carried out by law enforcement every year. An assessment by the Vera Institute found that Americans make at least around 240 million calls to 911 for emergency assistance every year.¹⁰⁴ Admittedly, many of these calls do not require responses from armed police. Cynthia Lum, Christopher S. Koper, and Xiaoyun Wu conducted one of the most comprehensive studies to date on 911 police service calls across nine mostly large American cities.¹⁰⁵ They found that a significant percentage of 911 calls in their dataset involved requests for assistance with disorder and disturbances of the peace (16.2%); reports of suspicious persons, vehicles, noises, or other similar circumstances (12.8%); property crimes including burglaries and larcenies (10.2%); alarms (6.9%); and domestic disputes including domestic violence (5.8%).¹⁰⁶ Around 6.4% of all 911 calls involved reports of violence, including homicides, rapes, sex crimes, robberies, and assaults.¹⁰⁷ Additionally, around 1.3% of calls in their dataset involved requests for assistance with mental health issues.¹⁰⁸

These may suggest that many calls to 911 do not require the need for an armed response. However, extrapolating these numbers across the over 240

101. *See supra* notes 97-100 and accompanying text.

102. *See supra* notes 97-99 and accompanying text.

103. *See* Audrey Carlesen & Sahil Chinoy, *How to Buy a Gun in 16 Countries*, N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/interactive/2018/03/02/world/international-gun-laws.html> [<https://perma.cc/7HUC-D5NW>] (noting that “Yemen has the second-highest gun ownership rate in the world, after the United States” and further detailing the ease by which Americans can purchase firearms relatively to peers in other countries).

104. Nazish Dholakia, *Most 911 Calls Have Nothing to Do With Crime. Why Are We Still Sending Police?*, VERA (Apr. 22, 2022), <https://www.vera.org/news/most-911-calls-have-nothing-to-do-with-crime-why-are-we-still-sending-police> [<https://perma.cc/7AW7-8NHE>] (“[I]t’s not surprising that 911 dispatchers receive 240 million calls per year – an average of 7.6 calls every second.”).

105. Cynthia Lum et al., *Can We Really Defund the Police? A Nine-Agency Study of Police Response to Calls for Service*, 25 POLICE Q. 255, 260–65 (2022) (describing their methodology for this study).

106. *Id.* at 265–66.

107. *Id.* at 266.

108. *Id.*

million 911 calls made by Americans each year,¹⁰⁹ this would amount to over fifteen million calls for emergency assistance with violent crimes and nearly fourteen million calls to report domestic disputes, including domestic violence.¹¹⁰ Put simply, even though many calls for emergency assistance may not involve immediate risks of physical injury or death, police are still the first responders to millions of reports of violence or ongoing threats of violence.

None of this is to say that police are necessary as first responders to all calls for service. As discussed in more depth in Part IV.B., several cities have experimented having social workers or non-police officers respond to some mental health calls.¹¹¹ However, even cities that have successfully deployed 311 call systems to respond to non-emergency situations have maintained an ongoing need for police responses to emergency situations.¹¹² For example, in Baltimore, the introduction of a 311 non-emergency call system was associated with a 34.2% reduction in citizen calls to 911, including a substantial reduction in low-priority calls.¹¹³ This nonemergency system, though, did not eliminate the need for emergency responses.¹¹⁴ In fact, Baltimore experienced a concurrent increase in total high priority calls to its 911 system after the introduction of its 311 system.¹¹⁵

C. Deterrence and Crime Control Function

Next, the overall body of empirical evidence suggests that police can deter some types of crime, including violent crime.¹¹⁶ Much of the existing evidence on the deterrent effect of police on crime rests theoretically on the effectiveness of deterrence and the disruption of situational incentives for crime. Traditional deterrence theory says that many would-be criminal offenders are rational. They weigh the benefits of committing a crime against “the certainty, severity, and celerity (or immediacy) of punishment.”¹¹⁷ Police

109. *9-1-1 Statistics*, NENA: THE 9-1-1 ASS'N, <https://www.nena.org/page/911Statistics> [<https://perma.cc/5RBX-T2MC>].

110. See Lum et al., *supra* note 105, at 266.

111. See discussion *infra* Part IV.B.

112. See Lorraine Mazerolle et al., *Managing Citizen Calls to the Police: The Impact of Baltimore's 3-1-1 Call System*, 2 CRIMINOLOGY & PUB. POL'Y 97, 102, 117–20 (2002) (listing examples of Baltimore, Buffalo, New York, Dallas, and Phoenix, later indicating an ongoing need for police under these systems).

113. *Id.* at 106–07 (identifying this reduction in overall calls, and a 54.3% reduction in low-priority calls).

114. See *id.* at 107.

115. *Id.* (noting that these calls actually increased by 27.5%).

116. Aaron Chalfin & Justin McCrary, *Criminal Deterrence: A Review of the Literature*, 55 J. ECON. LIT. 5, 14 (2017) (summarizing prior studies and concluding that the existing body of studies “consistently demonstrate that police do reduce crime”).

117. *Id.* at 6.

generally cannot affect the severity of punishment ultimately handed down by the justice system, as that may necessarily involve decisions by numerous other criminal justice actors—for example, whether a prosecutor will file charges, whether a jury will convict them, and the sentencing decision of a trial court judge. But policing tactics may influence the certainty or immediacy of punishment, thereby deterring those considering criminal behavior. The existing empirical evidence suggests that numerous policing tactics—hot spot policing, focused deterrence, problem-oriented policing, and other strategies—likely have some impact on crime rates.¹¹⁸ This is not to say that these tactics are fully justified or without significant attendant cost. In fact, many focused or aggressive policing tactics come with the risk of *significant* attendant costs (particularly if not carefully regulated) that often disparately affect racial minorities and other historically marginalized communities that must be weighed against the benefits they provide before they are deployed.¹¹⁹ Nevertheless, as discussed below, police departments have frequently deployed these tactics to successfully reduce crime that also disproportionately harms many of these same communities.

First, a substantial body of empirical evidence suggests that hot spot policing can contribute to statistically significant reductions in crime with minimal displacement. Numerous prior studies have found that a significant amount of crime is concentrated in a relatively small geographical area.¹²⁰ Hot spot policing describes when police agencies target enforcement resources to these geographical areas known for previously high rates of criminal activity.¹²¹ Numerous academics and police departments have tested the hot spot policing theory. For example, in 1995, the Minneapolis Police Department identified 110 hot spots based on addresses with unusually high

118. *See id.* at 16–21 (highlighting these three strategies and noting their potential impact).

119. RUSHIN, FEDERAL INTERVENTION, *supra* note 35, at 7 (describing how racial and other minorities are affected disproportionately by police misconduct).

120. *See, e.g.*, David Weisburd et al., *Contrasting Crime General and Crime Specific Theory: The Case for Hot Spots of Crime*, in 4 NEW DIRECTIONS IN CRIMINOLOGICAL THEORY: ADVANCES IN CRIMINOLOGICAL THEORY 45, 50–53 (Freda Adler & William S. Laufer eds., 1992) (finding, as an example, that in Minneapolis only a small number of addresses accounted for about half of all calls for police assistance); John E. Eck et al., *Finding Crime Hot Spots Through Repeat Address Mapping*, in ANALYZING CRIME PATTERNS: FRONTIERS OF PRACTICE 49, 54–58 (Victor Goldsmith et al. eds., 2000) (showing, as an example, the geographic concentration of crimes in the Bronx); David Weisburd et al., *Trajectories of Crime at Places: A Longitudinal Study of Street Segments in the City of Seattle*, 42 CRIMINOLOGY 283, 294 (2004) (stating that “[b]etween 4 and 5 percent of the street segments account for about 50 percent of incidents in our data in each of the years examined” in Seattle).

121. Chalfin & McCrary, *supra* note 116, at 16–17 (summarizing the available research on hot spot policing tactics and their effectiveness, and stating that “the observation that crime is so highly concentrated in a very small number of places has led to efforts to intensify the focus of police resources on these places”).

rates of police service calls.¹²² The department then randomly assigned fifty-five of these hot spots to the treatment group that received additional policing resources, with the remaining fifty-five hot spots receiving no additional resources.¹²³ In analyzing the results from this experiment, Lawrence Sherman and David Weisburd found that the treatment group had between 6% and 13% fewer service calls after receiving additional policing resources, as compared to the control group.¹²⁴ As another example, in 2007, the Boston Police Department implemented the so-called Safe Street Teams Program.¹²⁵ As part of this program, the department used computerized mapping to identify thirteen violent crime hot spots in the city, and then engaged in increased enforcement initiatives in these locations.¹²⁶ Anthony A. Braga, David M. Hureau, and Andrew V. Papachristos found a statistically significant reduction in violent crimes associated with this reallocation of resources.¹²⁷ And in Camden, New Jersey, Jerry H. Ratcliffe and Clarisa Breen found that a 2005 initiative to place highly visible uniformed patrols in geographical hot spots for twenty-eight days resulted in substantially larger reductions in all crime as compared to control areas.¹²⁸

These examples are representative of the results from a 2019 meta-analysis of hot spot policing by Anthony A. Braga, Brandon Turchan, Andrew Papachristos, and David M. Hureau that found general agreement that the tactic could reduce crime.¹²⁹ That analysis considered seventy-eight separate tests of hot spot policing in relatively small geographic locations from locations across the country, including large American cities like Boston, Buffalo, Camden, Jacksonville, Jersey City, Kansas City, Minneapolis, Newark, New York, Philadelphia, and St. Louis.¹³⁰ The meta-analysis also included studies from smaller and mid-sized American cities like Colorado

122. Lawrence W. Sherman & David Weisburd, *General Deterrent Effects of Police Patrol in Crime Hot Spots: A Randomized, Controlled Trial*, 12 JUST. Q. 625, 630–33 (1995) (describing these 110 sites).

123. *Id.* at 632.

124. *Id.* at 625.

125. Anthony A. Braga et al., *An Ex Post Facto Evaluation Framework for Place-Based Police Interventions*, 35 EVALUATION REV. 592, 594 (2012).

126. *Id.* at 598.

127. *Id.* at 617 (finding that these approaches resulted in “statistically significant reductions in violent crimes at the SST treatment street units relative to comparison street units located elsewhere in Boston without simply displacing violent crime problems into proximate areas”).

128. Jerry H. Ratcliffe & Clarisa Breen, *Crime Diffusion and Displacement: Measuring the Side Effects of Police Operations*, 63 PRO. GEOGRAPHER. 230, 237–40 (2011) (showing these differences in Table 6).

