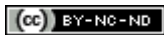


ARTICLES

THE THIN BLUE LINE BETWEEN VIRTUE AND VICE: CONFRONTING THE MORAL HARMS OF POLICING

G. Alex Sinha

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ARTICLES

THE THIN BLUE LINE BETWEEN VIRTUE AND VICE: CONFRONTING THE MORAL HARMS OF POLICING

G. Alex Sinha *

ABSTRACT

Scholarship on policing has exploded in recent years as bystanders increasingly record and circulate videos of police brutality, much of it directed at civilians of color. These incidents have drawn significant attention to the culture of police departments and police unions, generating widespread calls for the reform, or even the abolition, of police forces. The traditional considerations at the center of these debates include the practical challenges to enacting reforms, the expected efficacy of proposed changes for curtailing abuses, and the possible costs of these changes (whether measured in dollars or crime rates). The moral premises that are inherently embedded in reform arguments typically remain unstated and undefended, obscuring

* Associate Professor, Maurice A. Deane School of Law at Hofstra University. I am grateful to have had the opportunity to present this project at an annual meeting of the Southeastern Association of Law Schools and the University of Richmond School of Law Junior Faculty Forum, as well as to audiences at the Temple University Beasley School of Law, the William S. Richardson School of Law at the University of Hawai'i at Mānoa, the Maurice A. Deane School of Law at Hofstra University, and the Quinnipiac University School of Law. The paper benefitted from exchanges with Jon Abel, Alice Abreu, Scott Burris, Baruch Bush, Bill Chang, Robin Charlow, Erin Collins, Ron Colombo, Michelle Cosby, Randle DeFalco, Margaret deGuzman, Neal Feigenson, Brenner Fissell, Leslie Francis, Eric Freedman, Betsy Ginsberg, Lauryn Gouldin, Dan Greenwood, Paul Gugliuzza, Daniel Harawa, Ben Heath, Jen Herbst, Alex Klein, Stan Krauss, Guha Krishnamurthi, Julian Ku, Jamie Macleod, Jane Manners, Linda Meyer, Mark Niles, Alex Nunn, Jaya Ramji-Nogales, Rachel Rebouché, Alan Rozenstein, Shelley Sadin, Jim Shellenberger, Norm Silber, Jocelyn Simonson, Barbara Stark, Stewart Sterk, Victoria Szymczak, Janani Umamaheswar, Louis Virelli, Richard Wallsgrove, and S. Lisa Washington. Finally, I am indebted to Kaylyn Fagan and Shannon Palm for their invaluable research assistance. All errors are my own.

entire categories of harm imposed by police and the proper aims and urgency of reform.

Quite separately from disputes about policing, many legal scholars have come to accept that the proper aim of the law is to facilitate the moral flourishing of the public, or, relatedly, that the human virtues provide a helpful model for understanding the law and the obligations of its agents. Scholars have applied this theoretical framework, known as “virtue jurisprudence,” to dozens of substantive areas of law as well as to the professional duties of legal officers, such as judges and lawyers. Yet, much as moral considerations have largely been left aside by policing scholars, policing has been effectively overlooked by virtue scholars. This latter omission is especially peculiar. Whether one accepts that the law is instrumental in guiding the moral development of the populace, or that the virtues serve as helpful models for the professional duties of judges and lawyers, policing is plainly ripe for virtue-centered analysis. After all, police represent the most prominent point of contact between the public and the legal system and, more than any other state officials, police personify the government’s near-monopoly on the legitimate use of force.

This Article analyzes American policing through the lens supplied by virtue jurisprudence, arguing that uncontroversial assumptions about the moral role of the law provide both a compelling basis for sweeping police reform and valuable parameters for the nature of such reform. The virtues—traits like benevolence, honesty, and wisdom—reveal an entire class of harms caused by police that are widely overlooked: *the propensity of policing to make us morally worse people*. Police inflict these harms by demanding fawning deference from the civilians they serve and by widely expressing and modeling vice, especially through their unapologetic demonstrations of bias and brutality. The virtues simultaneously offer a cohesive theoretical justification for condemning the more obvious harms linked to racism and excessive use of force by police—harms that monopolize scholarly attention. Virtue jurisprudence thus grounds a more comprehensive tally of the merits and demerits of American law enforcement, and it reframes a solution to the problem of policing: whether through reform or abolition, we must humble the police.

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INTRODUCTION

Few topics have invited as much recent attention from legal scholars as policing. A great deal of intellectual energy flows toward analyzing the effects of American policing and the pathways toward reform.¹ The inescapable reason for this is that authors, editors, and readers widely recognize the need for police reform or abolition as an urgent moral problem. Indeed, substantially all reform arguments—even those that purport to be non-ideological² or purely data-driven³—are premised on the notion that some (and not other) aspects of policing are seriously morally bad.

¹ See, e.g., Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 720–21 (2017); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761 (2012); Kate Levine, *Police Suspects*, 116 COLUM. L. REV. 1197 (2016); Seth W. Stoughton, *The Incidental Regulation of Policing*, 98 MINN. L. REV. 2179 (2014); Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. 545, 593 (2019) [hereinafter Rushin, *Disciplinary Appeals*]; Benjamin Levin, *What’s Wrong with Police Unions?*, 120 COLUM. L. REV. 1333 (2020); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191 (2017); Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community—Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355 (2017); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778 (2021); Monica Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017) [hereinafter Bell, *Legal Estrangement*]; Barry Friedman, *Disaggregating the Policing Function*, 169 U. PA. L. REV. 925 (2021) [hereinafter Friedman, *Policing Function*]; Bennett Capers, *Policing, Place, and Race*, 44 HARV. C.R.-C.L. L. REV. 43 (2009); Samuel Walker, “Not Dead Yet”: *The National Police Crisis, A New Conversation About Policing, and the Prospects for Accountability-Related Police Reform*, 2018 U. ILL. L. REV. 1777 (2018); PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017). Indeed, policing has been a significant point of concern for at least half a century. David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699 (2005).

² See Trevor George Gardner, *By Any Means: A Philosophical Frame for Rulemaking Reform in Criminal Law*, 130 YALE L.J.F. 798, 808–09 (2021).

³ See Cynthia Lum, *Perspectives on Policing: Cynthia Lum*, 4 ANN. REV. CRIMINOLOGY 19 (2021), <https://www.annualreviews.org/doi/pdf/10.1146/annurev-criminol-093020-023221>.

Yet, save for rare exceptions, like Jocelyn Simonson⁴ and Monica Bell,⁵ most policing scholars conspicuously leave their essential moral premises entirely unstated. And none appear to offer a complete and coherent moral justification for those premises.⁶

Instead, contributions to policing debates tend to begin by identifying troubling features or consequences of American policing without explaining what makes them bad. These features include high rates of brutality against civilians,⁷ low rates of corresponding police accountability,⁸ over-incarceration,⁹ and racial disparities or

⁴ See Simonson, *supra* note 1. Simonson argues for examining the need for police reform through the “power lens”—and more specifically, for shifting power away from police and toward “populations who have historically been subject . . . to the violence and control of everyday policing.” *Id.* at 830. In defending this claim, she plainly asserts the underlying moral considerations. For instance, she argues that power reallocation is “reparative,” which is important because “we must take historical wrongs into account when thinking about reform in the present.” *Id.* at 830. She argues that shifting power toward policed communities is also valuable because of its antisubordination implications—it is “consistent” with the notion that that law “should not ‘perpetuate[] . . . the subordinate stature of a specially disadvantaged group.’” *Id.* at 838 (citation omitted). And she argues that the power lens is “supported by a theory of democracy that values contestation and resistance as necessary parts of a healthy state.” *Id.* at 843. These are compelling moral considerations; and although Simonson regards them as related, *id.* at 830, their force is somewhat blunted when they are severed from a more fundamental and cohesive theory about the function of the State and its agents. This Article endeavors to sketch out the basis for precisely such a theory—a theory that could incorporate the claims on which Simonson relies.

⁵ Some of Monica Bell’s work engages with moral considerations, though not as a primary matter. For example, Bell articulates the moral underpinnings of legitimacy theory, which she deploys in her analysis of legal estrangement. See Bell, *Legal Estrangement*, *supra* note 1, at 2075.

⁶ There is a relatively small body of literature on moral theory and policing, or ethics and policing, but those contributions do not attempt to paint a comprehensive moral picture of policing, nor do they deploy virtue theory (as this article does). See, e.g., Eric J. Miller, *Knowing Your Place: The Police Role in the Reproduction of Racial Hierarchy*, 89 GEO. WASH. L. REV. 1607 (2021); Eric J. Miller, *The Moral Burdens of Police Wrongdoing*, 97 RES PHILOSOPHICA 219 (2020); Jennifer Page, *Reparations for Police Killings*, 17 PERSPS. ON POL. 958 (2019); Kenneth J. Peak et al., *Ethical Considerations in Community Policing and Problem Solving*, 1 POLICE Q. 19 (1998); JOHN KLEINIG, *THE ETHICS OF POLICING* (1996).

⁷ See Friedman, *Policing Function*, *supra* note 1, at 928; BUTLER, *supra* note 1, at Preface.

⁸ See Walker, *supra* note 1, at 1784–85.

⁹ See Akbar, *supra* note 1, at 1841–42.

biases that manifest in policing practices.¹⁰ The empirical bases for these concerns are well documented, so there are a great deal of data to choose from.¹¹

¹⁰ See Bill Ong Hing, *From Ferguson to Palestine: Disrupting Race-Based Policing*, 59 HOW. L.J. 559, 563 (2016); see also Radley Balko, *Opinion, There's Overwhelming Evidence that the Criminal Justice System Is Racist. Here's the Proof.*, WASH. POST (June 10, 2020), <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/#Policing> [<https://perma.cc/4E52-J4N9>]; *A Roadmap for Re-imagining the Public Safety in the United States*, HUM. RTS. WATCH (Aug. 12, 2020, 8:00 AM), https://www.hrw.org/news/2020/08/12/roadmap-re-imagining-public-safety-united-states#_Policing_in_the [<https://perma.cc/TN9F-PYK9>].

¹¹ It is commonly accepted that police in the United States kill approximately 1,000 Americans per year, disproportionately people of color. Anthony O'Rourke et al., *Disbanding Police Agencies*, 121 COLUM. L. REV. 1327, 1337 (2021). In fact, data from the past few years show that the number of civilians fatally shot by police has increased annually since at least 2016, falling just shy of 1,100 in 2022. *1,099 People Have Been Shot and Killed by Police in the Last 12 Months*, WASH. POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/E9JS-CDW6>] (last updated Feb. 15, 2023). Tallies that look beyond fatal shootings specifically generate higher numbers still. See MAPPING POLICE VIOLENCE, POLICE VIOLENCE MAP (2023), <https://mappingpoliceviolence.us> [<https://perma.cc/7CYF-PVFG>] (finding that police killed nearly 1,200 civilians in 2022). Moreover, one recent study found that “police killings in America have been undercounted by more than half over the past four decades,” casting serious doubt on the data experts have been relying on for nearly half a century. Tim Arango & Shaila Dawn, *More than Half of Police Killings Are Mislabeled, New Study Says*, N.Y. TIMES (Sept. 30, 2021), <https://www.nytimes.com/2021/09/30/us/police-killings-undercounted-study.html> [<https://perma.cc/YZ7C-M379>]. According to the Brookings Institute, “Black people are 3.5 times more likely than white people to be killed by police when Blacks are not attacking or do not have a weapon.” Rashawn Ray, *How Can We Enhance Police Accountability in the United States?*, BROOKINGS (Aug. 25, 2020), <https://www.brookings.edu/policy2020/votervital/how-can-we-enhance-police-accountability-in-the-united-states/> [<https://perma.cc/5CAS-92MN>]. One study found that approximately “1 out of every 1,000 [B]lack men [in the United States] can expect to be killed by police.” Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-ethnicity, and Sex*, PNAS (Aug. 5, 2019), <https://www.pnas.org/content/116/34/16793>.

Police rarely face professional consequences for these killings, and they face criminal accountability even less frequently. See Ray, *supra*. According to one analysis, through mid-March of 2020, a mere “110 law enforcement officers nationwide ha[d] ever been charged with murder or manslaughter in an on-duty shooting”—about 10% of a single year’s worth of police killings—with fewer than half convicted of any (often lesser) charges. Amelia Thomson-DeVeaux et al., *Why It’s So Rare for Police Officers to Face Legal Consequences*, FIVETHIRTYEIGHT (June 4, 2020, 6:00 AM), <https://fivethirtyeight.com/features/why-its-still-so-rare-for-police-officers-to-face-legal-consequences-for-misconduct/> [<https://perma.cc/SWF7-BKKP>]. The same analysis showed only five murder convictions of police officers that withstood subsequent appeals. *Id.* Notably, for all the recent attention on police brutality, there has been no statistically significant increase in charges for officers who kill civilians. *Id.*

Precise numbers are difficult to ascertain, but it is possible that significantly more than one million people per year endure “lesser threats or uses of force.” Friedman, *Policing Function*, *supra* note 1, at 936. Indeed, even those who are skeptical of the meaning of racial disparities in police shootings of civilians acknowledge substantial racial disparities in “lower level” uses of force. See, e.g., Roland G. Fryer, *An Empirical Analysis of Racial Differences in the Use of Force*, 127 J. POL. ECON. 1210, 1212–13, 1248 (2019). Police also target racial minorities—especially Black Americans—for stops and arrests

Next, most commentators propose reforms of varying scope. They might suggest pinning a greater share of financial liability for police misconduct on police agencies or scaling back protections that permit abusive officers to keep their jobs;¹² hiring more women into police forces or requiring additional training;¹³ addressing irregularities in police pay;¹⁴ tweaking collective bargaining procedures;¹⁵ or increasing community influence over police discipline.¹⁶ Some recommendations are a great deal more sweeping,¹⁷ such as Amna Akbar's call for "fundamental transformation" in response to "a crisis" that extends beyond police violence to "our entire system of laws and statecraft."¹⁸ Some scholars also examine the challenge of enacting changes against opposition from police unions.¹⁹

at far greater rates than they target Whites. See ACLU ANALYTICS & ACLU OF D.C., RACIAL DISPARITIES IN STOPS BY THE METROPOLITAN POLICE DEPARTMENT: 2020 DATA UPDATE (2021), <https://www.aclu.org/en/publications/racial-disparities-stops-metropolitan-police-department-2020-data-update> [https://perma.cc/UMW7-KHUQ]; 2011 NYPD Stop and Frisk Statistics, CTR. FOR CONST. RTS. & JUST. (2011), <https://ccrjustice.org/files/CCR-Stop-and-Frisk-Fact-Sheet-2011.pdf> [https://perma.cc/82YF-4FF5]. Racial disparities also carry over to police use of force against children. Helen Wieffering et al., *Tiny Wrists in Cuffs: How Police Use Force Against Children*, APNEWS (Oct. 20, 2021), <https://apnews.com/article/arrests-george-floyd-chicago-only-on-ap-82193c995f313f5c0aefb0c08e0d5091> [https://perma.cc/D8JM-3H46]. More generally, police constitute the front line in a criminal legal system that incarcerates more people objectively—and a greater proportion of its population—than any country in the world. See Inst. for Crime Pol'y Rsch. & Birkbeck Univ. of London, *Highest to Lowest—Prison Population Total*, WORLD PRISON BRIEF, http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All [https://perma.cc/EE85-3E92] (last visited Dec. 12, 2021). Incarceration rates also reflect enormous racial disparities, some measured in orders of magnitude. Friedman, *Policing Function*, *supra* note 1, at 936.

¹² See Ray, *supra* note 11.

¹³ Robert Muggah & Thomas Abt, *Opinion, Calls for Police Reform Are Getting Louder—Here Is How to Do It*, FOREIGN POL'Y (June 22, 2020, 5:18 PM), <https://foreignpolicy.com/2020/06/22/calls-for-police-reform-are-getting-louder-here-is-how-to-do-it/> [https://perma.cc/B6ML-5EFJ].

¹⁴ See Bell, *Legal Estrangement*, *supra* note 1, at 2131–36. Bell makes numerous other suggestions as well. See *id.* at 2126–49.

¹⁵ See Fisk & Richardson, *supra* note 1, at 720–21.

¹⁶ See Rushin, *Disciplinary Appeals*, *supra* note 1, at 588–91.

¹⁷ For a convenient introduction to some of these, see Simonson, *supra* note 1, at 785–86, summarizing the positions of scholars who target deeper forms of change to policing, such as Amna Akbar, Paul Butler, Tracey Meares, and Bennett Capers; see also Amna Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 429 (2018); Friedman, *Policing Function*, *supra* note 1, at 980.

¹⁸ Akbar, *supra* note 1, at 1841–45.

¹⁹ See, e.g., Levin, *supra* note 1.

This approach hides the most important element of any reform or abolition proposal. Although some might dispute the *extent* of any given policing problem,²⁰ for most, it is self-evident that (for example) police brutality is bad.²¹ The focus therefore quickly shifts to what to do about it. Of course, police brutality *is* bad; a world in which that proposition is the subject of substantial debate is a troubled one, and it can be helpful for reform advocates to take that premise for granted. But *why*, exactly, is it bad? Is it bad simply in the way that interpersonal violence or coercion is often bad, absent special circumstances? Or is it different from “ordinary” civilian-on-civilian violence—better, perhaps, as incidental to an essential societal function, or worse, perhaps, because officers operate under special obligations to the communities that they police?

This Article argues that we can and must say more.²² The notion that there is a morally neutral way to contemplate police reform permeates the literature, but it is pure fiction. Police reform arguments are inherently ideological. Failure to elaborate on the moral premises that motivate any given argument exacts a price. If we cannot grasp precisely why American policing practices are problematic, we cannot fully appreciate either the need for reform or the scope of the appropriate responses. Moral arguments may well mirror the empirical ones in provoking widespread disagreement. If so, that is a disagreement we must have in the open and in conjunction with our well-aided empirical debates. Indeed, many of the policy

²⁰ For instance, one policing scholar describes overt police prejudice toward people of color as “possible but unlikely.” Justin Nix et al., *A Bird’s Eye View of Civilians Killed by Police in 2015*, 16 CRIMINOLOGY & PUB. POL’Y 309, 310 (2017).

