The Procedural Justice Industrial Complex

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The singular focus on procedural justice police reform is dangerous. Procedurally just law enforcement encounters provide an empirically proven subjective sense of fairness and legitimacy, while obscuring substantively unjust outcomes emanating from a fundamentally unjust system. The deceptive simplicity of procedural justice — that a polite cop is a lawful cop — promotes a false consciousness among would-be reformers that progress has been made, evokes a false sense of legitimacy divorced from objective indicia of lawfulness or morality, and claims the mantle of “reform” in the process. It is not just that procedural justice is a suboptimal type of reform; it is the type of reform that actively frustrates other reforms by dressing up policing with the perception of correctness and legitimacy.

And yet, procedural justice dominates police reform policy. Virtually all current federally funded police reform proposals support procedural justice trainings to the exclusion of proposals to address police brutality, eliminate discriminatory over-policing, demilitarize departments, and end qualified immunity. As a result, a growing procedural justice industrial complex has taken shape. This multilayered public-private partnership between government agencies, academic institutions, and for-profit training companies increasingly helps police departments “protect their brand” and “reduce liability” through procedural politeness, while requiring no changes to unlawful, unnecessary, and violent police behavior.

This Article provides the first comprehensive account of this growing complex, charting its roots in community policing and evolving into a cottage industry of private, for-profit purveyors offering costly procedural justice trainings to departments flush with federal grant money. This Article also challenges the dominant scholarly narrative supporting these procedural justice policies, interrogating its role in promoting unnecessary ubiquitous police presence and justifying new racially discriminatory practices like “hot spots policing” and “precision policing.” In doing so, the Article applies these process-oriented critiques to five substantive police reform proposals, exploring how this singular focus on procedural justice distinctly frustrates more necessary transformative reforms in the areas of discriminatory policing, police brutality, police accountability, legal reform, and police abolition.

* Associate Professor of Law, California Western School of Law. Many thanks to my incredible research assistant, Sarah Varela, for making this project a reality. I also benefitted greatly from faculty discussions and workshops at the University of Tennessee College of Law, University of Kentucky College of Law, University of Oregon School of Law, and the Wilson Center for Science and Justice at Duke Law School, as well as roundtable discussions at the Southeastern Association of Law Schools 2022 Annual Meeting. Special thanks to Ben Grunwald, Cortney Lollar, Dwight Aarons, Kristen Bell, Donald Dripps, and Pedro Gerson. Dedicated to Noël, without whom none of this is possible.
INTRODUCTION

The brief mainstream movement to “defund the police” is over.1 A movement largely consigned to academic and fringe activist circles gained momentary widespread traction following the murders of Breonna Taylor and George Floyd in 2020, with lawmakers passing resolutions to shrink police departments, and cities as large as Minneapolis and Los Angeles promising to slash police budgets.2 But with


rising crime rates during the COVID-19 pandemic and political backlash to the "defund" messaging, policymakers retreated from earlier transformative police reform announcements while quietly increasing municipal police budgets in 2021 and 2022. President Biden gave voice to this retreat during his 2022 State of the Union address when he declared that “[t]he answer is not to [d]efund the police. The answer is to FUND the police with the resources and training they need to protect their communities.”

In lieu of police defunding or other substantive reforms, one popular type of “resources and training” is flush with funding at the federal, state, and local level: procedural justice training. Procedural justice—the idea that state actors should treat their citizens with respect, neutrality, dignity, and fairness—has emerged over the last three decades as the dominant lens through which scholars and lawmakers assess


police legitimacy. Procedural justice theorists claim that the more citizens perceive police as treating them with respect and dignity, the more they will perceive police as legitimate even if they do not agree with the outcome of a particular interaction. Procedural justice trainings are popular with lawmakers and police alike because they are inexpensive (compared to more transformative substantive police reforms) and noncontroversial, and they do not require major changes to the fundamental problems plaguing the criminal justice system as a whole.

As a result of this popularity, a burgeoning cottage industry of private commercial and academic procedural justice training programs has formed. Dozens of agencies now offer thousands of courses in “procedural justice policing,” often at great expense to police departments—and thus, the public. These organizations work closely with public agencies and reap millions of dollars in revenue each year in what has become nothing short of a procedural justice industrial complex. The success of this growing complex has effectively sidelined all other substantive police reforms.


10. See infra Section II.C.2.

11. Id.; see also Dorian Schaap & Elsa Saarikomäki, Rethinking Police Procedural Justice, 26 Theoretical Criminology, 416, 416–17 (2017) ("[P]rocedural justice theory has
But while training police to act politely in encounters is a laudable goal, it is neither the only nor the primary area requiring police reform. Procedural justice trainings do nothing to address the underlying issues of mass incarceration, overpolicing of minority neighborhoods, exploitative criminal codes that target the poor and marginalized, lax search and seizure standards, and police brutality. Instead, they provide the unearned veneer of legitimacy to police, reifying a criminal justice system that exacts an unjust and disproportionate harm on society’s underclass.

The procedural justice industrial complex is not only ineffective in solving these problems; it is also dangerous. It threatens to exacerbate policing’s fundamental problems in three distinct yet related ways. First, it creates what scholars call a “false consciousness,” referring to “the tendency of liberal reforms to dupe those at the bottom of the social and economic hierarchy with promises of equality [and] fairness.” Procedural justice trainings promote the unrealistic sense that the positions of those most marginalized and harmed by unjust policing practices will meaningfully improve in relation to law enforcement. But procedural justice makes no such promise. While a procedurally just encounter may afford these individuals a sense of dignity previously missing in past police contacts, neither the officer’s decision to target that person nor the substantive outcome of the encounter is changed become the dominant paradigm in thinking about police legitimacy . . . . [A] fourth wave of police trust-building strategies is in vogue . . . . [It is] primarily [focused on] individual interactions between police officers and citizens.” (emphasis omitted).

12. Schaap et al., supra note 11, at 426 (“The bulk of procedural justice research currently neither addresses well enough the problem of over-policing of certain groups, nor the profound cynicism of those groups toward the police and the criminal justice system . . . .”); ROBERT E. WORDEN & SARAH J. MCLEAN, MIRAGE OF POLICE REFORM: PROCEDURAL JUSTICE AND POLICE LEGITIMACY 149–165 (2017) (concluding that quality of officer’s interactions with citizens often bears little resemblance to what officers actually do); Monica C. Bell, Police Reform and the Dismantling of Legal Estrangement, 126 YALE L.J. 2054, 2062 (2017) (critiquing procedural justice as an ineffective tool to address “legal estrangement” felt by minority communities operating within a substantively unjust system); SHAWN E. FIELDS, NEIGHBORHOOD WATCH: POLICING WHITE SPACES IN AMERICA 141–42 (2022) (“[P]rocedural justice . . . mak[es] people feel better about their interactions with police,” but it does not address “failures of substantive justice, [which] include[] among other things, reducing the amount of actual contact between police and citizens.”).

13. See FIELDS, supra note 12, at 141–42 (describing “[f]alse [p]romise of [p]rocedural [j]ustice” in places such as Minneapolis, hailed as a “national leader in procedural justice initiatives” two years before George Floyd’s murder exposed police abuses within the city’s police ranks).


15. See Bell, supra note 12, at 2082 (“[T]he procedural justice solution could paradoxically teach officers more effective ways to discriminate and violate privacy.”); cf. Tracey Meares, The Legitimacy of Police Among Young African-American Men, 92 MARQ. L. REV. 651, 653 (2009) (“[T]he form of policing that has the potential to solve the ‘race issue’ emphasizes process rather than outcomes . . . .”).
at all by procedural justice. Yet the false promise that police reform is taking place tends to have a “pacification effect” that diminishes the perceived need for transformative change.\textsuperscript{16}

Second, procedural justice creates a false sense of police legitimacy, laundering the oppressive overpolicing, overzealous prosecution, and mass incarceration of poor and minority communities for nonviolent or even trivial deviations from (wealthy, White) social norms.\textsuperscript{17} This false legitimacy is problematic in its own right, because it misdiagnoses state legitimacy as derived primarily from sound protocols rather than substantively just uses of state power. Procedural justice-as-legitimacy also tends to support policies favoring increases in police budgets, law enforcement personnel, and community policing footprints.\textsuperscript{18} Indeed, statements by procedural justice proponents, including Presidents Biden and Obama, suggest that successful procedural justice trainings rely on and are intentionally designed to justify more funding for more cops.\textsuperscript{19} But increasing police presence without addressing

\begin{itemize}
\item \textsuperscript{16} Butler, supra note 14, at 1467; see also Kimberlé Williams Crenshaw, \textit{Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law}, 101 HARV. L. REV. 1331, 1346 (1988) (describing a similar effect in civil antidiscrimination law).
\item \textsuperscript{19} See Radley Balko, \textit{7 Ways the Obama Administration Has Accelerated Police Militarization}, HUFFPOST (July 10, 2013, 3:57 PM), https://www.huffpost.com/entry/obama-police-militarization_n_3566478 [https://perma.cc/JX6H-4M8M] (describing Obama’s support for procedurally just community policing programs, including by increasing DOJ’s Community Oriented Policing Services (COPS) by 250% in his first year in office); Ed. Bd., Editorial, \textit{Biden Should Know. Adding 100,000 More Cops Is the Wrong Approach}, L.A.
substantive policing problems such as discriminatory “precision policing”\(^{20}\) and dragnet-style stop and frisk in so-called “high-crime areas”\(^{21}\) promises only to increase the scale of these existing problems.

Third, the emphasis on procedural justice to the exclusion of other criminal legal reforms works to frustrate larger, more systemic reform efforts. This criticism of procedural justice goes beyond misplaced priorities. It is not a matter of simply focusing on process-oriented policing instead of substantive policing reforms. In many ways, procedural justice “actually hinder[s] achieving [the wholesale] transformation,” which is “necessary to fix the kinds of problems [in policing] articulated by the Movement for Black Lives.”\(^{22}\)

This Article provides the first comprehensive evaluation of the explosive growth of the procedural justice industrial complex, with particular attention to the underexplored world of private, for-profit police training “academies” that rely heavily on federal grant dollars funneled through state and local police departments.\(^{23}\) It also challenges the prevailing scholarly narrative that procedural justice alone can enhance police legitimacy, exploring how a monocular focus on process as legitimacy has already corroded momentum for changes rooted in officer lawfulness and morality.\(^{24}\) In doing so, it charts the adverse implications of procedural justice for five specific areas of police reform—reducing discriminatory policing, addressing police brutality, police accountability, legal reform, and police abolition—examining how the false promise of procedural justice reform distinctly threatens needed transformative change in these areas.\(^{25}\)

After decades of political debate over whether a policing problem even existed in this country,\(^{26}\) the topic of police reform has become a viable, mainstream, bipartisan

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\(^{21}\) See generally infra Section II.

\(^{22}\) Butler, *supra* note 14, at 1426.

\(^{23}\) See generally infra Section II.

\(^{24}\) See infra Section III.

\(^{25}\) See infra Section III.

\(^{26}\) See Jason Mazzone & Stephen Rushin, *State Attorneys General as Agents of Police*
But the early returns on the substance of this conversation are worrisome. The growing procedural justice industrial complex threatens not only to waste a precious opportunity for more necessary transformative change but also to exacerbate existing structural policing problems along the way.

I. THE MEANING OF PROCEDURAL JUSTICE

Prior to 1990, most criminologists assumed people obeyed criminal laws and police commands out of a deterrence-based fear of sanction. But beginning with Yale Law Professor Tom Tyler’s transformative book Why People Obey the Law, and continuing with the work of legitimacy scholars Justice Tankebe, Tracey Meares, and others, a process-based model of legitimacy arose that posited and


29. TOM R. TYLER, WHY PEOPLE OBEY THE LAW (1990); see also Justice Tankebe, Police Legitimacy, in THE OXFORD HANDBOOK OF POLICE AND POLICING 238, 239 (2014) (“[I]t is undoubtedly Tom Tyler’s work that opened the way for the present stature of legitimacy within criminology.”).


proved through self-evaluative surveys that people obeyed police not out of fear but out of a sense that police had the legitimate authority to command compliance. They also showed that when feelings of legitimacy toward police lagged, so, too, did compliance with police directives. Tyler and others showed that the best, cheapest, and most popular way to regain legitimacy (and thus, to secure compliance) was through acting in procedurally just ways toward citizens. This work laid the foundation for the current dominant lens through which policymakers, theorists, and many activists view modern police legitimacy and reform.

This section defines procedural justice as a concept and a practice, examines its usage as a reflection of state legitimacy, and evaluates recent studies illustrating its efficacy as a tool to promote exploitative compliance with state directives.

A. Procedural Justice Defined

Procedural justice as it relates to policing “focuses on the way police . . . interact with the public, and how the characteristics of those interactions shape the public’s views of the police, their willingness to obey the law, and actual crime rates.”

Legitimacy, 44 LAW & HUM. BEHAV. 377 (2020).
33. Tyler, Procedural Justice, supra note 7, at 290–94.
34. Id.
35. Id. at 306 (“One particular advantage of procedural justice is that it leads to compliance over time.”); Sunshine et al., supra note 7, at 522–25; cf. Victor D. Quintanilla, Taboo Procedural Tradeoffs: Examining How the Public Experiences Tradeoffs Between Procedural Justice and Cost, 15 NEV. L.J. 882, 885 (2015) (exploring whether procedural justice in civil law, business, criminal investigation, and elsewhere can be achieved with reference to a “cost-benefit analysis” because it fails to “encompass the . . . range of human values implicated when procedural justice is withheld . . . .”).
Procedural justice entails “two components”: (1) quality of decision making (“whether citizens are treated fairly when law enforcement authorities make decisions”), and (2) quality of treatment (“whether law enforcement officers treat citizens with proper respect as human beings”).