129. Anthony A. Braga et al., *Hot Spots Policing of Small Geographic Areas Effects on Crime*, 15 CAMPBELL SYSTEMATIC REVS., Sept. 2019, at 1, 2.

130. *Id.* at 8–10 (“In total, the 65 studies included in this review yielded 78 experimental and quasiexperimental tests of hot spot policing on crime.”).

Springs, Flint, Glendale, Lowell, and New Haven, as well as a number of foreign cities like Bogotá, Columbia; Buenos Aires, Argentina; Rajasthan, India; and Stockholm, Sweden.¹³¹ Overall, they found that hot spot policing tactics were associated with a small, but statistically significant reduction in crime rates in the targeted geographical area.¹³² This effect was slightly smaller in randomized controlled trials, but remained significant.¹³³ They also found minimal evidence that hot spot policing merely displaced crime to different geographical locations. Instead, the body of evidence across the seventy-eight tests of hot spot policing was most consistent with “a diffusion of crime control benefits rather than a crime displacement effect.”¹³⁴

They further found that the benefits of hot spot policing extended to reductions in violent crime, property crime, drug crime, and disorder crime rates—with around 80% of all tests of hot spot tests resulting in a subsequent reduction in a targeted crime category.¹³⁵ There was some evidence of “mild publication selection bias” in the results, but nothing that substantially altered the overall conclusion that hot spot policing is generally associated with a reduction in crime without substantial displacement.¹³⁶ These findings are roughly consistent with prior meta-analysis conducted by a subset of these researchers in 2014 analyzing nineteen then-existing studies¹³⁷ and in 2001 assessing nine then-existing studies.¹³⁸ These results are also consistent with a 2005 more focused analysis of five randomized controlled trials on hot spot policing.¹³⁹

131. *Id.* at 11–30 (listing all studies considered in this meta-analysis and many of their geographical locations).

132. *Id.* at 33 (stating “[t]he meta-analysis of effect sizes suggests an effect in favor of hot spot policing strategies,” but also noting the “mean effect size” is relatively “small”).

133. *Id.* (“[Q]uasiexperimental designs produced a slightly more conservative effect size estimate . . .”).

134. *Id.* at 45.

135. Anthony A. Braga et al., *Hot Spot Policing and Crime Reduction: An Update of an Ongoing Systematic Review and Meta-Analysis*, 15 J. EXPERIMENTAL CRIMINOLOGY 289, 298–300 (2019) (finding that sixty-two of seventy-eight main effects tests produced results that favored the treatment over the control).

136. *Id.* at 303–05 (reaching this conclusion using a trim-and-fill approach to impute potentially missing studies, under the assumption of symmetric distribution of effect sizes).

137. See Anthony A. Braga et al., *The Effects of Hot Spot Policing on Crime: An Updated Systematic Review and Meta-Analysis*, 31 JUST. Q. 633, 640–42, 658 (2014) (describing the nineteen studies included in that analysis).

138. See Anthony A. Braga, *The Effects of Hot Spot Policing on Crime*, 578 ANNALS AM. ACAD. POL. & SOC. SCI. 104, 104 (2001).

139. See Anthony A. Braga, *Hot Spot Policing and Crime Prevention: A Systematic Review of Randomized Controlled Trials*, 1 J. EXPERIMENTAL CRIMINOLOGY 317, 335–36 (2005) (finding that “focusing police efforts at high activity crime places can be effective in preventing crime”).

Second, the weight of the evidence suggests that focused deterrence strategies by police can likely reduce crime rates. Focused deterrence involves attempts by law enforcement to increase the probability of apprehension of would-be criminal offenders and communicate these changes to the targeted population of would-be offenders.¹⁴⁰ It operates under the assumption that many criminal offenders are at least somewhat rational.¹⁴¹ In deciding whether to commit a crime, individuals weigh the benefits of criminal activity against the probability of apprehension and the swiftness of criminal penalties.¹⁴² This kind of deterrence relies in large part on informing the targets of such enforcement operations of the possible consequences of their actions.¹⁴³ David M. Kennedy has identified several key features of focused deterrence policing strategies, including: (1) the identification of a particular crime problem (e.g., youth homicide), (2) identifying “key offenders or groups of offenders and the context of their criminal behavior,” (3) “[d]eveloping a special enforcement strategy” directed at this target population, (4) engaging in “parallel efforts to direct social services and the moral voices of the communities negatively affected by the targeted criminal behavior to those key offenders,” and (5) notifying this group of would-be offenders of the increased police enforcement they will face and the possible consequences of continued criminal behavior.¹⁴⁴

In a 2018 meta-analysis of twenty-four existing studies, Anthony Braga, David Weisburd, and Brandon Turchan found considerable evidence that these programs can reduce crime.¹⁴⁵ This analysis included studies conducted in a wide range of American cities, including Boston, Chicago, Cincinnati, Indianapolis, Los Angeles, Nashville, Newark, New Orleans, Rochester, Seattle, and Stockton.¹⁴⁶ Nearly 80% of the studies found significant reductions in crime associated with focused deterrence interventions.¹⁴⁷ While the effect size varied by study, the aggregate effect size was “large compared with those of [other] assessments of interventions in crime and justice work more generally.”¹⁴⁸ And similar to the meta-analysis of prior studies on hot

140. See Braga et al., *Focused Deterrence*, *supra* note 80.

141. See *id.* at 211 (explaining focused deterrence as “leverage[ing] the rationality of group members to no longer encourage norms that provoke the outbreaks of violence”).

142. *Id.* at 210 (“Deterrence theory suggests that crime can be prevented when the costs of committing the crime are perceived by the offender to outweigh the benefits.”).

143. *Id.* (“The effective operation of general deterrence is dependent on the communication of punishment threats to relevant audiences.”).

144. *Id.* at 208–09 (citing David M. Kennedy, *Old Wine in New Bottles: Policing and the Lessons of Pulling Levers*, in *POLICING INNOVATION CONTRASTING PERSP.* 156–57 (David L. Weisburd & Anthony Braga eds., 2006)).

145. *Id.* at 238.

146. *Id.* at 220–28 (listing in Table 2 the studies considered in this meta-analysis).

147. *Id.* at 232.

148. *Id.* at 232–33.

spot policing, focused deterrence appears to be an effective strategy for reducing crime, even if we assume the existence of some publication bias in the studies that ultimately make it to print.¹⁴⁹ Among the various types of focused deterrence programs employed by police across the country, Braga et al. found that those targeting serious violent crime produced the greatest crime reductions, while targeted interventions on drug markets produced more modest effects.¹⁵⁰

Third, problem-oriented policing (POP) tactics likely contribute to reductions in crime. POP originates from the observation by Herman Goldstein in 1979 that policing focused too often on “means over ends”—that is, policing too focused on simply responding to crime rather than partnering with the community to identify the root causes of disorderly or antisocial behavior.¹⁵¹ Thus, POP strategies have included a wide range of interventions that involve police identifying the root causes of some types of criminal behavior, and teaming up with community members to invest in various initiatives designed to reduce the benefits of crime or the incentives to engage in criminal behavior. This may include everything from initiatives focused on housing for the unhoused, outreach and extracurricular activities for at-risk or unsupervised youth, methods to better track stolen property, assisting community members with the concealment of property to reduce the incentive to break into homes or cars, and more.¹⁵²

Across thirty-nine published studies between 2006 and 2018, Joshua C. Hinkle, David Weisburd, Cody W. Telep, and Kevin Petersen found that problem oriented policing interventions were associated with an average reduction in crime of around 33.8%, considerably larger than many other policing interventions.¹⁵³ This included studies from a wide range of American cities, including San Angelo, Texas; Knoxville, Tennessee; Lexington, Kentucky; and Houston, Texas.¹⁵⁴ Nearly all of these studies found the POP intervention associated with a reduction in crime or disorder.¹⁵⁵

149. *See id.* at 236–37 (using a trim-and-fill methodology, under the assumption that the effect sizes should be symmetrically distributed).

150. *Id.* at 238.

151. Herman Goldstein, *Improving Policing: A Problem-Oriented Approach*, 25 *CRIME & DELINQ.* 236, 236 (1979).

152. *Problem-Oriented Policing*, RAND, <https://www.rand.org/pubs/tools/TL261/better-policing-toolkit/all-strategies/problem-oriented-policing.html> [<https://perma.cc/7ATU-SX7J>] (listing these and other examples of POP initiatives).

153. Joshua C. Hinkle et al., *Problem-Oriented Policing for Reducing Crime and Disorder: An Updated Systematic Review and Meta-Analysis*, 16 *CAMPBELL SYSTEMATIC REVIEWS*, Sept. 2020, at 1, 1–2.

154. *Id.* at 35 (showing these jurisdictions in Figure 2).

155. *Id.* (placing the rate of success over 90% regardless of the model used).

Additionally, the studies generally found no evidence of displacement of crime caused by these interventions.¹⁵⁶

Eight of these prior studies also investigated the effect of these policing tactics on expenditures. All these studies found that POP approaches to policing reduced crime while also reducing policing expenditures and officer hours worked.¹⁵⁷ Even when accounting for publication bias, the meta-analysis still found a statistically significant connection between POP and crime—albeit with POP interventions resulting in an estimated 14.1% aggregate reduction in crime after applying a technique designed to control for publication bias.¹⁵⁸ These results are consistent with multiple prior studies evaluating the effectiveness of POP strategies on crime.¹⁵⁹

Finally, other policing behaviors including the policing of disorder,¹⁶⁰ pedestrian stops,¹⁶¹ officer staffing levels,¹⁶² surveillance cameras,¹⁶³

156. *Id.* at 51 (“There is no evidence of spatial displacement of crime/disorder in these studies.”).

157. *Id.* at 42–43.

158. *Id.* at 49–50.

159. See David Weisburd et al., *The Effects of Problem-Oriented Policing on Crime and Disorder*, 14 CAMPBELL SYSTEMATIC REVS., Oct. 2008, at 1, 15–21 (finding in a review of ten studies that most reported a reduction in crime associated with POP strategies); David Weisburd et al., *Is Problem-Oriented Policing Effective in Reducing Crime and Disorder?*, 9 CRIMINOLOGY & PUB. POL’Y 139, 151–52 (2010) (similarly finding POP associated with a reduction in crime).