²¹ There are exceptions here as well. Some, like President Trump, have encouraged the police to be even more forceful with suspects rather than less. See, e.g., Kelly Swanson, *Trump Tells Cops They Should Rough People Up More During Arrests*, VOX (July 28, 2017, 4:35 PM), <https://www.vox.com/policy-and-politics/2017/7/28/16059536/trump-cops-speech-gang-violence-long-island> [<https://perma.cc/GKA9-N3YH>].

²² Rachel Harmon (among others) has influentially called for policing scholars to step outside the “conventional paradigm” for understanding police misconduct, a paradigm trapped within the parameters of constitutional criminal procedure. See Harmon, *supra* note 1, at 762–63. Scholars taking up this approach have looked at other forms of law—and even the “incidental regulation of policing”—that bear on policing behavior and accountability. Stoughton, *supra* note 1, at 2182–83. The argument advanced in this Article is that we must step back further still, not only examining the full array of influences on police behavior but also seriously and openly contending with normative questions about *what policing is for*. Monica Bell has noted that “[t]his moment calls for expertise of many kinds,” above and beyond the social sciences. Monica Bell, *Black Security and the Conundrum of Policing*, JUST SEC. (July 15, 2020), <https://www.justsecurity.org/71418/black-security-and-the-conundrum-of-policing/> [<https://perma.cc/8G8H-3ZRW>] [hereinafter Bell, *Black Security*]. Bell’s article argues that moral theory must also play an essential role here.

debates about police reform are merely proxy disputes for the divergent yet hidden moral premises of their authors.²³ In short, therefore, this Article seeks to spark a broader, explicit conversation about a necessary but heretofore implicit dimension of the policing debate. In doing so, the paper responds to calls from major policing scholars to make policing research “less parochial.”²⁴

The first step is to adopt a lens through which to explore the moral dimensions of policing practices. I nominate virtue jurisprudence, an ascendant framework of special relevance in this context. Legal scholars increasingly recognize the analytic value of the human virtues—qualities like wisdom, benevolence, courage, and so forth.²⁵ Some adopt a “strong” form of virtue jurisprudence, claiming that the purpose of the law should be to help guide its subjects toward virtue²⁶ and, accordingly, toward morally good lives.²⁷ Others deploy a “weaker” form of the methodology, foregoing a position on the proper objectives of the law while holding that the human virtues are nevertheless a useful tool for illuminating dimensions of the law, especially as a model for understanding the duties of legal officers.²⁸ Collectively, scholars have applied some form of virtue analysis to a wide range of substantive areas of the law,²⁹ from broad, doctrinal areas, like criminal law³⁰ and

²³ For instance, one study found “compelling evidence that moral intuitions play an important role in explaining American’s (sic) divergent attitudes toward BLM and the police.” See Eric Silver et al., *Social Order and Social Justice: Moral Intuitions, Systemic Racism Beliefs, and Americans’ Divergent Attitudes Toward Black Lives Matter and Police*, 2022 CRIMINOLOGY 342.

²⁴ Monica C. Bell, *Next-Generation Policing Research: Three Propositions*, J. ECON. PERSPS., Fall 2021, at 29, 30 [hereinafter Bell, *Next-Generation Policing*]; see also Dorian Schaap & Elsa Saarikkomäki, *Rethinking Police Procedural Justice*, 26 THEORETICAL CRIMINOLOGY 1, 12 (2022).

²⁵ I offer some examples of the literature on virtue jurisprudence below. For a far more comprehensive bibliography, see G. Alex Sinha, *Virtuous Law-Breaking*, 13 WASH. U. JURIS. REV. 199, 207 nn.22–36 (2021) [hereinafter Sinha, *Virtuous Law-Breaking*].

²⁶ See Colin Farrelly & Lawrence B. Solum, *An Introduction to Aretaic Theories of the Law*, in VIRTUE JURISPRUDENCE 3–4 (Colin Farrelly & Lawrence B. Solum eds., 2008).

²⁷ Rosalind Hursthouse & Glen Pettigrove, *Virtue Ethics*, STAN. ENCYC. PHIL. (Dec. 8, 2016), <https://plato.stanford.edu/entries/ethics-virtue/#AgenBaseExemVirtEthi> [<https://perma.cc/6HYL-AJ8T>].

²⁸ See *infra* notes 33–34. For more on the distinction between strong and weak virtue jurisprudence, see Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 215–16.

²⁹ See *id.* at 207–09.

³⁰ See Kyron Huigens, *Virtue and Inculcation*, 108 HARV. L. REV. 1423 (1995); Christopher Slobogin, *A Jurisprudence of Dangerousness*, 98 NW. U. L. REV. 1, 31 (2003); Dan M. Kahan & Martha C. Nussbaum, *Two Conceptions of Emotion in Criminal Law*, 96 COLUM. L. REV. 269 (1996).

property law,³¹ to more specialized subjects, like bankruptcy³² and antitrust.³³ A common application of weak virtue jurisprudence explores the implications of virtue-centered analysis for judges³⁴ and lawyers.³⁵ In light of its popularity in both forms, it is remarkable that virtue scholars appear to have neglected policing altogether.³⁶

This Article demonstrates that both strong and weak forms of virtue jurisprudence offer fresh insights into the policing debate. Beyond working from plausible assumptions, each approach provides a helpful framework for identifying which policing practices are morally problematic and—crucially—*why* they are problematic. Virtue jurisprudence thus supports a more comprehensive accounting of the costs and benefits of American policing, including its corrosive effects on our moral character. In doing so, it reveals the relevance of certain policing practices that are ordinarily considered secondary in importance, and it illuminates which types of reform warrant the most serious consideration. More specifically, virtue jurisprudence frames and explains a compelling objective for police reform: to humble the police.

Section I of the Article briefly explains what virtue jurisprudence is and why it provides such a compelling frame for policing. Section II distills a basic cluster of propositions about the role of the law in a virtue-centered society; deploys those propositions to identify five key axes along which we should attend to the influence of policing practices on civilian flourishing; and posits uncontroversial moral

³¹ See David Lametti, *The (Virtue) Ethics of Private Property: A Framework and Implications*, in *NEW PERSPECTIVES ON PROPERTY LAW, OBLIGATIONS AND RESTITUTION* 39 (Alistair Hudson ed., 2003); Eduardo M. Peñalver, *Land Virtues*, 94 *CORNELL L. REV.* 821 (2009).

³² See Matthew Bruckner, *The Virtue in Bankruptcy*, 45 *LOY. U. CHI. L.J.* 233 (2013).

³³ See Elbert L. Robertson, *A Corrective Justice Theory of Antitrust Regulation*, 49 *CATH. U. L. REV.* 741 (2000).

³⁴ See Suzanna Sherry, *Judges of Character*, 38 *WAKE FOREST L. REV.* 793 (2003); Lawrence B. Solum, *Virtue Jurisprudence: A Virtue-Centered Theory of Judging*, 34 *METAPHILOSOPHY* 178 (2003) [hereinafter Solum, *Judging*]; Lawrence B. Solum, *A Tournament of Virtue*, 32 *FLA. ST. U. L. REV.* 1365 (2005) [hereinafter Solum, *Tournament*]; Lawrence B. Solum, *Judicial Selection: Ideology Versus Character*, 26 *CARDOZO L. REV.* 659 (2005).

³⁵ See Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 *N.D. L. REV.* 19 (2011); Robert Araujo, S.J., *The Virtuous Lawyer: Paradigm and Possibility*, 50 *SMU L. REV.* 433, 434 (1997); Heidi Li Feldman, *Codes and Virtues: Can Good Lawyers Be Good Ethical Deliberators?*, 69 *S. CAL. L. REV.* 885, 908–09 (1996).

³⁶ I have been unable to locate any substantive work on policing and the virtues. See Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 209 n.36.

premises for assessing police performance on each of these five axes. These moral premises are independently plausible, but they also cohere neatly because they derive directly from the virtue framework. Section III marshals the copious data and scholarship on policing to highlight the most serious deficiencies of American policing on all five of these axes, underscoring how current approaches to policing make us morally worse people. Finally, Section IV catalogs the substantial implications of virtue analysis for police reform.

I. WHY VIRTUE?

A brief introduction to the presumptions behind virtue jurisprudence will facilitate the analysis provided in subsequent Sections of this Article. Much of the work in virtue ethics derives, in some form, from Aristotelian ethics.³⁷ Fundamentally, virtue jurisprudence extends the philosophical tradition of virtue ethics to the study of the law.³⁸ Virtue ethics purports to analyze the moral rightness of an action not strictly by its consequences (like utilitarianism) or its conformity with specific principles or duties (like Kantianism), but instead by asking whether a virtuous person would do it.³⁹ To undertake such an inquiry, virtue theorists posit praiseworthy qualities—such as honesty,⁴⁰ humility,⁴¹ courage,⁴² and wisdom⁴³—and then assess actions against the competing demands of those qualities.

Theorists disagree about the proper list of the virtues,⁴⁴ but they often agree to conceive of the virtues (and vices) as relatively stable character traits that predict both how their bearers will feel and how they will conduct themselves under various

³⁷ Karen Stohr, *Contemporary Virtue Ethics*, 1 PHIL. COMPASS 22, 23 (2006).

³⁸ Farrelly & Solum, *supra* note 26, at 1.

³⁹ ROSALIND HURSTHOUSE, ON VIRTUE ETHICS 1 (1999). Hursthouse's view is both well developed and influential, and I rely on her work as a reasonable account of the significance of the virtues.

⁴⁰ *See id.* at 10–13.

⁴¹ *See* G. Alex Sinha, *Modernizing the Virtue of Humility*, 90 AUSTRALASIAN J. PHIL. 259 (2012).

⁴² *See* Sherry, *supra* note 34, at 803–10.

⁴³ *See* Solum, *Judging*, *supra* note 34, at 192–94.

⁴⁴ For example, Aristotle accepted a substantially longer list than Plato. Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 213.

circumstances.⁴⁵ One purported advantage of virtue theory is that it captures the nature of moral deliberation more fully than competing theories, as it addresses a broader range of factors relevant to moral life.⁴⁶ Balancing the demands of the virtues under novel circumstances is, plausibly, a large part of the challenge of attaining and manifesting moral goodness. Sometimes the virtues point in the same direction, but they often conflict. What is brave may not always be prudent, for example.⁴⁷ Despite the scope for disagreement, the popularity of both virtue ethics⁴⁸ and virtue jurisprudence⁴⁹ speaks to the intuitive accessibility of the concept of human virtue. At minimum, the language of virtue and vice conforms to our lay conventions; we routinely identify and label people's propensities to do "good" or "bad" things when praising or criticizing their character.

A particularly prominent approach to the virtues, one bearing Aristotelian influence, imagines that the virtues are interconnected: to possess any one of them in reasonable measure is to possess them all.⁵⁰ Further, to possess them is a necessary condition for leading a good life, for flourishing in the distinctive way that humans (unlike plants or animals) can.⁵¹ Certain complexities attend this form of flourishing,⁵² which encompasses both objective and subjective elements,⁵³ but the general idea is that human agents lead good lives when they manifest the virtues and,

⁴⁵ Generally, virtues and vices encompass both an agent's behavior and her attitude. For example, an honest person will typically avoid dishonesty not simply for fear of reputational harm, but also because she sincerely values honesty. HURSTHOUSE, *supra* note 39, at 11–13.

⁴⁶ *See id.* at 2–3.

⁴⁷ Conversely, some argue that the virtues provide insufficient guidance to agents on how to act. *Id.* at 17.

⁴⁸ *See id.* at 2.

⁴⁹ *See supra* text accompanying notes 29–35.

⁵⁰ John Finnis, *Aquinas' Moral, Political, and Legal Philosophy*, STAN. ENCYC. PHIL. (Mar. 16, 2021), <https://plato.stanford.edu/entries/aquinas-moral-political/> [<https://perma.cc/YH5Z-EDSD>].

⁵¹ *See* HURSTHOUSE, *supra* note 39, at 167 (noting the link between virtue and eudaimonia); *id.* at 9–10 (translating the Greek term *eudaimonia* roughly as "flourishing"). As Hursthouse notes, the word "flourish" offers an imperfect English synonym for *eudaimonia*. *Id.* at 9–10.

⁵² *See id.* at 163–91.

⁵³ *See* Hursthouse & Pettigrove, *supra* note 27.

relatedly, experience deep satisfaction.⁵⁴ Notably, the commitment to considering community flourishing is becoming increasingly important in policing scholarship.⁵⁵

Some version of the foregoing account undergirds virtue jurisprudence. Theorists with inclinations toward virtue ethics have long viewed the law as playing an instrumental role in conditioning its subjects to live virtuous lives. For example, both Aristotle⁵⁶ and Thomas Aquinas⁵⁷ held that the law can help to train us toward virtue. Such a view provides the shortest route from virtue ethics to virtue jurisprudence: learning to manifest the virtues is important for our moral development—indeed, it is intrinsically good, and the highest end we can aim for⁵⁸—and the law’s role is (at least in part) to help us attain such moral excellence. Many modern theorists have followed suit, such as Lawrence Solum,⁵⁹ a major contributor to the literature on virtue jurisprudence and arguably a leading cause of its current popularity.⁶⁰ Others have adopted it as well.⁶¹

The presumptions of strong virtue jurisprudence may sound rather stilted in theoretical form, but they are quite plausible in application. It is reasonable for the law to help us thrive both objectively and subjectively, structuring our respective entitlements and obligations in a way that empowers us to lead our lives well as part of a collective, societal enterprise. Theorists may adopt different conceptions of the moral side of that story—endorsing thinner or thicker interpretations of the law’s role in shaping us as moral agents—but even generic commitments to political

⁵⁴ *Id.* Hursthouse does not think of the virtues as rigid determinants of life outcomes for their possessors but rather regards them more probabilistically. See HURSTHOUSE, *supra* note 39, at 185. Others take a different view. See Hursthouse & Pettigrove, *supra* note 27 (describing Aristotle’s view and distinguishing it from the view held by Plato and the Stoics).

⁵⁵ For example, Monica Bell has urged policing scholars to engage more fully with the notion of community flourishing. See Bell, *Next-Generation Policing*, *supra* note 24, at 32–33.

⁵⁶ Robert P. George, *The Central Tradition—Its Value and Limits*, in VIRTUE JURISPRUDENCE 24, 29 (Colin Farrelly & Lawrence B. Solum eds., 2008).

⁵⁷ *Id.* at 32.

⁵⁸ Richard Kraut, *Aristotle’s Ethics*, STAN. ENCYC. PHIL. (July 2, 2022), <https://plato.stanford.edu/entries/aristotle-ethics/#InteVirt> [<https://perma.cc/Q3AL-6Z9P>] (last updated July 2, 2022).

⁵⁹ See Farrelly & Solum, *supra* note 26, at 2.

⁶⁰ Solum is an editor of perhaps the first collected volume on the subject, at least in English. See *id.* Much of Solum’s work concerns judicial virtues. See, e.g., Solum, *Judging*, *supra* note 34; Solum, *Tournament*, *supra* note 34.

⁶¹ See generally, e.g., Jeffrey Nesteruk, *Law, Virtue and the Corporation*, 33 AM. BUS. L.J. 473 (1996); Sinha, *Virtuous Law-Breaking*, *supra* note 25.

liberalism demand compliance with moral principles, such as cabining the exercise of one's liberties so as not to harm others.⁶² The virtues offer a natural way of augmenting that moral tale; although the language of the virtues may strike some as religious or even stodgy, that association is entirely artificial.⁶³ Indeed, the implications of the virtues for the calibration of the law also plausibly accord with other well-known theoretical frameworks, such as sociological ones.⁶⁴

As noted above, an alternative approach to virtue jurisprudence omits any commitment to the moral purpose of the law; rather, it views the virtues as analytically helpful in some other way.⁶⁵ This "weaker" form of virtue jurisprudence can be particularly well suited to assessing the duties of legal agents; the balancing of complex and competing obligations of officers of the law arguably mirrors the difficulties we all encounter in balancing the demands of the virtues.⁶⁶ Both versions of virtue jurisprudence can shed novel and valuable light on policing. Notably, despite the significant methodological differences between them, the following Sections reveal that they dovetail on the question of American policing.

II. POLICING AS A CORNERSTONE OF CIVILIAN FLOURISHING

Virtue jurisprudence has the power to highlight important and overlooked axes along which police influence civilian flourishing. Notably, these axes will be plausible to many who do not recognize an affinity for the virtues at all. To identify these axes, we will briefly consider the relationship between the law and civilian flourishing. Despite significant space for disagreement on how best to conceptualize that relationship, it is notable how far we can get with basic and uncontroversial assumptions. More specifically, a barebones commitment to strong virtue jurisprudence will supply us with three plausible, core propositions about the role of

⁶² For an introduction to the moral commitments underlying different strands of political liberalism, see generally Gerald Gaus et al., *Liberalism*, STAN. ENCYC. PHIL. (Jan. 22, 2018), <https://plato.stanford.edu/entries/liberalism/#DebAboLib> [https://perma.cc/73Z4-QSZX].

⁶³ Indeed, the Aristotelian roots of virtue ethics predate its Thomistic turn, as well as Christianity itself. For more on the relationship between Aristotle's ethics and Thomas Aquinas', see Ralph McInerny & John O'Callaghan, *Saint Thomas Aquinas*, STAN. ENCYC. PHIL. (May 23, 2014), <https://plato.stanford.edu/entries/aquinas/> [https://perma.cc/L5NX-KC8E].

⁶⁴ For instance, Monica Bell describes the concept of anomie and the possibility that "the purpose of the legal system is to create a cohesive and inclusive society." See Bell, *Legal Estrangement*, *supra* note 1, at 2083–85.

⁶⁵ See LAW, VIRTUE & JUSTICE (Amalia Amaya & Ho Hock Lai eds., 2013).

⁶⁶ See *supra* text accompanying notes 46–49.

the law in a virtue-centered society. Together, this trio of propositions establishes a virtue-centered base that provides a clear and compelling frame for assessing American policing.