To effectuate quality of decision making and treatment in practice, Professor Tyler identified “several critical dimensions of procedural fairness”:

1. Voice (the perception that your side of the story has been heard);
2. Respect (perception that system players treat you with dignity and respect);
3. Neutrality (perception that the decision-making process is unbiased and trustworthy);
4. Understanding (comprehension of the process and how decisions are made); and
5. Helpfulness (perception that system players are interested in your personal situation to the extent that the law allows).

It has become popular in recent years to reduce these tenets of procedural justice to “four central principles: treating people with dignity and respect; giving [citizens] a voice during encounters; being neutral in decision making; and conveying trustworthy motives.” The National Commission on Peace Officer Standards and Training (POST), one of the largest organizations contracted to train officers, succinctly describes procedurally just policing as requiring: “[1] Voice (Listen); [2] Neutrality (Be fair); [3] Respectful treatment (Be respectful); and [4] Trustworthiness (Trying to do what’s best for the people).”

“While these considerations might seem minor aspects of police-public encounters, they powerfully influence individual judgments about the morality of power.” Using a survey-based methodology, Tyler and others have demonstrated that procedural justice improves police legitimacy perceptions because the public views police as fair and willing to treat members of the public with respect. These procedural justice scholars argue that “perceived legitimacy is critical because it

38. Bottoms et al., supra note 30, at 121; see also Tyler, Procedural Justice, supra note 7, at 284.
42. Reisig et al., supra note 28, at 151.
increases citizen’s willingness to obey the law and to cooperate with law enforcement. This correlation between procedural justice and compliance naturally finds supporters in the law enforcement community, which wants above all else obedience with their directives. It is why law enforcement agencies, from the Department of Justice to small municipal departments, increasingly make “[t]he [c]ase for [p]rocedural [j]ustice . . . as a [c]rime [p]revention [t]ool.”

B. Legitimacy and Compliance

Does a more procedurally just police encounter lead to more substantively just outcomes simply because it involves greater citizen compliance? Or, alternatively, is increasing the subjective satisfaction of obedient citizens an end in itself? The answer to both questions is no. Instead, from the state’s perspective, procedural justice supplies the means of increased perceptions of police legitimacy, which in turn achieves the end of increased compliance with police commands. Procedural justice research shows an unmistakable connection between procedural justice, perceived police legitimacy, and actual citizen compliance. What it does not demonstrate is any connection between procedural justice, citizen compliance, and substantively legitimate police action. But to the state, this end is secondary to achieving compliance.


45. See, e.g., Police-Community Relations, LAW EN’T ACTION P’SHIP, https://lawenforcementactionpartnership.org/our-issues/police-community-relations/ [https://perma.cc/J6XP-B7BR] (advocating for procedurally just community policing to help “improving support for officers like us”); Rich Miller, The Importance of Procedural Justice, 6 E-NEWSL. COPS OFF. (2013), https://cops.usdoj.gov/html/dispatch/09-2013/the_importance_of_procedural_justice.asp [https://perma.cc/9BUJ-2UMT] (“[T]here is empirical research that shows procedural justice delivers positive results. . . . This is not a theory. . . . If the community views their officers as legitimate they are more likely to. . . . agree with police decisions and less likely to be confrontational or hostile toward us.”) (internal footnote omitted).

46. Gold, supra note 39.

47. Bottoms et al., supra note 30, at 129 (criticizing this theory of state legitimacy as one tied to “belief in legality” for the purpose of “compliance with enactments which are formally correct and which have been made in the accustomed manner,” even if substantively unjust) (emphasis omitted) (quoting MAX WEBER, ECONOMY AND SOCIETY 214 (1978)).

48. Pina-Sánchez et al., supra note 32, at 378 (“A substantial body of evidence has emerged that emphasizes a strong and positive relationship between individual perceptions of procedural justice, their assessments of the legitimacy of criminal justice institutions . . . and subsequent compliance . . . .”); Tyler et al., supra note 37, at 266 (distinguishing cooperation from compliance, but finding that “research using police records to index behavior supports the linkage of procedural justice to compliance through legitimacy”).
Not surprisingly, then, “[p]rocedural justice and police legitimacy have increasingly converged, becoming a focal point of discussion for law enforcement throughout the United States.”

Indeed, when President Obama constituted his Task Force on 21st Century Policing (“Task Force”) in 2014, he declared that “the most important issue in America today is police having trust in different communities” as a way to increase the perceived legitimacy of police in those communities. A year later, when the Task Force issued its report and recommendation, the most prominent recommendation for increasing legitimacy was procedural justice. Thus, the Obama Administration’s first police reform priority was legitimacy, and its measure of police legitimacy did not involve lawful or moral police behavior, but a procedural tool designed intentionally to give the subjective appearance of legitimacy.

How did we get here? How did it become the dominant narrative that armed-government-agent legitimacy should be measured not by whether a particular use of state force was just or unjust but by subjective perceptions regarding that use of force?

This nearly singular focus on perceptions of procedural legitimacy over actual substantive fairness owes much to the work of German sociologist Max Weber. For Weber, the modern state is a “compulsory organization with a territorial basis” that must achieve its objectives by claiming authority in one of three ways: charismatic authority, traditional authority, or legal-rational authority. Charismatic authority rests on the exceptional or exemplary character of an individual who makes a claim to legitimate rule. Traditional authority relies on the sanctity of customs and traditions for validation. Legal-rational authority, the authority most relevant to the modern state, is grounded in “a belief in the legality of [the] enacted rules and the right of those elevated to authority under such rules to issue commands.” From Weber’s standpoint, legitimation is a subjective process: it does not inhere in an authority’s procedures or existence, but is continuously negotiated with subjects, taking into account their views.

For police specifically, Weber cares less about actual legitimacy as an end than with perceived legitimacy as a means to the end of compliance. The state’s ability to effectively issue commands rests on “domination,” the “probability that a command

50. *Id.*
51. *Final Report*, supra note 6, at 1 (“The task force recommendations . . . are organized around six main topic areas or ‘pillars’: Building Trust and Legitimacy . . . . Toward that end, law enforcement agencies should adopt procedural justice as the guiding principle for internal and external policies and practices . . . .”).
52. *Weber*, supra note 47, at 56; *see also* Bottoms et al., *supra* note 30, at 127–28 (“Weber’s principal concern, in his writings on legitimacy, is to explore the[se] three different ‘pure types of legitimate domination’ . . . .”).
54. *Id.*
56. Bell, *supra* note 12, at 2074; *see also* Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1795–1801 (2005); *cf.* DAVID BEETHAM, THE LEGITIMATION OF POWER 24 (2013) (“It is necessary for social science to be freed from the whole Weberian legacy if it is to make sense of the subject of legitimacy.”).
with a given specific content will be obeyed by a given group of persons.”

The likelihood that police commands will be obeyed is both important and difficult to achieve. While “day-to-day use of legitimate [physical] force within any given state is normally reserved to law enforcement officials,” people will not submit to domination as a virtue in itself. Instead, in seeking to “secure continuing obedience a power-holder always ‘attempts to establish and to cultivate the belief in its legitimacy.’”

Cultivating this belief in legitimacy can take many forms. But for three decades, “the dominant theoretical approach to [perceived police] legitimacy . . . is that of ‘procedural justice.’” Echoing Weber, Professor Tyler concluded, “people comply with the law . . . because they feel that legal authorities are legitimate and that their actions are generally fair.”

In the short term, Tyler claimed that procedural fairness was “more likely to lead to (1) immediate decision acceptance, and (2) an initial ascription of legitimacy to the law enforcement authority.” In the longer term, he argued that “to the degree that people do regard the police and courts as legitimate, they are more willing to accept the directives and decisions of the police and courts, and the likelihood of defiance, hostility, and resistance is diminished.”

Subsequent empirical studies have confirmed this legitimacy-compliance connection in procedurally just policing. Perhaps surprisingly, “the perceived

57. WEBER, supra note 47, at 215.
58. Bottoms et al., supra note 30, at 127; WEBER, supra note 47, at 213 (“Experience shows that in no instance does domination [including physical force] voluntarily limit itself to the appeal to [citizens’] material or affectual or ideal motives as a basis for its continuance.”); cf. Alan Hyde, The Concept of Legitimation in the Sociology of Law, 1983 WIS. L. REV. 379, 389 (1983) (critiquing the view that social observations like submission or perceptions of legitimacy can be meaningfully correlated to “analysis of elite communication” like complex law).
59. Bottoms et al., supra note 30, at 128 (emphasis omitted) (quoting WEBER, supra note 47 at 213).
60. Bottoms et al., supra note 30, at 120.
61. TYLER, supra note 29, at back cover; see also Justice Tankebe, Self-Help, Policing, and Procedural Justice: Ghanaian Vigilantism and the Rule of Law, 43 LAW & SOC’y REV. 245, 247 (2009) (”[P]eople [are not] simply . . . rational beings[,] . . . [they are also] moral beings . . . . [T]hey are [therefore] likely to [obey] the law and [to] cooperate with legal authorities” on the grounds of deterrence and also for reasons of legitimacy.).
62. Bottoms et al., supra note 30, at 121; see also Schaap et al., supra note 11, at 419 (observing that the “procedural justice paradigm” focuses “explicitly on obedience and public acceptance of police decisions”).
63. Tyler, Procedural Justice, supra note 7, at 286; Schaap et al., supra note 11, at 419 (“[B]y concentrating on . . . obedience . . . the purpose of the procedural justice paradigm is very clearly to reduce (the need for) police use of force.”).
procedural fairness of law enforcement authorities” correlates more strongly with perceived legitimacy and subsequent compliance than “the favorability or perceived fairness of the outcome.” That is, regardless of whether an officer’s decisions were actually fair, just, or legal, a citizen is more likely to accept as legitimate—and thus, to comply and submit to—the authority of the procedurally just officer.

There appear to be two primary reasons that states are drawn to this view of legitimacy. First, rather than having to defend the substantive justness of the rules enacted or commands issued by officers in enforcing those rules, the state need only point to the existence of those rules as a “legal-rational” basis for legitimacy. This “obeyed legality” view of legitimacy adheres dangerously close to pre-World War II positivist conceptions of state legitimacy, whereby legitimacy is simply equated with “legality, with the proviso that the laws must in fact usually be obeyed.”

Second, the state’s actual substantive legitimacy need not exist in fact but need only be perceived by its citizens. The theoretical work of Weber and Tyler, as well as the empirical studies described in the next subsection, emphasize the “belief” in legitimacy, the “perception” of legitimacy, and the “subjective reception” of the power-holder by the citizen-subject. Thus, whether the police officer proceeds fairly in fact (or lies, plants evidence, or searches beyond legal bounds) is beside the point. Likewise, whether the laws regulating police behavior or being enforced by the officer are just does not matter. So long as the officer treats the citizen-subject with dignity and provides other veneers of just treatment to an encounter, the resultant belief one has been treated fairly will promote the perceived legitimacy of the officer and the police more broadly, which in turn will increase citizen-subject compliance—which, in fact, is the actual end goal for the state.

Police departments and lawmakers increasingly describe “effective policing” and “procedurally just” policing as inextricably linked. Tyler and others first observed factors producing cooperation and compliance depend upon the values that civilians independently hold or endorse, rather than the way they are treated during the encounter.”

65. Bottoms et al., supra note 30, at 120 (emphasis omitted); Meares, supra note 15, at 658.


67. See Hollander-Blumoff, supra note 32, at 142 (observing the importance of subjective perceptions of legitimacy in courtroom proceedings). In this sense, legitimacy is “dialogic and relational in character. . . . [T]hose in power . . . make a claim to be the legitimate ruler(s); then members of the audience respond to this claim. . . . It follows that legitimacy should not be viewed as a single transaction; it is more like a perpetual discussion, in which the content of power-holders’ later claims will be affected by the nature of the audience response.” Bottoms et al., supra note 30, at 129 (emphasis omitted); cf. Worden et al., supra note 12, at 12 (questioning predominant legitimacy narrative and pointing to an earlier study finding that “citizens’ subjective experience is very weakly related to officers’ procedural injustice”).

that when police are viewed as legitimate, citizens “comply with the law,” “accept police decisions,” and “help the police fight crime,” all of which promote “effective policing.” Law enforcement accounts borrow heavily from this scholarly literature, stressing the importance of procedural justice in helping officers meet their crime fighting ends. According to the Department of Justice:

The Department’s efforts to tackle crime depend on having trust and legitimacy with the communities we serve, so law enforcement is viewed as—and can be—an ally in guarding public safety. It is thus critical that we treat people with dignity and respect, establish a culture of transparency and accountability, and underscore our broader commitment to procedural justice and community policing.

Likewise, the following account from the National Initiative for Building Community Trust & Justice (“National Initiative”), an Obama-era government project designed to “improve relationships and increase trust between communities and the criminal justice system,” connects the dots from procedural justice to legitimacy to compliance to solving crimes to safety for all:

Procedurally just policing . . . is closely linked to improving community perceptions of police legitimacy, the belief that authorities have the right to dictate proper behavior. Research shows that when communities view police authority as legitimate, they are more likely to cooperate with police and obey the law. Establishing and maintaining police legitimacy promotes the acceptance of police decisions, correlates with high levels of law abidingness, and makes it more likely that police and communities will collaborate to fight crime.

There exists another allure to procedural justice for states: cost. Not only does procedural justice offer a way to change attitudes about police without requiring transformative legal changes about police power generally, but “[e]nhancing


69. Tyler et al., supra note 37, at 242, 249, 266, 273; TYLER, supra note 29, at 25 (Legitimacy “represents an acceptance by people of the need to bring their behavior into line with the dictates of an external authority.”).


71. Procedural Justice, supra note 37. Acknowledging the difficulties of “develop[ing] good will” in Black and Brown communities, the National Initiative also sought to “improve relationships and increase trust . . . [through] reconciliation . . . and implicit bias.” Id.; Butler, supra note 14, at 1433.
procedural justice is often considered a natural, largely costless fix for increasing perceptions of legitimacy and promoting self-regulation.”