160. See generally Anthony A. Braga et al., *Can Policing Disorder Reduce Crime? A Systematic Review and Meta-Analysis*, 52 J. RSCH CRIME & DELINQ. 567, 567–68 (2015) (finding in a meta-analysis of thirty studies, including twenty-eight in the United States, that efforts by police departments to police disorder contribute to a modest, but statistically significant reduction in crime, particularly when they involve community generated problem-solving efforts).

161. See generally Kevin Petersen et al., *Police Stops to Reduce Crime: A Systematic Review and Meta-Analysis*, 19 CAMPBELL SYSTEMATIC REVS., Oct. 2023, at 1, 1–2 (finding that across forty eligible studies for this meta-analysis, police-initiated pedestrian stops were associated with a statistically significant reduction in crime rates, while simultaneously contributing to increased risk of harms to individuals, including physical health issues and negative attitudes towards law enforcement).

162. See Steven D. Levitt, *Using Electoral Cycles in Police Hiring to Estimate the Effects of Police on Crime*, 87 AM. ECON. REV. 270, 270 (1997) (finding a statistically significant reduction in crime associated with increases in police staffing increases associated with election cycles). See generally Michael L. Carriaga & John L. Worrall, *Police Levels and Crime: A Systematic Review and Meta-Analysis*, 88 POLICE J.: THEORY, PRAC. & PRINCIPLES 315 (2015) (observing across a dozen studies a small relationship between staffing and crime rates).

163. See generally Eric L. Piza et al., *CCTV Surveillance for Crime Prevention: A 40-Year Systematic Review with Meta-Analysis*, 18 CRIMINOLOGY & PUB. POL’Y 135 (2019) (reporting a modest but statistically significant effect of surveillance cameras on crime).

neighborhood watches,¹⁶⁴ and improved street lighting,¹⁶⁵ among other strategies, may all be associated with reductions in criminal behavior. Additionally, prior studies have also found that some regulations of police designed to ensure the protection of constitutional rights may inadvertently disrupt policing tactics in a manner that increases crime rates.¹⁶⁶ To be clear, the evidence linking policing tactics to reductions in crime do not demonstrate that policing is the most efficient or morally justifiable route to reduce crime in many circumstances. No doubt, investments in education,¹⁶⁷ access to work opportunities,¹⁶⁸ after-school activities,¹⁶⁹ and other factors likely have some impact on crime. Many of these investments may deter crime without the added risk of police violence,¹⁷⁰ unnecessary and racially imbalanced criminalization,¹⁷¹ the physical and mental health consequences of over-

164. See generally Trevor Bennett et al., *Does Neighborhood Watch Reduce Crime? A Systematic Review and Meta-Analysis*, 2 J. EXPERIMENTAL CRIMINOLOGY 437 (2006) (concluding through a meta-analysis that fifteen of eighteen existing studies found reductions in crime associated with the implementation of neighborhood watch programs).

165. See generally David P. Farrington & Brandon C. Welsh, *Improved Street Lighting and Crime Prevention*, 19 JUST. Q. 313 (2002) (systematically reviewing available research on the link between street lighting and crime, and finding that across thirteen studies, improved lighting is associated with an aggregate reduction in crime of around 20%).

166. See generally Tanaya Devi & Ronald G. Fryer, Jr., *Policing the Police: The Impact of "Pattern-or-Practice" Investigations on Crime* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27324, 2020), <http://www.nber.org/papers/w27324> [<https://perma.cc/YST7-SLKQ>] (generally finding a connection between pattern or practice under the Violent Crime Control and Law Enforcement Act and crime rates); Stephen Rushin & Griffin Edwards, *De-Policing*, 102 CORNELL L. REV. 721 (2017) (generally finding that federal interventions in local police departments and concurrent settlement agreements were associated with a statistically significant, albeit temporary, uptick in some crime rates).

167. See, e.g., Brian Bell et al., *Why Does Education Reduce Crime?*, 130 J. POL. ECON. 732, 734–37, 752 (2022) (summarizing the existing literature on the relationship between education and crime; also providing new empirical evidence that “show[s] a strong negative effect on arrest rates from school leaving age reforms”).

168. See, e.g., Aaron Chalfin & Steven Raphael, *Work and Crime*, in THE OXFORD HANDBOOK OF CRIME AND CRIMINAL JUSTICE 444, 444 (Michael Tonry ed., 2011) (summarizing empirical studies on the relationship between work opportunities and crime).

169. See, e.g., Denise C. Gottfredson et al., *The Timing of Delinquent Behavior and Its Implications for After-School Programs*, 1 CRIMINOLOGY & PUB. POL'Y 61, 62–68 (2001) (summarizing the available empirical evidence on the link between after school programing and delinquency).

170. GBD 2019 Police Violence U.S. Subnational Collaborators, *Fatal Police Violence by Race and State in the USA, 1980-2019: A Network Meta-Regression*, 398 LANCET 1239, 1243–47 (providing a detailed analysis of the rates of police violence by race and by jurisdiction in the United States).

171. See, e.g., Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, 34 U.C. DAVIS L. REV. 1005, 1015–20 (2001) (providing, as an example, the consequences of incarceration of Black parents on children and communities).

policing,¹⁷² and mass incarceration¹⁷³ presented by criminal justice interventions. This Article does not argue that policing is the optimal way to fight crime. In fact, tactical improvements in the policing strategies may increase trust in local departments, reduce the harmful footprint of police interventions, and operate alongside other social investments as part of a holistic public safety plan.

These realities, though, do not detract from the empirical evidence on the deterrent effect of many policing tactics. Additionally, the existing literature persuasively suggests that the policing tactics that may most effectively reduce crime are those where officers work together with community members to address the root problems contributing to crime, while concurrently establishing an incentive structure that both deter and disrupt situational incentives of would-be offenders. Moreover, as discussed more in Part III, these realities highlight the importance of carefully regulating policing so as to obtain its benefits while minimizing some of its attendant costs.

D. Traffic Enforcement

Perhaps most controversially, police presently serve as the primary agents for enforcing traffic laws across the country. Traffic stops are “the most common interaction between police and civilians.”¹⁷⁴ Police officers across the country are the primary enforcers of traffic safety laws. Annually, police officers in the United States complete tens of millions of traffic stops.¹⁷⁵ These traffic stops result in hundreds of thousands of vehicle and traffic arrests.¹⁷⁶ Police officers enforce all kinds of traffic laws, including speed limits, vehicle

172. See, e.g., Petersen et al., *supra* note 161, at 24–25 (finding that police stops of pedestrians was associated with a 46% higher probability of mental health issues and a 36% higher probability of physical health issues); see also Jacob Bor et al., *Police Killings and Their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-Experimental Study*, 392 LANCET 302, 305–06 (2018) (finding exposure to police killings of unarmed Black individuals increased mental health issues for Black individuals exposed to this information in their study).

173. See generally Richard Delgado & Jean Stefancic, *Critical Perspectives on Police, Policing, and Mass Incarceration*, 104 GEO. L.J. 1531 (2016) (linking policing to the broader problem of mass incarceration and racial inequality in the justice system).

174. Woods, *supra* note 20.

175. Max Carter-Oberstone, *America’s Traffic Laws Give Police Way Too Much Power*, TIME (May 11, 2022, 4:45 PM EDT), <https://time.com/6175852/pretextual-traffic-stops> [<https://perma.cc/B9BV-A5VS>].

176. SUSANNAH N. TAPP & ELIZABETH J. DAVIS, BUR. JUST. STAT. REP., NCJ 304527, CONTACTS BETWEEN POLICE AND THE PUBLIC 6, 8 (Nov. 2022) <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cbpp20.pdf> [<https://perma.cc/T4V8-BFNM>] (reporting in Tables 4 and 5 that 4.7% of the 13,718,100 traffic stops reported by drivers resulted in a “search/arrest”).

registration requirements, red light violations, drunk driving prohibitions, and numerous other moving violations.¹⁷⁷ Part of the justification for police enforcement of traffic laws is the reality that traffic accidents are one of the leading causes of death in the United States and globally.¹⁷⁸ The National Highway Traffic Safety Administration estimates that there were 42,795 motor vehicle traffic fatalities in the United States in 2022.¹⁷⁹

As discussed in more detail in Part III, researchers have made powerful arguments about the harms involved in police enforcing traffic laws.¹⁸⁰ Numerous studies have found evidence that police officers may engage in racial profiling in the enforcement of traffic code.¹⁸¹ In many cases, civil rights advocates have argued that police departments have disproportionately allocated officers to communities of color, resulting in these communities experiencing greater enforcement burdens.¹⁸² Emboldened by permissive U.S.

177. Woods, *supra* note 20, at 1481–82 (explaining that “[s]tate traffic codes include a wide range of moving violations . . . and nonmoving violations” and listing examples of speeding, failing to stop at a stop sign, improper parking, reckless driving, etc.).

178. See Lyndel Bates et al., *The Effectiveness of Traffic Policing in Reducing Traffic Crashes*, in POLICING AND SECURITY IN PRACTICE: CHALLENGES AND ACHIEVEMENTS 90, 91–93 (Tim Prenzler ed., 2012) (stating “[t]rauma resulting from traffic crashes is a significant global concern with more than a million people killed, and an additional 50 million seriously injured, on roads throughout the world each year,” and providing in Table 6.1 an estimate for the number of traffic fatalities by country over time); Roni Caryn Rabin, *Covid Remained a Leading Cause of Death Among Americans in 2022*, N.Y. TIMES (May 4, 2023), <https://www.nytimes.com/2023/05/04/health/covid-deaths-2022.html> [https://perma.cc/3TN6-5Z6N] (“Unintentional injuries – a category that includes drug overdoses and car accidents – were responsible for more deaths than Covid last year and were the nation’s third leading cause of death.”).

179. *Early Estimate of Motor Vehicle Traffic Fatalities*, NAT’L HIGHWAY TRAFFIC SAFETY ADMIN. REP. NO. DOT HS 813 428, at 1 (2023), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813428> [https://perma.cc/HF7H-Q2WW] (showing figures year-over-year in Table 1).

180. See *infra* Part III.

181. For one of the most comprehensive empirical studies on racial profiling in police traffic enforcement in the United States, see Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 736–37 (2020) (finding evidence of racial disparities in an analysis of one of the largest ever datasets of police stop data).