A. *Three Assumptions About the Role of the Law in a Flourishing Community*

By hypothesis, strong virtue jurisprudence offers us the first of our three assumptions about the role of the law right out of the gate: (1) the legal system is an instrument for supporting the virtue-centered flourishing of its subjects.⁶⁷ By definition, we must accept this premise in applying strong virtue jurisprudence. The second and third assumptions follow closely behind, derived from the most basic interpretation of how the law fulfills its instrumental role. More specifically, we can identify a pair of fundamental yet distinct roles for the law in promoting human flourishing, each supplying us with one further core assumption.

At one level, mere survival of a legal system's subjects does not entail flourishing, but it is a precondition; flourishing is not available to the dead, nor to those who constantly suffer serious harm. Thus, flourishing requires stable access to biological necessities, such as food, water, shelter, safety, and medical treatment.⁶⁸ Our second assumption about the law, therefore, is: (2) the legal system should ensure access to the biological necessities that constitute the preconditions to flourishing.

Beyond reasonably consistent access to necessities—to ensure the capacity of civilians to sustain themselves—flourishing also requires opportunities for the populace to experience fulfillment and develop themselves morally.⁶⁹ Accordingly, the third core assumption concerns the more difficult matter of how the law serves

⁶⁷ Farrelly & Solum, *supra* note 26, at 2.

⁶⁸ A variety of frameworks, across multiple disciplines, emphasize the significance of these sorts of necessities, reinforcing the case for the normative significance. For some, the preconditions to flourishing may evoke the capability approach developed by Martha Nussbaum and Amartya Sen, among others. See Ingrid Roybens & Morton F. Byskov, *The Capability Approach*, STAN. ENCYC. PHIL. (Dec. 10, 2020), <https://plato.stanford.edu/entries/capability-approach/> [https://perma.cc/D7C9-AU8J]. Others may recognize echoes of Abraham Maslow's hierarchy of needs. Abraham H. Maslow, *A Theory of Human Motivation*, 50 PSYCH. REV. 370 (1943).

⁶⁹ See *supra* text accompanying notes 51–55. Such opportunities might be pegged to family, work, leisure, or other means. Fundamentally, although conditions of desperation may offer some of the starkest opportunities to demonstrate virtue, they broadly encourage vice and are therefore hardly conducive to encouraging flourishing. See Janani Umamaheswar, “*Changing the Channel*”: *Hybrid Masculinity in a Men's Prison*, 1 INCARCERATION 1 (2020).

these moral ends. There are a variety of possible answers here, keyed to different assumptions about how paternalistic the law should be.⁷⁰ Let us bracket those difficult questions, which are sure to divide different ideologies, and instead select a much less controversial—and theoretically prior—premise: (3) at minimum, *the law should not make us morally worse*. Whatever we think of the law’s affirmative role in molding our moral constitution, a virtue theorist should minimally accept that the law operates counterproductively—even perversely—if it instills vice in its subjects.⁷¹

This set of propositions represents the most barebones package of commitments entailed by strong virtue jurisprudence: (1) the law plays an instrumental role, according to which it should (2) provide for the preconditions to virtue-centered flourishing and (3) avoid operating in a way that systematically makes us morally worse people. These three propositions create a lens that we can turn toward any segment of the legal system. As the following analysis demonstrates, that lens highlights five distinct dimensions along which we should be especially interested in the performance of police.

B. *The Special Role of Police in a Virtue-Centered Society*

Whether they like it or not, American police hold significant power over the flourishing of American civilians.⁷² As currently configured, they form the most prominent point of contact between the law and the public, and they operate as

⁷⁰ Although locating answers to these questions is not essential to this Article, it is plausible that a successful legal system would strike a balance between guiding the public toward moral improvement and permitting individuals the subjective satisfaction of exercising autonomy in favor of objectively suboptimal lives.

⁷¹ G. Alex Sinha & Janani Umamaheswar, *Wrongful Imprisonment and Coerced Moral Degradation*, 13 CAL. L. REV. ONLINE 17, 30 (2022).

⁷² American policing has not historically been configured—whether well or poorly—to bring about virtue-centered flourishing. In fact, some argue that policing historically undermined such objectives deliberately, such as by operating primarily to preserve “racial and economic hierarchies.” Aya Gruber, *Policing and “Bluelining,”* 58 HOUS. L. REV. 867, 881 (2020); *see also* Steven Greenhouse, *How Police Unions Enable and Conceal Abuses of Power*, NEW YORKER (June 18, 2020), <https://www.newyorker.com/news/news-desk/how-police-union-power-helped-increase-abuses> [<https://perma.cc/ST9C-7VTJ>] (describing “two distinct genealogies for policing in the North and in the South,” the former socioeconomically oppressive and the latter racially oppressive). The analysis presented here highlights the dimensions of policing that carry special significance should we now assume (as I claim we should) that virtue-centered flourishing is a desirable goal.

perhaps the primary tool of the legal system.⁷³ They are numerous, they are visible—often wearing distinctive uniforms, carrying weapons, and riding in marked vehicles—and they frequently engage with the public in their official capacities.⁷⁴

The prominence and power of police ensures their multifaceted influence over American civilians. The five subsections below explore different dimensions of that influence, each of which flows directly from the three assumptions derived above from the virtue framework. I will argue that evaluating police along these five dimensions provides sharp and powerful guidelines for assessing the necessity for reform, in addition to justifying certain threads of the policing literature and redirecting others.

1. Police Are Instruments of Civilian Flourishing

If the law is an instrument for promoting the virtue-centered flourishing of civilians—the first of our three assumptions derived from virtue jurisprudence—then the same is true of legal officers by extension. The police are therefore a tool to help communities thrive.⁷⁵ The interests of police as private citizens, specifically as members of the very communities they police, are worth as much as the interests of anyone else.⁷⁶ Their interests as police, however, are defined around and derived

⁷³ The United States contains approximately “18,000 police jurisdictions, [which employ] almost 900,000 armed officers and 400,000 civilians.” Anthony O’Rourke et al., *Disbanding Police Agencies*, 121 COLUM. L. REV. 1327, 1331–32 (2021).

⁷⁴ Government data suggests that 61.5 million Americans had at least one interaction with police in 2018. ERIKA HARRELL & ELIZABETH DAVIS, U.S. DEP’T OF JUST., NCJ 255730, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2018—STATISTICAL TABLES (2020), <https://bjs.ojp.gov/content/pub/pdf/cbpp18st.pdf> [<https://perma.cc/L2HN-UJWB>].

⁷⁵ I use the term “community” loosely, to refer either to the civilians living within the jurisdiction of any given policing agency, or, more generally, to the broader public. In referring to the “community’s” view on any given issue, I do not mean to suggest that it is always an easy matter to discern a community’s preferences, or to identify who speaks for the community. Many communities face sharp internal disagreements about policy, which introduces practical difficulties that are impossible to overlook in enacting reform. Even so, such dynamics are no impediment to identifying the ideal structural relationship between police and the communities they purport to serve.

⁷⁶ In some jurisdictions, police tend not to live in the communities where they work. *See, e.g.*, David Cruz, *A Majority of NYPD Officers Don’t Live in New York City, New Figures Show*, GOTHAMIST (Aug. 8, 2020, 5:37 PM), <https://gothamist.com/news/majority-nypd-officers-dont-live-new-york-city-new-figures-show> [<https://perma.cc/74UA-MKSD>]. This might undermine police-community relations, but, as a structural matter, it also renders police resistance to community calls for change especially problematic. Notwithstanding their personal preferences, police who do not live in the communities where they work have a much weaker claim to opposing community-driven reforms.

from the interests of the community.⁷⁷ The notion that police are instruments of their communities constitutes a relatively straightforward premise accepted even in many police manuals⁷⁸ and public messaging campaigns.⁷⁹ It often appears in scholarly work on policing as well.⁸⁰ The virtue framework accounts for this premise in a plausible way,⁸¹ and it has some important implications. For one, as discussed above,

⁷⁷ See, e.g., *Greetings from the Faculty Senate President: A Conversation with Police Chief John Collins*, TCNJ FAC. SENATE NEWSL. (The Coll. of N.J., Ewing Township, N.J.), Apr. 2009, at 1, <https://faculty senate.tcnj.edu/wp-content/uploads/sites/306/2012/10/sen-news5.2elecS09.pdf> [<https://perma.cc/7DWS-U76H>].

⁷⁸ See, e.g., HUNTINGTON PARK POLICE DEP'T, *Mission Statement*, in HUNTINGTON PARK PD POLICY MANUAL 2 (2020), https://hppolice.org/wp-content/uploads/2020/10/RELEASE_20200929_T175916_Huntington_Park_PD_Policy_Manual.pdf [<https://perma.cc/PY2D-9RFG>]; MINNEAPOLIS POLICE DEP'T, *Preface*, in POLICY AND PROCEDURE MANUAL (2019), <https://www.minneapolismn.gov/media/-www-content-assets/documents/MPD-Policy-and-Procedure-Manual.pdf> [<https://perma.cc/7PKJ-LX3Y>]; SEATTLE POLICE DEP'T, *The Seattle Police Department Code of Ethics*, in SEATTLE POLICE DEPARTMENT MANUAL, <http://www.seattle.gov/police-manual/general-policy-information/code-of-ethics> [<https://perma.cc/J3AF-HL3Y>] (2022). Some agencies use weaker language, but manuals often acknowledge the importance of the community in any event. See, e.g., N.Y.C. POLICE DEP'T, *Mission, Vision, and Values of the Department*, in NYCPD PATROL GUIDE (2021), https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf [<https://perma.cc/4LCN-XT8T>].

⁷⁹ “To Protect and To Serve” has been the official motto of the Los Angeles Police Department since 1963. *The Origin of the LAPD Motto*, L.A. POLICE DEP'T, https://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128 [<https://perma.cc/ZW63-45ZR>] (last visited Sept. 28, 2021). A version of that slogan appears on LAPD cars. See Charles Fleming, *LAPD Could Begin Using the World's First “Pursuit-Rated” Hybrid Patrol Car*, L.A. TIMES (Apr. 9, 2019, 9:05 PM), <https://www.latimes.com/business/autos/la-fi-hy-lapd-hybrid-20170409-story.html> [<https://perma.cc/KTN3-79QQ>].

⁸⁰ See, e.g., Rushin, *Disciplinary Appeals*, *supra* note 1, at 593; see also Justin Nix et al., *What Does the Public Want Police to Do During Pandemics? A National Experiment*, CRIMINOLOGY & PUB. POL'Y (SPECIAL ISSUE) 1, 3 (2021), <https://onlinelibrary.wiley.com/doi/full/10.1111/1745-9133.12535>.

⁸¹ Although many take the instrumental role of police for granted, that role leads to conclusions that are often overlooked. For instance, tensions frequently arise between communities and their police forces. See U.S. COMM'N ON CIV. RTS., POLICE USE OF FORCE: AN EXAMINATION OF MODERN POLICING PRACTICES 1 (2018), <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf> [<https://perma.cc/68T7-RYU8>]. However, there is a fundamental moral asymmetry between the two sides. Civilian animosity toward the police is qualitatively different from animosity among the police toward civilians. Animosity toward the police is problematic because it suggests a key piece of the legal system is out of kilter; the police are primed to fail in supporting civilian flourishing if members of the community mistrust or hate them. See *infra* Section II.B.v. But such animosity does not necessarily reflect poorly on those who feel it; in fact, resentment of the police is the proper response from communities that suffer disproportionate losses in flourishing at law enforcement's hands, especially disempowered subsets of the community that lack the power to enact reforms necessary to rein in problematic policing practices. See Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 238–42. Mistrust or anger toward the police in such circumstances is no more problematic—and it is arguably less problematic—than resistance to mistreatment at the hands of other government officials or the law more generally. Targeted communities are entitled to demand equal

it provides clear guidelines for assessing the efficacy of a legal system.⁸² Moreover, when interpreted in the context of any given system of governance, this assumption generates an understanding of who should retain the power to calibrate police (and the law more generally).⁸³

2. Policing Implicates Physical Safety and Health, Basic Preconditions of Human Flourishing

Beyond the structure of their relationship to civilians, police are directly implicated in societal flourishing in several primary ways. First and foremost, their mandate typically focuses on protecting the safety and health of civilians from certain harms, especially certain physical, psychological, and property harms caused by other people (rather than natural forces).⁸⁴ This is arguably a basic community need,⁸⁵ and a natural precondition of virtue-centered flourishing.⁸⁶ There are other models for providing this sort of security,⁸⁷ but policing predominates. As a result,

treatment by the police, and a proper measure of self-respect will justify resentment of deviations from that standard. *Id.* at 234–37.

By contrast, it is never appropriate for the police to harbor animosity toward the community. As instruments of the community, their obligations extend to all civilians, whether hostile or friendly. Police retaliation against members of the community is categorically inappropriate, albeit not uncommon. *See, e.g.,* Julienne Cuba, *Bad Cop, Bad Cop: NYPD Threatens Tipster for Filing 311 Complaints About Illegal Parking*, STREETS BLOG NYC (Oct. 18, 2021), <https://nyc.streetsblog.org/2021/10/18/bad-cop-bad-cop-nypd-threatens-tipster-for-filing-311-complaints-about-illegal-parking/> [<https://perma.cc/NBC8-ASQ8>]. It may be difficult for individual officers to suppress vindictive impulses, but that is each police officer's cross to bear. *See generally infra* Section III.A (discussing police responses to criticism). Similarly, police who divide the members of their communities into “victims” and “criminals”—who see their job only as protecting the former from the latter—have lost their bearings. *See, e.g.,* Levin, *supra* note 1, at 1351. The moral influence of the law and its officers is *especially* important for those implicated in (particularly *malum in se*) offenses.

⁸² *See supra* Section II.A.

⁸³ *See infra* text accompanying notes 126–30.

⁸⁴ *See, e.g.,* POST BASIC TRAINING BUREAU, *Code of Ethics, in* POLICE TRAINING PROGRAM GUIDE, at vii (2014), https://post.ca.gov/portals/0/post_docs/publications/police-training-program/PTP-Vol1.pdf [<https://perma.cc/8SWB-YA7B>]; N.Y.C. POLICE DEP'T, *supra* note 78.

⁸⁵ *See* Stoughton, *supra* note 1, at 2186. *See generally* ROBERT NOZICK, ANARCHY, STATE & UTOPIA (1973) (arguing that “protective associations” devoted to this very purpose would organically develop among groups of people seeking to coexist cooperatively).

⁸⁶ *See supra* text accompanying note 68.

⁸⁷ Traditional policing is not the only mechanism for ensuring such a sense of physical security. *See, e.g.,* Amaka Okechukwu, *Watching and Seeing: Recovering Abolitionist Possibilities in Black Community Practices of Safety and Security*, 18 DU BOIS REV. 153 (2021), <https://www.cambridge.org/core/>

one salient metric for assessing the efficacy of the police in supporting societal flourishing is their success rate in keeping the public safe from such harms, either preventatively or by catching those responsible after the fact.⁸⁸

Additionally, if the prevention of certain harms is a precondition for virtue-centered flourishing, then police affirmatively undermine such flourishing when they impose those very harms themselves—such as by killing, brutalizing, or otherwise harming civilians. Police forces that function well as cultivators of virtue would therefore be effective at preventing health- and safety-related harms, as well as sparing in directly causing those harms.

3. Police Condition Virtuous and Vicious Behavior Through Their Commands to Civilians

Virtue jurisprudence distinguishes itself from other moral frameworks most clearly in its sensitivity to the power of police to inculcate virtue or vice in the public. Early scholars of the virtues recognized the law's capacity to guide the public toward right action, even if the primary motivation for much legal compliance is self-interest or habit.⁸⁹ For the law to operate in this fashion, it must be calibrated to discourage morally-objectionable behavior and encourage morally-desirable behavior.⁹⁰ If the law is poorly calibrated in this respect, it may guide us away from virtue and toward vice.⁹¹ Although legislators and judges hold primary, respective dominion over the proper calibration of statutory and common law, police issue millions of targeted

journals/du-bois-review-social-science-research-on-race/article/watching-and-seeing/31372876BCD FCAF23DC27DC4964778F [https://perma.cc/2HYW-AX9P] (discussing “grassroots practices of community safety and security in Brooklyn”).

⁸⁸ See Shima Baradaran Baughman, *How Effective Are Police? The Problem of Clearance Rates and Criminal Accountability*, 72 ALA. L. REV. 47, 48 (2020). Solving crime and deterring crime are likely linked. Research on deterrence has consistently found that certainty of apprehension has a clearer dissuasive effect than severity of punishment, and the subjective perception of one's likelihood of apprehension plausibly stands to increase with higher rates of crime-solving. See Daniel S. Nagin, *Deterrence in the Twenty-First Century*, 42 CRIME & JUST. 199, 201–02 (2013). Crime-solving also implicates the morally-instructive value of policing activity. To cultivate even a habitual respect for the law, the police must successfully pursue those responsible for its most serious violations.

⁸⁹ See *supra* notes 56–57.

⁹⁰ Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 239 n.190.

⁹¹ It is no objection that there will of course be some disagreement about what conduct is virtuous and what conduct is vicious. Much of the analysis that follows draws on the most basic and uncontroversial moral premises to minimize the relevance of inevitable disagreements, especially those that arise at the margins.

demands to civilians,⁹² and they do so from a distinctive position as the most visible and (arguably) most influential legal officials.

A third dimension of police influence over civilian flourishing—perhaps the most concerted form of virtue cultivation engaged in by police—thus arises from the collective weight of their countless daily “retail” commands issued to civilians.⁹³ Police commands to civilians—to stop walking, to kneel, to keep their hands visible—are among the most pointed and personalized demands of the law that many of us ever face.⁹⁴ Additionally, unlike generic statutory commands, which are enforced after the fact (if at all), police commands extract our compliance in the moment by the direct threat of coercion at the hands of an armed agent of the state. Not only do these commands come with the presumption of compliance, but they also shape civilian attitudes toward authority and test civilian reactions to coercion and duress. The nature of these demands—whether they are necessary, frequent, threatening, lawful, or made in bad faith—is exceptionally important in shaping the virtues and vices manifested by the public in compliance and in noncompliance.