None of these theoretical articulations of legitimacy, nor the policy statements and recommendations flowing from them, makes any claim that legitimacy rests on the actual, substantive justness, ethics, or virtuosity of the power-holder. This understanding of legitimacy “does not require an external observer to make any judgment about the appropriateness . . . of the social order she investigates.”\(^{73}\) “[I]t is possible for a researcher to conclude that a police organization is legitimate in the empirical sense (i.e., it finds wide moral acceptance among citizens) and yet for that researcher to believe that that organization is deeply unjust or evil.”\(^{74}\)

Given the focus on empirical measurements of subjective attitudes about police legitimacy, it bears considering how well procedural justice efforts succeed in winning the hearts and minds (and compliance) of citizen-subjects. We now turn to the question of efficacy.

**C. The “Efficacy” of Procedural Justice**

In 2004, the National Research Council declared that “for many decades it has been assumed that more and better police training leads to improved police performance,” but “few studies evaluate[d] the impact of training programs on actual performance on the job.”\(^{75}\) Studies assessing the connection between procedural justice training and police legitimacy relied almost exclusively on survey data of a community’s *perception* that police are fair, legitimate, and deserving of obedience.\(^{76}\) Almost all yielded “efficacious” results in the areas of perceived legitimacy and willingness to obey.\(^{77}\) Thus, federal, state, and local governments,

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73. Tankebe, *supra* note 29, at 240–41 (internal citation omitted).
74. Id. at 241; see also Allen Buchanan, *Political Legitimacy and Democracy*, 112 ETHICS 689, 695 (2002) (“Political authority, understood as including the right of the government to be obeyed, entails political legitimacy, but not vice versa.”).
76. See, e.g., Andrew V. Papachristos, Tracey L. Meares & Jeffrey Fagan, *Why Do Criminals Obey the Law? The Influence of Legitimacy and Social Networks on Active Gun Offenders*, 102 J. CRIM. L. & CRIMINOLOGY 397, 410–12, 423 (2012) (describing study showing connection between procedural justice and enhanced legitimacy, “based on self-reported responses to survey questions”); Sunshine et al., *supra* note 7, at 525 (“To test the assumptions of the process-based model of policing, a self-report survey was mailed to a random sample of registered voters in New York City.”).
77. For Sunshine and Tyler, the willingness of citizens “to voluntarily defer to police action” and to “more widely tolerate[ ] . . . [intrusive police] tactics” was itself viewed as a
along with educational institutions and for-profit training centers, have relied on these studies to justify massive increases in spending on procedural justice training programs.\textsuperscript{78}

For example, in a 2003 study of New York City residents, Tyler and New York University Professor Jason Sunshine found that perceptions of police legitimacy were based largely on procedural justice judgments, and to a far lesser extent on police performance in maintaining law and order.\textsuperscript{79} They also found that legitimacy influenced people’s willingness to cooperate with the police.\textsuperscript{80} A 2010 study by Tyler, New York University Law Professor Stephen Schulhofer, and University of Chicago Law Professor Aziz Huq interviewed Muslim-Americans in New York and found that their views about police legitimacy were similarly shaped by the fairness of the processes the police employed when interacting with the public.\textsuperscript{81} Those views, in turn, determined Muslim-Americans’ willingness to alert the police about terrorist activities in their communities, an indicator that process may improve substantive police work from a community reporting perspective.\textsuperscript{82} Each of these studies, however, defined efficacy only as the measure of a citizen’s perceived legitimation of state agents and their consequent willingness to voluntarily comply with directives.\textsuperscript{83}

One hopeful study from 2018 found that when officers participated in a procedural justice training program, “[they] were as active in the community as untreated officers along multiple dimensions, but they were less likely to resolve incidents with an arrest and less likely to be involved in use-of-force incidents.”\textsuperscript{84}
This study served as an outlier in that it measured substantive results—arrests and force—as desirable objectives of procedural justice training. Unfortunately, it became difficult to differentiate between correlation and causation, as the same data set also found that “police departments with policies that place clear restrictions on when and how officers use force had significantly fewer killings than those that did not have these restrictions in place,” suggesting that other forces were at play. The National Academy of Sciences Committee on Proactive Policing concluded the same year that “there were simply not enough rigorous empirical studies to draw conclusions regarding the impacts of [procedural justice] policing on attitudes, [lawful behavior] or its ability to reduce crime.”

Private investment group Arnold Ventures and the National Policing Institute sought to change that by funding a three-year study conducted between 2017 and 2020. The study asked a simple question: “Can training police officers in procedural justice reduce crime and improve the community’s perceptions of the police?” Researchers conducted a randomized controlled trial in so-called “hot spots”—high-crime areas in cities with increased police presence—and found that training officers in procedural justice positively changed officer behavior while also reducing crime and arrest rates. Officers in the trial group “were significantly more likely to behave in procedurally just ways,” which includes, “giving people a voice, showing neutrality, treating people with respect, and showing trustworthy motives.” The trial group also saw a “reduction in arrests of more than 60%” relative to the control group. A press release announcing the results proclaimed, “This significant scientific experiment confirms that it is possible to simultaneously reduce crime and improve police-community relationships through improved training and supervision.”


85. See id. at 44–46.
89. PR Newswire, supra note 88; see also Weisburd et al., supra note 88, at 1.
90. Weisburd et al., supra note 88, at 1.
91. PR Newswire, supra note 88.
92. Weisburd et al., supra note 88, at 4.
93. PR Newswire, supra note 88 (“Police departments across the country should learn from these results and require high-quality procedural justice training as a core component of any hotspot crime reduction program.”).
A closer review of the study highlights limitations, however. The seemingly positive top-line data arguably resulted from lower rates of crime overall in procedural justice hot spot areas. Unable to differentiate between declining arrest rates resulting from procedural justice training and independently declining arrest rates resulting from declining crime rates, researchers cautioned against finding a direct link between procedurally just policing and substantive criminal justice changes. In fact, the researchers concluded “that our findings do not support the overall process model of police legitimacy,” and encouraged scholars “to reconsider issues of theory and measurement in understanding how procedurally just behavior impacts perceptions of legitimacy” beyond self-reported perceptions of legitimacy.

In short, the only conclusive empirical results of procedural justice “efficacy” involve improved perceptions of police, but studies still fail to find measurable connections between procedural justice and substantively just (lawful) or effective (crime reduction) police behavior. Nonetheless, government actors at all levels have relied on this literature to form hundreds of public-private procedural justice training partnerships in recognition that, at a minimum, procedurally just tactics will lead to greater obedience from citizens subjected to policing tactics. The next section charts the explosive growth of this procedural justice industrial complex, one that bears little connection to substantive police lawfulness, legitimacy, or reform, but that instead threatens the viability of more necessary, more transformative reform efforts.

II. THE RISE OF PROCEDURAL JUSTICE

The foundational elements of procedural justice have informed policing in the United States for nearly two centuries. But legitimacy-focused procedural justice research, coupled with a rise in community policing, brought the practice mainstream in the 1990s. In the last decade, a series of public-private partnerships have formed in the wake of high-profile police shootings, the Task Force’s focus on procedurally just policing as a solution to police distrust, and more recent federally funded training proposals as states are encouraged to “fund the police.”

95. Id. at 5.
96. Id.
97. See infra Section II.A.
This section charts that growth from English antecedents and the Warren Court’s criminal procedure “revolution”\(^{100}\) to the rapid rise of procedural justice fueled by two federally funded inflection points: the passage of the Violent Crime Control and Law Enforcement Act in 1994\(^{101}\) and the creation of the Task Force in 2014.\(^{102}\) This section concludes with an evaluation of the explosive growth of the procedural justice industrial complex since 2015 and charts implications for the increasingly profit-focused industry.

### A. Procedural Justice Antecedents

Early municipal policing was greatly influenced by the London Metropolitan Police, which Sir Robert Peel established in 1829.\(^{103}\) “Peelian” policing philosophy included nine principles that emphasized the idea that the authority of law enforcement was dependent on the consent and respect of the public it serves.\(^{104}\) Several of those principles demonstrated a commitment to procedural justice before it was known as such, including “demonstrating absolutely impartial service . . . without regard to the justice or injustice of the substance of individual laws, [and] . . . offering of individual service and friendship to all members of the public with . . . courtesy and friendly good humour.”\(^{105}\)

Interestingly, the Peelian focus on procedurally just legitimacy arguably was not required because unlike in the United States, police legitimacy in Britain derived from the public and not the written law.\(^{106}\)

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100. Morton J. Horwitz, *The Warren Court and the Pursuit of Justice*, 50 WASH. & LEE L. REV. 5 (1993); ERIWIN CHEMERINSKY, PRESUMED GUILTY: HOW THE SUPREME COURT EMPOWERED THE POLICE AND SUBVERTED CIVIL RIGHTS 87 (2021) ("[The Warren Court] was an exceptional period in American history, so far never again witnessed, in which the majority of the justices were concerned about protecting criminal defendants from police and were especially attentive to racial issues in society."); cf. George C. Thomas III, *The Warren Court, Idealism, and the 1960s*, 51 U. PAC. L. REV. 843, 844 (2020) ("The criminal procedure ‘revolution’ was more revolutionary in what it promised than in what it delivered.").


105. Jones., *supra* note 104 at 8.
from the English Constitution. When the city of Boston incorporated the first American municipal police force in 1838, it did so without the type of express constitutional authority to do so enjoyed by the London police. As a result, this department and the many that soon followed often relied on violence in lieu of legal legitimacy to force compliance.

As urban centers swelled during the Industrial Revolution and municipal police budgets grew alongside the population, some uneven internal efforts to “professionalize” police practices began. The International Association of Chiefs of Police and the National Sheriffs’ Association formed in 1871 and 1888, respectively, with the mission of standardizing practices across jurisdictions. During this “professional era” of American policing, police departments increasingly valued standardized protocols and centralized dispatch services, with some secondary efforts made to build trust between police and communities they served.

Widespread adoption of process-oriented policing practices took nearly another century and were initially externally imposed by the Warren Court. Prior to Chief Justice Earl Warren’s ascension, the U.S. Supreme Court was reluctant to apply the “criminal procedure amendments” to state conduct; when it did so, it often accorded strong deference to state police authority, with little regard for the rights of criminal suspects.

The Warren Court took a markedly different approach. Unlike its predecessors, the Warren Court more readily applied the Fourth, Fifth, and Sixth Amendments to state conduct, recognized federal rights of criminal defendants to exclude illegally obtained evidence and to be notified of the rights to remain silent and obtain free


108. Reisig, supra note 103, at 12.

109. Id. at 12–13.


113. See Chemerinsky, supra note 100, at 33.

114. Horwitz, supra note 100, at 5.

115. The Court first held that the Fourth Amendment was applicable to the States by reason of the Fourteenth Amendment’s Due Process Clause prior to Chief Justice Warren’s appointment. Wolf v. Colorado, 338 U.S. 25 (1949). But the Court in that case nonetheless declined to incorporate the Fourth Amendment’s primary remedy—exclusion of evidence. Id. at 38. The Warren Court overruled Wolf twelve years later and incorporated the exclusionary rule in Mapp v. Ohio, 367 U.S. 643 (1961).

legal counsel,\textsuperscript{117} and ruled against state police who ran afoul of these protections.\textsuperscript{118} This willingness to constitutionalize and enforce procedural protections against officers directly impacted the actions and procedures of police departments.\textsuperscript{119} For example, when the Court held in \textit{Mapp v. Ohio}\textsuperscript{120} that defendants could exclude evidence illegally obtained by state and local police in violation of the Fourth Amendment, police departments took notice.\textsuperscript{121} As one precinct captain conceded at the time:

> The \textit{Mapp} case was a shock to us. We had to reorganize our thinking, frankly. Before this, nobody bothered to take out search warrants. Although the U.S. Constitution requires warrants in most cases, the U.S. Supreme Court had ruled that evidence obtained without a warrant—illegally if you will—was admissible in state courts. So[,] the feeling was, why bother?\textsuperscript{122}

During this period, researchers also began to evaluate police success according to the subjective beliefs of citizens who interacted with law enforcement. One study, published in 1967, evaluated efforts to implement \textit{Miranda v. Arizona}\textsuperscript{123} by analyzing “the defendants’ perceptions of specific police practices.”\textsuperscript{124} This early “procedural justice as legitimacy” study remained an outlier for nearly a generation, however. The criminal procedure revolution, and the procedural justice revolution it helped spawn, stalled shortly after \textit{Miranda} following Chief Justice Warren’s retirement and the promotion of Warren Burger to the same role.\textsuperscript{125}

\begin{thebibliography}{999}
\bibitem{117} Miranda v. Arizona, 384 U.S. 436 (1966). The right to obtain free legal counsel in criminal proceedings had been recognized only three years earlier in \textit{Gideon v. Wainwright}, 372 U.S. 335 (1963).
\bibitem{118} See, \textit{e.g.}, \textit{Mapp}, 367 U.S. at 669–71 (excluding evidence obtained as a result of Ohio state police officer’s “lawless” activities); \textit{Massiah v. United States}, 377 U.S. 201, 220 (1964) (finding officers violated the Sixth Amendment when they questioned a criminal defendant without counsel).
\bibitem{119} Due process and procedural justice are not synonymous with one another and differ in many important ways. See \textit{infra} Section III.C.4. But they share conceptual similarities in promoting meaningful participation in the legal process and the neutral and impartial application of law. See Hollander-Blumoff, \textit{supra} note 32, at 142.
\bibitem{120} 367 U.S. 643 (1961).
\bibitem{122} Maclin, \textit{supra} note 121, at 84.
\bibitem{124} \textit{Id.} at 1352.
\bibitem{125} Chemerinsky, \textit{supra} note 100, at 34.
\end{thebibliography}
During this time, the political branches also began promoting changes to policing processes. In 1967, following riots and high-profile clashes between police, antiwar protestors, and minority communities, President Lyndon Johnson appointed a Blue Ribbon committee to study growing police distrust. The resulting report, *The Challenge of Crime in a Free Society*, found that police had become increasingly detached from the communities they served as motor vehicle patrols and telecommunications-based reactive policing replaced regular in-person contact with community members. The report suggested developing a new type of police officer who would act as a community liaison and work to build relationships between law enforcement and minority populations.