182. The New York City stop-and-frisk litigation provides a useful example of this phenomenon. There, the City of New York argued that the overrepresentation of Black and Hispanic individuals in stops-and-frisks was the result of a rational allocation of more police officers to areas with greater public safety needs—which happened to also be neighborhoods with more Black and Hispanic residents. The City used this explanation to justify the evidence of statistically disparate impact. The federal court ultimately sided against the City. During this litigation, there was agreement that the policing tactics chosen by the NYPD had a disparate impact on communities of color, regardless of whether the sides could agree on the constitutionality of the practices. See *Floyd v. City of New York*, 959 F. Supp. 540, 583–89 (S.D.N.Y. 2013).

Supreme Court precedent,¹⁸³ police may frequently use traffic code violations as pretexts to investigate other crimes in situations when they otherwise lack probable cause or reasonable suspicion of any wrongdoing.¹⁸⁴ These tactics, too, may have racially disparate effects.¹⁸⁵ Those documenting police killings of civilians, like the *Washington Post*,¹⁸⁶ *Mapping Police Violence*,¹⁸⁷ the *Guardian*,¹⁸⁸ and *Fatal Encounters*¹⁸⁹ have found evidence that many of these incidents start with routine traffic stops.¹⁹⁰

Empirical evidence that police face surprisingly low levels of risk of physical injury or death in the enforcement of traffic laws¹⁹¹ have bolstered some scholarly arguments that jurisdictions could plausibly narrow the scope of policing by allocating some or all traffic enforcement authority to unarmed, non-police personnel or technological replacements.¹⁹² Scholars have argued that such a shift could still ensure adequate enforcement of traffic code while

183. *Whren v. United States*, 517 U.S. 806, 809, 812–13, 819 (1996) (concluding that pretextual traffic stops do not violate the Fourth Amendment; as long as officers identify some objective violation of traffic code, they may complete a traffic stop, even if the objective justification is a pretext to investigate a hunch or suspicion that lacks probable cause or reasonable suspicion).

184. See, e.g., David A. Harris, “*Driving While Black*” and *All Other Traffic Offenses: The Supreme Court and Pretextual Traffic Stops*, 87 J. CRIM. L. & CRIMINOLOGY 544, 560 (1997) (explaining how the broad nature of the *Whren* decision means that it “will permit police to stop anyone driving a car whenever they observe the ever-present violations of the traffic code . . .”).

185. Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 STAN. L. REV. 637, 683–97 (2021) (finding that a court decision in Washington that permitted pretextual traffic stops by officers was associated with an increase in the targeting of drivers of color, particularly during the daytime).

186. Julie Tate et al., *Fatal Force*, WASH. POST. (Aug. 10, 2020), <https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019> [<https://perma.cc/9NM4-9XLN>].

187. CAMPAIGN ZERO, MAPPING POLICE VIOLENCE (June 22, 2024), <https://mappingpoliceviolence.org> [<https://perma.cc/H8US-FDKJ>].

188. *The Counted: People Killed by Police in the US*, THE GUARDIAN, <https://www.theguardian.com/us-news/series/counted-us-police-killings> [<https://perma.cc/58VM-NCCN>].

189. FATAL ENCOUNTERS, <http://www.fatalencounters.org> [<https://perma.cc/58VM-NCCN>].

190. Rushin & Edwards, *supra* note 185, at 700 (noting that in the *Guardian* database for 2016, around 8% and 9% of all police killings of civilians in November and December happened subsequent to a police traffic stop).

191. Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635, 683–84 (2019) (conducting an extensive empirical evaluation of the risk of officer injury and death in traffic stops and finding that, “the dominant danger narrative [suggesting] that routine traffic stops are highly dangerous settings for police officers” is not supported by the available data).

192. See generally, e.g., Woods, *supra* note 20 (offering a comprehensive proposal for reducing the scope of law enforcement involvement in many routine traffic enforcements).

minimizing the attendant costs of police carrying out this responsibility.¹⁹³ And others have argued an increased use of automated enforcement to reduce the attendant risks of police officers using traffic stops as pretexts for the investigation of other criminal offenses that may lead to racial profiling and avoidable violence.¹⁹⁴

Putting aside those critiques for now, though, the available empirical evidence from across the globe strongly suggests that present efforts by police to enforce traffic laws can reduce traffic accidents, injuries, and fatalities. As Lyndel Bates, David Soole, and Barry Watson explained in an international literature review on traffic enforcement research, countries across the globe generally rely on deterrence theory to reduce harmful driving behaviors.¹⁹⁵ Much like in the context of general policing strategies to deter crime, this theory assumes that the individuals are less likely to engage in reckless or dangerous driving behavior if they believe the “certainty, severity, and swiftness of punishment” is sufficiently high.¹⁹⁶ While jurisdictions across the world take varied approaches to traffic enforcement, virtually all vest this authority in either general police agencies, or police agencies specifically tasked with enforcing traffic laws.¹⁹⁷

Prior research has consistently shown that, despite its potential risk for attendant harms, police traffic enforcement can reduce harmful driving behavior, leading to fewer injuries and possibly fewer deaths.¹⁹⁸ For example, Michael D. Makowsky and Thomas Stratmann used twenty-one months of data from Massachusetts to estimate the effect of traffic enforcement on motor vehicle accidents and injuries.¹⁹⁹ They found that when cities experienced financial distress, they sought additional revenue through increased traffic

193. See, e.g., Rushin & Edwards, *supra* note 185, at 703–04 (“[O]ur findings may strengthen arguments for reducing police discretion in traffic enforcement through integration of emerging technologies.”); Elizabeth E. Joh, *Discretionless Policing: Technology and the Fourth Amendment*, 95 CALIF. L. REV. 199, 216–25 (2007) (arguing that technological replacements for police enforcement of traffic laws, like red light cameras or speed cameras, could more fairly and consistently enforce traffic laws in an unbiased manner).

194. See, e.g., Woods, *supra* note 20, at 1502–04 (“Recognizing its limitations, however, some scholars have hailed the potential of automated traffic enforcement to reduce pretextual traffic stops and other forms of racial profiling exacerbated by police-initiated traffic stops.”).

195. Bates et al., *supra* note 178, at 96 (“[A]rguably the most common theoretical approach utilized in traffic psychology is ‘deterrence theory,’ a criminological perspective that focuses on the effect of enforcement activities and legal sanctions of behaviour.”).

196. *Id.*

197. *Id.*

198. See *id.* at 97 (“The road safety literature has highlighted the positive relationship between deterrence theory constructs and a number of risky driving behaviours.”).

199. Michael D. Makowsky & Thomas Stratmann, *More Tickets, Fewer Accidents: How Cash Strapped Towns Make for Safer Roads*, 54 J.L. & ECON. 863, 864–65 (2011).

stops.²⁰⁰ These same cities that experienced financial distress and increased traffic stops also experienced a decrease in both traffic accidents and injuries from traffic accidents.²⁰¹ As another example, Gregory DeAngelo and Benjamin Hansen used the mass layoff of state highway patrol officers in Oregon to estimate the effect of police traffic enforcement on accidents, injuries, and deaths.²⁰² A 2003 budget cut in Oregon resulted in the Oregon State Patrol (OSP) laying off 117 of its 354 highway patrol officers.²⁰³ Relative to nearby control jurisdictions like Washington and Idaho, Oregon experienced a substantial decrease in traffic enforcement following the mass layoff of OSP personnel.²⁰⁴ This decrease in enforcement was further associated with a statistically significant increase in nonfatal traffic injuries and fatalities.²⁰⁵ Additionally, a meta-analysis of thirty-nine studies found considerable evidence that police efforts to deter drunk driving contributed to a statistically significant reduction in injuries, fatalities, and property damage.²⁰⁶ Data collected by Richard Tay found that police enforcement of speed limits in the Australian State of Queensland was associated with a statistically significant reduction in traffic accidents.²⁰⁷

The overall body of empirical evidence strongly suggests that police enforcement of traffic laws is associated with a decreased probability of traffic accidents and associated harm. Further, while automated enforcement may have some deterrent impact on traffic accidents, some evidence suggests that in-person police enforcement may have even greater impact.²⁰⁸

E. *Promotion of the Rule of Law*

Finally, given the current nature of the responsibilities undertaken by police in the United States, the institution of policing is fundamental to the rule of law in our country. As Ronald A. Cass has explained, scholars have

200. *Id.* at 876 (“The results . . . suggest that passing overrides requesting large dollar amounts, indicating significant financial distress, leads to more tickets issued.”).

201. *Id.* at 882 (“The model’s results show that tickets are an effective means of reducing accidents and injuries . . .”).

202. Gregory DeAngelo & Benjamin Hansen, *Life and Death in the Fast Lane: Police Enforcement and Traffic Fatalities*, 6 AM. ECON. J.: ECON. POL’Y 231, 234–35 (2014).

203. *Id.* at 234.

204. *Id.* at 241–44 (providing details on the effect of layoffs on enforcement, with data presented in Table 3).

205. *Id.* at 245–51.

206. Bates et al., *supra* note 178, at 98.

207. Richard Tay, *The Effectiveness of Automated and Manned Traffic Enforcement*, 3 INT’L J. SUST. TRANSP. 178, 185 (2009) (finding manned traffic enforcement reduced both total and serious car accidents, automated enforcement only impacted total crashes, suggesting that the deterrent effect of manned enforcement may be greater).

208. *Id.*

developed multiple different definitions of the rule of law. On one end of the spectrum, some positivist thinkers have defined the rule of law as basically synonymous with “law-boundedness irrespective of the ends served by the law.”²⁰⁹ Conversely, on the other end of the spectrum, some scholars define the rule of law as effectively “synonymous with justice.”²¹⁰ But regardless of where different scholars fall along this spectrum, virtually all scholarship on the rule of law has assumed that it requires the establishment of reasonably transparent laws or rules, and the predictable enforcement of these rules.²¹¹ As former United States Supreme Court Justice Sandra Day O’Connor explained, while there is wide disagreement about the definition of the rule of law, generally most conceptions of the rule of law “requires that legal rules be publicly known, consistently enforced, and even-handedly applied.”²¹² This is consistent with the claims of many scholars that any basic conception of the rule of law requires some type of government enforcement of laws and rules, and mechanisms to ensure compliance with the law.²¹³

As Tom Tyler has explained, an effective rule of law requires the government to be able to gain both immediate and long-term or general compliance with rules and legal authority.²¹⁴ As he explained:

For example, when the police are called to intervene in a domestic violence dispute by telling someone to stop beating his or her spouse it is important that they be able to stop aggressive behaviors that are occurring. It is further desirable if they can intervene in a way that discourages similar behavior in the future [Additionally,] [t]he law tells people not to speed, not run red lights, and not to murder

209. RONALD A. CASS, *THE RULE OF LAW IN AMERICA* 1 (2001) (emphasis omitted).

210. *Id.* at 2.