Notably, unlike other officials who issue personalized legal demands, such as judges who make rulings in criminal matters, police often issue their orders on the fly, in scenarios where they feel threatened, and in the absence of witnesses or other safeguards that render the encounter visible to the broader public.⁹⁵ These structural features conduce to improper legal demands issued by police.⁹⁶ The same features also contribute to the heavy circumstantial pressure to submit to police demands—

⁹² Friedman, *Policing Function*, *supra* note 1, at 935. NYPD officers used to stop hundreds of thousands of civilians annually under New York City’s “stop and frisk” program. *See 2011 NYPD Stop and Frisk Statistics*, *supra* note 11.

⁹³ Some scholars distinguish between “wholesale” and “retail” commands of the law, where wholesale commands are broad and generic (such as prohibitions contained in statutes), and retail commands are directed at specific subjects of the law (such as the targeted orders of the police or individualized sentencing decisions). William A. Edmundson, *The Virtue of Law Abidance*, 6 PHILOSOPHER’S IMPRINT 1, 2 (2006). I adopt that distinction as well.

⁹⁴ It bears acknowledging that incarcerated populations face frequent, pointed demands at the hands of correctional officers, a subject that warrants its own dedicated exploration. *See* Janani Umamaheswar, ‘*Suppression on Top of Oppression*’: A Symbolic Interactionist Perspective on the Affective Experience of Incarceration, 61 BRIT. J. CRIMINOLOGY 1107, 1114 (2021).

⁹⁵ These sorts of transparency considerations help to explain recent interest in equipping police with body cameras. *See* Candice Norwood, *Body Cameras Are Seen as Key to Police Reform. But Do They Increase Accountability?*, PBS (June 25, 2020, 4:41 PM), <https://www.pbs.org/newshour/politics/body-cameras-are-seen-as-key-to-police-reform-but-do-they-increase-accountability> [<https://perma.cc/2NJL-WYRT>].

⁹⁶ *See supra* notes 10–11.

even when they are unreasonable or patently unjust. In short, it is usually *prima facie* prudent to comply with police demands even if the demands issue from a place of bias or prejudice.⁹⁷ In a society that takes seriously the possibility that the law may condition vice, the police would be especially careful about the circumstances, tenor, and purpose attending the orders they issue to civilians.

4. Policing Practices Express Important Propositions on Behalf of the State

The conditioning effect of retail commands is not the only way that police may instill vice in the public. As government agents, police—especially high-ranking police officials—have access to nonpublic data about civilians and speak with authority on behalf of the state itself. At times, they draw on that authority to speak to matters that bear on community flourishing, such as the relative trustworthiness—or even moral worth—of subsets of the community.⁹⁸ Patterns in policing practices also reveal state priorities and, at minimum, the state’s implicit endorsement of the various factual premises needed to justify those practices.⁹⁹ For example, if police consistently target specific communities for law enforcement with more vigor than others, they imply (when they do not outright state)¹⁰⁰ the state’s acceptance of the proposition that those communities deserve greater scrutiny. Such propositions may be especially persuasive among those who regard the police favorably;¹⁰¹ but they remain powerful and potentially corrosive even among audiences who are not receptive to them. For instance, these messages can be alienating to those who are over-targeted for enforcement, and who view them as suggestive of their diminished

⁹⁷ Indeed, officers possess the power to use force against civilians they perceive—even incorrectly—as refusing to submit to police authority. See Alice Ristoph, *The Constitution of Police Violence*, 64 UCLA L. REV. 1182, 1185 (2017).

⁹⁸ See *infra* Section III.D.

⁹⁹ See, e.g., Capers, *supra* note 1, at 46; Bell, *Legal Estrangement*, *supra* note 1, at 2087–88. For a broader discussion of the expressive power of the law, see generally Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996).

¹⁰⁰ See Webster et al., “*They Saw Me and Thought the Worst*,” PROPUBLICA (Sept. 24, 2021, 5:00 AM), <https://www.propublica.org/article/across-the-parish-line> [<https://perma.cc/4L7V-33GM>] (quoting a former sheriff of Jefferson Parish, Louisiana, as stating that his plan to address violent crime was “only stopping Black people”).

¹⁰¹ For example, if white members of the community deeply respect the police but officers inappropriately target people of color for law enforcement, white civilians may infer that their heavily-policed neighbors are in fact worthy of greater suspicion and mistrust. See *infra* notes 255–60 and accompanying text.

status in the eyes of law enforcement more generally.¹⁰² Such propositions have serious implications for the attitudes that members of the community take toward each other and toward the law itself.¹⁰³

5. Police Influentially Model Virtue and Vice

Finally, beyond the power of the police to cultivate virtue directly through their commands, and to express propositions of moral significance on behalf of the state, police stand to influence attitudes toward virtue (and toward the law generally) by their comportment and general reputation. The legal system cannot consistently nudge civilians toward moral improvement if its officials routinely model vice; but the coercive authority and salience of police in representing the state¹⁰⁴ establish an outsized role for police in modeling various dispositions to the public. In many respects, the police *personify* the law;¹⁰⁵ public attitudes toward the police thus stand to bear disproportionately on public attitudes toward the law more generally.¹⁰⁶ Whether the public perceives the police as devoted public servants¹⁰⁷ or as racist oppressors¹⁰⁸ is of paramount importance in determining the public's attitude toward

¹⁰² See Bell, *Legal Estrangement*, *supra* note 1, at 2066.

¹⁰³ Rory Kramer & Brianna Remster, *The Slow Violence of Contemporary Policing*, 5 ANN. REV. OF CRIMINOLOGY 43, 54–56 (2022), <https://doi.org/10.1146/annurev-criminol-030321-041307>.

¹⁰⁴ I use the term “state” generically to refer to a governing authority with meaningful jurisdiction over a person. Most law enforcement officers operate under state rather than federal authority. CONNOR BROOKS, BUREAU OF JUSTICE STATISTICS, NCJ 251922, *Federal Law Enforcement Officers, 2016—Statistical Tables* (2019), <https://bjs.ojp.gov/content/pub/pdf/fleo16st.pdf> [<https://perma.cc/D5FS-C623>]. But it is not necessary for present purposes to distinguish the attitudes of civilians toward state and federal government.

¹⁰⁵ Indeed, the phrase “the law” often refers colloquially to the police. See, e.g., JUDGE DREDD (Hollywood Pictures 1995); I AM THE LAW (Edwin Carewe Picture Corp. 1922); I’M THE LAW (Cosman Productions TV television broadcast Feb. 13, 1953). At times, police deploy that phrasing when confronting civilians. See WPDE, *Watch: Police Release Body Cam Video of McDonald’s Homeless Man Incident*, ABC 15 NEWS (Mar. 2, 2018), <https://wpde.com/news/local/watch-police-release-body-cam-video-of-mcdonalds-homeless-man-incident> [<https://perma.cc/CQN8-3BZC>].

¹⁰⁶ See Victor M. Rios et al., *Mano Suave—Mano Dura: Legitimacy Policing and Latino Stop-and-Frisk*, 85 AM. SOC. REV. 58, 71 (2020).

¹⁰⁷ See, e.g., Press Release, Tom Cotton, Senator for Arkansas, Cotton, Colleagues Introduce Bill To Stop “Doxing” of Government Workers (Dec. 3, 2020), <https://www.cotton.senate.gov/news/press-releases/cotton-colleagues-introduce-bill-to-stop-doxing-of-government-workers> [<https://perma.cc/GA9F-57YW>].

¹⁰⁸ See, e.g., Huey P. Newton, *Executive Mandate No. 1: Statement by the Minister of Defense*, in ESSAYS FROM THE MINISTER OF DEFENSE 17–18 (1968).

the law and toward their own (and their compatriots') compliance with it.¹⁰⁹ The police must *themselves* demonstrate virtue in their official capacities.¹¹⁰

One could instead arrive at the same conclusion through weak virtue jurisprudence.¹¹¹ Rather than accepting that the function of the law is to facilitate virtue-centered flourishing among the community, one might think only that the virtues provide a useful mechanism for itemizing and elucidating the professional duties of police officers, just as they help to illuminate the duties of judges and lawyers.¹¹² Whichever basis we select—or even if we rely on both at once—the result is similar: we should be able to interpret the professional obligations of the police in terms of the virtues. As noted above, there is no philosophical consensus on the complete canon of the virtues.¹¹³ But it should nevertheless be possible to identify a series of relatively uncontroversial qualities that the state's armed law enforcement officials ought to manifest, whether those qualities stand alone as distinct virtues or constitute component parts of other virtues.¹¹⁴ We might call these qualities “role virtues”—professional obligations, modeled on uncontroversial moral virtues and bearing instrumental value for the realization of moral virtue by the beneficiaries of the legal system.¹¹⁵

For judges, scholars have focused on qualities such as courage, temperament, intelligence, and wisdom,¹¹⁶ as well as justice¹¹⁷ and humility.¹¹⁸ For lawyers,

¹⁰⁹ Public attitudes also influence the efficacy of police in keeping the community safe. U.S. COMM'N ON CIV. RTS., *supra* note 81, at 2.

¹¹⁰ Some police training materials already recognize this conclusion explicitly. *See, e.g.*, SEATTLE POLICE DEP'T, *supra* note 78.

¹¹¹ *See supra* text accompanying note 28 (defining weak virtue jurisprudence).

¹¹² *See supra* notes 34–35.

¹¹³ *See supra* note 44 and accompanying text.

¹¹⁴ Lawrence Solum has contended with a similar challenge in identifying judicial virtues, adopting the same strategy of mapping the clearest and most uncontroversial terrain. *See Solum, Tournament, supra* note 34, at 1367–69.

¹¹⁵ *See G. Alex Sinha, Original(ism) Sin*, 95 ST. JOHN'S L. REV. 739, 758–62 (2022) (describing role virtues in detail).

¹¹⁶ *See Solum, Judging, supra* note 34, at 190–94. These five qualities are the desirable counterparts to the judicial vices of corruption, cowardice, bad temper, incompetence, and foolishness. *Id.* at 186–88.

¹¹⁷ *Id.* at 195–98.

¹¹⁸ *See Sherry, supra* note 34, at 799–803. Sherry also analyzes judicial courage, *id.* at 803–10, and acknowledges the importance of judicial wisdom, honesty, impartiality, and integrity, *id.* at 797.

candidate virtues might include compassion, discipline, courage, perseverance, prudence, and practical wisdom, among others.¹¹⁹ For police, a plausible list of virtues would include, at minimum, benevolence, courage, fairness or justice, wisdom or intelligence,¹²⁰ honesty or integrity, accountability, and humility. It may be possible to reconfigure or re-describe some of these qualities, but they all relate to important elements of police work, and they all appropriately mirror more general qualities that a flourishing populace would manifest as well.

In the context of policing, benevolence characterizes the orientation of an officer toward the members of the community he polices—a desire to promote their flourishing rather than to undermine it. Courage in law enforcement extends not just to bravery in the face of the genuine dangers police may face¹²¹—an officer cannot be trusted to keep the community safe if he routinely flees when its members are in danger—but also to confronting or reporting misconduct by other officers. Fairness or justice relates, at minimum, to the officer’s capacity to draw on his authority in an evenhanded manner, suppressing or eliminating whatever biases might lead him to treat members of the community differently for morally irrelevant reasons. Wisdom or intelligence jointly speak to an officer’s base of knowledge—of the community and of the law he is to enforce—and his judgment in how to balance the competing demands of his professional duties and the needs of the community. Honesty or integrity implicate an officer’s resistance to corruption—to perjury and the falsification of evidence, for example, or to the pursuit of suspects in bad faith. Finally, humility in the context of policing refers to an officer’s understanding that he is entrusted with distinctive and significant powers in his role as an instrument of the community, rather than for his own benefit.

We might additionally consider lawfulness an important trait in the police. Many theorists regard some form of lawfulness as a virtue generally.¹²² Elsewhere, I have argued that an emphasis on lawfulness among civilians is misguided if the law

¹¹⁹ See Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 N.D. L. REV. 19, 37 (2011).

¹²⁰ Some scholars treat wisdom and intelligence as separate virtues, capturing different dimensions of mental capacity. See Solum, *Judging*, *supra* note 34, at 191–94.

¹²¹ Those dangers are real, Jessica Learish, *The 20 Deadliest Jobs in America, Ranked*, CBS NEWS (July 19, 2017, 2:01 PM), <https://www.cbsnews.com/pictures/the-20-deadliest-jobs-in-america-ranked/7/> [<https://perma.cc/Rf47-AJGA>], but they are also declining, Michael Sierra-Arévalo, *American Policing and the Danger Imperative*, 55 LAW & SOC. REV. 70 (2021), <https://doi.org/10.1111/lasr.12526>.

¹²² See Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 218–27.

itself is sufficiently inequitable.¹²³ Police are positioned distinctively vis-à-vis the law, however. Because police operate as the personification of legal authority, and as the primary tools to enforce law-compliance among civilians, there is an internal tension between policing and law-breaking.¹²⁴ If police routinely break the law, especially in self-interested or harmful ways, there is no serious hope of the populace respecting the law either.

Put another way, it should be safe to assume that an officer is deficient in some important respect if he is aggressive or cruel, cowardly, prejudiced or otherwise unjust, ignorant or weak in judgment, dishonest, lacking in integrity, arrogant, or prone to breaking the law.¹²⁵ And if there is evidence that these qualities are widespread among police, that would suggest the need for significant change, as widespread vice (or role-vice) among the police would substantially undermine their efficacy in important respects, including their power to model the virtues and inspire respect for the law. As the next Section documents, these vices are disturbingly widespread among American police.

III. VICIOUS POLICING

Let us take stock. Virtue-centered analysis underscores five key axes along which we might take a special interest in assessing the configuration of policing. First, police are instruments of the legal system, whose efficacy can be assessed by its effects on the flourishing of the community. Second, through their near-monopoly on the legitimate use of force, police exercise significant control over key preconditions to such flourishing: physical safety and health. Third, police can “train” civilians into virtuous or vicious dispositions by their power and propensity to issue forceful demands to compliance. Fourth, through explicit statements and through patterns in their conduct, police express propositions of moral importance on behalf of the state itself. Fifth, and finally, as the personification of the law, police can influence civilian dispositions toward the law (and toward the virtues and vices more generally) by modeling morally desirable and undesirable traits.¹²⁶ Notably,

¹²³ See *id.* at 247–49.

¹²⁴ See Justice Tankebe, *Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy*, 51 *CRIMINOLOGY* 103, 125 (2012).

¹²⁵ Police agencies in fact recognize this at some level, often reproducing some conception of the importance of officers modeling moral conduct through prohibitions on “conduct unbecoming an officer.” See, e.g., ST. PAUL POLICE DEP’T, *Conduct Unbecoming a Peace Officer*, in SAINT PAUL POLICE MANUAL § 230.13 (2017), <https://www.stpaul.gov/books/23013-conduct-unbecoming-peace-officer> [<https://perma.cc/8PDT-XAQF>].

¹²⁶ Weak virtue jurisprudence leads to a similar conclusion. See *infra* Section IV.D.

the final three axes pertain to the capacity of police to cultivate virtue or vice, above and beyond their influence on physical safety and health.

These axes of police influence are summarized in Table 1 below:

Dimension	Nature of Dimension
Structural Axis	Concerns the nature of the relationship between police and the communities they purport to serve
Security Axis	Concerns the extent to which police support or undermine the physical security and well-being of civilians in the community
Coercive Axis	Concerns the extent to which police condition civilians toward virtue or vice via demands for compliance backed by their legal authority
Expressive Axis	Concerns the extent to which the conduct of police expresses powerful moral propositions on behalf of the state that support or undermine civilian flourishing
Modeling Axis	Concerns the extent to which police, as prominent legal officials, model virtues and vices themselves

Each of these five axes reflects an important dimension for assessing the effects of policing, but, collectively, they paint a comprehensive picture of what is so troubling about American policing. Each allows us to isolate distinctive and important ways in which American policing is suboptimal or outright vicious—some that are obvious but in search of a theoretical basis for condemnation, and others that have largely flown under the radar.

I will argue that American policing is poorly configured or seriously deficient on each of these five axes. To motivate these conclusions, I adopt five basic moral premises for assessing police performance, one for each of the five axes of police influence. Each of these five premises is also independently plausible—so plausible that I claim the entire set should each be acceptable to most readers, regardless of one’s preferred moral framework. In fact, these premises are likely to be widely shared (if often unarticulated), forming the basis for common intuitions about policing that underpin key contours of the reform literature. Although it may be possible to re-describe some of these premises without reference to the virtues,

important elements may be lost in translation.¹²⁷ Additionally, by anchoring these premises in the virtue framework, all five spring harmoniously from a unified, theoretical base.¹²⁸ I elaborate on each below and organize them in Table 2 for simplicity.

The first moral premise is that, in any reasonably democratic society, the calibration of the instruments of community flourishing falls to the members of that community.¹²⁹ Second, because police are entrusted with maintaining a key element of civilian safety and health, they ought to be proficient at that task, and not responsible for substantial, counterproductive harms of the exact sort they are tasked with preventing.¹³⁰ Third, in a properly-calibrated legal system, compliance with the law should not be vicious, and should not generally condition vice.¹³¹ Fourth, police officials should not generally express—and policing practices should not imply—false or vicious propositions, especially on matters that bear substantially on community flourishing.¹³² Fifth, and finally, legal officials should consistently model virtue—or, minimally, should not consistently model vice.¹³³

Each of these premises provides a floor—a minimum standard that civilians should be able to expect from police—for assessing American policing on the five axes identified above. This floor sets the stage for identifying a range of deficiencies embedded in American policing. But, as the following will make clear, the *causes* of these deficiencies may vary. Some misconduct indisputably implicates the individual

¹²⁷ For instance, the notion that animates the final three axes is that the law operates counterproductively in an important respect if it functions to make us morally worse people. It is difficult to capture that idea as naturally or fully if we leave behind the virtues.

¹²⁸ For an example of a police-reform argument that offers plausible but independent moral premises, see Simonson, *supra* note 1. For a brief discussion of Simonson's premises, see *supra* note 4.

¹²⁹ This is especially important—and difficult to reject—when there is strong evidence that policing practices do, in fact, undermine civilian flourishing and therefore require amendment.