In response, several police departments experimented with a new type of proactive “community policing,” deploying officers on foot to specific geographic areas, day after day, to build relationships with citizens in those areas. Influential research by criminal justice academics, led by Michigan State University Professor Robert Trojanowicz (who later founded and became the director of the National Center for Community Policing), extolled the benefits of community policing for improving trust and perceptions of police legitimacy. Trojanowicz’s 1990 book, *Community Policing: A Contemporary Perspective*, influenced policymakers and DOJ officials in both the George H.W. Bush and Clinton Administrations. By 1994, community policing was official federal policy. The Violent Crime Control and Law Enforcement Act created the Office of Community Oriented Policing Services (COPS) within the Department of Justice and provided millions of dollars in funding to promote community policing at the federal, state, and local levels.

128. President’s Commission on Law Enforcement, supra note 127, at 12.
The timing of this community policing boom coincided with Tyler’s groundbreaking 1990 procedural justice research, and the two policing theories immediately influenced each other.\textsuperscript{133} Community policing emphasized building individual relationships through increased in-person police presence, which procedural justice complemented by emphasizing fair treatment of citizens in in-person interactions.\textsuperscript{134} Both community policing and procedural justice aim to give voices to the public in its interactions with police,\textsuperscript{135} and some see community policing as a natural way to implement the principles of procedural justice.\textsuperscript{136}

As community policing became the preferred form of daily patrol, procedural justice became increasingly relevant as a means through which to improve communities’ attitudes toward the police.\textsuperscript{137} The federal government’s first major investment in procedural justice occurred in 1997 when COPS funded and established the “Center for Public Safety and Justice” at the University of Illinois Chicago, a center dedicated to community policing and to upholding the “four pillars of procedural justice”: fairness, voice, transparency, and impartiality.\textsuperscript{138} By the early 2000s, both academics and policymakers increased attention on building relationships founded on trust and legitimacy between police and their communities, with subjective public perceptions of police procedure becoming an increasingly preferred measurement of police efficacy.\textsuperscript{139} As a result, community policing and procedural justice evolved together to dramatically increase police presence in the United States while purporting to regulate how police exercised their authority in “legitimacy-enhancing” ways.\textsuperscript{140}
Washington State’s “Listen and Explain with Equity and Dignity” (LEED) model, created in 2005 by police reform advocate Sheriff Sue Rahr, exemplified an early approach to procedurally just community policing. This community policing program was designed to improve the quality of officer interactions by encouraging police to: “Listen - Allow people to give their side of the story . . . . [;] Explain - Explain what you’re doing, what they can do and what’s going to happen . . . . [;] Equity - Tell them why you are taking action . . . . [; and] Dignity - Act with dignity and leave them with their dignity.”

In 2011, procedural justice theorists Tyler and Meares began training departments in procedural justice directly, beginning with the Chicago Police Department (PD). Through this collaboration, the Chicago PD developed a robust training program, which it distributed to other departments on a pilot basis in 2013. That same year, law enforcement executives began promoting procedural justice as the next step in policing. The DOJ’s COPS Office also used procedural justice as a tool in an age-old police lobbying tactic of raising fears of impending police budget cuts.


cuts. In 2013, COPS claimed, “With budget cuts and the resulting pressure on the justice system to do more with less, procedural justice offers an evidence-based approach that can help law enforcement agencies . . . enhance legitimacy and reduce crime: the proverbial win-win.”

In fact, the opposite was true. In the two decades between the 1994 Victims Crime bill and the creation of President Obama’s Task Force in 2014, the Department of Justice funded budget increases for departments across the country, all under the guise of developing interpersonal relationships through ubiquitous community policing. While funding for procedural justice training existed, a far greater amount of federal funding during this period went to providing tactical, paramilitary equipment to these ever-enlarging state and local police departments. By the time Michael Brown became a household name in 2014, small police departments such as the one in Ferguson, Missouri, roamed the streets constantly in furtherance of community policing, outfitted with retired military equipment better suited for the battlefield.

C. The Procedural Justice Industrial Complex

On August 9, 2014, Ferguson, Missouri, police officer Darren Wilson fired at least six shots into the chest of eighteen-year-old Michael Brown, who was standing...
unarmed in the middle of a street.151 Protests over the killing were violently suppressed by Ferguson PD, which infamously used armored tankers, long-range acoustic devices, tear gas grenades, and other military gear transferred from the Department of Defense to this city of 21,000 residents.152

In the immediate aftermath of the shooting and protests, President Obama announced the creation of two federal organizations designed to enhance trust and perceptions of legitimacy between police and communities of color.153 The first, the National Initiative for Building Community Trust and Justice (National Initiative), was formed in September 2014 in the DOJ with distinct objectives: “enhanc[ing] procedural justice[, reducing implicit bias,] and [fostering] reconciliation.”154 None of the initiative’s goals, then or now, focused on substantive police reforms addressing systemic issues highlighted in the DOJ’s scathing report of Ferguson police practices: racially discriminatory over policing, overcharging practices, police brutality, and police immunity.155

The second, the Task Force on 21st Century Policing (Task Force), was created by executive order on December 18, 2014, with a clear mission: “The Task Force shall, consistent with applicable law, identify best practices and otherwise make recommendations to the President on how policing practices can promote effective crime reduction while building public trust.”156 This Task Force, and the Final Report


154. Id.


it issued in 2015, has done more to promote procedural justice and facilitate the growth of the procedural justice industrial complex than any other single action.

1. The Task Force

The Task Force comprised leaders from “law enforcement, [police unions, academia, civil rights organizations,] and community members.”157 Over a ninety-day period, the task force “facilitated seven hearings with 140 witnesses and reviewed volumes of written testimony submitted online by additional witnesses and the general public.”158 Following this extensive research period, the Task Force generated fifty-nine recommendations with ninety-two action items in a Final Report, each of which was “approved by the task force by consensus.”159

The Final Report’s recommendations were organized around six pillars of police reform, with the first and most prioritized pillar being “Building Trust and Legitimacy.”160 The Task Force identified the most critical action item for “building trust and legitimacy” as “law enforcement agencies . . . adopt[ing] procedural justice as the guiding principle for . . . their interactions with rank and file officers and with the citizens they serve.”161 It encouraged law enforcement to “embrace community policing” by, among other things, “ensur[ing] fair and impartial policing [through procedural justice].”162 It repeated the need to adhere to the “four principles” of procedural justice, because “trust and legitimacy grow from positive interactions based on more than just enforcement actions.”163

Following the Task Force’s directives, the COPS Office and the Center for Public Safety and Justice published a guidebook encouraging law enforcement agencies to adopt procedural justice and apply it to community policing.164 The federal government also began funding innovative projects on procedural justice, including the National Organization of Black Law Enforcement Executives (NOBLE) “Law


159. Id.

160. FINAL REPORT, supra note 6, at 1.

161. Id.

162. President’s Task Force, supra note 158.

163. Id.

and Your Community Program,” and the Justice Collaboratory at Yale Law School.\textsuperscript{165}

In late 2015, the DOJ began on-site implementation of the National Initiative.\textsuperscript{166} Six cities’ police officers received training on how to interact with citizens in a procedurally just way, developing procedurally just policies and leading discussions on reconciliation between police and the community.\textsuperscript{167} Participating cities took what they learned back to their communities, and many departments proposed incorporating annual mandatory courses as part of a certification program.\textsuperscript{168} Participating departments also made official changes to their own policies to institutionalize procedural justice training as a formal part of cadet training.\textsuperscript{169}

The Task Force’s full-throated support for procedural justice as the most important police reform in the United States, coupled with federal funding to support this reform, clearly communicated to activists, academics, and private industry leaders that procedural justice proposals would receive backing and financial support. The influence of this prioritized police reform recommendation is difficult to overstate and is reflected in the hundreds of private training agencies forming or offering procedural justice programs to departments for the first time after 2015.\textsuperscript{170} While the Final Report also included substantive proposals, many of them were framed as acknowledgements of deeper issues rather than specific action items.\textsuperscript{171} The Final Report also passed on recommending more transformative opportunities for police reform, noting simply that the criminal justice system alone “cannot solve many of the underlying conditions that give rise to crime” such as “poverty, education, health, and safety.”\textsuperscript{172} It declined to address the ways in which the criminal justice system exacerbates those underlying conditions. In short, the Final Report set the police reform agenda for the growing procedural justice industrial complex.\textsuperscript{173}

\begin{itemize}
  \item \textsuperscript{165} See Branly et al., supra note 104; The Law and Your Community, NOBLE NAT’L, https://noblenational.org/tlyc/ [https://perma.cc/TU9A-FBU7]; The Justice Collaboratory, About Us, YALE L. SCH., https://law.yale.edu/justice-collaboratory/about-us [https://perma.cc/QB6Y-CP9Z].
  \item \textsuperscript{167} Id. at vi.
  \item \textsuperscript{168} Id. at 35–36.
  \item \textsuperscript{169} Id.
  \item \textsuperscript{170} See infra Section III.B.2.; see also Mariano Delle Donne, Procedural Justice: How a Simple Concept Can Help Cops Make a Big Impact, POLICE1 (May 6, 2016), https://www.police1.com/patrol-issues/articles/procedural-justice-how-a-simple-concept-can-help-cops-make-a-big-impact-msXlb4nM0y0nIlJE/ [https://perma.cc/UD5A-SKDG].
  \item \textsuperscript{171} Final Report, supra note 6, at 12 (recommending bans on racial profiling without providing any of the granular action items that accompanied the recommendations to embrace community policing or adhere to procedural justice tenets).
  \item \textsuperscript{172} Id. at 8.
  \item \textsuperscript{173} The irony of these recommendations is that few, if any, directly addressed the
2. The Complex

The term “industrial complex” refers to the phenomenon wherein businesses become entwined with social or political systems or institutions, creating or bolstering a for-profit economy from these systems. As the complex grows in power and profit, it pursues its own financial interests regardless of, and often at the expense of, the best interests of society and individuals. This concept increasingly describes the proliferation of for-profit private procedural justice police training programs, their intertwined relationship with the public sector, and their self-protective objectives that often are at odds with the public interest.

Not surprisingly, following publication of the Final Report, police departments across the country began boasting about their commitment to procedural justice and their requirements that officers be trained in procedural justice principles. A cottage industry of private procedural justice training facilities, run primarily by former law enforcement officers, immediately filled the need to train these departments. Initially, federal agencies, such as the Federal Law Enforcement Training Center, contracted with private trainers to offer courses in “Procedurally Just Community Policing” in 2016 and “Procedural Justice” in 2017. The DOJ’s systemic issues plaguing the Ferguson Police Department, giving rise to the Task Force’s creation in the first place. See Civil Rights Division, supra note 155


175. See supra note 174.


Office of Justice Programs also promoted procedural justice training modules in 2016.\footnote{178} By 2017, private police training academies had pivoted to offering procedural justice trainings for the first time, often with federal funding. The Public Agency Training Council, founded in 1987 and self-described as the “largest privately owned law enforcement training company [in the United States],” \footnote{179} supplemented its existing crime investigation and use of force curriculum with community policing classes, described as employing “procedural justice” methods.\footnote{179} Similarly, private academy “Police1” began offering a “Community Policing Course” to complement its “Active Shooter,” “Gangs,” “Drug Enforcement,” “Use of Force,” and “Officer Safety” courses.\footnote{180}

Law Enforcement Training Solutions, LLC (LETS) is a perfect example of the Task Force-driven public-private partnership at work.\footnote{181} Founded in Huntington Beach, California, in 2017, less than two years after the Final Report, LETS offers dozens of trainings to law enforcement personnel across the country.\footnote{182} Its homepage offers a range of courses from which to choose, first among them an eight-hour online course in “Procedural Justice.”\footnote{182} LETS also offers courses (for a substantial fee) necessary for officers to receive their Peace Officer Standards and Training (POST) certificate, a requirement for police officers at most police departments across the country.\footnote{184} LETS prominently emphasizes on its website that co-founders Mitchell Sigal and Artin Baron, both former law enforcement personnel, “are graduates of” POST themselves.\footnote{185}

The POST certificate, and similar mandatory certifications required by police departments across the country following the Final Report, helped spawn a sub-industry of private training academies willing to track certification progress and

\begin{itemize}
\item \footnote{178} Procedural Justice Training for Law Enforcement Officers, \textit{DEPT. OF JUST.} (Sept. 22, 2016), https://www.ojp.gov/media/video/4731 [https://perma.cc/5XVH-EQZ4].
\item \footnote{181} See \textit{Law Enforcement Training Solutions, LLC.}, https://lawenforcementtrainingsolutions.com/ [https://perma.cc/7PYN-YGBB].
\item \footnote{182} Id.
\item \footnote{183} Id. (“Topics include Procedural Justice, Death Investigation, Chaplain Integration, and The Link between human and animal violence.”).
\item \footnote{184} \textit{POST Courses – Law Enforcement Training Solutions}, \textit{LETS}, https://lawenforcementtrainingsolutions.com/post-courses-post/ [https://perma.cc/YN8C-FLJ3].
\item \footnote{185} About LETS, \textit{LETS} (2023), https://lawenforcementtrainingsolutions.com/about-lets/ [https://perma.cc/24AV-8MDG].
\end{itemize}
provide real-time analytics on individual officers.\textsuperscript{186} For example, in 2018, Police One Academy (different from “Police1”) added to its roster of 1300 fully online courses with courses in community policing and procedural justice.\textsuperscript{187} It also began offering online tools for officers to receive and track progress related to mandatory training programs and for executives to overhaul their departmental training systems.\textsuperscript{188}

Police1, Police One Academy, and LETS are just three of dozens of substantially identical private, for-profit police officer training programs offering procedural justice trainings as part of an educational package designed to satisfy POST and other certification requirements.\textsuperscript{189} Like LETS, many of these companies did not exist prior to 2015.\textsuperscript{190} Other longstanding organizations, some for-profit and some nonprofit, have pivoted dramatically toward federally funded procedural justice initiatives since the Final Report. The Center for Justice Innovation (CJI), a New York-based nonprofit focused on transformative decarceral programs inside and outside of the courtroom, briefly invested in procedural justice trainings and

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programs in courts and on the street beginning in 2017. The former Director of Procedural Justice Initiatives for CJI later left to start her own private procedural justice consulting firm, offering fee-based trainings to police. Both CJI and the consulting firm have existing partnership arrangements with both public agencies and academic institutions promoting procedurally just policing as the primary objective of police reform.