211. *See, e.g.*, Robert Stein, *What Exactly Is the Rule of Law?*, 57 *HOUS. L. REV.* 185, 194 (2019) (“The law must be known and predictable so that persons will know the consequences of their actions. The law must be sufficiently defined and government discretion sufficiently limited to ensure the law is applied in a nonarbitrary manner The law must be applied equally to all persons in like circumstances.”).

212. Sandra Day O’Connor, *Vindicating the Rule of Law: The Role of the Judiciary*, 2 *CHINESE J. INT’L L.* 1, 1 (2003).

213. *See, e.g.*, Robert Stein, *Rule of Law: What Does It Mean?*, 18 *MINN. J. INT’L L.* 293, 300–02 (2009) (citing several scholars who have advocated for the need for rules to be enforced or enforceable to maintain a satisfactory rule of law); Jeremy Waldron, *The Rule of Law*, in *STANFORD ENCYCLOPEDIA OF PHILOSOPHY* 1, 8 (Edward N. Salta & Uri Nodelman eds., 2023) (“Indeed that is what many scholars mean by the Rule of Law: people being governed by measures laid down in advance in general terms and enforced equally according to the terms in which they have been publicly promulgated.”).

214. Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 *CRIME & JUST.* 283, 283 (2003) (discussing a “process-based model of regulation” including these “two key concerns underlying effective regulation”).

their neighbors. To be effective, such laws need to generally be widely obeyed by members of the public in their everyday lives.²¹⁵

The need to gain compliance with legal rules is compounded by the reality that individuals often resist compliance with the law, even when confronted by law enforcement officers. As found across multiple studies, noncompliance in the face of police enforcement efforts is common. One study from Richmond, Virginia, found that officers responding to public safety calls faced noncompliance rates of 22%.²¹⁶ These included around 19% noncompliance when police asked an individual to leave another person alone, 33% noncompliance when police asked a person to stop engaging in a disorderly act, and 18% noncompliance when they asked someone to stop illegal behavior.²¹⁷ A similar attempt to replicate this finding in St. Petersburg, Florida, and Indianapolis, Indiana, found that officers faced noncompliance rates of around 20%.²¹⁸ These included fairly high noncompliance rates for requests to leave another person alone (14%), requests to stop disorderly behavior (25%), or cease some other type of disorder (21%).²¹⁹ Given the challenges that even armed law enforcement faces in obtaining compliance with the law, it is difficult to imagine a predictable and ordered society without any such state institution.

As Jeremy Waldron has explained, predictable and regular enforcement of the law can ensure that “ordinary people” are able to “uphold their rights, settle their disputes, and [receive protection] against abuses of public and private power.”²²⁰ Police, for all their faults, are the primary American institution that investigates and enforces prohibitions on unlawful conduct. A robust rule of law cannot exist without some institution, like police, tasked with the enforcement of laws.

IV. IMPLICATIONS FOR POLICE DEFUNDING, ABOLITION, AND THE REIMAGINATION OF PUBLIC SAFETY

The evidence presented in this Article has numerous implications for the emerging debates about police defunding, abolition, and the reimagination of public safety. Even before the murder of George Floyd by former Minneapolis

215. *Id.* at 283–84.

216. *Id.* at 289 (citing Stephen D. Mastrofski et al., *Compliance on Demand: The Public’s Responses to Specific Police Requests*, 33 J. RES. CRIME & DELINQ. 269 (1996)).

217. *Id.* (citing Mastrofski et al., *supra* note 216).

218. *Id.* (citing John D. McCluskey et al., *To Acquiesce or Rebel: Predicting Citizen Compliance with Police Requests*, 2 POLICE Q. 389 (1999)).

219. *Id.* (citing McCluskey et al., *supra* note 218).

220. Waldron, *supra* note 213, at 2.

police officer Derek Chauvin,²²¹ some civil rights activists and scholars began arguing that policing was fundamentally broken and could not be adequately regulated.²²² Thus, according to this viewpoint, the only way to reduce the harms of policing is to reduce the footprint of policing or abolish policing altogether.²²³ The murder of George Floyd seemed to galvanize, at least for some brief time, broader public interest in these policy proposals.²²⁴ At least a few major cities reduced or pledged to reduce funding to their local police departments, although many eventually reversed course.²²⁵

While polling suggests that public support for the defunding or abolition of police departments appears to be somewhat low,²²⁶ the scholarly interest in the topic has seemingly grown in recent years.²²⁷ This Part considers the

221. Arango et al., *supra* note 1 (describing the guilty verdict against Chauvin and the circumstances surrounding the murder).

222. *See, e.g.*, VITALE, *supra* note 22 (providing a compelling scholarly justification of police abolition, published before the murder of George Floyd).

223. *See Invest-Divest*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/invest-divest> [<https://perma.cc/UDC8-J8AU>] (describing demands to defund policing and reinvest these resources elsewhere); Kaba, *supra* note 4 (arguing for the abolishment of policing as we know it); Aaron Ross Coleman, *Police Reform, Defunding, and Abolition, Explained*, VOX (July 16, 2020, 8:00 AM EDT), <https://www.vox.com/21312191/police-reform-defunding-abolition-black-lives-matter-protests> [<https://perma.cc/79XL-PFDA>] (providing a media accounting of this movement).

224. Maya King, *How 'Defund the Police' Went from Moonshot to Mainstream*, POLITICO (June 17, 2020, 6:10 AM EDT), <https://www.politico.com/states/new-york/city-hall/story/2020/06/17/how-defund-the-police-went-from-moonshot-to-mainstream-1293451> [<https://perma.cc/Y8Y7-9DNC>] (describing the rise in public interest in defunding the police after the George Floyd-related protests in 2020).

225. Tate Fegley & Ilia Murtazashvili, *From Defunding to Refunding Police: Institutions and the Persistence of Policing Budgets*, 196 PUB. CHOICE 123, 127 (2023) (finding that many cities that defunded police, such as Austin, Los Angeles, and New York, only did so temporarily, quickly reallocating this money back to the police in the years that followed); *see, e.g.*, Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, N.Y. TIMES (Nov. 3, 2021), <https://www.nytimes.com/2020/09/26/us/politics/minneapolis-defund-police.html> [<https://perma.cc/F24B-ZA6S>] (describing how the Minneapolis promise to abolish their police force never became reality); Mitch Smith & Tim Arango, *'We Need Policemen': Even in Liberal Cities, Voters Reject Scaled-Back Policing*, N.Y. TIMES (Nov. 8, 2021), <https://www.nytimes.com/2021/11/03/us/police-reform-minneapolis-election.html> [<https://perma.cc/L8SE-DY5V>] (providing a broader description of how voters rejected police defunding or abolition efforts across the country, and further noting that, “[s]ome of the cities that cut police budgets last year have now restored funding”).

226. Sarah Elbeshbishi & Mabinty Quarshie, *Fewer Than 1 in 5 Support 'Defund the Police' Movement, USA Today/Ipsos Poll Finds*, USA TODAY (Mar. 8, 2021, 6:10 PM ET), <https://www.usatoday.com/story/news/politics/2021/03/07/usa-today-ipsos-poll-just-18-support-defund-police-movement/4599232001> [<https://perma.cc/ZGF3-48C3>].

227. *See generally, e.g.*, Morgan, *supra* note 22 (reviewing Mariame Kaba's book on abolition and considering how the abolitionist critique can be added to the other tools for thinking about legal questions); *see also, e.g.*, Sheila A. Bedi, *The Myths of Effective Law*

implications of this Article’s findings for the growing scholarly debate on defunding, abolition, and the reimagination of public safety. It ultimately argues that defunding or abolition may not alleviate many of the social problems that policing seeks to remedy, nor adequately provide the benefits of policing as an institution. While this does not discredit the valuable contributions made by scholars supporting defunding or abolition of policing, it does suggest that these proposals may face significant implementation challenges. Further, this Part argues that scholars advocating for defunding or abolition may benefit from offering counterproposals that would ensure that some other government institution could adequately replace many of the socially valuable contributions of modern policing.

A. Police Funding

To better understand the implications of these findings for the ongoing debate about police funding, it may be useful to discuss how we fund policing in the United States. Most spending on policing in the United States happens at the local level (municipal or county) and is funded primarily by local property taxes and sales taxes, as well as occasionally, local income taxes.²²⁸ Local governments are commonly tasked with funding not just police departments, but also schools, fire departments, parks, sanitation operations, some local infrastructure, and some social services.²²⁹ Thus, police departments are often competing with other local government services for a

Enforcement and the Demand to Defund the Police, 17 STAN. J. C.R. & C.L. 499, 501, 548–50 (2022) (arguing, in part, how “money diverted from police departments should fund successful, non-carceral, community-based approaches to public safety”); Tiffany Yang, “*Send Freedom House!*”: A Study in Police Abolition, 96 WASH. L. REV. 1067, 1082–99 (2021) (generally describing how police in some locations previously drove ambulances but have since been taken out of that role—using this as a model for modern movements for police defunding and abolition). For an excellent scholarly introduction to the abolitionist scholarship in this area, see generally Akbar, *supra* note 22 (introducing the abolitionist scholarship in this area); Eaglin, *supra* note 21 (providing a summary of different approaches to defunding police).

228. See Rushin & Michalski, *supra* note 23, at 287; see also KATE HAMAJI ET AL., THE CTR. FOR POPULAR DEMOCRACY ET AL., FREEDOM TO THRIVE: REIMAGINING SAFETY & SECURITY IN OUR COMMUNITIES 3, 5 (Jennifer Epps-Addison, Andrew Friedman & Tracey Corder eds., 2020), <https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf> [<https://perma.cc/J939-DL6J>] (finding that the vast majority of municipalities spend huge portions of their budgets on policing, and, while cities and counties mostly raise revenue through property taxes, charges for services, and user fees, some states allow local governments to charge income sales tax).