¹³⁰ An obvious corollary of this premise is that police operate counterproductively when they affirmatively undermine the security of the community. The virtue framework suggests that police also operate counterproductively—against the broader aims of the legal system—when they condition, express or model vice.

¹³¹ As noted above, this proposition carries special significance to the context of demands issued by police officers, which are accompanied by unusually strong pressure to comply. See *supra* Section I.B.iii.

¹³² Such matters include the relative importance and moral standing of different groups within the community.

¹³³ Police are not the only legal officials who may struggle on this front, of course. See generally, e.g., Alan Z. Rozenshtein, *The Virtuous Executive* (Oct. 18, 2021) (unpublished manuscript) (on file with author) (applying virtue analysis to the presidency).

moral failings of specific police officers.¹³⁴ Other deficiencies may also reflect training shortfalls, the institutional culture of police departments, broader structural factors, or political inaction.¹³⁵ In providing a novel framing for policing deficiencies, virtue analysis also highlights the importance of further research to individuate the causes of certain underappreciated deficiencies in policing. Additionally, although police conduct can implicate more than one of these five premises at once, each premise identifies a distinctive form of harm.

¹³⁴ See, e.g., Jonathan Edwards, *Two NYPD Officers Said They Were Mentoring a 'Troubled' 15-Year-Old Girl. A Judge Determined They Raped Her.*, WASH. POST (July 29, 2021, 5:10 AM), <https://www.washingtonpost.com/nation/2021/07/29/nypd-officers-fired-raping-teenager/> [https://perma.cc/TN5H-D4H9].

¹³⁵ See, e.g., Gina Barton et al., *Behind the Blue Wall of Silence*, USA TODAY (Dec. 30, 2021, 3:11 AM), <https://www.usatoday.com/in-depth/news/investigations/2021/12/09/blue-wall-police-misconduct-whistleblower-retaliation/8836387002/> [https://perma.cc/MP3C-FGC].

Table 2: Moral baselines for all five axes of police influence over community flourishing		
Axis	Moral Premise	Nature of Harm if Violated
Structural Axis	As instruments of the community in a relatively democratic system, police should be reasonably responsive to community-driven reform efforts, especially when evidence shows police often undermine civilian flourishing	Structural: undermines the assumption that the law should be instrumental to civilian flourishing (Assumption 1 from Section II(A))
Security Axis	As the legal officials primarily entrusted with maintaining a key dimension of civilian security and health, police should be effective at that task—and they should not generally harm civilian security and health	Basic: undermines the assumption that the law should provide basic preconditions to civilian flourishing (Assumption 2 from Section II(A))
Coercive Axis	As the source of a huge proportion of the legal system's retail demands, police should not issue orders to civilians that it would be vicious to comply with, or that collectively cultivate vice in their targets	Moral: undermines the assumption that the law should not make us morally worse people (Assumption 3 from Section II(A))
Expressive Axis	As officials who prominently bear the authority to speak on behalf of the state, police should not generally express (explicitly or implicitly) false or vicious propositions, especially on matters that bear on civilian flourishing	Moral: undermines the assumption that the law should not make us morally worse people (Assumption 3 from Section II(A))
Modeling Axis	As officials who personify the law itself, police should generally model virtue; at minimum, they should not consistently and prominently model vice	Moral: undermines the assumption that the law should not make us morally worse people (Assumption 3 from Section II(A))

A. *The Structural Axis: American Police Forces Often Usurp Communities' Democratic Pride of Place and Demonstrate Hostility to Community Control*

Police are an instrument of civilian well-being. In any reasonably democratic system, civilians possess significant control over any apparatus of the state with significant implications for their well-being.¹³⁶ This observation provides a point of contact between the virtues and democratic theory.¹³⁷ I will not endorse any particular conception of democracy here; it is sufficient for present purposes to observe that, on an instrumental account of the law, the very concept of democratic self-governance provides for sharp limitations on the appropriate scale of police resistance to community-driven modifications to police authority, budgets, equipment, pay, disciplinary protocols, transparency, and so forth. Police may—and often do—publicly make the case that proposed changes will harm their ability to support the community,¹³⁸ but the ultimate determination is not for them to make. As members of the community themselves, police may also take a natural and appropriate interest in the health of the community and in proposed changes to their jobs that may affect their safety, their conditions of employment, their compensation, and so forth. They may also be better positioned than laypeople in the community to assess the likely effects of various reforms, although their opinions on that front may also be distorted by self-interest.¹³⁹ Too much community control over police

¹³⁶ Even in an autocratic society, it would not follow that police agencies—rather than a centralized governmental authority with its own conception of community flourishing—should determine the ideal configuration of police power and responsibility.

¹³⁷ Some scholars, like Jocelyn Simonson, may favor adopting democratic theory over the virtues as a moral frame for assessing policing. That approach entails certain tradeoffs best explored in another venue. Democratic theory could well offer support for significant police reform, but the analysis it produces will take a very different form.

¹³⁸ For example, police officials sometimes testify publicly about pending reform legislation. *See, e.g., Dhruv Mehrotra et al., DC Police Tried To Fire 24 Current Officers for 'Criminal Offenses.' A Powerful Panel Blocked Nearly Every One, Documents Show., REVEAL NEWS* (Dec. 18, 2021), https://revealnews.org/article/dc-police-tried-to-fire-24-current-officers-for-criminal-offenses/?fbclid=IwAR04Bxy-3bIEOtNxs1MiA_FFqSsHwNEoC8GO6vXeW326YsT0NHw44BOr3XI [<https://perma.cc/6MR9-524D>].

¹³⁹ Resistance among police to certain reforms—like the publication of police disciplinary records—plausibly derives primarily from self-interest. For a discussion of some police arguments against such measures, see Patrick Wilson, *VA Police Agencies Oppose Bill Requiring Release of Officer Disciplinary Records, RICHMOND-TIMES DISPATCH* (May 18, 2021), https://richmond.com/news/state-and-regional/va-police-agencies-oppose-bill-requiring-release-of-officer-disciplinary-records/article_5be09183-5b4c-5424-9d00-9d109492aa77.html [<https://perma.cc/5XV9-ULD3>].

agencies might lead to exploitation of officers whereas too little entails police usurpation of the community's role in configuring its own legal system.¹⁴⁰ Although both ends of that spectrum are suboptimal, the structural tie-breaker falls to civilians.¹⁴¹

Despite routinely acknowledging their obligation to serve communities,¹⁴² police—especially through their unions—consistently oppose civilian-driven reforms.¹⁴³ Indeed, police groups have a history of resisting civilian oversight,¹⁴⁴ and they remain deeply involved in lobbying against policy changes aimed at reconfiguring American policing.¹⁴⁵ The consequences of those efforts might matter less if police groups were driven by an assiduous (if paternalistic) commitment to promoting their own understanding of societal flourishing—especially if those efforts involved unobjectionable campaigns to get the public on board.¹⁴⁶ It would be structurally inappropriate for police to impose their own view of community flourishing on civilians, but the consequences of that resistance would vary from case

¹⁴⁰ In fact, beyond their structural implications, police unions play powerful expressive and modeling functions. *See infra* Sections III.D–E.

¹⁴¹ Fortunately, virtue jurisprudence helps to identify the policing practices that harm community flourishing and that require modification. *See infra* Section IV.D.

¹⁴² *See supra* notes 77–79 and accompanying text.

¹⁴³ *See generally* Levin, *supra* note 1 (exploring, *inter alia*, police union resistance to civilian-driven reform). A recent study of the NYPD found that officers deploy their discretion selectively to curate complaints from residents, amplifying complaints made *to* them and “smoothing” or minimizing complaints *about* them. Tony Cheng, *The Cumulative Discretion of Police over Community Complaints*, 127 AM. J. SOCIO. 1782, 1787–88 (2022).

¹⁴⁴ Greenhouse, *supra* note 72. Some even claim their power “supersedes the powers of the President.” *See About CSPOA*, CONST. SHERIFFS & PEACE OFFICERS ASS’N, <https://cspoa.org/about/> [<https://perma.cc/EF9J-6R5P>] (last visited Oct. 9, 2021).

¹⁴⁵ Luke Broadwater & Catie Edmondson, *Police Groups Wield Strong Influence in Congress, Resisting Strictest Reforms*, N.Y. TIMES, <https://www.nytimes.com/2020/06/25/us/politics/police-reforms-congress.html> [<https://perma.cc/8SCK-MXP4>] (last updated Mar. 8, 2021); *see also* Deana Winter, *Law Enforcement Opposes Rules Banning Cops from Being Involved in Extremist Groups*, MINN. REFORMER (Nov. 17, 2022, 6:00 AM), <https://minnesotareformer.com/2022/11/17/law-enforcement-opposes-rules-banning-cops-from-being-involved-in-extremist-groups/> [<https://perma.cc/75S9-WJT5>] (reporting on resistance among police to proposed rules in Minnesota that would ban “applicants or officers from participating in or supporting white supremacist, hate or extremist groups”).

¹⁴⁶ Broadwater & Edmondson, *supra* note 145. Notably, much of this lobbying has been undertaken quietly, *id.*, and therefore not with the aim of persuading policed communities that reform proposals are misguided.

to case. It is conceivable, after all, that civilians might also sometimes advocate for ineffective or counterproductive reforms.¹⁴⁷

But competing visions of community flourishing do not adequately explain police opposition to reform. Police unions prioritize the interests of police, not the interests of the community—indeed, that is their very purpose.¹⁴⁸ Much of their work at opposing reform takes place behind the scenes, rather than as a visible and concerted effort to persuade the public.¹⁴⁹ Further, if unions serve to limit employers in the private sector, they serve to limit communities in the public sector.¹⁵⁰ Thus, a great deal of police opposition to reform is anchored in their own self-interest and comes, by definition, at community expense.¹⁵¹ Of course, advocates of reform should acknowledge that police are members of communities too; like any other worker, they can be exploited or mistreated, which would harm their own personal welfare and that of their families. Indeed, the history of police unions suggests this may have been a more widespread problem before the early 20th century.¹⁵² But the virtue framework makes clear that the self-interest of police—either qua police or qua civilians who happen to go to work as police—cannot justify significant deficits in civilian flourishing more broadly, especially if those deficits are *caused by* an arm of the legal system that purports to promote community well-being.¹⁵³

There is an uneasy tension here; it is difficult to identify an obvious limitation on the power of police unions (or police agencies more generally) to ensure that this

¹⁴⁷ One can imagine a bigoted majority in a community that asks police to ignore crime against a certain set of victims, or a well-meaning community that makes erroneous judgments about the most effective way to configure policing. Importantly, however, the structural axis does not rest on claims about who is best positioned to assess the needs of virtue-centered flourishing; it asserts a purely relational claim about the subordinate status of legal officers in a democratic society.

¹⁴⁸ Levin, *supra* note 1, at 1359–60.

¹⁴⁹ Broadwater & Edmondson, *supra* note 145.

¹⁵⁰ For a broader discussion of public-sector unions, see Levin, *supra* note 1, at 1354–68.

¹⁵¹ Multiple studies have linked police union protections with police violence against civilians. See Abdul N. Rad, *Police Institutions and Police Abuse: Evidence from the US* (Apr. 23, 2018) (M.A. thesis, University of Oxford), https://ora.ox.ac.uk/objects/uuid:d251393e-53e0-4c5e-a0ab-323b49768de2/download_file?file_format=pdf&safe_filename=Police%2BINstitutions%2Band%2BPolice%2BAbuse%2B-%2BEvidence%2Bfrom%2Bthe%2BUS%2B-%2BRG%2Bthesis.pdf&type_of_work=Thesis [<https://perma.cc/DP5C-TAS6>]; Dhammika Dharmapala et al., *Collective Bargaining Rights and Police Misconduct: Evidence from Florida*, 30 J.L. ECON. & ORG. 1 (2020).

¹⁵² Fisk & Richardson, *supra* note 1, at 734.

¹⁵³ See *infra* Section III.B.

give-and-take remains within a reasonable range.¹⁵⁴ But it is noteworthy that, for a variety of reasons that include their forceful union representation, police generally operate under greater protections than most private-sector employees.¹⁵⁵ Moreover, as others have observed, police are *sui generis* among public-sector workers.¹⁵⁶ Their distinctive role in sustaining community flourishing, tied in large part to their cultural prominence and their power over civilians, carries a unique propensity to generate conflict between their employment-related demands and the interests of their communities.¹⁵⁷ Their role also gives them unusual leverage to extract concessions from the communities they serve, including the power to run a “protection racket.”¹⁵⁸

If some measure of self-interested police advocacy is consistent with the virtue framework, forgetfulness about their instrumental role and contempt for civilian control is not. It may well be that the former inevitably leads to the latter.¹⁵⁹ There are numerous instances of police groups across the country arrogating for themselves a primary rather than instrumental role, such as by attempting to place themselves on the same footing as protected classes within the community.¹⁶⁰ Police groups

¹⁵⁴ Some scholars have attempted proposed solutions to this specific problem, such as by modifying collective bargaining procedures, see Fisk & Richardson, *supra* note 1, at 783–89, or limiting “the range of subjects over which police unions can bargain,” Greenhouse, *supra* note 72. These changes may prove beneficial, but alone they are unlikely to resolve the problems identified here. See *infra* Section IV.D.

¹⁵⁵ Fisk & Richardson, *supra* note 1, at 718–19. Indeed, the comportment of police unions has made other unions uncomfortable. See Greenhouse, *supra* note 72.

¹⁵⁶ See, e.g., Rushin, *Disciplinary Appeals*, *supra* note 1, at 593.

¹⁵⁷ See Dharmapala et al., *supra* note 151.

¹⁵⁸ Noam Scheiber et al., *How Police Unions Became Such Powerful Opponents to Reform Efforts*, N.Y. TIMES (Apr. 2, 2021), <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html> [<https://perma.cc/48LS-REQQ>].

¹⁵⁹ Mark P. Thomas & Steven Tufts, *Blue Solidarity: Police Unions, Race and Authoritarian Populism in North America*, 34 WORK, EMP. & SOC’Y 126, 136 (2020).

¹⁶⁰ Legislation to this effect has sprung up all around the country. See, e.g., Julia Craven, *32 Blue Lives Matter Bills Have Been Introduced Across 14 States This Year*, HUFFPOST (Dec. 11, 2017), https://www.huffpost.com/entry/blue-black-lives-matter-police-bills-states_n_58b61488e4b0780bac2e31b8 [<https://perma.cc/G7X4-CDYD>]; Jamiles Lartey, *US Senate Bill Would Liken Violence Against Police to Hate Crimes*, THE GUARDIAN (May 8, 2018, 7:58 PM), <https://www.theguardian.com/us-news/2018/may/08/police-violence-hate-crimes-us-senate-bill> [<https://perma.cc/X6AW-W232>]; *Nassau County Exec Vetos Bill That Would Let Police Sue Protesters*, NBC N.Y. (Aug. 11, 2021), <https://www.nbcnewyork.com/news/politics/nassau-county-exec-vetos-bill-that-would-let-police-sue-protesters/3215137> [<https://perma.cc/6AFF-UZDT>]; see also, e.g., Jordan Miller, *Woman Faces a Year in Prison for Stomping a ‘Back the Blue’ Sign and ‘Smirking in an Intimidating Manner,’* SALT LAKE TRIB. (July 13, 2021, 2:00 PM), <https://www.sltrib.com/news/2021/07/09/woman-faces-year-prison/> [<https://perma.cc/D4VD-2N7Y>]. With a proper understanding of the structural axis in hand, it is

often show open disdain for legislative processes¹⁶¹ and elected officials,¹⁶² and even retaliate against the families of politicians they see as insufficiently supportive of their interests.¹⁶³ Many bristle at criticism from the community,¹⁶⁴ as if they are entitled by default to deference and respect.¹⁶⁵ To express dissatisfaction with

incoherent to designate offenses against police as “hate crimes”; because of the subservient relationship of police to the community, such offenses are not in any meaningful way analogous to an offense based on the victim’s race, sex, gender, sexual orientation, or other such quality. Indeed, as noted above, hatred of police can be morally appropriate. *See supra* note 81. That does not mean that violence against police is easily justified, but rather that a virtuous populace can (and sometimes must) manifest a range of negative attitudes toward law enforcement officers.

¹⁶¹ Some see reform legislation as an “end-around game for contract negotiations.” Fran Spielman, *Reform Bill Hands ‘Keys to the Criminals,’ Chicago Police Union President Says*, CHI. SUN TIMES (Jan. 14, 2021, 4:49 PM), <https://chicago.suntimes.com/2021/1/14/22231554/police-reform-bill-catanzara-chicago-crime-misconduct-body-cameras> [<https://perma.cc/26MY-WB5Q>]. Others simply see it as a personal attack. *See* Chip Mitchell, *Will Chicago Police Union President John Catanzara Resign? Don’t Hold Your Breath*, WBEZ CHI. (Jan. 12, 2021, 11:33 PM), <https://www.wbez.org/stories/will-chicago-police-union-president-john-catanzara-resign-dont-hold-your-breath/da63fb91-cf86-4b85-a018-e99526dc0fd0> [<https://perma.cc/Q2CQ-Z54L>]. Police also routinely decline to enforce laws simply based on personal disagreement with them. *See, e.g.*, Tori B. Powell, *Los Angeles Sheriff’s Department Won’t Enforce County Mask Mandate*, CBS NEWS (July 17, 2021, 3:14 PM), https://www.cbsnews.com/amp/news/los-angeles-county-sheriff-mask-mandate-covid/?__twitter_impression=true [<https://perma.cc/3HZE-E4L8>]; Kiley Koscinski, *Pittsburgh Police Resume Secondary Traffic Stops Despite City Ordinance Against Them*, 90.5 WESA (Jan. 12, 2023), <https://www.wesa.fm/politics-government/2023-01-12/pittsburgh-police-resume-secondary-traffic-stops-despite-city-ordinance-against-them> [<https://perma.cc/8Z3J-WPAP>].

¹⁶² *See* Graham Rayman et al., *Hundreds of NYPD Cops Turn Backs to de Blasio in Protest as He Speaks at Funeral for Slain Officer Miosotis Familia*, N.Y. DAILY NEWS (July 11, 2017, 9:38 PM), <https://www.nydailynews.com/new-york/scores-nypd-cops-turn-backs-de-blasio-officer-funeral-article-1.3318292> [<https://perma.cc/DC8H-4Q94>].