The academic institution most prominently associated with this growing complex is Yale Law School’s Justice Collaboratory, co-founded and run by procedural justice heavyweights Professors Meares and Tyler. The Justice Collaboratory regularly publishes academic articles as well as government-funded and government-coauthored position papers promoting the evidence-based, legitimacy-enhancing benefits of procedural justice. The Justice Collaboratory has provided procedural justice trainings to dozens of police departments. Among the dozens of partners about which the Justice Collaboratory boasts on its website are federal government organizations, several prestigious academic institutions, twelve police departments, the Association of Prosecuting Attorneys, and private training organizations.

Silicon Valley big data entrepreneurs are entering the industry as well. In summer 2022, a former law enforcement official teamed up with data software engineers to create Guardian Score, a platform designed to help cities and citizens rate police officers. Guardian Score’s website asks: “Why can we rate Uber drivers but not police officers?” It offers a suite of software features, including real-time analytics, custom officer reports, and “interaction cards”—one-time use cards with unique QR codes that officers hand to citizens to “rate” their performance. Along


193. Id.; see also About the Justice Collaboratory, Just. Collaboratory: Yale L. Sch., https://www.justicehappenshere.yale.edu/about [https://perma.cc/XJT6-JRF6].

194. About the Justice Collaboratory, supra note 193; see also supra note 165.

195. See About the Justice Collaboratory, supra note 193.

196. Id.

197. Id. (listing “Our [Partners],” including the National Initiative, University of Virginia School of Law, NYU School of Law Policing Project, Wilson Center for Science and Justice at Duke Law School, and Lagratta Consulting, Inc.).


199. Id.

what metrics does Guardian Score rate “good officers”? Procedural justice: “[W]e [h]elp law enforcement agencies protect their brand [by] . . . measur[ing] procedural justice skills of individual police officers [and] [b]uild[ing] legitimacy for law enforcement within their community.” Guardian Score prices its products “based on the size of a police department” and notes that “the cost of Guardian Score may be eligible for grant funding.”

Two caveats are in order regarding the claims of the industrial complex. First, the exact size of the procedural justice training industry is not known, though the sheer number of private for-profit and academic institutions offering procedural justice for the first time since 2015 reflects a strong correlation between the federal government’s focus on procedural justice and a burgeoning, multilayered, multimillion-dollar industry. Second, procedural justice training remains a relatively small part of police training budgets and an even smaller part of police budgets overall. But the influence of procedural justice trainings far outpaces their cost, which is part of the allure for police departments. Unlike resource-intensive combat readiness or tactical weapons trainings, procedural justice trainings require little more than a speaker, a classroom, and some space to role play. But the strong correlation between procedural justice and improved perceptions of legitimacy (and thus, improved rates of citizen-subject compliance) helpfully sanitizes some of the less desirable pathologies of trained police behavior, like the “warrior cop” complex.

201. Guardian Score, supra note 198 (emphasis added).
204. See Schulhofer, supra note 8, at 339–40; Bell, supra note 12, at 2081 (observing that many police departments look at “legitimacy theory and the procedural justice approach as if they are silver-bullet solutions to today’s policing crisis”).
205. See Vaughn, supra note 144, at 11 (describing mechanics of Chicago Police Department procedural justice training, which includes role-playing scenarios and individual feedback); Braga, supra note 88, at 2 (describing experiment in which trial group received five-day “intensive training course,” which included role playing exercises and discussions about working with diverse populations).
One such for-profit organization, Asymmetric Solutions, highlights the troubling sanitizing effects of procedural justice as a mask for an otherwise violent mentality.\textsuperscript{207} Asymmetric Solutions offers tactical trainings to both military and law enforcement, but the two are virtually indistinguishable on its webpage.\textsuperscript{208} The “Law Enforcement” page includes a banner photo of an officer dressed in a Kevlar vest and a Stormtrooper-like black helmet and holding an AR-15, below which is the following description of what Asymmetric Solutions provides:

Law Enforcement Departments [and] individual officers are facing an increasingly challenging environment in which public scrutiny and politics are making it nearly impossible to perform the job. Asymmetric Solutions provides Law Enforcement a broad spectrum of training courses aimed at increasing officer safety and performance, improved readiness, and reduced liability.\textsuperscript{209}

The “Law Enforcement Training” brochure lists over two dozen training courses, all but one of which appear specifically designed to improve an officer’s ability to use force against civilians.\textsuperscript{210} The only noncombat course offered: “Cultural Awareness/Procedural Justice.”\textsuperscript{211}

Arguably, the growing influence of these warrior cop training programs only confirms the need for a kinder, gentler approach like procedural justice, one which trains officers to give dignity and a voice to citizens. But it is not that simple. Procedural justice trainings neither encourage nor discourage the use of force, leaving undisturbed officers’ often troubling pre-existing calculations about what constitutes “reasonable force,” a calculation often infected by a “kill or be killed” mentality.\textsuperscript{212} Indeed, research shows that procedural justice trainings have no impact on substantive officer decision making, including whether and how to use force.\textsuperscript{213}


\textsuperscript{208} See id.

\textsuperscript{209} Id. (emphasis added).

\textsuperscript{210} Law Enforcement (LE) Training, ASYMMETRIC SOL., https://www.asymmetricsolutionsusa.com/Content/ASUSA-LE-Page-Overview.pdf [https://perma.cc/4NSN-4DHY]. (“Counter Ambush/Vehicle Defense; Small Arms; Sniper/Precision Rifle; Basic SWAT; Advanced SWAT; Mission Planning; Breaching and Extrication; Less Lethal; Force on Force; Contact Combat/Hand to Hand; Dignitary Protection; CQB/Hostage Rescue; Active Shooter; Low Light/No Light.”).

\textsuperscript{211} Id.; see also Risk Management Topics Designed to Prevent Claims and Lawsuits, LOCALGOVU, https://www.localgovu.com/ [https://perma.cc/58TV-LJHX] (private training portal offering procedural justice trainings to law enforcement among “Risk Management Topics Designed to Prevent Claims and Lawsuits”).

\textsuperscript{212} See SHAWN E. FIELDS, NEIGHBORHOOD WATCH: POLICING WHITE SPACES IN AMERICA 110 (2022) (noting how “warrior cop” trainings tell officers to “take the fight to the bad guys” to keep “from becoming a statistic” and describing the “Bulletproof Warrior” training program, which primes officers with a single question: “Are you ready to kill?”); see also Stoughton, supra note 206, at 228; Stephens, supra note 206.

\textsuperscript{213} Jannetta et al., supra note 166, at 66, 71 (observing how officers frequently felt
What these trainings do instead is teach violent officers how to “reduce liability” and “protect their brand” by appearing transparent, fair, and impartial, thus packaging their violence in ways that appear more legitimate. This focus on protecting a brand, reducing liability, and “prevent[ing] claims and lawsuits” bears all the hallmarks of a maturing industrial complex, one in which profit and self-interest transcend the public good.214

3. “Fund the Police”

Much like the death of Michael Brown, George Floyd’s murder sparked national protests that demonstrated the deep lack of trust between the public and law enforcement and raised serious questions about the role of police in modern society. Calls for deep cuts to police budgets, a radical shrinking of the role of police in public safety, changes to use of force law and policies, increased police accountability, and dismantling the carceral state dominated the police reform discussion for much of 2020.215

Following President Biden’s election, advocates were eager to see what major changes might be ahead for police reform.216 They were disappointed. Owing in part to rising crime rates during the height of the COVID-19 pandemic217 and to deeply unpopular messaging about “defunding” or “abolishing” police,218 President Biden’s police reform initiatives bore virtually no resemblance to the demands for transformative change when he ran for the office. After nearly a year and a half of silence on the issue, in May 2022, Biden signed the executive order, “Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,”219 articulating his vision for police reform.220 The “reform

insulted by the commonsense principles procedural justice trainings, believing the trainings were a waste of time that would not change how they policed or made decisions).

214. Risk Management Topics Designed to Prevent Claims and Lawsuits, supra note 211.
217. See supra note 4.
218. See supra note 3.
largely repackaged calls for federally funded community policing and procedural justice:

Our criminal justice system must respect the dignity and rights of all persons . . . Protecting public safety requires close partnerships between law enforcement and the communities it serves. Public safety therefore depends on public trust, and public trust in turn requires that our criminal justice system as a whole embodies fair and equal treatment, transparency, and accountability.  

Putting a finer point on his vision during a press conference later that month discussing federal pandemic relief funds, Biden implored state and local governments to “spend this money” to fund police departments to give them the resources and training they need. To support this “fund the police” vision, the Biden Administration made federal funding available to any police department that voluntarily participated in federal procedural justice reform initiatives. Departments across the country, from Tustin, California, to Washington, D.C., have been happy to oblige.  

Biden’s continuation of his old boss’s procedural justice initiatives comes as little surprise. But his push to “fund the police” seems curious. There exists “no pressing, national need for greater police funding. If anything, police departments and their allies have skillfully used anxiety over ‘defund’ to successfully lobby for even larger budgets . . . .” In the nation’s fifty largest cities, “law enforcement spending as a share of general expenditures rose slightly” from 2020 to 2021, “even as many cities cut spending in other areas as a result of the Covid pandemic.” And despite the politically charged nature of the “defund” movement, more than half of the forty-two major cities where Democrats gained votes from 2016 to 2020 increased police spending in 2021. The few cities that “cut spending or pledged to cut it later
reversed or restored that funding.”228 In short, Biden’s pledge to “fund the police” is a “solution to a problem that does not exist.”229

This particular push for more funding is dangerous, however. Biden’s proposal to fund “resources and training” has turned into a call for 100,000 more cops, along with more training in three areas: “hot spot” policing, “precision policing,” and procedural justice.230 Hot spot policing, a highly controversial form of policing that concentrates law enforcement activities in the few areas (or “hot spots”) in a city where most crime occurs,231 often rests on flawed, racially discriminatory data created through intentional overpolicing of communities of color, which reinforces the false narrative that minorities commit more crimes.232 Racially discriminatory inputs, racially discriminatory outputs. Hot spot policing also often relies on specialized units with abysmal records of abuse, like the Memphis Police Department’s SCORPION Unit that brutally murdered Tyre Nichols on January 7, 2023, during a traffic stop in one of Memphis’s “hot spots.”233

228. Id.
229. Id.
231. Hot Spots Policing, NAT. INST. OF JUST. (Sept. 9, 2013), https://crimesolutions.ojp.gov/ratedpractices/8#:~:text=Hot%20spots%20policing%20strategies%20focus,is%20most%20likely%20to%20occur [https://perma.cc/QHE3-SPN5] (“Hot spots policing strategies focus on small geographic areas or places, usually in urban settings, where crime is concentrated.”).
232. See Griffard, supra note 20, at 46–51.
“Precision policing” similarly uses “evidence-based” tools to detect social disorder or criminal behavior, often relying on artificial intelligence and data algorithms to predict the precise locations where police enforcement can be most effective.\textsuperscript{234} Precision policing has even been described as “the future of policing.”\textsuperscript{235} But this promise of “bias-free” policing suffers from the same bad, racially discriminatory inputs into the AI as hot spot policing—racist inputs, racist outputs.

Both purportedly “efficient” and “cutting edge” forms of policing are, in fact, another opportunity to over police Black and Brown communities.\textsuperscript{236} The third type of federally funded training—procedural justice—provides the sheen of fairness, neutrality, and legitimacy to this new high-tech wave of racial profiling. In short, the growth of the procedural justice industrial complex, coupled with a federal government incentivizing police departments to increase their sizes and operations, has created a perfect storm: an omnipresent police force that appears procedurally just while continuing—and often increasing—its racially discriminatory, violent activities.

III. THE FALSE PROMISE OF PROCEDURAL JUSTICE

Police reformers could pursue procedural justice and substantive reform simultaneously. But focusing first, and often exclusively, on procedural justice obscures and delegitimizes other substantive ends—ending discriminatory policing and police brutality, improving police accountability, reforming constitutional policing frameworks—precisely because it gives perceived legitimacy to police existing in places they do not belong and engaging in activities in which they should not be engaged.\textsuperscript{238} When procedural justice equals legitimacy, a polite and

\begin{itemize}
  \item \textsuperscript{237} See Griffard, supra note 20, at 46.
  \item \textsuperscript{238} See Fields, supra note 12, at 89–92 (criticizing the “maximum policing” state, where officer ubiquity is normalized but neither lawful nor necessary); Albert Reiss, \textit{The Police and the Public} 70 (1972) (“Police regard it as their duty to find criminals and prevent or solve crimes. The public considers it the duty of the police to respond to [all of] its calls and crises.”); Barry Friedman, \textit{Disaggregating the Policing Function}, 169 U. PA. L. REV. 925, 954 (2021) (“[I]t often is explained that the police are society’s only 24-hour general purpose...
compassionate officer who arrests and imprisons someone having a mental health crisis has “legitimately” fulfilled their duties, even if the arrest itself is an inefficacious and unwarranted outcome. 239 When procedural justice equals legitimacy, an officer trained in neutrality and impartiality can be perceived as legitimate when arresting people for petty, nonviolent drug offenses, even if doing so unjustly perpetuates mass incarceration on the backs of Black and Brown citizens. 240 When procedural justice equals legitimacy, an armed officer who gives voice to a motorist on the side of the road can cloak themselves in virtue when the traffic stop escalates and ends in gunfire, even though no legitimate reason existed in the first place for an armed officer to forcefully detain someone for a broken taillight. 241

In this sense, procedural justice is not just one of many approaches to police reform. It is an approach that actively frustrates the more fundamental substantive goals of police reform: ending overpolicing (especially of minority neighborhoods), reducing incarceration rates, removing police from non-law-enforcement functions, and reducing police violence. Procedural justice provides the veneer of legitimacy to substantively illegitimate ends. This section explores the three primary ways it does so: (1) by promoting a false sense of consciousness among would-be reformers that problems in policing are being addressed; (2) by claiming a false sense of legitimacy for procedurally just officers based on subjective feelings rather than substantive legality, morality, or efficacy; and (3) by frustrating, in distinct ways, more substantive police reform goals.