229. RUSHIN, FEDERAL INTERVENTION, *supra* note 35 (describing how police reform in many communities have required them to “reallocate scarce municipal resource that could have otherwise gone to fund schools, roads, or parks”).

finite pool of resources.²³⁰ On average, most localities nationally spend less than 10% of their locally generated tax revenue on police or sheriff's departments—although this number varies somewhat by municipality.²³¹

Police departments also reflect the vast municipal wealth disparities that exist in the United States. Wealth is not evenly distributed geographically in the United States.²³² Some jurisdictions with high property values and significant concentrations of commercial businesses can tax constituents at comparatively low rates, and still obtain comparatively large amounts of revenue relative to their peer cities.²³³ Meanwhile, poorer communities often struggle to obtain adequate revenue.²³⁴ This has resulted in significant disparities between jurisdictions in police spending. In some wealthier jurisdictions, departments employ almost entirely full-time sworn officers paid considerable full-time salaries with generous benefits.²³⁵ By contrast, some poorer jurisdictions can only afford to hire part-time officers paid less than employees at the local Walmart.²³⁶

As a preliminary matter, these realities suggest that defunding or abolition of police is unlikely to free up sufficient resources at the local level to adequately address many of the root causes of crime and violence. Even if most or all local tax dollars currently spent on local policing were reallocated to other social programs, it would represent a relative drop in the bucket

230. See Rushin & Michalski, *supra* note 23, at 330 (“This forces some poorer communities to levy higher taxes and allocate a higher percentage of their general funds towards policing, leaving fewer scarce resources to invest in other government services.”).

231. Emily Badger & Quoc Trung Bui, *Cities Grew Safer. Police Budgets Kept Growing.*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/interactive/2020/06/12/upshot/cities-grew-safer-police-budgets-kept-growing.html> [<https://perma.cc/SM5H-6P9G>] (showing data from 1977 to 2017 indicating that, based on one estimate, the average percentage of local dollars going to policing 150 large American cities has increased from around 6.6% in 1977 to 7.8% in 2017).

232. See, e.g., RUSHIN, FEDERAL INTERVENTION, *supra* note 35, at 36 (providing an example of the considerable variation in finances that exists between American police departments).

233. See *id.* at 36–37 (describing the examples of Camden and Brick, New Jersey).

234. See *id.*

235. See Rushin & Michalski, *supra* note 23, at 283–84 (using wealthy areas of Allegheny County, Pennsylvania, as an example of certain citizens being “served by police officers working full time,” earning high salaries compared to local counterparts, and further noting, “Allegheny County is not the exception but the rule. All across the country, massive inequality in the funding of local police departments means that individuals receive drastically different levels of public-safety services”).

236. See *id.* (expanding on the Allegheny County example by noting that poorer jurisdictions were “served only by part-time officers who are paid around \$10 an hour—less than employees at the nearby Walmart”).

compared to existing expenditures on social programs in the United States.²³⁷ In 2018, federal, state, and local tax receipts totaled around \$5.4 trillion.²³⁸ Of these tax receipts, roughly 64% were federal tax receipts, 21% were state tax receipts, and 15% were local tax receipts.²³⁹ The vast majority of all police spending at the state and local level comes from this local tax revenue.²⁴⁰ Based on this estimate, spending on local policing represents approximately 3.7% of all state and local expenditures.²⁴¹ Thus, no matter how it is measured, spending on local policing represents a relatively small fraction of all government expenditures at the federal, state, and local level combined.²⁴² It is not clear that a reallocation of a comparatively small amount would drastically reduce wealth disparities, poverty, educational disparities, or crime rates. If anything, this may suggest that many police defunding and reallocation demands are insufficiently ambitious. For defunding and reallocation to make a significant dent in the root causes of crime and violence in the United States, this reallocation may need to be more extensive and coordinated at the state or federal level.²⁴³

Further, because of the unequal distribution of wealth and the method by which we currently fund police, the poorest municipalities in the United States stand to benefit the least comparatively from defunding or abolition. Policing, as imperfect as it may be, may be a cost-effective strategy to provide at least some benefits to communities plagued with high crime rates. This is part of why some, like economists Aaron Chalfin and Justin McCrary, have argued that America may be underinvesting in policing.²⁴⁴ As they see it, murders are especially costly to society, and each \$1.00 invested in policing may yield a

237. See *Public Welfare Expenditures*, URB. INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/public-welfare-expenditures> [<https://perma.cc/V6PD-6U64>] (showing that, among the overall pool of all state and local expenditures in the United States, only 3.7% go to policing—compared to public welfare, education, health and hospital funding, which comprises 66.2% of expenditures).

238. *Tax Policy Center Briefing Book*, TAX POL'Y CTR. (Jan. 2024), <https://www.taxpolicycenter.org/briefing-book/what-breakdown-revenues-among-federal-state-and-local-governments> [<https://perma.cc/PW7Z-V2VH>].

239. *Id.*

240. Rushin & Michalski, *supra* note 23, at 277 (“[P]olice departments derive funding primarily from local sales and property taxes.”).

241. URB. INST., *supra* note 237.

242. *Id.*

243. See Rushin & Michalski, *supra* note 23, at 320–27 (offering a blueprint to reimagine the allocation of funding to local police departments by redistributing wealth from richer municipalities to poorer communities).

244. See Aaron Chalfin & Justin McCrary, *Are U.S. Cities Underpoliced? Theory and Evidence*, 100 REV. ECON. & STAT. 167, 183–84 (2018) (making this argument).

social return of around \$1.63 in social benefit through reduced violent crime rates, particularly reduced murder rates.²⁴⁵

At the same time, the existing empirical literature is mixed on whether changes in police strategies or changes in policing staff levels may be the key to reduced crime.²⁴⁶ This may suggest that defunding efforts that mildly reduce the number of officers on a police force may not produce significant increases in crime, so long as they do not limit the ability of a police department to deploy potentially empirically supported crime fighting strategies.

B. Replacing the Functions of Police

Next, supporters of defunding and abolition may be most successful if they couple their demands with affirmative, empirically supported proposals for replacing many of the socially valuable functions that policing currently serves. Some of these functions—like the enforcement of traffic code violations—may be more comparatively straightforward to replace than others. As discussed earlier, some researchers have argued that automated enforcement technologies could effectively replace a significant number of existing traffic officers.²⁴⁷ Numerous technologies exist today that were unimaginable only a few decades ago, including automated speed cameras, red light cameras, and automated license plate readers.²⁴⁸ These automated traffic enforcement technologies, while controversial, could theoretically enforce the traffic code in a more neutral manner without the concurrent risks of unnecessary escalation or subsequent violence.²⁴⁹ Elizabeth Joh has argued that policymakers could conceivably replace much of police traffic enforcement with automated traffic enforcement technologies.²⁵⁰ Doing so, she argues, would remove officer discretion from the exercise of traffic code

245. *Id.* (“Our argument is that from a welfare perspective, the effect of police on property crime is not nearly as important as the effect of police on violent crime, particularly murder.”).

246. *See* Carriaga & Worrall, *supra* note 162, at 316–28 (discussing the literature on police staffing, police strategies, and crime reductions); *see also supra* Part II.B (discussing the literature on police strategies and crime reductions).

247. *See, e.g.*, Elizabeth E. Joh, *Automated Policing*, 15 OHIO STATE J. CRIM. L. 559, 560 (2018) (“By automated policing, I mean a future in which a significant portion of ordinary policing employs robotics, artificial intelligence, and big data.”).

248. Keith Goble, *Ticket Camera Rules Approved, Advance in 11 Statehouses*, LAND LINE (July 7, 2023), <https://landline.media/ticket-camera-rules-approved-advance-in-11-statehouses> [<https://perma.cc/28AK-CTJ6>] (describing the proliferation of these technologies in states like California, Connecticut, Colorado, Delaware, Michigan, Oregon, Pennsylvania, and Washington).

249. *See supra* notes 193–194 and accompanying text.

250. Joh, *Discretionless Policing*, *supra* note 193, at 202–03.

enforcement.²⁵¹ As currently structured, the U.S. Supreme Court has granted police with extensive discretionary authority in the enforcement of traffic code.

In *Whren v. United States*, the U.S. Supreme Court held that a police officer may conduct a traffic stop anytime they observe any objective violation of the traffic code, even if their real motivation for the traffic stop is to investigate a hunch or suspicion that does not rise to the level of probable cause or reasonable suspicion.²⁵² That case originated from the stop of Michael Whren and James L. Brown in Washington, D.C., (both Black men) after officers claimed to observe them stop at a stop sign for over twenty seconds, turning without signaling, and driving at a high rate of speed.²⁵³ The officers used these circumstances to legally justify the traffic stop, even though their actual motivation was to investigate whether the vehicle's occupants may be engaged in other crimes, like drug trafficking.²⁵⁴ The officers then claimed that, as they approached the car, they saw two large plastic bags filled with crack cocaine in the hands of Mr. Whren.²⁵⁵ Police then arrested both Whren and Brown.²⁵⁶

In attempting to suppress this evidence, Whren and Brown argued that the traffic stop violated the Fourth Amendment prohibition on unreasonable searches and seizures since the officers' purported justification for the traffic stop was pretextual; the officers weren't actually interested in the speeding or failure to signal, but rather in investigating their unsubstantiated hunch that the defendants were engaged in drug trafficking.²⁵⁷ If permitted to engage in pretextual stops of this variety, police would have enormous power to stop virtually any driver any time they observe some kind of a "technical violation."²⁵⁸ This, they argued, could give officers discretionary authority that could be used in a racially imbalanced manner.²⁵⁹ In a unanimous decision, the U.S. Supreme Court rejected these concerns and held that pretextual traffic stops do not violate the Fourth Amendment.²⁶⁰ In the wake of *Whren*, scholars widely worried that because police harbor implicit bias

251. *Id.* at 204–11 (defining discretion in policing and describing how discretion is both necessary in modern policing and how it can contribute to harm in the context of traffic enforcement).

252. 517 U.S. 806, 809, 812–13 (1996) (holding that the "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis").

253. *Id.* at 808–10.

254. *Id.*

255. *Id.* at 808–09.

256. *Id.* at 809.

257. *Id.*

258. *Id.* at 810.

259. *Id.* (describing the use of "decidedly impermissible factors" including race).