¹⁶³ When the daughter of New York City Mayor Bill de Blasio was arrested at a protest following the police murder of George Floyd, the Sergeants Benevolent Association departed from their typical practice to tweet an internal report with her private information, earning a suspension of their Twitter account. Dana Rubinstein & Jeffrey C. Mays, *Police Union Discloses Arrest of de Blasio’s Daughter in Privacy Breach*, N.Y. TIMES (June 1, 2020), <https://www.nytimes.com/2020/06/01/nyregion/chiara-de-blasio-arrest.html> [<https://perma.cc/A4N5-7CVH>].

¹⁶⁴ As Benjamin Levin observes, police unions frequently make clear that they are “open to no critique.” Levin, *supra* note 1, at 1351. That attitude carries over to police work. For example, officers from varied agencies across the country notoriously mishandled the BLM protests in the wake of the police murder of George Floyd, at least in part because “the protests pitted demonstrators against officers who became defensive and emotional in the face of criticism.” Kim Baker et al., *In City After City, Police Mishandled Black Lives Matter Protests*, N.Y. TIMES (June 28, 2021), <https://www.nytimes.com/2021/03/20/us/protests-policing-george-floyd.html> [<https://perma.cc/3KWM-HD3K>].

¹⁶⁵ Indeed, studies show that police are more likely to mistreat civilians whom they perceive as rude. *See* Justin Nix et al., *Demeanor, Race, and Police Perceptions of Procedural Justice: Evidence from Two*

political leaders or to retaliate for criticism they face from the public, police agencies across the country have engaged in work slowdowns—declining to respond to calls or make arrests.¹⁶⁶ These examples demonstrate conduct that clearly falls below the floor set by the moral premise associated with the structural axis. In many instances, police unions appear to have almost completely inverted the ideal structural relationship between police agencies and their communities. Indeed, some police union behavior is so extreme that its effects extend beyond the structural axis.¹⁶⁷ This final point eludes traditional analyses of police unions, which lack the vocabulary to explain the additional harms embedded in the hostility that prominent police groups often show toward civilians.¹⁶⁸

In sum, despite commonly acknowledging their role in serving the community, police groups and agencies routinely and steadfastly resist civilian control and accountability.

Randomized Experiments, 34 JUST. Q. 1154 (2017); see also, e.g., J. Edward Moreno, *NY Police Union Head Rails Against Legislators, Media for ‘Vilifying’ Law Enforcement*, THE HILL (June 9, 2020, 4:20 PM), <https://thehill.com/homenews/state-watch/501899-ny-police-union-head-rails-against-legislators-media-for-vilifying-law> [https://perma.cc/3FD6-VU7W]. This is such a prevalent phenomenon that it has a name: “contempt of cop.” Robin Stein et al., *71 Commands in 13 Minutes: Officers Gave Tyre Nichols Impossible Orders*, N.Y. TIMES (Jan. 29, 2023), <https://www.nytimes.com/2023/01/29/us/tyre-nichols-video-assault-cops.html> [https://perma.cc/4U26-KZX4]. In fairness, however, some police union leaders have been more receptive to criticism. See, e.g., Christianna Silva, *Fraternal Order of Police President: ‘We All Agree that We Need to Have Some Reform,’* NPR (June 10, 2020, 6:30 PM), <https://www.npr.org/2020/06/10/873624473/fraternal-order-of-police-president-discusses-police-reforms> [https://perma.cc/538E-ZADQ].

¹⁶⁶ See Brad Heath, *After Floyd’s Killing, Minneapolis Police Retreated, Data Shows*, REUTERS (Sept. 13, 2021, 11:00 AM), <https://www.reuters.com/investigates/special-report/usa-policing-minneapolis/> [https://perma.cc/6WF4-ELHX]; Haven Orecchio-Egresitz, *Police Have Traditionally Protested Anti-Police Rhetoric by Making Fewer Arrests. Right Now That’s Exactly What the Public Wants*, INSIDER (June 16, 2020 4:41 PM), <https://www.insider.com/police-have-historically-protested-by-making-fewer-arrests-its-become-2020-6> [https://perma.cc/WMS6-CAJD].

¹⁶⁷ See *infra* Sections III.D–E.

¹⁶⁸ For example, Benjamin Levin has observed that police unions “brook[] no compromise” and that their aggressive statements “rile[] many scholars and activists.” See Levin, *supra* note 1, at 1351. But there is a deep moral significance to this conduct—a significance that remains hidden when we focus only on structural and security factors.

B. *The Security Axis: American Police Are Ineffective at Ensuring the Safety and Health of Civilians, even as They Cause a Significant Amount of Harm Themselves*

Police in the United States ostensibly operate primarily to keep members of the community safe from crime,¹⁶⁹ at least now if not historically.¹⁷⁰ It is therefore appropriate to consider how well police dissuade crime (*ex-ante*) or solve crime (*ex-post*). Selecting a precise and ascertainable metric for measuring police effectiveness on these fronts requires resolving several difficult questions,¹⁷¹ but the overall efficacy of American police appears poor. First, although it is likely that police have preempted some violence and death,¹⁷² the link between police manpower and crime is tenuous.¹⁷³ Moreover, the preventative efforts of police—including many “proactive” approaches like “stop and frisk”—are widely regarded as ineffective.¹⁷⁴

Additionally, and perhaps more striking, American police are quite bad at solving crime. Overall, police spend only a small portion of their time responding to reports of crime, and a smaller slice of that portion dealing with violent crime that poses the most acute threat to civilian safety and health.¹⁷⁵ As Barry Friedman has recently observed, “most of what cops do is not crime fighting, even though that is primarily what they train for.”¹⁷⁶ Further, the substantial majority of crime committed in the United States is never solved by police.¹⁷⁷ One common metric for

¹⁶⁹ See, e.g., N.Y.C. POLICE DEP’T, *supra* note 78. Most officer training time goes toward preparing police to use force or otherwise handle reports of crime. See Friedman, *Policing Function*, *supra* note 1, at 946–48.

¹⁷⁰ See *supra* note 71.

¹⁷¹ For a discussion of these difficulties, see Baughman, *supra* note 88, at 55–56.

¹⁷² Bell, *Black Security*, *supra* note 22.

¹⁷³ See Gary Kleck & J.C. Barnes, *Do More Police Lead to More Crime Deterrence?*, 60 CRIME & DELINQUENCY 716 (2010).

¹⁷⁴ Friedman, *Policing Function*, *supra* note 1, at 974–75. For more on the narrow exception Friedman refers to—the efficacy of “hot spot policing”—see *id.* at 975.

¹⁷⁵ Studies of American police have shown that they spend between .7% and 11% of their time on addressing crime, and between approximately .5% and 5.5% of their time on *serious* crime, depending on the nature of the community they police. In smaller areas, police may fall on the lower of that spectrum. See Friedman, *Policing Function*, *supra* note 1, at 949–50.

¹⁷⁶ *Id.* at 954.

¹⁷⁷ Baughman, *supra* note 88, at 88–89.

evaluating a police agency's crime-solving success is its clearance rate.¹⁷⁸ Although there are multiple ways of calculating clearance rates, a prominent formula adopted by the FBI ascertains the proportion of crimes reported to the police that are ultimately resolved ("cleared") in one of two specific ways: either by the arresting, charging, and referring a suspect to the courts for prosecution, or by other "exceptional means."¹⁷⁹

Clearance rates invite skepticism from observers because they are susceptible to manipulation.¹⁸⁰ The rates themselves turn a great deal both on the timing of clearances and on how police agencies elect to classify reported offenses, and there is a long history of agencies massaging the numbers.¹⁸¹ Even according to their clearance rates, however, police take significant steps toward resolving only a small share of the crimes they investigate. One tally suggests that nationally, on average, American police tend to clear about 20–25% of the crimes that are reported to them.¹⁸² Another found that only 46% of "all violent crimes known to the police" were cleared in 2019, with the rate dropping below 18% for property crimes.¹⁸³

Recent data from New York City largely align with these numbers—with the partial exception of the NYPD's self-reported murder clearance rates, which contain irregularities.¹⁸⁴ The NYPD claim to clear substantially fewer than half of all

¹⁷⁸ 1 THE ENCYCLOPEDIA OF POLICE SCIENCE 182 (Jack R. Greene ed., Routledge 3d ed. 2007).

¹⁷⁹ Baughman, *supra* note 88, at 57–58. Clearance by exceptional means occurs when police identify a suspect; gather enough evidence to arrest, charge, and refer the suspect for prosecution; and discern the location of the suspect so that her apprehension is possible; but ultimately fail to arrest, charge, or refer the suspect due to circumstances outside police control (such as the death of the suspect, the unavailability of the suspect due to extradition limitations, or the noncooperation of the victim). *Id.* at 58. Some police agencies have been accused of misusing "exceptional means" clearances to boost their overall clearance rates. See Matthew Clarke, *U.S. Murder Clearance Rates Among the Lowest in the World*, CRIM. LEGAL NEWS, Mar. 2018, at 22, <https://www.criminallegalnews.org/news/2018/feb/16/us-murder-clearance-rates-among-lowest-world/> [<https://perma.cc/8Z2X-9CRR>].

¹⁸⁰ Andrew D. Leipold, *The Puzzle of Clearance Rates, and What They Can Tell Us About Crime, Police Reform, and Criminal Justice*, 56 WAKE FOREST L. REV. 47, 60 (2021); Baughman, *supra* note 88, at 59. The salience of clearance rates also creates suboptimal incentives for police agencies. *Id.* at 60.

¹⁸¹ For some examples, see Baughman, *supra* note 88, at 62–65.

¹⁸² *Id.* 88–89.

¹⁸³ Leipold, *supra* note 180, at 61.

¹⁸⁴ See CLEARANCE REPORT, N.Y.C. POLICE DEP'T, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/clearance.page> [<https://perma.cc/2PWM-XB5G>] (last visited Feb. 13, 2023). More specifically, numerous entries for specific boroughs in the NYPD clearance spreadsheets from 2019–2022 report over a 100% clearance rate for murder—sometimes as high as 200%—which is obviously impossible and which stands to inflate the numbers erroneously. Although the true NYPD murder clearance rate is not

reported rapes and robberies; and they report a somewhat higher clearance rate—but still just over 50%—for aggravated assault.¹⁸⁵ The NYPD clears property crimes (burglary, larceny, and motor vehicle theft) at much lower rates still, ranging from under 10% to approximately 30%.¹⁸⁶ Notably, historical trends suggest that clearance rates have largely held steady over the last twenty years, despite increases in the per capita number of police over that time.¹⁸⁷ Additionally, there is evidence that police are less effective at clearing even the most serious of crimes when the victims are people of color. One study of homicide investigations in Chicago found that police solved under half of murder cases with white victims, approximately one-third with Hispanic victims, and under one-quarter with Black victims.¹⁸⁸ Another study found similar results in Indianapolis.¹⁸⁹

Even leaving racial inequities aside, these numbers are uninspiring.¹⁹⁰ But there is reason to think that clearance rates substantially overstate police efficacy. First, they exclude the significant share of crime in the United States—perhaps more than half—that is never reported to police at all.¹⁹¹ Accounting for unreported crime drops national clearance rates to about 10%, although even that number may be generous.¹⁹² The FBI clearance formula also favorably accounts for instances where police refer a suspect who is never convicted.¹⁹³ By contrast, a metric that accounts

accessible through these data, it is worth noting that the reported rate is higher—sometimes much higher—than the rate reported by police in other major American cities. *See* REVIEW OF THE CHICAGO POLICE DEPARTMENT'S HOMICIDE INVESTIGATION PROCESS, CHICAGO POLICE DEP'T 3 (Oct. 2019), <https://home.chicagopolice.org/homicideclearancereport2019/> [<https://perma.cc/47AW-FT9B>] (documenting Chicago's 2016 and 2017 murder clearance rates as less than half of New York's, and showing that New York claims to do better than Los Angeles and much better than Philadelphia).

¹⁸⁵ *See* N.Y.C. POLICE DEP'T, *supra* note 184.

¹⁸⁶ *See id.*

¹⁸⁷ Leipold, *supra* note 180, at 75. For a possible explanation, *see id.* at 80–86.

¹⁸⁸ Conor Friedersdorf, *Criminal-Justice Reformers Chose the Wrong Slogan*, THE ATLANTIC (Aug. 8, 2021), <https://www.theatlantic.com/ideas/archive/2021/08/instead-of-defund-the-police-solve-all-murders/619672/> [<https://perma.cc/XXE4-PMXN>].

¹⁸⁹ *Id.*

¹⁹⁰ *See* Leipold, *supra* note 180, at 62.

¹⁹¹ Baughman, *supra* note 88, at 90.

¹⁹² *Id.*

¹⁹³ *See supra* note 179.

both for unreported crimes and for “favorable” prosecutorial outcomes finds that between 1% and 2% of total crimes result in convictions.¹⁹⁴

By including unreported crimes on the front end and convictions on the back end, these adjusted statistics include certain factors outside direct police control, such as prosecutorial performance.¹⁹⁵ But they also account for important factors that clearance rates omit, such as the influence of police reputation on low reporting rates¹⁹⁶ and many of the instances where police refer weak cases (or innocent parties) to prosecutors. Even without accounting for these factors, however, American police appear to perform poorly relative to their peers in other Western countries.¹⁹⁷ This result has obvious implications for community safety,¹⁹⁸ beyond its implications for the instructive value of the law. None of this undermines the value of the instances in which police successfully solve crime, but their limited efficacy plainly bears on calls for reform.

Additionally, police *cause* substantial harms to civilians, even along basic indices of health and safety best assessed as part of the security axis. American police have both the means¹⁹⁹ and the broad legal authority²⁰⁰ to use force against civilians, paired with extremely limited civil²⁰¹ and criminal liability.²⁰² Even when police face

¹⁹⁴ Baughman, *supra* note 88, at app. 1 tbl.6. Baughman analogizes these results to “the fire department only responding to two out of ten fires that are reported and only putting out the fire in two out of every 100 fires.” *Id.* at 106.

¹⁹⁵ *Id.* at 69.

¹⁹⁶ *See id.* at 82–83, 104–105.

¹⁹⁷ Clarke, *supra* note 179. For instance, the United States lags developed nations from around the world in homicide clearance rates. *See* Marieke Liem et al., *Homicide Clearance in Western Europe*, 16 EUR. J. CRIMINOLOGY 81, 82 (2018), <https://journals.sagepub.com/doi/full/10.1177/1477370818764840>.

¹⁹⁸ *See generally* Nagin, *supra* note 88.

¹⁹⁹ Like most countries, the United State routinely arms its police, though at least nineteen countries do not. *See* Mélissa Godin, *What the U.S. Can Learn from Countries Where Cops Don’t Carry Guns*, TIME (June 9, 2020, 6:18 AM), <https://time.com/5854986/police-reform-defund-unarmed-guns/> [<https://perma.cc/3DTR-9425>].

²⁰⁰ Ristroph, *supra* note 97, at 1184–85; *see also* MICHELLE ALEXANDER, *THE NEW JIM CROW* 103 (2010).

²⁰¹ Most notably, police benefit from broad protection under the doctrine of qualified immunity. *See* Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1519–22 (2016).

²⁰² *See supra* note 11.

civil liability, their financial exposure is also quite limited.²⁰³ Perhaps as a result, relative to their counterparts in peer nations, American police are notoriously violent toward their communities,²⁰⁴ particularly toward disadvantaged groups.²⁰⁵ As noted above, at least a thousand civilians die per year at the hands of police.²⁰⁶ Another million or more annually experience threats or less-than-lethal force at the hands of law enforcement.²⁰⁷

To grant police the authority to use force against civilians is to presume there may be cases where such force is necessary, such as to protect others in the community from imminent harm. But the routine reliance on force directly undermines community well-being in ways beyond the obvious.²⁰⁸ In addition to harming the physical health of its victims, numerous studies have found that police violence is associated with detrimental mental health effects, among others, in the broader community.²⁰⁹ Because such violence is concentrated on communities of color,²¹⁰ those communities disproportionately bear the psychological costs as

²⁰³ Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 936–37 (2014); Carbado, *supra* note 201, at 1523.

²⁰⁴ See Amelia Cheatham & Lindsay Maizland, *How Police Compare in Different Democracies*, COUNCIL ON FOREIGN RELS. (Apr. 21, 2021, 1:04 PM), <https://www.cfr.org/backgroundunder/how-police-compare-different-democracies> [<https://perma.cc/G3MV-VSE6>].

²⁰⁵ See U.S. COMM’N ON CIV. RTS., *supra* note 81, at 4.

²⁰⁶ See *supra* note 11.

²⁰⁷ Friedman, *Policing Function*, *supra* note 1, at 936.

²⁰⁸ I address the subject of virtue cultivation below, see *infra* Section III.C–E, but I suspect routine reliance on force by police is unnecessary for cultivating virtue. Civil and criminal liability attaches to those who break the law, and the threat of liability serves to “train” most of the public into compliance most of the time. The additional, amorphous threat of personal violence at the hands of police is not obviously necessary to help cultivate respect for the law; in fact, it has the propensity to backfire when such violence is inflicted inequitably, and it actively cultivates a form of vice. See *infra* Section III.C.

²⁰⁹ See, e.g., Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104 AM. J. PUB. HEALTH 2321 (2014); Abigail A. Sewell & Kevin A. Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J. URB. HEALTH 42 (2016); J.E. DeVylder et al., *Prevalence, Demographic Variation, and Psychological Correlates of Exposure to Police Victimization in Four US Cities*, 26 EPIDEMIOLOGY PSYCHIATRIC SCIS. 466 (2017).