A. False Consciousness

Procedural justice reform “has a pacification effect. It calms the natives even when they should not be calm.” 242 Some theorists describe this phenomenon as “false responder.”)


241. Jordan Blair Woods, Traffic Without the Police, 73 STAN. L. REV. 1471, 1474–75 (2021) (challenging role of police in traffic enforcement); see also Shaw Fields, The Fourth Amendment Without Police, 90 U. CHI. L. REV. 1023, 1046 (2023) (“Police have no inherent role in traffic enforcement. Yet traffic stops are by far the most frequent interaction between police and citizen.”).

242. Butler, supra note 14, at 1467; see also Marina Bell, Abolition: A New Paradigm for Reform, 46 LAW & SOC. INQUIRY 32, 42 (2021) (advocating for police abolition because
consciousness,” referring to “the tendency of liberal reforms to ‘dupe[] those at the bottom of the social and economic hierarchy’ with promises of ‘equality, fairness, and neutrality.’” For policing, procedural justice provides the promise of fair processes and personal satisfaction among citizen-subjects, even if the substantively unjust treatment of these subjects never changes.

Kimberlé Crenshaw observed this false consciousness in the context of civil rights protection and antidiscrimination law. “Even though civil rights laws passed in the 1960s succeeded in breaking down some formal barriers, subtle and invidious forms of discrimination persisted.” Yet the “perception of progress” provided by the legislation “mollified communities of color and sapped the energy needed for a continued push for substantive equality.” Indeed, the “formal equality” of civil rights legislation, coupled with judicially conscious processes such as strict scrutiny and intermediate scrutiny gave the appearance of substantive victory, diminishing the popular desire to redress continued discrimination that never left but merely adapted to take a less overt form.

Neo-Marxist accounts of the law provide valuable lenses through which to view this mollification risk in procedurally just policing. “Traditional Marxist accounts present law as a tool of oppression serving the pacify the working class,” but critics point to the “considerable support that the state and the legal system enjoy from the dominated classes.” The state does so by promoting what Antonio Gramsci calls “hegemony,” referring to “the means by which a system of attitudes and beliefs, permeating both popular consciousness and the ideology of elites, reinforces existing

243. Butler, supra note 14, at 1467 (quoting Anthony Cook, Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr., in Critical Race Theory: The Key Writings That Formed the Movement 85, 86 (1996)); see Cook, supra note 14 at 86.

244. Crenshaw, supra note 16, at 1349 (warning that the “limited gains” of civil rights laws could “hamper efforts of African-Americans to . . . remain capable of engaging in collective action in the future”).

245. Butler, supra note 14, at 1467; see also Crenshaw, supra note 16, at 1347 (“Society has embraced the rhetoric of equal opportunity without fulfilling its promise . . . .”)

246. Butler, supra note 14, at 1467.

247. Crenshaw, supra note 16, at 1334 (criticizing claim that “the extension of formal equality” makes “a continuing struggle under the banner of civil rights . . . inappropriate”); see also Katharine T. Bartlett, Gender Law, Duke J. Gender L. & Pol’y 1, 2–3 (1994) (describing the false consciousness consequences of “formal equality” in gender antidiscrimination law).


250. Crenshaw, supra note 16, at 1350–51 n.73 (State domination is “a combination of both physical coercion and ideological control.”); see also Antonio Gramsci, Selections from the Prison Notebooks 18–22 (Quintin Hoare & Geoffrey Nowell Smith eds., trans., 1971).
social arrangements and convinces the dominated classes that the existing order is inevitable."251 The procedural justice industrial complex, pushed by political elites and increasingly adopted in popular consciousness, reinforces the existing social arrangement of a well-funded, militaristic, ubiquitous police force violently suppressing nonviolent social “disorder.”252 In doing so, it convinces the dominated classes—the poor, the Black, the Brown—that the existing order is “inevitable.”253

How does it do so? Procedurally just law enforcement encounters provide a subjective sense of fairness and dignity while obscuring substantively unjust outcomes emanating from a substantively unjust system. It is not just that procedural justice is a suboptimal type of reform; it is also the type of reform that actively frustrates other reforms by dressing up policing with the perception of correctness and legitimacy. In this sense, procedurally just “legal consciousness induces people to accept or consent to their own oppression.”254

In legitimizing unjust activities, procedural justice obscures “the undeniably numerous, specific ways in which the [criminal] legal system functions to screw poor people” by providing a façade “in which the system seems at first glance basically uncontroversial, neutral, [and] acceptable.”255 This dressing up of policing’s ugly warts reflects “[t]he most effective kind of domination . . . when both the dominant and dominated classes believe that the existing order represents the most that anyone could expect, because things pretty much have to be the way they are.”256

Other scholars have noted a similar falsely conscious legitimizing effect in the area of death penalty reform.257 Efforts to make “implementation of capital

251. Crenshaw, supra note 16, at 1351; Gramsci, supra note 250, at 238.
252. See Charles C. Lanfear, Lindsey R. Beach & Timothy A. Thomas, Formal Social Control in Changing Neighborhoods: Racial Implications of Neighborhood Context on Reactive Policing, 17 CITY & CMTY. 1075, 1075 (2018) (describing racially discriminatory policing against Black citizens for disorderly conduct where Black citizens were “more frequently subject to arrest overall” than their White neighbors); FIELDS, supra note 12, at 47–51 (decrying “broken windows racism” wherein Black citizens are handcuffed, assaulted, and killed more frequently by police in response to minor disturbance calls).
253. Crenshaw, supra note 16, at 1350 (describing critical theory view that law is “a series of ideological constructs that . . . convince[] people that things are both inevitable and basically fair”).
254. Crenshaw, supra note 16, at 1351; see also Robert Gordon, New Developments in Legal Theory, in THE POLITICS OF LAW 281, 284 (David Kairys ed., 1978) (Such thoughts and beliefs limit people’s ability “even to imagine that life could be different and better.”).
255. Gordon, supra note 254, at 286; see also Thomas Y. Davies, The Supreme Court Giveth and the Supreme Court Taketh Away: The Century of Fourth Amendment Search & Seizure Doctrine, 100 J. CRIM. L. & CRIMINOLOGY 933, 988 (2010) (criticizing “race-neutral” Fourth Amendment doctrine creating a “disturbingly formless and potentially permissive” standard based on race-based hunches); Angela J. Davis, Race, Cops, and Traffic Stops, 51 U. MIAMI L. REV. 425, 430–31 (1997) (“[O]fficers do not stop whites who exhibit . . . innocent behaviors or characteristics as frequently as African-Americans. . . . If a police officer who uses a profile treats similarly situated blacks and whites differently, then race becomes the defining factor which elevates a suspicion or hunch to reasonable suspicion or even probable cause.”).
257. Carol S. Steiker & Jordan M. Steiker, Judicial Developments in Capital Punishment
punishment more “fair” implicitly endorse the death penalty as a legitimate form of punishment and “may have the perverse consequence of furthering what is a fundamentally unjust practice.” Similarly, policing itself is often fundamentally unjust and cannot be reformed to become more fair. In *An Abolitionist Horizon for (Police) Reform*, Professor Amna Akbar powerfully articulated that “police are a regressive and violent force in a historical power struggle over the distribution of land, labor, and resources.” From that perspective, police cannot be reformed; any real agenda for police reform must replace police entirely. Procedural justice works against that reform by promoting the false consciousness that police—and policing—are fundamentally just and moral, requiring only tweaks on the margins.

Procedural justice promotes false consciousness for another simple reason: people like it. Not surprisingly, “the public is especially concerned that the conduct of authorities be fair,” and people “welcome being treated as equals with a stake in keeping their communities safe.” In fact, a “key component of the research” animating the procedural justice industrial complex is that being treated fairly “matters more to [the public] than whether outcomes of particular interactions favor them” or are themselves fair. In some ways, “[t]he greatest strength of the police legitimacy approach” adopted by procedural justice theorists “is its deceptive simplicity. Its . . . core ideas that people will accept unfavorable police decisions so long as the preceding processes are perceived to be fair” show both the strength of procedural justice as a popular type of reform and its ability to pacify citizens into accepting substantively unjust outcomes.

This does not mean that citizen-subjects can never recognize the substantively unfair nature of their police encounter; they simply are willing (or resigned) to accept it in exchange for a more neutral, fair interaction. As Professor Steven Lukes observes, false consciousness need not exist “because we have been bamboozled by the powerful; we can be fully engaged in bamboozling ourselves.” By accepting procedural justice as a legitimate type of reform, we accept policing as currently constituted as itself fundamentally legitimate. We “accept[] the bounds of law and order[] [our] lives according to its categories and relations,” and in this way “conflict and antagonism are contained: the legitimacy of the entire order is never seriously questioned.”

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258. Butler, supra note 14, at 1466.
260. Id. at 1787.
264. Bell, supra note 12, at 2080.
266. Crenshaw, supra note 16, at 1352.
B. False Legitimacy

Procedural justice does not just falsely inspire consciousness that true reform is taking place; it also falsely equates that reform with legitimacy, divorced from whether the laws governing police conduct are substantively legitimate or whether the police are operating within those constraints. In this sense, Weber’s theory of legitimacy animating most procedural justice proposals is “amoral,” because it does not account for the fairness of substantive rules. Instead, legitimacy becomes simply a matter of fact, that fact being that citizens hold a certain belief.” Relying on this narrow and misleading definition of legitimacy, one divorced from the correctness of state power, procedural justice focuses only on the subjective treatment of suspects, with no consideration of whether the procedures themselves are “correct” or if the decisions made can be “justified.”

Treating procedural justice’s minimal alterations of police behavior—which amount to little more than “empirically informed officer politeness”—as radical reformation speaks to the low bar we collectively have set for police behavior. And yet, “officer politeness” appears to confer a sense of legitimacy in the eyes of the public, who “view the extension of [these] rights . . . [as] producing apparent victories in the short run, [while] ultimately legitimating the very racial inequality and oppression that such extension purports to remedy.”

This false promise of procedural justice—that a polite criminal justice encounter is a just one—exemplifies a core critique of Weber’s and Tyler’s views of legitimacy. By placing “unnecessary emphasis upon people’s subjective beliefs” in measuring legitimacy, they fail to “focus on the objective compatibility between the legal validity of power and the manner in which that power is exercised.”

Rather than perceived fairness, legality should be “the first and most basic level of legitimacy.” Police legitimacy should be assessed most fundamentally by evaluating “whether or not power has been acquired and exercised in accordance

267. See Tankebe, supra note 29, at 242; see also Schaap, supra note 11, at 421–23.
269. Tankebe, supra note 29, at 241 (quoting Robert Grafstein, The Failure of Weber’s Conception of Legitimacy: Its Causes and Implications, 43 J. OF POL. 456, 456 (1981)); see also Joseph A. Conti, Legitimacy Chains: Legitimation of Compliance with International Courts Across Social Fields, 50 LAW & SOC’Y REV. 154, 157 (2016) (“Weber characterized the acceptance of a legitimacy claim in terms of subjective belief.”); cf. id. (“Beetham instead argues that a “power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs.””).
271. Reisig, Tankebe & Mesko, supra note 28, at 150.
with established rules.” Professor Eric Miller calls this form of legitimacy “role-based authority,” where the legitimacy of an officer’s actions is measured by “the degree to which the official’s role matches the circumstances triggering their exercise of authority.” For example, the legitimacy of an officer’s decision to stop and frisk someone should be measured not by whether the invasive police action was conducted with dignity and politeness, but whether the circumstances giving rise to the stop and frisk legally justified the action.

Professor Meares proposes to address the perception-as-legitimacy problem by encouraging what she calls “rightful policing,” an approach where police officers should not only “comport themselves in ways that confer dignity,” but should also “endeavor to follow every general order or administrative rule.” This approach helpfully resolves one of the key drawbacks of procedural justice by requiring attention to substantively lawful action. But it still fails to account for whether those laws are just. “[L]awfulness and legitimacy are not enough. If existing law is too tolerant of police violence,” or too permissive in authorizing invasive searches, rightful policing still fails “to address the substantive shortcomings of the criminal justice system.” To continue the stop and frisk example, current law on reasonable suspicion is far too permissive in authorizing unwarranted searches and seizures based on little more than an averted gaze, nervousness, or flight from an armed cop in a poor neighborhood. Not surprisingly, this law results in unwarranted and unnecessary overpolicing of Black and Brown bodies on threadbare accounts of suspicion infected by implicit (and explicit) bias. “Rightful policing” does not solve that larger problem.