260. *Id.* at 819.

that disproportionately impacts racial minorities,²⁶¹ this new broad grant of discretionary authority could result in officers “us[ing] the traffic code to stop a hugely disproportionate number of African-Americans and Hispanics.”²⁶²

Then, in *Atwater v. City of Lago Vista*, the U.S. Supreme Court further expanded police power during traffic stops. In that case, the Court held that after a lawful traffic stop, a police officer may arrest the driver for any criminal offense, even an offense that does not lead to imprisonment under state statute.²⁶³ After conducting a traffic stop of Gail Atwater and her two children, an officer in Lago Vista, Texas, allegedly observed the children sitting in the front seat of the automobile without seatbelts.²⁶⁴ Rather than simply issuing a traffic citation, the officer decided to handcuff Ms. Atwater and place her under arrest.²⁶⁵ Thereafter, she was booked at the police station and forced to wait in a jail cell for an hour before appearing before a magistrate judge who released her on a \$310 bond.²⁶⁶ Under Texas law, her charges (failure to wear a seatbelt and failure to provide insurance documentation) were criminal misdemeanors punishable by only fines with no possibility of imprisonment.²⁶⁷

Ms. Atwater claimed that the officer’s behavior constituted an unlawful seizure in violation of the Fourth Amendment.²⁶⁸ But the Court narrowly held that officers may conduct such warrantless arrests for any criminal offense, including those that can only result in fines.²⁶⁹ The combination of *Whren* and *Atwater*, along with other historic criminal procedure cases, gives police extensive authority to use traffic stops as tools for investigating unrelated crimes and hunches. As Justin Driver put it, this line of cases gave police a license to engage in fishing expeditions and exploratory searches that would inevitably “fall disproportionately on racial minorities”²⁷⁰

States and localities, though, could respond by limiting police authority in the context of traffic stops. Several cities and states have already moved to

261. Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 983–91 (1999) (documenting the then-existing literature on how race influences police perceptions of potential criminal suspects).

262. Harris, *supra* note 184, at 546.

263. 532 U.S. 318, 354 (2001).

264. *Id.* at 323–24.

265. *Id.* at 324.

266. *Id.*

267. *See id.* at 323–24.

268. *Id.* at 325.

269. *See id.* at 354 (“If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.”).

270. Justin Driver, *The Supreme Court as Bad Teacher*, 169 U. PA. L. REV. 1365, 1410 (2021).

ban or limit the use of pretextual stops.²⁷¹ Still, others have attempted to limit other types of police behaviors during traffic encounters, like the use of consent searches.²⁷² Other states have attempted to outlaw or limit the use of particularly offensive police management tactics like quotas, that may contribute to constitutional violations.²⁷³ In other jurisdictions, local prosecutors have established declination policies, whereby they have publicly announced that they will not pursue criminal cases if evidence emerges of officers engaging in questionable conduct during traffic stops, regardless of the admissibility of the evidence.²⁷⁴

More drastically, scholars like Jordan Blair Woods have argued that localities could fully replace armed police with unarmed civilians for many types of traffic enforcement.²⁷⁵ Doing so could “increase fairness and equality in policing along lines of race and class,”²⁷⁶ reduce the number of police-civilian interactions that escalate into violence,²⁷⁷ improve the public perceptions of the police,²⁷⁸ and give police time to focus on more significant

271. See, e.g., Ned Oliver, *Virginia Lawmakers Pass Bill Limiting Pretextual Traffic Stops, Barring Search Based on Smell of Marijuana*, VA. MERCURY (Oct. 2, 2020, 5:21 PM), <https://www.virginiamercury.com/2020/10/02/virginia-lawmakers-pass-bill-banning-pretextual-traffic-stops-and-searches-based-on-the-smell-of-marijuana> [https://perma.cc/Q6FD-BHA6] (describing the Virginia law that combatted pretextual stops through banning traffic stops based on minor traffic infractions often associated with pretextual policing; further limiting searches of vehicles after stops); Kevin Rector, *New Limits on ‘Pretextual Stops’ by LAPD Officers Approved, Riling Police Union*, L.A. TIMES (Mar. 1, 2022, 7:32 PM PT), <https://www.latimes.com/california/story/2022-03-01/new-limits-on-pretextual-stops-by-lapd-to-take-effect-this-summer-after-training> [https://perma.cc/L6LP-9JZB] (describing a similar move by the LAPD taken through a general order rather than through legislative action; requiring officers to record themselves on body camera explaining the reasons for suspecting a more serious crime has occurred).

272. See, e.g., Alma McCarty, *Oregon Lawmakers Consider Bill That Would Limit Traffic Stops, Ensure Written Consent for Vehicle Searches*, KGW8 (Feb. 16, 2022, 11:47 PM PST), <https://www.kgw.com/article/news/local/oregon-lawmakers-senate-bill-1510-traffic-stops-consent-search/283-58cf06e7-9d95-4ac3-8f6a-e0546e430101> [https://perma.cc/55PD-S8DK] (describing an Oregon law that requires police to notify individuals of their ability to decline a consent search and obtain written consent).

273. For a comprehensive summary of recent laws on police quotas, see generally Shaun Ossei-Owusu, *Police Quotas*, 96 N.Y.U. L. REV. 529 (2021) (identifying at least twenty-one limits in police quotas under state law).

274. See, e.g., *San Francisco DA Chesa Boudin Rolls Out New Policies on Gang Enhancement, Police Stops*, KTVU (Feb. 28, 2020, 4:01 PM PST), <https://www.ktvu.com/news/san-francisco-da-chesa-boudin-rolls-out-new-policies-on-gang-enhancement-police-stops> [https://perma.cc/DL4D-EZ8T] (“[T]he district attorney’s office will no longer charge defendants with possession of contraband in cases where the illegal goods were obtained through stop-and-frisk style ‘pretextual’ searches.”).

275. Woods, *Traffic Without Police*, *supra* note 20, at 1477–78 (defending the removal of police from traffic enforcement).

276. *Id.* at 1515.

277. *Id.* at 1516.

278. *Id.* at 1519.

public safety problems.²⁷⁹ As discussed previously, some empirical evidence compiled by Woods suggests that officers face low risks of physical injury or death during the process of conducting traffic stops.²⁸⁰

Despite the thoroughness and persuasiveness of Woods's data, it is difficult to know whether these low risks are in any way connected to the fact that motorists understand that officers conducting traffic stops are often armed and empowered to make arrests or otherwise enforce the criminal law. Outside of one mid-sized American city, there has been little appetite among local and state elected officials to transfer traffic enforcement to unarmed civilians.²⁸¹

By contrast, some of the other functions of policing may be hard to replicate. It remains unclear whether defunding police and reinvesting that relatively small pool of money (as compared to other existing government expenditures on social programs) could meaningfully reduce crime as efficiently or effectively as the most empirically supported policing techniques. Additionally, it may be hard to replace the emergency responder function that police currently serve. Even if local jurisdictions move to abolish police, no individual municipality can independently outlaw handgun ownership. In places like Washington, D.C., the U.S. Supreme Court has overturned local attempts to regulate handgun ownership on Second Amendment grounds.²⁸² And in cities like Chicago, local attempts to regulate firearm ownership within the boundaries of the Second Amendment have not prevented the free flow of handguns from nearby jurisdictions, like Indiana, with laxer firearm regulations.²⁸³ Thus, there will almost certainly be occasional emergency situations requiring a response from armed government personnel. This does not mean, though, that communities cannot still reimagine the scope and role of police as emergency responders.

279. *Id.* at 1523.

280. Woods, *Routine Traffic Stops*, *supra* note 191, 668–84 (generally finding evidence that injuries to police officers during routine traffic stops are rare).

281. See Jill Cowan, *Berkeley Moves Closer to Ending Police Traffic Stops*, N.Y. TIMES (Oct. 31, 2021), <https://www.nytimes.com/2021/02/24/us/berkeley-police.html> [https://perma.cc/PRT2-PY5S] (explaining a program in Berkeley to move enforcement of traffic violations to civilians rather than armed police).

282. *District of Columbia v. Heller*, 554 U.S. 570, 574–75, 635 (2008) (holding the Second Amendment protects the ability of a private individual to keep a loaded handgun inside their home; overturning a Washington, D.C. law that banned handguns and required any rifles or shotguns to be kept unloaded and disassembled); see also *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010) (extending the logic from *Heller* to state regulations of firearms).

283. See Shelby Bremer, *Majority of Guns Used in Chicago Crimes Come from Outside Illinois: Report*, NBC CHI. (Oct. 30, 2017, 7:06 PM), <https://www.nbcchicago.com/news/national-international/chicago-gun-trace-report-2017/27140> [https://perma.cc/VH44-4R27] (“Nearly 60 percent of guns recovered in Chicago come from out-of-state dealers, with more than 20 percent traced back to Indiana, according to a newly released report on the city’s violence.”).

Numerous cities across the country are experimenting with new models for responding to individuals experiencing mental health crises that minimize the role of armed law enforcement. For example, in Chicago, the proposed “Treatment Not Trauma Ordinance” would pair police officers with mental health professionals to provide more holistic responses to mental health emergencies.²⁸⁴ That model builds both on an earlier pilot program used in Chicago²⁸⁵ and a Denver program that similarly sent mental health professionals rather than police to over 700 calls in its first six months in operation.²⁸⁶ The Denver program primarily dealt with non-violent situations, often involving individuals experiencing homelessness, poverty, substance addiction, and mental health issues.²⁸⁷ Admittedly, these calls represented a small minority (around 3%) of the total calls handled by police in Denver each year.²⁸⁸ But by replacing even this small percentage of situations previously handled by Denver police, that program “frees up police to handle” more serious public safety emergencies like “a robbery or domestic violence call.”²⁸⁹

As another example, Portland similarly has employed a separate “Portland Street Response” team that responds to 911 calls between 8am and 10pm in the city.²⁹⁰ This program has received praise from city leaders, including the mayor, for effectively handling over one thousand calls a year that might have otherwise gone to the police department.²⁹¹ Like in Denver, supporters of the program have praised it for freeing up police to spend somewhat more time focusing on violent crime and more urgent public safety issues, by allowing the Street Response team to respond primarily to the 911 calls involving an apparent mental health crisis or intoxication issue in public where there is no visible weapon.²⁹² However, like in Denver, it is important

284. Charlie Wojciechowski, *City Council Committee Approves ‘Treatment Not Trauma’ Ordinance That Would Send Crisis Responders to Mental Health Calls*, NBC CHI. (July 24, 2023, 6:40 PM), <https://www.nbcchicago.com/news/local/city-council-committee-approves-treatment-not-trauma-ordinance-that-would-send-crisis-responders-to-mental-health-calls/3193016> [<https://perma.cc/7SEB-2F5M>].