²¹⁰ See Rory Kramer et al., *Black Lives and Police Tactics Matter*, CONTEXTS (Oct. 4, 2017).

well.²¹¹ Research suggests these effects can be substantial for young people, even undermining their academic performance.²¹²

It is not only by their use of force that police undermine the health and safety of their communities. For example, Monica Bell has identified “six mechanisms that link policing and residential segregation,” none of which relate specifically to police use of force.²¹³ Police around the country have also been disproportionately resistant to receiving COVID-19 vaccines, despite the risks their hesitancy creates for the very communities they are expected to protect.²¹⁴ Vaccination rates among police are among the lowest of all public-sector workers.²¹⁵ Numerous officers have

²¹¹ For example, police brutality is one of several factors weighing heavily on the emotional well-being of Black Americans. Isabella Grullón Paz, *Pandemic and Racial Injustice Cause Outsize Harm to Black Students, Study Finds*, N.Y. TIMES (July 27, 2021), <https://www.nytimes.com/2021/07/27/us/covid-race-impact-black-education.html> [<https://perma.cc/X5R8-NFPB>].

²¹² See Jocelyn R. Smith & Michael A. Robinson, “*That’s My Number One Fear in Life. It’s the Police*”: Examining Young Black Men’s Exposures to Trauma and Loss Resulting from Police Violence and Police Killings, 45 J. BLACK PSYCH. 143 (2019); Patrick Sharkey et al., *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 AM. SOCIO. REV. 1214 (2017); Desmond Ang, *The Effects of Police Violence on Inner-City Students*, 136 Q.J. ECON. 115 (2021); Aaron Gottlieb & Robert Wilson, *The Effect of Direct and Vicarious Police Contact on the Educational Achievement of Urban Teens*, 103 CHILD. & YOUTH SERVS. REV. 190 (2019).

²¹³ See Monica Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 689 (2020); see also SARAH BRAYNE, PREDICT AND SURVEIL: DATA, DISCRETION, AND THE FUTURE OF POLICING 121 (2020); ANA MUÑIZ, POLICE, POWER, AND THE PRODUCTION OF RACIAL BOUNDARIES (2015); Brenden Beck, *Policing Gentrification: Stops and Low-Level Arrests During Demographic Change and Real Estate Reinvestment*, 19 CITY & CMTY. 245 (2020), <https://journals.sagepub.com/doi/full/10.1111/cico.12473>; Rachel Lautenschlager & Marisa Omari, *Racial Threat, Social (Dis)organization, and the Ecology of Police: Towards a Macro-level Understanding of Police Use-of-force in Communities of Color*, 36 JUST. Q. 1050 (2019).

²¹⁴ See Isaac Stanley-Becker, *Many Police Officers Spurn Coronavirus Vaccines as Departments Hold Off on Mandates*, WASH. POST (May 2, 2021, 3:21 PM), <https://www.washingtonpost.com/health/2021/05/02/police-low-vaccination-rates-safety-concerns/#click=https://t.co/EtNWbyDWdm> [<https://perma.cc/236V-YMPK>]; *NYPD Has Vaccinated 43% of Its Service Members Against COVID-19*, NBC N.Y. (July 21, 2021, 5:46 PM), https://www.nbcnewyork.com/news/coronavirus/only-43-of-nypd-officers-and-support-staff-have-received-the-covid-19-vaccine/3166342/?_osource=SocialFlowTwt_NYBrand&__twitter_impression=true [<https://perma.cc/D75P-JQTH>].

²¹⁵ See Nic Dawes (@NicDawes), TWITTER (July 26, 2021, 8:35 AM), <https://twitter.com/nicdawes/status/1419637561857908742?s=21> [<https://perma.cc/4XUZ-P284>].

threatened—and even followed through with—resignation²¹⁶ and lawsuits²¹⁷ in response to COVID-19 vaccine mandates. One police union leader has even likened COVID-19 vaccine mandates to the Holocaust.²¹⁸ Other officers have forcefully objected to mandates and secured exemptions not available to other public-sector workers.²¹⁹ The net result is that police have become a salient vector for transmission²²⁰ of a virus that has already killed over 1.1 million Americans in under three years.²²¹

In sum, American police are both objectively and relatively ineffective at protecting civilians from others—even as they simultaneously constitute a threat to civilian safety and health.

²¹⁶ See, e.g., Elizabeth Stinnette, *Multiple Police Officers Threaten to Resign as Leesburg Considers Staff Vaccine Mandate*, LOUDOUN TIMES-MIRROR (Sept. 28, 2021), https://www.loudountimes.com/news/multiple-police-officers-threaten-to-resign-as-leesburg-considers-staff-vaccine-mandate/article_35cbcc44-20c6-11ec-b0c8-cb051f574ed8.html [https://perma.cc/3RA7-NHBA]; Jonathan Franklin, *Dozens of Massachusetts State Police Have Resigned over a Vaccine Mandate, Union Says*, NPR (Sept. 27, 2021, 4:35 PM), <https://www.npr.org/sections/coronavirus-live-updates/2021/09/27/1040961594/massachusetts-state-police-resign-covid-vaccine> [https://perma.cc/PWZ3-NQSJ]; David Hernandez, *Survey: Many SDPD Officers Say They Would Rather Quit than Comply with Vaccine Mandate*, SAN DIEGO SUN-TRIB. (Sept. 9, 2021, 7:46 PM), <https://www.sandiegouniontribune.com/news/public-safety/story/2021-09-09/survey-many-sdpd-officers-say-they-would-rather-quit-than-comply-with-vaccine-mandate> [https://perma.cc/37T6-96SN].

²¹⁷ See, e.g., Craig McCarthy, *NYPD's Largest Police Union Vows To Sue over Possible COVID Vaccine Mandate*, N.Y. POST (Aug. 25, 2021, 2:12 PM), <https://nypost.com/2021/08/25/pba-president-patrick-j-lynch-to-sue-nyc-over-covid-19-vaccine-mandate> [https://perma.cc/FXG6-DMZ6]; Sam Levin, *LA Officers Sue over Vaccine Mandate as Police Across California Threaten to Resign*, THE GUARDIAN (Sept. 13, 2021, 9:18 PM), <https://www.theguardian.com/us-news/2021/sep/13/los-angeles-police-covid-vaccine-mandate-lawsuit> [https://perma.cc/5PPS-ZR43].

²¹⁸ Satchel Price & Tom Schuba, *Police Union Boss Slammed for Comparing Vaccine Mandate to Holocaust*, CHI. SUN TIMES (Aug. 26, 2021, 3:18 PM), <https://chicago.suntimes.com/politics/2021/8/26/22643110/chicago-police-union-president-nazi-germany-vaccine-mandate-lori-lightfoot-john-catanzara> [https://perma.cc/424D-LDY2].

²¹⁹ See Rebecca Ellis, *Portland May Exempt Police Force from Citywide Vaccine Mandate*, OPB (Sept. 7, 2021, 8:35 PM), <https://www.opb.org/article/2021/09/07/portland-vaccine-mandate-police-bureau-exemption-city-officials/> [https://perma.cc/8RYR-XUZT].

²²⁰ See Kevin Rector, *L.A. Police, Fire Agencies Hotbeds of Vaccine Opposition—and Coronavirus Outbreaks*, L.A. TIMES (Sept. 26, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-09-26/covid-outbreaks-plague-lapd-fire-agencies-data-show> [https://perma.cc/VMN5-6EH7].

²²¹ See CENTER FOR DISEASE CONTROL, COVID DATA TRACKER, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> [https://perma.cc/GM56-6BM6] (last updated Feb. 16, 2023). Given their instrumental role in the community, it is entirely appropriate for communities to impose vaccine mandates on police officers. See *supra* Section III.A.

C. *The Coercive Axis: American Police Often Demand Servility from Civilians, Especially Those from Disadvantaged Groups*

One specific—and underappreciated—dimension of the use of force by American police concerns its propensity to inculcate vicious attitudes in its victims through state-sanctioned coercion. If the law can condition virtue and vice, police carry a particularly potent form of that power. As noted above, over one million Americans experience threats or are subject to the use of force at the hands of police an annual basis,²²² and tens of millions more experience legal demands issued by police.²²³ These demands are categorically different from wholesale statutory provisions. The power of police to enforce compliance accompanies their retail demands, creating distinctive and substantial pressure for civilians to comply.²²⁴ American police routinely expect unquestioning obedience to these demands, even when the demands themselves are inappropriate or unreasonable.²²⁵ Perhaps extreme deference among civilians makes policing easier, safer, and less aggravating for

²²² Friedman, *Policing Function*, *supra* note 1, at 936; HARRELL & DAVIS, *supra* note 74.

²²³ See HARRELL & DAVIS, *supra* note 74.

²²⁴ See *supra* text accompanying notes 94–96.

²²⁵ One study found that, when civilians display a “bad” demeanor in interactions with police—that is, “legally permissible behavior of civilians during interactions with police that indicates the degree of deference or respect they extend to involved officers”—“officers are more likely to be suspicious, perceive danger, and experience various antagonistic emotions such as anger, frustration, and annoyance.” Nix et al., *supra* note 165, at 611. Some officers are comfortable publishing their demands for extreme deference. See Sunil Dutta, *I’m a Cop. If You Don’t Want To Get Hurt, Don’t Challenge Me.*, WASH. POST (Aug. 19, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/08/19/im-a-cop-if-you-dont-want-to-get-hurt-dont-challenge-me/> [<https://perma.cc/MH24-K37F>]. Dutta openly states:

Even though it might sound harsh and impolitic, here is the bottom line: if you don’t want to get shot, tased, pepper-sprayed, struck with a baton or thrown to the ground, just do what I tell you. Don’t argue with me, don’t call me names, don’t tell me that I can’t stop you, don’t say I’m a racist pig, don’t threaten that you’ll sue me and take away my badge. Don’t scream at me that you pay my salary, and don’t even *think* of aggressively walking towards me.

Id.; see also *A Roadmap for Re-imagining the Public Safety in the United States*, HUM. RTS. WATCH (Aug. 12, 2020, 8:00 AM), https://www.hrw.org/news/2020/08/12/roadmap-re-imagining-public-safety-united-states#_Policing_in_the [<https://perma.cc/MH24-K37F>]; Hannah Knowles, *A State Trooper Hit a Pregnant Woman’s Car to Enforce a Traffic Stop. It Flipped and Crashed*, WASH. POST (June 10, 2021, 10:50 PM), <https://www.washingtonpost.com/nation/2021/06/10/arkansas-trooper-janice-harper/> [<https://perma.cc/8XRB-HZLG>].

police.²²⁶ But conditioning the public into unquestioning obedience treads *directly* on the concerns of virtue jurisprudence: it entails the cultivation of servility, a vicious trait that displaces the virtue of self-respect.²²⁷

The lopsided use of coercive power against communities of color creates an especially sharp version of this problem. There is little dispute that police apply coercive measures to people of color and those with fewer resources at much higher rates than to richer, whiter segments of the population.²²⁸ Although some have tried to minimize them,²²⁹ the disparities on this front are alarming.²³⁰ Police violence toward Black Americans has spurred record-breaking protests domestically²³¹ and demonstrations abroad,²³² and it has even inspired the United Nations to take up research on systemic racism in policing.²³³ Beyond the health and safety harms

²²⁶ See Dutta, *supra* note 225.

²²⁷ See Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 234–37. Targets of improper police demands are not necessarily morally obliged to resist. As we noted above, the costs of noncompliance with police demands are high—indeed, they can be fatal. When directed by police to yield, it is rarely prudent to resist, even if one’s self-respect counts in favor of defiance. *Id.* at 240–41. But it may be morally defensible for civilians facing certain improper demands of the police to resist on the grounds of self-respect, even if that is not morally obligatory. *Id.* at 235.

²²⁸ For relevant studies, see Kramer & Remster, *supra* note 103, at 5–6. Of course, racial biases pervade the policing practices of other countries as well. See Hing, *supra* note 10, at 608; Ignacio Cano, *Racial Bias in Police Use of Lethal Force in Brazil*, 11 POLICE PRAC. & RSCH. 31 (2010), <https://www.tandfonline.com/doi/abs/10.1080/15614260802586350?journalCode=gpr20> [<https://perma.cc/WER2-AT2A>].

²²⁹ See Brandon Tregle et al., *Disparity Does Not Mean Bias: Making Sense of Observed Racial Disparities in Fatal Officer-Involved Shootings with Multiple Benchmarks*, 42 J. CRIME & JUST. 18, 24–25 (2019), https://www.tandfonline.com/doi/full/10.1080/0735648X.2018.1547269?casa_token=px2kYv_SlzYAAAAA%3A7_YqDCIBTuOqVCeATeP0FYGLvzLsSMfn_SksA1IG-10aaLNQxfjPnHecXqwJ3WJTh2QIH5QbRLud [<https://perma.cc/8SUU-VTGW>].

²³⁰ For some relevant statistics, see *supra* note 11.

²³¹ Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/6J8Y-WK55>].

²³² *Protests Across the Globe After George Floyd’s Death*, CNN (June 13, 2020, 3:22 PM), <https://www.cnn.com/2020/06/06/world/gallery/intl-george-floyd-protests/index.html> [<https://perma.cc/S9W2-EX5V>].

²³³ Nick Cumming-Bruce, *U.N. To Form Panel To Investigate Systemic Racism in Policing*, N.Y. TIMES (July 13, 2021), <https://www.nytimes.com/2021/07/13/world/united-nations-panel-human-rights-council-racism.html> [<https://perma.cc/D59F-QLEW>]. Indeed, one international group has concluded that police violence against Black Americans may constitute a crime against humanity. REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY ON SYSTEMIC RACIST POLICE VIOLENCE AGAINST PEOPLE OF

associated with police use of force, discussed in the preceding Section, these imbalances *themselves* have corrosive effects highlighted by the virtue framework.

The members of a flourishing community will manifest some reasonable measure of self-respect, at minimum by expecting equal treatment before the law, including at the hands of police.²³⁴ But police do not provide equal treatment. As the data canvassed above demonstrate, police have long deployed their coercive authority against certain groups disproportionately and inappropriately. In other words, they consistently issue unfair retail demands to people of color, among other disadvantaged groups.²³⁵ These demands force upon their targets a moral dilemma: how to balance their own self-respect—which includes the rejection of unfair demands issued to them by police—against the imprudence of noncompliance, especially given the high costs of resisting. Many will deem it necessary to comply even though compliance is in some respect vicious.²³⁶

Over time, these dilemmas can have a pronounced conditioning effect on targeted populations.²³⁷ Indeed, data show that, in the wake of highly publicized incidents of police violence against people of color, communities of color become reluctant to contact the police even to report violent crime.²³⁸ Other people of color

AFRICAN DESCENT IN THE UNITED STATES, INT'L COMM'N INQUIRY ON SYSTEMIC RACIST POLICE VIOLENCE AGAINST PEOPLE AFRICAN DESCENT U.S. 119 (2021), <https://inquirycommission.org/website/wp-content/uploads/2021/04/Commission-Report-15-April.pdf>.

²³⁴ Morally relevant differences may justify differential treatment, but biased policing of the form empirically demonstrated above largely tracks morally irrelevant differences, such as race.

²³⁵ See U.S. COMM'N ON CIV. RTS., *supra* note 81, at 4.

²³⁶ In one recent incident, a Black man who was wrongfully handcuffed in front of his son felt he “could do nothing other than obey in a desperate attempt not to die.” Jonathan Edwards, *A Black Army Vet Toured a House with His Real Estate Agent and Teen. Police Surrounded the Home and Handcuffed Them*, WASH. POST (Aug. 7, 2021, 5:37 PM), <https://www.washingtonpost.com/nation/2021/08/06/black-realtor-michigan-police-handcuffed/> [<https://perma.cc/7AWW-XQF2>].

²³⁷ For instance, more Black Americans are afraid of police than are afraid of crime, and Black Americans are more than five times as likely as their White compatriots to fear that their friends and loved ones will be harmed by police. Justin Pickett et al., *The American Racial Divide in Fear of Police*, 60 CRIMINOLOGY 291, 304 (2022), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9125.12298>; see also German Lopez, *Black Parents Describe “The Talk” They Give to Their Children About Police*, VOX (Aug. 8, 2016, 11:40 AM), <https://www.vox.com/2016/8/8/12401792/police-black-parents-the-talk> [<https://perma.cc/Z7Y2-H7VS>].

²³⁸ See Matthew Desmond et al., *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOCIO. REV. 857 (2016). Additionally, residents of predominantly Black communities “are more likely than whites to view the police as illegitimate and untrustworthy.” Bell, *Legal Estrangement*, *supra* note 1, at 2059.

report a deep ambivalence about police—a recognition that a heavier police presence may mean better protection from one source of threats through the introduction of another.²³⁹ Profound fear of the state—including manifesting a willingness to suffer crime rather than interact with police, or adopting a fawning deference to legal officers²⁴⁰—is a marker of conditioned subjugation rather than virtue. That attitude also conflicts with widely-held (if perhaps mythical) views about American foundational values and nobility of spirit.²⁴¹

In sum, through their coercive authority, police routinely extract vicious civilian compliance with retail demands, specifically by requiring civilians to trade off their self-respect to comply. Collectively, these demands demonstrably push the populace—especially in communities of color—toward vice rather than virtue.

D. The Expressive Axis: American Police Consistently Express Vicious Propositions that Undermine Civilian Flourishing

Both through their words and their conduct, police officials and groups routinely express false or vicious propositions that threaten to make civilians morally worse people. There are many ways for police to express such propositions,²⁴² but I will focus on their consistent endorsement of prejudice against different groups of civilians. Examples abound. The president of the Police Officers Federation of Minneapolis has referred to Black Lives Matter as a “terrorist movement.”²⁴³ A sheriff in Louisiana publicly stated that his plan to address violent crime was “only

²³⁹ Bell, *Black Security*, *supra* note 22.

²⁴⁰ Pickett et al., *supra* note 237, at 1.

²⁴¹ See Alexander Tsesis, *Maxim Constitutionalism: Liberal Equality for the Common Good*, 91 TEX. L. REV. 1609, 1636 (2013). The notion that the public should—or even must—resist abusive government officials remains highly influential in American culture. For the backstory to one prominent example, see Rob Walker, *The Shifting Symbolism of the Gadsden Flag*, NEW YORKER (Oct. 2, 2016), <https://www.newyorker.com/news/news-desk/the-shifting-symbolism-of-the-gadsden-flag> [https://perma.cc/72FE-XD6Q].