273. Tankebe, supra note 29, at 243; Bell, supra note 12, at 2081–86 (describing how claims of police legitimacy in the face of substantively unjust rules reifies racial subordination).
275. Meares, supra note 143, at 1878.
276. Id. at 1866. (“First, rightful policing does not depend on the actual lawfulness of police conduct.”).
278. See BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION 152–53 (2017) (describing “drug courier profile” used by DEA agents to develop reasonable suspicion of drug trafficking, including behavior like, “arrived at night, arrived in the morning, walked rapidly through the airport, walked aimlessly through the airport, bought a one-way ticket, [or] bought a round-trip ticket”); FIELDS, supra note 12, at 69–71 (collecting cases allowing stops based on eye contact with officers or looking away from officers: “If you’re starting to think there is no way to avoid looking suspicious in public, you’re right . . . [T]he Florida Highway Patrol . . . cautions troopers to be suspicious of ‘scrupulous obedience of traffic laws.’”).
279. See supra note 17; Sharon LaFraniere & Andrew W. Lehren, The Disproportionate Risks of Driving While Black, N.Y. TIMES (Oct. 24, 2015), https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html [https://perma.cc/V5MY-5UER] (describing 2015 study in North Carolina where officers “used their discretion to search black drivers . . . more than twice as often as white motorists” and “were more likely to stop black motorists for no discernible reason”).
Procedural justice theorists acknowledge that citizens are more likely to view police as legitimate when they believe the stated command (to stop and be searched, for example) is moral and right, not just lawful.\textsuperscript{280} Yet these theorists often focus on procedural justice as a shortcut to legitimacy because it is more easily achievable.\textsuperscript{281} As Meares explains, “legitimacy is a more stable basis for voluntary compliance than is personal morality,” because “one’s personal moral schedule may or may not be in line with authoritative dictates.”\textsuperscript{282} This view admits that procedural justice’s ultimate aim is to gain citizen compliance rather than to achieve a just result, a troubling concession for a criminal justice system and policing apparatus long defined by injustice.

The solution may seem simple: adopt both procedural justice and substantive legal reforms simultaneously. But the implementation of procedural justice reforms paradoxically makes such substantive reform more difficult. Because the public generally remains uninformed on the laws of policing, the actual objective legality of police actions remains a minor factor in determining the public’s trust in police.\textsuperscript{283} Instead, the public regularly “evaluates the [legal] propriety of police actions primarily by assessing whether police officers exercise their authority with ‘procedural justice.’”\textsuperscript{284} Thus, the more we wed ourselves to the notion of procedural justice as a panacea for what ails policing, and the greater trust the public puts in police as a result, the less incentive police and the public will have to pursue substantive reforms to improve the actual objective justness and legality of policing. The next section explores this problem in greater detail.

\textbf{C. False Reform}

Procedural justice does not merely stunt reform by presenting a false narrative of substantive change; it actively works in conflict with transformative police reform. This antagonism is natural to the extent that one cannot achieve substantive reform by continuing to work within the system of oppression.\textsuperscript{285} As Audre Lorde poignantly explained, “the master’s tools will never dismantle the master’s house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.”\textsuperscript{286} Indeed, the problem with perception-
based police reform "is that it can cloak aggressive policing in enhanced legitimacy, and it has the potential to blunt the momentum for rising up against overcriminalization, wealth inequality, and white supremacy."287

This final section charts five primary areas of substantive police reform—reducing discriminatory policing, addressing police brutality, police accountability, legal reform, and police abolition—and evaluates how procedural justice frustrates each reform in distinct ways.

1. Discriminatory Policing

Studies confirming the racially discriminatory impacts of policing are legion.288 Racial minorities, particularly Black individuals, are disproportionately targeted for adverse treatment at every step of the criminal investigative process.289 Black Americans are significantly more likely to be stopped and frisked, pulled over for "no discernible reason," searched without authorization, handcuffed, arrested, subjected to force, and killed by police officers.290 For those who survive the police encounter, the adjudicative process ensures more disparate treatment; Black Americans are charged with more serious crimes than White Americans for identical conduct, are prosecuted and convicted at higher rates, and serve longer sentences for the same conduct.291 Even controlling for other variables, including poverty and the conduct of the suspect/defendant during the criminal legal process, the only salient distinguishing factor to explain this disparate treatment is race.292

And yet, "[t]he most widely accepted diagnosis of the cleavage between the police and African Americans . . . centers on legitimacy. . . . African Americans are less likely than other groups to see the police as legitimate authorities," which in turn

287. Butler, supra note 14, at 1468; See Anthony O’Rourke, Rick Su & Guyora Binder, Disbanding Policing Agencies, 121 COLUM. L. REV. 1327, 1352 (2021) ("[T]he procedural justice framework may increase the efficiency of policing as a technology of surveillance and social control of poor communities of color, without reducing its harm.").
288. See supra note 17.
289. Id.
290. See LaFraniere et al., supra note 279; see also Shawn E. Fields, Weaponized Racial Fear, 93 TUL. L. REV. 931, 971–72 (2019) ("Black individuals who [are] searched [are] far less likely to have contraband than white individuals who are searched. . . . Rather than communities of color committing crimes at greater rates, the crime in those areas are simply detected at greater rates because of over-enforcement.").
291. See BISHOP ET AL., supra note 17, at 18–21; Lenese C. Herbert, Bête Noire: How Race-Based Policing Threatens National Security, 9 MIC. J. RACE & L. 149, 174 (2003) ("African Americans are ‘over-policed,’ or surveilled, investigated, detained, arrested, prosecuted, and incarcerated more frequently than other Americans, irrespective of illegality.").
292. See BISHOP ET AL., supra note 17, at 21; see also Justin Murphy, Are Stand Your Ground Laws Racist and Sexist? A Statistical Analysis of Cases in Florida, 99 SOC. SCI. Q. 439, 439 (2018) (finding that Black defendants were nearly ten times as likely as White defendants to be convicted of a homicide when mounting a stand your ground defense: a stand your ground defense "has nearly zero probability of succeeding when the victim is white and the defendant is a person of color. This finding remains true after accounting for more than 10 objective factors related to the crime . . . ").
diminishes the “feeling of obligation to obey the law and to defer to the decisions made by legal authorities.” To the procedural justice theorist, this legitimacy gap does not arise from the belief that police are either themselves racist or willing participants in a fundamentally racist criminal legal architecture, but because “across racial-ethnic groups, people tend to view police as legitimate when they are procedurally just.”

As such, “the primary reason African Americans do not see police as legitimate is because they tend to have more personal experiences in which police officers treat them in a procedurally unjust manner.”

There are valid reasons for this belief. Early studies of urban policing found a prevalent belief among law enforcement that “both African Americans and residents of poor neighborhoods” required a “fundamentally different type of policing than other groups because those two groups ‘respond only to fear and rough treatment.’” The procedural justice approach is intended as “a partial corrective to that [misguided] common wisdom.” Thus, if “African Americans’ greater distrust of police . . . arises as the product of negative personal experiences,” a more racially fair and neutral encounter will improve perceptions of police and make members of this community “more likely to accept the outcome” of a police encounter, even if negative.

This is not real reform, for it fails to interrogate the roots of racist policing. Even assuming the police-citizen encounter was procedurally just, was the encounter itself lawfully authorized? Was it necessary? Was it driven by race, in whole or in part? Was the outcome of the procedurally just encounter lawfully authorized? Was it necessary? Will the outcome lead to racially disparate treatment in the adjudicative process, whether or not the prosecutor and judge act in a procedurally just manner?

“Critical race theory scholars condemn this focus on procedure, arguing that it obscures the law’s substantive impact on systemic inequality and racism and undermines substantive change.” These claims “are valid. No amount of procedural window dressing can fix substantive law that harms people. [P]rocedural justice . . . can . . . compound the negative effects of harmful ones.” And yet it appears procedural justice theorists are willing to concede this point, acknowledging

293. Bell, supra note 12, at 2073 (quoting Fagan, supra note 37, at 235).
294. Id. at 2076 (emphasis omitted); Schulhofer et al., supra note 8, at 374; Tom R. Tyler, Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities, 25 LAW & SOC. INQUIRY 983, 999 (2000) (“Demographic characteristics such as ethnicity and gender do not affect the relative importance of procedural justice concerns in determining procedural preferences—everyone cares about procedural justice.”).
295. Bell, supra note 12, at 2076.
296. Id. at 2081 (quoting William A. Westley, Violence and the Police, 59 AM. J. SOC. 34, 40 (1953)).
297. Id.
300. Id.
the unchangeable substantive unfairness of the criminal legal system and instead focusing on the low-hanging fruit that is achievable.301
Perhaps the sheer scale of racial subordination drives procedure over substance advocacy. In decrying shocking statistical evidence about the mass incarceration of Black men during a symposium lecture on the benefits of procedural justice, Professor Meares concluded that “[i]n everyday language it is normal. For these men, going to prison is an ordinary life experience along one’s life course trajectory, just like graduation, marriage, a first job, or having children is for everybody else.”302 In other words, racial subordination has become so normalized for this community that shockingly high and racially disparate rates of adverse outcomes do not even factor into personal perceptions of police legitimacy; they just are a function of life. It should come as little surprise, then, when “positive experiences . . . lead to positive evaluations of police legitimacy . . . even when the relevant experience . . . led to a negative outcome.”303 The negative outcome is expected. What was unexpected was the polite way in which the negative outcome was delivered. Whether one calls this pacification, mollification, or resignation, it is a depressing and wholly unsatisfactory measure of “police reform.”

2. Police Brutality

Police responses to minor disturbances with violent, often lethal force garner perhaps the most sustained criticism in popular police reform discourse.304 Indeed, the last two waves of national police reform in 2014 and 2020 were sparked by unlawful murders of unarmed Black men engaged in nonviolent and nonthreatening conduct.305 And yet, despite this attention, officer-involved shootings and other uses

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301. See, e.g., Meares, supra note 15, at 656.
302. Id. at 655.
303. Id. at 656; cf. Worden et al., supra note 12, at 89 (identifying ten main sources of public dissatisfaction with police, the primary being “the outcome of the contact,” followed by “perceived disrespect/loss of dignity”); Pina-Sanchez et al., supra note 32, at 388 (challenging causal relationship between procedural justice and legitimacy).
304. See Jamillah Williams, Naomi Mezey & Lis Singh, #BlackLivesMatter – Getting from Contemporary Social Movements to Structural Change, 12 Calif. L. Rev. Online 1, 7 (2021); Deen Freelon, Charlton D. McIlwain & Meredith D. Clark, Beyond the Hashtags: #Ferguson, #Blacklivesmatter, and the Online Struggle for Offline Justice, Ctr. Media & Soc. Impact 42–43 (Feb. 29, 2016), https://cmsimpact.org/resource/beyond-hashtags-ferguson-blacklivesmatter-online-struggle-offline-justice/ [https://perma.cc/K296-ZSSW] (observing that “the nature of police brutality as an issue . . . is extremely well-suited to internet-based activism” because it is “concrete, discrete in its manifestations, and above all, visual”).
of force are on the rise.\textsuperscript{306} The continued outfitting of local police departments with paramilitary weaponry and the cultivation of a warrior cop mentality feed the police brutality epidemic unabated.\textsuperscript{307} And this epidemic continues to disproportionately impact minority communities.\textsuperscript{308}

Procedural justice training gives little direct attention to uses of force, though implicit in giving suspects voice and treating them with dignity presumably is a commitment not to kill them.\textsuperscript{309} But nonlethal uses of force, even if unlawful or unnecessary, may very well be accepted more readily if deployed in the context of a procedurally just encounter, again obscuring underlying questions of legality, necessity, and racial motivation.\textsuperscript{310}

Some evidence exists for this conclusion. In 2015, the DOJ entered into a consent decree with the Prince George's County, Maryland Police Department, in response to findings that the department engaged in systemic, unlawful police brutality, especially against communities of color.\textsuperscript{311} The DOJ intervention was driven in large part by public outcry, as evidenced by the hundreds of complaints of police brutality

\begin{itemize}
\item \textsuperscript{308} See supra notes 17–18.
\item \textsuperscript{310} See Brie McLemore, \textit{Procedural Justice, Legal Estrangement, and the Black People’s Grand Jury}, 105 \textsc{Va. L. Rev.} 371, 380 (2019) (observing that, exercised properly, procedural justice can assist the state to maintain its power and monopoly of violence against citizen challenge); \textit{cf. id.} (exposing “the limits of procedural justice” in a “legal system [that] fails to indict or convict police officers who kill and injure Black civilians”).
\end{itemize}
lodged by community members.\footnote{Id.} The consent decree required, among other things, that officers train in and practice procedural justice techniques as a way to rebuild trust and legitimacy with the community.\footnote{Id.} After this intervention, “the number of complaints about use of force decreased. At the same time, however, the use of force by the police actually increased. In other words, the police used force more and received fewer complaints about it.”\footnote{Butler, supra note 14, at 1467.}

This is procedural justice at work. A polite use of force is deemed more legitimate and thus less deserving of criticism or redress than an impolite use of force, regardless of whether the handcuffs, chokeholds, or knees to the neck were necessary or lawful. This false reform gives rise to “consensual domination” and the belief that any departures from collectively agreed-upon conduct—procedurally just uses of force—is the product of a rogue actor and not a centuries-old system of oppression.\footnote{Anthony E. Cook, Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr., 103 HARV. L. REV. 985, 986 n.3 (1990).} This false reform gives the false impression that wrongdoing stems from “isolated actions against individuals rather than as a societal policy against an entire group.”\footnote{Crenshaw, supra note 16, at 1342.}

But there exists no evidence that either the use of procedurally just techniques or the attendant increased perception of police legitimacy will actually change police behavior regarding uses of force. As Professor Lawrence Rosenthal observed, police will continue responding to perceived threats with violence regardless of any soft perceptions that they are acting legitimately.\footnote{See Lawrence Rosenthal, Good and Bad Ways to Address Police Violence, 48 URB. L. 675, 691–700 (2016).} The only conduct that can, and has, altered police use of force behavior is external substantive regulation.\footnote{See Tennessee v. Garner, 475 U.S. 1, 11–12 (1985) (setting bright-line rule prohibiting officers from using deadly force against fleeing suspects unless the suspect poses a threat of serious physical harm to others); Cynthia Lee, Reforming the Law on Police Use of Deadly Force: De-Escalation, Preseizure Conduct, and Imperfect Self-Defense, 2018 U. ILL. L. REV. 629, 642 (2018) (“The number of persons shot and killed by police decreased dramatically after the Garner decision, in large part because many police departments . . . changed their policies to conform to the decision.”).}