285. *Id.*

286. Grace Hauck, *Denver Successfully Sent Mental Health Professionals, Not Police, to Hundreds of Calls*, USA TODAY (Feb. 8, 2021, 1:36 PM ET), <https://www.usatoday.com/story/news/nation/2021/02/06/denver-sent-mental-health-help-not-police-hundreds-calls/4421364001> [<https://perma.cc/Z3RJ-5ULB>].

287. *See id.*

288. *Id.*

289. *Id.*

290. Rebecca Ellis, *Portland Street Response Expands Citywide with New Answer for Mental Health, Addiction-Related 911 Calls*, OR. PUB. BROAD. (Mar. 28, 2022, 6:07 PM), <https://www.opb.org/article/2022/03/28/portland-street-response-oregon-mental-health-crisis> [<https://perma.cc/4GJG-JXM8>].

291. *Id.*

292. *Id.*

to acknowledge that the roughly one thousand calls fielded annually by the Portland Street Response team represent a small fraction of the total calls for public safety assistance received by the city every year.²⁹³ Most public safety calls are still handled by the police department.

C. *The Rule of Law Without Police*

Finally, those supporting the full abolition of the police may need to consider the implications for the rule of law. How can a robust rule of law exist in a world without the primary state institution empowered to ensure immediate compliance with legal rules—particularly those related to conduct deemed socially harmful and thus criminal? If the government has no state institution empowered to use force to stop harmful behavior, how can the government respond to public safety emergencies? And without the frontline enforcers of the criminal law, how can the state ensure that the criminal law is anything more than a symbolic gesture?

Another particularly complicated question for abolitionists is how to best protect the vulnerable in a world without police or law enforcement. Just as an example, hate crimes in the United States reached record levels in 2023.²⁹⁴ In 2022, the Federal Bureau of Investigations reported an estimated 11,634 hate crime incidents involving around 13,337 bias-motivated offenses.²⁹⁵ The majority of these involved offenses based on the victim’s perceived race, ethnicity, or ancestry, while a substantial minority involved offenses based on religion or sexual orientation.²⁹⁶ There are legitimate concerns about the handling of these hate crimes by some law enforcement agencies, including claims of underenforcement or underreporting.²⁹⁷ Nevertheless, hate crime enforcement is just one of many examples of circumstances where the

293. *See id.*

294. N’dea Yancey-Bragg, *Hate Crimes Reached Record Levels in 2023. Why ‘a Perfect Storm’ Could Push Them Higher*, USA TODAY (Jan. 5, 2024, 5:46 PM ET), <https://www.usatoday.com/story/news/nation/2024/01/05/hate-crimes-hit-record-levels-in-2023-why-2024-could-be-even-worse/72118808007> [<https://perma.cc/B8AD-K5MH>] (“The annual study found at least 2,184 hate crimes were reported across New York City, Los Angeles, Chicago, Houston, Phoenix, Philadelphia, San Antonio, San Diego, Dallas, and Austin last year, an increase of nearly 13% from 2022 driven in part by upticks in anti-Jewish and anti-Muslim attacks amid the ongoing Israel-Hamas war.”).

295. *FBI Releases 2022 Hate Crime Statistics*, U.S. DEP’T JUST. (Mar. 15, 2024), <https://www.justice.gov/hatecrimes/hate-crime-statistics> [<https://perma.cc/D6BC-CSQY>].

296. *Id.*

297. Susan Bro & Haifa Jabara, *Hate Crimes Are Slipping Through the Cracks*, N.Y. TIMES (Aug. 12, 2019), <https://www.nytimes.com/2019/08/12/opinion/hate-crime-statistics-heather-heyer.html> [<https://perma.cc/Q7XP-HLJG>] (“These omissions are not the exception, but rather dramatic examples of the chronic underreporting of hate crime in this country. Experts have told us the great majority of hate crimes goes unreported — missing entirely from the data . . .”).

enforcement of criminal law is a critically important tool for the protection of historically marginalized groups from private violence.²⁹⁸

This is not to say that the existing state of policing in the United States is fully consistent with a just rule of law. The manner in which policing disparately affects communities of color raises its own serious concerns about the legitimacy and the rule of law.²⁹⁹ However, responding to this reality by abolishing or substantially defunding law enforcement may ultimately create even greater rule of law-related challenges. Based on the available empirical evidence, defunding may reduce resources for criminal investigations, thereby lowering clearance rates and resulting in fewer offenders being brought to justice for their crimes. Defunding police agencies is unlikely to address the rate of gun ownership or the underlying causes of public safety emergencies that currently require armed intervention by police. This could exacerbate power imbalances, with vulnerable and unarmed individuals hurt the most by a lack of government response to public safety emergencies, crime, and violence.

V. CONCLUSION

The world would be simpler if policing were an objective evil that could simply be eradicated. The reality is more complicated. Policing serves numerous important roles in society—including investigative, emergency response, deterrence of crime, and traffic enforcement functions—that may prove difficult to replace with other government institutions. At a minimum, any effort to strip fully these powers from police departments must consider the collateral consequences and offer compelling alternatives to replace these current functions of policing. More generally, the enforcement of many criminal prohibitions by police is fundamental to the rule of law and the protection of historically marginalized communities.

298. See generally JEANNINE BELL, *POLICING HATRED: LAW ENFORCEMENT, CIVIL RIGHTS, AND HATE CRIMES* (NYU Press, rev. ed. 2004) (providing a comprehensive study of one major hate crime unit, and ultimately reaching the conclusion that police need to be empowered to enforce even some low-level offenses because of their harmful effects).

299. See Louis E. Porter, *Police Misconduct*, in *CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS* 261 (Roger G. Dunham et al. eds., 8th ed. 2021) (“Police abuse of their authority represents a fundamental threat to both human rights and the democratic rule of law.”); see also Guillermo O’Donnell, *The Quality of Democracy: Why the Rule of Law Matters*, 15 J. DEMOCRACY 32, 44 (2004) (“The police and other security forces must respect the rights of all individuals, and individuals should not be held in prison or subject to other ills in violation of basic rules of procedural fairness.”). See generally Nirej Sekhon, *Police and the Limit of Law*, 119 COLUM. L. REV. 1711 (2019) (generally arguing that police are not easily constrained by law, but law nonetheless represents an important constraint on their abuse of power).

This is not to say that policing has always been consistent with a robust rule of law. In some jurisdictions, poorly regulated and unaccountable police departments have engaged in patterns of unconstitutional behavior.³⁰⁰ These harms often disproportionately affect historically marginalized communities, including communities of color (especially Black and Latino young men), LGBTQIA+ individuals, and justice-involved populations.³⁰¹ Additionally, communities often ask police departments to do too much, suggesting that communities may be wise to narrow the scope of some police responsibilities and better regulate the authority of police when they engage in these remaining responsibilities. Given these realities, effectively controlling police behavior is a complex regulatory challenge, one that demands aggressive local, state, and federal responses. This may include bolstering state oversight of police,³⁰² reforming federal civil rights laws,³⁰³ re-examining doctrinal interpretations of existing laws regulating police behavior,³⁰⁴ and rethinking

300. For examples of jurisdictions engaged in such patterns or practices of misconduct, see Rushin, *Structural Reform Litigation*, *supra* note 55 (listing some major cities that the Department of Justice has identified as being engaged in a pattern or practice of unlawful police misconduct, and generally summarizing how this process works).

301. RUSHIN, FEDERAL INTERVENTION, *supra* note 35, at 7 (explaining that “[p]olice misconduct disproportionately affects political marginalized minorities” that “lack the same political power as the majority” and listing various groups including communities of color, specifically Black and Latino individuals and justice-involved communities).

302. *See, e.g.*, Roger Goldman, *Importance of State Law in Police Reform*, 60 ST. LOUIS U. L.J. 363, 381–86 (2016) (describing how to establish more effective licensing laws, decertification procedures, minimum department policy standards, and state databases for data on officer behavior); Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State “Pattern or Practice” Statute*, 19 GEO. MASON U. C.R. L.J. 479, 536–51 (2009) (arguing in favor of state laws modeled after the federal law that permits the U.S. attorney general to intervene into departments engaged in patterns of unlawful behavior).

303. *See, e.g.*, Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797, 1832–35 (discussing generally the arguments in favor of eliminating qualified immunity and discussing how to move forward); Aneri Shah, Comment, *Reinvigorating the Federal Government’s Role in Civil Rights Enforcement Under 18 U.S.C. § 242: The George Floyd Justice in Policing Act’s Not So Reckless Proposal*, 52 SETON HALL L. REV. 1601, 1629–31 (2022) (arguing generally in favor of altering the standard under federal criminal law from “willfully” to “recklessly” for cases involving the deprivation of civil rights by police officer); Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 20–52 (2009) (explaining a proposal to increase the deterrent effect of the federal law that empowers U.S. Department of Justice intervention into local police departments by creating a publicized worst-first methodology for prioritizing these cases); Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384 (2000) (generally arguing for a change to the federal law that empowers U.S. Department of Justice intervention into local police departments that would empower private individuals to be deputized, thereby increasing the number of cases brought against police departments each year).

304. *See, e.g.*, Cynthia Lee, *Officer-Created Jeopardy: Broadening the Time Frame for Assessing a Police Officer’s Use of Deadly Force*, 89 GEO. WASH. L. REV. 1362, 1419–33

the internal investigation and disciplinary procedures used by many police agencies,³⁰⁵ just to name a few prior proposals.

These kinds of policy changes will not be easy. Given the decentralization of American policing, many of these policy changes would require action by legislators at the local, state, and federal levels. However, this approach may maximize the social benefits of policing, while minimizing its attendant harms.

(2021) (arguing for courts to not preclude consideration of officer behaviors before a use of force that may have increased the risk of a deadly confrontation); Teressa Ravenell, *Unidentified Police Officials*, 100 TEX. L. REV. 891, 893, 897–99 (2022) (describing how an interpretation of existing civil rights law could allow litigants to more easily identify police officers responsible for unconstitutional behavior; also showing how historically, this John Doe problem can impede litigants' ability to receive relief under existing law).

305. See, e.g., Rushin, *Police Arbitration*, *supra* note 61, at 1064–77 (discussing various ways to reform the appellate review system for police disciplinary cases, including alterations to the standard of review or the selection of arbitrators); Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. 545, 588–92 (2019) (generally presenting evidence on the kind of appellate options available to police after they are found responsible for professional misconduct and offering recommendations for reforming this appellate review process).