3. Police Accountability

False perceptions of legitimacy threaten to derail another sorely needed police reform: accountability. Research has long shown that officers act with relative impunity, from insulated cryptic reviews of police misconduct by internal affairs departments,\footnote{The Daily, The Systems That Protect the Police, N.Y. TIMES (June 2, 2020), https://www.nytimes.com/2020/06/02/podcasts/the-daily/george-floyd-protests.html [https://perma.cc/UGE5-PRDQ].} to political efforts to protect officers from scrutiny,\footnote{Id.; see Zach Williams, Kathy Hochul Suddenly Backs Protecting Cops from Lawsuits as She Fights with Democrats, N.Y. POST (Jan. 24, 2023), https://nypost.com/2023/01/24/gov-kathy-hochul-says-she-opposes-repealing-qualified-immunity-amid-fights-with-left/} to a qualified
immunity doctrine that has all but ended any chance at redress for violations of constitutional rights.\textsuperscript{321}

Qualified immunity in particular has destabilized any sustained effort at changing substantive police behavior, especially in use-of-force cases. What was once a doctrine of limited \textit{qualified} immunity shielding police from some civil liability has metastasized into a doctrine of \textit{absolute} immunity, protecting officers from illegal, often egregiously unconstitutional conduct.\textsuperscript{322}

Procedural justice’s pacifying effects limit prospects for police accountability, including reforms to immunity-based defenses, in an important way. External accountability depends on an aggrieved actor seeking redress, either through a civil lawsuit, criminal charge, or police department complaint. But the “deceptive simplicity” of procedural justice is that citizens subject to a procedurally just encounter often perceive that the officer’s actions were just, legitimate, and thus lawful—even if they were not.\textsuperscript{323} And since most citizens are not steeped in the intricacies of criminal procedure, their feelings of justness almost entirely guide the analysis of whether a particular police action was, in fact, legitimate.

In other words, the existing system of police accountability is broken because it rarely (if ever) offers redress to litigants for unlawful police conduct. Rather than fixing that system, procedural justice exacerbates the problem and takes us further from a solution by removing the would-be litigant in the first place without forcing or encouraging any substantive change to unlawful police behavior. The irony is that citizens require effective “legal recourse and accountability from those who wrong them” in order to “restore[] trust and strengthen[] the foundations” of the government-citizen relationship.\textsuperscript{324} What procedural justice offers instead is a façade of trust based on unearned false legitimacy masquerading as reform.

\textsuperscript{321} William Baude, \textit{Is Qualified Immunity Unlawful?}, 106 CALIF. L. REV. 45, 82 (finding that thirty police officer qualified immunity cases were decided by the Supreme Court between 1982 and 2017, all but two of which resulted in wins for the officer); Andrew Chung, Lawrence Hurley, Jackie Botts, Andrea Januta & Guillermo Gomez, \textit{Supreme Defense, Reuters Investigates: SHIELDED} (May 8, 2020), https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/ [https://perma.cc/XY5X-H5ZR].

\textsuperscript{322} Diana Hassel, \textit{Living a Lie: The Cost of Qualified Immunity}, 64 MO. L. REV. 123, 130–31 (1999) (highlighting diminished importance of questions of fact in excessive force cases given qualified immunity doctrine); Mullenix v. Luna, 577 U.S. 7, 26 (2015) (Sotomayor, J., dissenting) (criticizing the majority for “sanctioning a ‘shoot first, think later’ approach to policing [that] renders the protections of the Fourth Amendment hollow” when they granted qualified immunity to an officer who killed a motorist by firing six shots into a car the officer knew was soon to be disabled).

\textsuperscript{323} Bell, supra note 12, at 2080.

4. Legal Reform

Any procedural justice reforms “[must] be accompanied by substantive [legal] reforms if they are to have an impact beyond public relations.”\textsuperscript{325} However, procedural justice often works hand-in-glove with excessively permissive laws regulating police conduct to perpetuate injustice manifested by those lax regulations. Indeed, “Fourth Amendment jurisprudence on the voluntariness of searches foregrounds this danger.”\textsuperscript{326} Courts often mention the politeness or courtesy of officers when using a totality of the circumstances analysis to decide whether a warrantless search was voluntary, at times debating the relative importance of politeness in the voluntariness analysis.\textsuperscript{327} The more polite an officer is in making a search request, or the less aggressive or hostile his tone, the more likely a court is to find that any “consent” to search was granted voluntarily.\textsuperscript{328} This is no small issue, since as many as ninety-eight percent of all searches are “voluntary,” or conducted with the “consent” of the searched party.\textsuperscript{329} Thus, “[t]hin conceptions of procedural justice” focused on “empirically informed officer politeness” could produce a form of “‘sham security,’ leaving some individuals with a vague sense that they have been treated justly while neglecting” larger issues of constitutional legality or justice.\textsuperscript{330}

Procedural justice proponents view this as a feature rather than a bug. Their “non-law” approach to police reform explicitly rejects legal intervention into policing.\textsuperscript{331} Their core suggestions are training, the substance of which is highly discretionary and rarely encoded directly into law, thus avoiding “litigation-based pathways toward systemic reform.”\textsuperscript{332} The solutions do not involve creating, changing, or enforcing the law. Thus, even if their procedural justice approaches are effective, they largely leave intact the legal structure that has given birth to distrust and illegitimacy, which codifies and excuses the very problems plaguing the system. These “successful” reform efforts substantially improve community perceptions about the police without substantially improving police practices.\textsuperscript{333}

\begin{itemize}
  \item \textsuperscript{325} Butler, supra note 14, at 1468.
  \item \textsuperscript{326} Bell, supra note 12, at 2082.
  \item \textsuperscript{327} See, e.g., United States v. Drayton, 536 U.S. 194, 203–04 (2002) (ruling that a search was voluntary in part because the officer spoke in a “polite, quiet voice”); Florida v. Royer, 460 U.S. 491, 531 (1983) (Rehnquist, J., dissenting) (arguing that a search was voluntary in part because “the detectives were quite polite”).
  \item \textsuperscript{328} United States v. Hughes, 640 F.3d 428, 437 (1st Cir. 2011) (“The troopers were polite and never hectored the defendant or raised their voices. Details such as these are entitled to some weight in determining whether a particular interrogation was custodial.”).
  \item \textsuperscript{329} Paul Sutton, \textit{The Fourth Amendment in Action: An Empirical View of the Search Warrant Process}, 22 CRIM. L. BULL. 405, 415 (1986) (discussing results of study showing that an estimated ninety-eight percent of all searches were by consent); Joshua Dressler, Alan C. Michaels & Ric Simmons, \textit{Understanding Criminal Procedure} § 16.01 (8th ed. 2021) (“Put simply, there are few areas of Fourth Amendment jurisprudence of greater practical significance than consent searches.”).
  \item \textsuperscript{330} Bell, supra note 12, at 2082, 2081, 2083.
  \item \textsuperscript{332} Bell, supra note 12, at 2078; see supra notes 34–45.
  \item \textsuperscript{333} Butler, supra note 14, at 1425 (“The improved perceptions remove the impetus for
Legal reforms themselves are not a panacea, but those aimed directly at limiting police power—like strictly defining probable cause, limiting the scope of permissible searches outside the warrant requirement, and prohibiting all unnecessary uses of force as unconstitutional seizures—could promote genuine substantive reform within an admittedly flawed power structure. Procedural justice reform remains a step removed even from imperfect legal reform because it does not purport to prioritize substantive legal reforms restricting unwarranted police behavior. Instead, it reinforces existing standards through the veneer of procedural legitimacy.

5. Police Abolition

We end where we began. Police reform in 2020 was defined by efforts to “defund” or “abolish” police, with calls to focus not on minor fixes within the existing system but to remove the fundamental problem in the system—the armed officer. Police abolition theory is animated primarily by two major critiques of American police. Those who argue that police as an institution are historically and inextricably linked to racism, violence, and exploitation demand a complete dismantling of the entire police apparatus. In contrast, those who focus on the inefficacy of current “one size fits all” policing and claim that police are ill-equipped to handle the wide variety of services municipalities thrust upon them may seek a more limited unbundling of services. These quasi-abolitionists challenge the prevailing notion that an armed the kinds of change that would actually benefit the community.”.


335. See supra note 1; 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/F5JK-G3AV] (“There is not a single era in United States history in which the police were not a force of violence against black people. . . . So when you see a police officer pressing his knee into a black man’s neck until he dies, that’s the logical result of policing in America. . . . [H]e is doing what he sees as his job.”).

336. Fields, supra note 241, at 1031.

337. Rachel Herzing, Address to the Critical Prison Studies Caucus of the American Studies Association: Keywords in Critical Prison Studies (Nov. 8, 2014), https://www.theasa.net/communities/caucuses/critical-prison-studies-caucus [https://perma.cc/7ACA-2PGJ] (Activists “used to think that if we improved police we would escape its violence. The only way to stop the violence of policing is to make the cops obsolete.”); Akbar, supra note 259, at 1783; Vitale, supra note 261, at 30.

officer trained in force and law has any logical role in traffic enforcement, mental health response, homeless outreach, or a child’s classroom. At their core, however, both strands of thought share the essential characteristic of a radically reduced role for police in civil society.

Procedural justice reform, in contrast, relies explicitly on the ubiquitous presence of “community police” building legitimacy one polite encounter at a time. Indeed, in many ways, procedural justice and police abolition are mutually exclusive ends and cannot exist together in any meaningful way. Procedural justice could complement more limited police disaggregation efforts by promoting nonviolent, productive encounters in those few situations where an officer’s presence is truly warranted, but to most abolitionists the only “core” responsibility of an armed police officer involves response to violent crime—a circumstance ill-suited for the soft skills of procedural justice.

At a minimum, the abolitionist’s question—is a police officer’s presence necessary here, now?—must be answered before any questions can be entertained about the procedural contours of that encounter. For example, an abolitionist would question whether an officer can legitimately be present at a traffic stop for a minor vehicle infraction, or whether that presence is itself unjustified and unwarranted. A procedural justice theorist, in contrast, does not care why the officer is present or whether their presence is warranted (or even lawful); the theorist cares only if the officer’s presence is a dignified, respectful, and polite one.

Procedural justice frustrates abolition, or more moderate defunding or reallocation, reforms in another important way: it relies on and encourages increased police presence. According to one procedural justice proponent, “[p]olice officers as state officials have more opportunities than most state agents to make a positive difference.” Thus, they have among the greatest (or at least the greatest number of) opportunities to foster legitimacy among a government’s citizens. That may be true, but only because society has normalized the broad, ubiquitous presence of police officers in areas of civil society where armed agents have no logical place and in neighborhoods where the most vulnerable are at greatest risk of police oppression. The fact that police officers have more contact with these communities should not be celebrated because of the increased opportunities to practice procedural justice. It should be interrogated, criticized, and changed.

remove police from noncriminal public safety functions); Woods, supra note 241, at 1471 (detailing proposal to permanently remove police from traffic enforcement); see also Ji Seon Song, Policing the Emergency Room, 134 HARV. L. REV. 2646, 2648–50 (2021) (articulating structural dangers of putting police in emergency rooms where it is difficult to justify police presence).

339. See Fields, supra note 241.
340. Id. at 1031.
341. See supra Section II.B.; Meares, supra note 15, at 655 (discussing how increased police presence provides opportunities to practice procedural justice).
342. Thompson, supra note 338; Fields, supra note 241.
343. This question is separate from whether the presence is “authorized by law.” See Friedman, supra note 238 at 959.
Yet Meares and other procedural justice adherents celebrate this opportunity to spread the gospel of procedural justice.\textsuperscript{345} And herein lies the reason why procedural justice reforms represent an existential threat to transformative police reform: by celebrating police omnipresence as an opportunity for procedural justice omnipresence, this movement necessarily eschews the type of police defunding and criminal justice decarceration so desperately needed but so antithetical to police omnipresence.

\section*{Conclusion}

The murder of Tyre Nichols provides yet another sobering inflection point about the state of policing in America, one far too often characterized by over-enforcement, discrimination, and unspeakable brutality. The reforms advocated in the early aftermath of this tragedy—removing police from traffic enforcement, eliminating special units and the hot spot policing they employ, and improving accountability for lawless officers before they kill—may not have saved Mr. Nichols’s life. Bad actors will always exist. But these reforms at least speak directly to the circumstances allowing a systemic, ubiquitous, lawless culture of police violence to thrive from Memphis to Minneapolis. Procedural justice does not.

This Article highlights how procedural justice theory fails to address any of the root problems in policing today. But it does more than criticize a minor reform as less desirable than major reforms. It illustrates the dangers of treating procedural justice as a “silver bullet” panacea and charts precisely how this danger is materializing at the federal, state, and local levels. The growing procedural justice industrial complex has displaced the opportunity for necessary fundamental changes, with police lobbies, policymakers, and for-profit purveyors more than happy to oblige. As a result, moments of national reckoning in 2014 and 2020 largely failed to create the structural reforms that once seemed possible. We must do better in 2023.

\textsuperscript{345} Some research suggests ubiquitous police presence is necessary to improve perceptions of legitimacy. See James E. Howden, John Ryan & Sean P. Griffin, \textit{Policing Tactics and Perceptions of Police Legitimacy}, 6 POLICE Q. 469, 469 (2003) (asking “does community policing improve citizen perceptions of the police or is this improvement simply due to increased police visibility?[,]” before confirming that it is the latter).