²⁴² For example, police groups have been known to offer misleading statements to justify demands for greater funding. See, e.g., Opinion, *Kansas City Police Union Boss Says ‘Defunding’ Led to Violent Weekend. What Defunding?*, KAN. CITY STAR (Dec. 6, 2021, 12:32 PM), <https://www.kansascity.com/opinion/editorials/article256377502.html>; see also *‘We Can’t Guarantee Your Safety’: Head of LAPD’s Police Officers’ Union Warns Tourists Away*, CBS L.A. (Dec. 7, 2021, 9:47 PM), <https://losangeles.cbslocal.com/2021/12/07/we-cant-guarantee-your-safety-head-of-lapds-police-officers-union-warns-tourists-away/> [https://perma.cc/887J-9MPK].

²⁴³ Scheiber et al., *supra* note 158.

stopping Black people.”²⁴⁴ Another prominent police official has called Muslims “savages,”²⁴⁵ and has advocated for killing criminal suspects.²⁴⁶ A sizable group of officers was caught exchanging text messages about lynching Blacks, gassing Jews, and assaulting members of the LGBTQ community.²⁴⁷ Officers regularly generate outrage with racist, sexist, and homophobic social media posts.²⁴⁸ The pattern is so well-established that it has permeated popular culture; it even serves as the basis of jokes from prominent platforms like *Saturday Night Live*.²⁴⁹ Offensive statements from police convey state-sanctioned prejudice, and their frequency suggests at least a partial government endorsement of the moral inferiority of singled-out groups.²⁵⁰

In fact, for all the zealous advocacy police unions undertake on behalf of their members—often directly to the detriment of civilians²⁵¹—at times unions instead prioritize run-of-the-mill political speech *at the expense of their own members*. That speech, too, has had corrosive moral effects. For example, police unions have been

²⁴⁴ Webster et al., *supra* note 100.

²⁴⁵ Mitchell, *supra* note 161.

²⁴⁶ *FOP President Suspended from CPD with No Pay Pending Outcome of His Case*, FOX 32 CHI. (Feb. 10, 2021, 6:08 PM), <https://www.fox32chicago.com/news/fop-president-suspended-from-cpd-with-no-pay-pending-outcome-of-his-case> [<https://perma.cc/2JL8-88GC>].

²⁴⁷ James Queally, *Torrance Police Traded Racist, Homophobic Texts. It Could Jeopardize Hundreds of Cases*, L.A. TIMES (Dec. 8, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-12-08/torrance-police-traded-racist-homophobic-texts-it-could-jeopardize-hundreds-of-cases> [<https://perma.cc/Q35F-4T6J>].

²⁴⁸ See, e.g., Kyle Stucker, *First Amendment v. Public Duty: Police Social Posts Renew Concerns About Bias, Solutions*, PROVIDENCE J. (Oct. 27, 2021, 12:18 PM), <https://www.providencejournal.com/story/news/2021/10/26/police-officers-racist-inappropriate-social-media-posts-can-draw-criticism-reveal-bias/6108222001/> [<https://perma.cc/7R3E-6T93>]; Kayla Epstein, *Racist Posts from Police Officers' Social Media Accounts Trigger a Wave of Investigations*, WASH. POST (June 4, 2019), <https://www.washingtonpost.com/nation/2019/06/04/racist-posts-police-officers-social-media-accounts-trigger-wave-investigations/> [<https://perma.cc/EE9J-9KWS>]; *9 OPD Officers Disciplined in Investigation of 'Racist and Sexist' Social Media Posts*, NBC BAY AREA (Sept. 18, 2021, 1:18 PM), <https://www.nbcbayarea.com/news/local/east-bay/9-opd-officers-disciplined-in-investigation-of-racist-and-sexist-social-media-posts/2660252/> [<https://perma.cc/RWT5-FPJ5>].

²⁴⁹ @Stapes, TWITTER (Nov. 19, 2022, 1:23 PM), https://twitter.com/stapes/status/1594033723909242880?s=46&t=w_G1aiPhmCWPxOXc1pC4wg [<https://perma.cc/KS3Y-GEJD>].

²⁵⁰ Communications of this sort are particularly corrosive when they emanate from the state; under many circumstances, they may qualify as propaganda. See generally G. Alex Sinha, *Lies, Gaslighting and Propaganda*, 68 BUFF. L. REV. 1037 (2020) (explaining the significance of misleading governmental communications and defending an account of propaganda that captures a significant share of such communications).

²⁵¹ See *supra* Section III.A.

remarkably quiet²⁵² about the injuries and death that the Capitol Police suffered at the hands of insurrectionist rioters on January 6, 2021.²⁵³ The most plausible explanation for their reticence is the well-documented affinity between many police and the rioters.²⁵⁴ By contrast, the head of the Chicago Fraternal Order of Police threatened to expel union members who kneeled in solidarity with George Floyd.²⁵⁵ The political valence of such speech (or silence) tends to reinforce the messages conveyed by prejudiced police statements and practices.

The biased or prejudiced policing practices detailed above—the disproportionate targeting of people of color for stops, searches, and uses of force²⁵⁶—also serve an expressive function that reinforces copious racist statements by police officials. These practices betray an implicit state endorsement of privately-held prejudices among the community and may even prime members of the public toward adopting or heightening their own animus against over-policed groups.²⁵⁷ The effects of these messages are so pronounced that some researchers have

²⁵² See John Berman (@JohnBerman), TWITTER (July 28, 2021, 10:42 AM), <https://twitter.com/johnberman/status/1420394132032327683?s=21> [<https://perma.cc/5J33-7AG7>] (publishing an interview with a Capitol Police Officer describing the lack of support he has received from the Fraternal Order of Police in the wake of the attacks he suffered during the insurrection on Jan. 6, 2021); @Acyn, TWITTER (July 28, 2021, 4:34 PM), <https://twitter.com/acyn/status/1420482880942350340?s=21> [<https://perma.cc/TET3-T3L6>] (publishing an interview in which Jake Tapper confronts the national president of the Fraternal Order of Police over his organization's reluctance to defend Capitol Police publicly after the insurrection); Andrew Boryga, *This Was the Biggest, Loudest Cop Union in America. Then Came Jan. 6*, DAILY BEAST (July 29, 2021, 3:37 AM), <https://www.thedailybeast.com/fraternal-order-of-police-was-the-biggest-loudest-cop-union-in-america-but-michael-fanone-felt-abandoned> [<https://perma.cc/23XT-VR8N>].

²⁵³ Bart Jansen, *130 Officers Have Left Capitol Police Since Jan. 6 Insurrection, Watchdog Tells Senate Hearing*, USA TODAY (Dec. 7, 2021, 4:45 PM), <https://www.usatoday.com/story/news/politics/2021/12/07/capitol-police-lose-200-officers-since-jan-6/6415037001/> [<https://perma.cc/4TEG-Z5HW>].

²⁵⁴ See Philip Bump, *Police Made a Lot More Reported Contributions in 2020 than Normal—Mostly to Republicans*, WASH. POST (Feb. 25, 2021), <https://www.washingtonpost.com/politics/2021/02/25/police-made-lot-more-reported-contributions-2020-than-normal-mostly-republicans/> [<https://perma.cc/6WJK-JCHU>].

²⁵⁵ Gino Spocchia, *Black Lives Matter Protests: Chicago Police Face Being Kicked out of Their Union if They Kneel*, THE INDEPENDENT (June 12, 2020, 3:34 PM), <https://www.independent.co.uk/news/world/americas/black-live-matter-police-kneel-union-chicago-a9563156.html> [<https://perma.cc/Z4R3-28PA>].

²⁵⁶ See *supra* note 11.

²⁵⁷ See Nix et al., *supra* note 80.

described them as “race-making,” conveying that police represent “the dominant race” and, accordingly, relegating others to a lower status.²⁵⁸

In sum, police consistently and influentially express vice on behalf of the state, both explicitly and impliedly through their conduct.

²⁵⁸ See Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race—Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565 (2017).

E. The Modeling Axis: American Police Routinely and Prominently Model Vice

A constant stream of cell phone videos, news reports, and studies supplies a rolling reminder of aggressive,²⁵⁹ cruel,²⁶⁰ cowardly,²⁶¹ prejudiced,²⁶² ignorant,²⁶³ dishonest,²⁶⁴ corrupt,²⁶⁵ and arrogant²⁶⁶ law-breaking²⁶⁷ conduct by police all over the country.²⁶⁸ It is quite simply indisputable that, as prominent legal officials, police frequently model vice in one form or another. Recognizing the significance of this conclusion goes a long way toward explaining the power of prominent cases of police misconduct. After all, although there is no question such cases are numerous,²⁶⁹ it can be difficult to identify a baseline for assessing the prevalence of the moral failings that drive them, let alone to actually calculate the frequency with which those failings arise. For example, there is some evidence that a propensity toward brutality is relatively widespread among police officers,²⁷⁰ but one cannot necessarily derive statistical conclusions about the rates of vice manifested by officers (whether on duty or off)²⁷¹ from media reports about individual instances of police misconduct. At minimum, fatal civilian encounters with police constitute a small fraction of the total universe of civilian encounters with police.²⁷²

But frequency is not necessary to justify outrage upon witnessing an officer choke a restrained civilian to death,²⁷³ or fatally shoot an unarmed civilian in the

²⁵⁹ See, e.g., Sebastian Murdock & Ryan J. Reilly, *Justice Department Announces Sweeping Probe into Phoenix Police*, HUFFPOST (Aug. 5, 2021, 2:33 PM), https://m.huffpost.com/us/entry/us_610c2678e4b06253fa4c468e/ [<https://perma.cc/2F45-DVGS>].

²⁶⁰ See Sebastian Murdock, *'You Shouldn't Be Able to Breathe,' Police Officer Told Tennessee Man Before He Died*, HUFFPOST (May 21, 2021, 12:34 PM), https://www.huffpost.com/entry/tennessee-police-video_n_60a7c745e4b09604b521d75e [<https://perma.cc/YLG2-769U>]; Nina Golgowski, *5 Miami Beach Officers Charged After Violent Arrests of Black Man in Hotel*, HUFFPOST (Aug. 3, 2021, 11:35 AM), https://www.huffpost.com/entry/miami-beach-officers-charged-after-hotel-arrests_n_61093310e4b0552883e558b2?_gl=1*3zgi5j*_ga*YW1wLWdxMFFlcGNsZDFCVlJmbU56Sk93aGc [<https://perma.cc/MG8G-X5ZC>]; @campaigntoendqi, TWITTER (Aug. 2, 2021, 10:20 PM), <https://twitter.com/campaigntoendqi/status/1422381719420907520?s=21> [<https://perma.cc/2HKP-SR3W>] (“This Detroit police officer punched a man in the face so hard that he fell backwards onto the street—going temporarily unconscious.”); Kenneth Wong & FOX 10 Staff, *'I'm Not Jumping in After You': Man Drowned in Tempe Town Lake as Police Watched, Transcripts Reveal*, FOX 10 PHOENIX, <https://www.fox10phoenix.com/news/man-dead-after-jumping-into-tempe-town-lake-police-say> [<https://perma.cc/6S3U-9M82>] (last updated June 4, 2022).

²⁶¹ See, e.g., Bradford Betz, *New York Police Officers Accused of Covering up Name Tags, Claiming Fear of Being Doxed*, FOX NEWS (Sept. 2, 2020, 6:05 PM), <https://www.foxnews.com/us/buffalo-police-officers-accused-covering-name-tags-fear-doxed> [<https://perma.cc/FNP9-WQY4>]; Liam Quinn, *Newark Cop Accused of Fatally Striking Garfield Man with Car on Parkway and Moving Body*, NORTHJERSEY.COM (Nov. 25, 2021, 2:06 PM), <https://www.northjersey.com/story/news/bergen/>

garfield/2021/11/24/newark-nj-police-officer-charged-garden-state-parkway-crash/8751004002/ [https://perma.cc/9YP6-5H27]; Katie Mettler, *Prince George's Officer Suspended for Allegedly Fleeing Scene of Crash in Unmarked Cruiser*, WASH. POST (Sept. 7, 2021, 5:10 PM), https://www.washingtonpost.com/local/public-safety/prince-georges-police-officer-suspended-for-allegedly-fleeing-scene-of-crash-in-unmarked-cruiser/2021/09/07/fcf219d2-101c-11ec-882f-2dd15a067dc4_story.html [https://perma.cc/KQ69-27ZB]. Among the most notorious recent incidents in which police have been credibly accused of cowardice is the shooting that took place at Robb Elementary School in Uvalde County, Texas in May of 2022. The police waited over seventy minutes to confront an active shooter who ultimately killed nineteen children and two teachers in the school. Zach Despart et al., *Records Reveal Medical Response Further Delayed Care for Uvalde Shooting Victims*, TEX. TRIB. (Dec. 20, 2022, 5:00 AM), <https://www.texastribune.org/2022/12/20/ualde-medical-response/> [https://perma.cc/A3HU-99ET]. Many people, including relatives of the victims, have interpreted the delay as a reflection of cowardice. See Shimon Prokupecz & Matthew J. Friedman, *Grieving Uvalde Families Condemn Responding Officers as 'Cowards'*, CNN (July 8, 2022, 3:20 PM), <https://www.cnn.com/2022/07/08/us/ualde-families-call-officers-cowards/index.html> [https://perma.cc/Q4JF-WDV4].

²⁶² See *supra* notes 240–45 and accompanying text.

²⁶³ See, e.g., Nick Sibilla, *Cop Who Wrongly Led No-Knock Raid Against 78-Year-Old Grandfather Can't Be Sued, Court Rules*, FORBES (June 8, 2021, 12:55 PM), <https://www.forbes.com/sites/nicksibilla/2021/06/08/cop-who-led-accidental-no-knock-raid-against-78-year-old-grandfather-cant-be-sued-court-rules/?sh=5399221168b3> [https://perma.cc/Z6QV-KT4A]; Kalhan Rosenblatt, *Mississippi Police Fatally Shoot Man at Wrong House While Serving Warrant*, NBC NEWS (July 26, 2017, 4:53 PM), <https://www.nbcnews.com/news/us-news/mississippi-police-fatally-shoot-man-wrong-house-while-serving-warrant-n786681> [https://perma.cc/Y65X-X892].

²⁶⁴ See, e.g., Jonathan Abel, *Cop Tracing*, 107 CORNELL L. REV. 927, 928 (2022); Adela Suliman, *Sheriff Charged with Falsely Reporting Black Newspaper Carrier to Police*, WASH. POST (Oct. 21, 2021, 7:01 AM), <https://www.washingtonpost.com/nation/2021/10/21/ed-troyer-washington-sheriff-false-reporting/> [https://perma.cc/YH3E-XEWF].

²⁶⁵ See, e.g., Tim Dickinson, *'Executioners,' 'Reapers,' and 'Banditos': Gangs of Sheriff's Deputies Are Wreaking Havoc in L.A.*, ROLLING STONE (Sept. 14, 2021, 1:01 PM), <https://www.rollingstone.com/politics/politics-news/los-angeles-sheriffs-department-gangs-rand-report-1225982/> [https://perma.cc/HGG6-CJYV]; Barton et al., *supra* note 135; Timothy Bella, *Sheriff Ordered Deputies to Take Cash from Undocumented Immigrants, Investigators Allege*, WASH. POST (Jan. 11, 2022, 2:21 PM), <https://www.washingtonpost.com/nation/2022/01/11/texas-sheriff-cash-undocumented-immigrants-johnson> [https://perma.cc/RS9D-BP8N]; Adam Serwer, *The Authoritarian Instincts of Police Unions*, THE ATLANTIC (June 22, 2021, 11:43 PM), <https://www.theatlantic.com/magazine/archive/2021/07/bust-the-police-unions/619006/> [https://perma.cc/C7AJ-RCF5].

²⁶⁶ See WPDE, *supra* note 105; see also Mike Baker, *Police Presentation in Portland Celebrated Violence Against Protestors*, N.Y. TIMES (Jan. 14, 2022), <https://www.nytimes.com/2022/01/14/us/portland-police-protests.html> [https://perma.cc/4H7P-36X3]; Gloria Pazmino (@GloriaPazmino), TWITTER (Dec. 21, 2021, 3:46 PM), <https://twitter.com/gloriapazmino/status/1473394432057745414?s=21> [https://perma.cc/Q7AM-WD3M] (publishing video of the new mayor of New York City, Eric Adams, asserting that only others who have served as police—like he did—“have the right to question” him).

²⁶⁷ See, e.g., Edwards, *supra* note 134; Billy Binion, *Texas Cops Realized They Raided the Wrong House. They Kept Searching Anyway.*, REASON (July 30, 2021, 5:07 PM), <https://reason.com/2021/07/30/qualified-immunity-police-drug-raid-texas-lucil-basco/> [https://perma.cc/7XS9-LHGQ]. A couple dozen

back.²⁷⁴ The import of these cases is not reducible to their elusive statistical significance. Even if we were to assume (questionably) that these sorts of cases are

current and former police officers have been arrested for breaking into the U.S. Capitol on January 6, 2021. See Spencer S. Hsu, *Current, Former Police Officers Charged in New Proud Boys Indictment in Capitol Riot*, WASH. POST (July 16, 2021, 5:43 PM), https://www.washingtonpost.com/local/legal-issues/proud-boys-police-indictment-florida/2021/07/16/1fdbe642-e5a4-11eb-8aa5-5662858b696e_story.html [https://perma.cc/4Z5S-3DAQ]. For a feature on active-duty police officers who attended the January 6 rally, see Jonathan Ben-Menachem, *The Cops at the Capitol*, THE APPEAL (Jan. 13, 2021), <https://theappeal.org/the-cops-at-the-capitol/> [https://perma.cc/LD5X-EVDX].

²⁶⁸ See generally George Joseph, *Brooklyn DA Releases Massive Trove of Internal Documents on NYPD Misconduct*, GOTHAMIST (Aug. 2, 2021), <https://champ.gothamist.com/champ/gothamist/news/brooklyn-da-releases-massive-trove-internal-documents-nypd-misconduct?> [https://perma.cc/2E32-TCEH] (publishing thousands of documents detailing police misconduct among NYPD officers in Brooklyn).

²⁶⁹ One lawyer publicly cataloged nearly 1,000 incidents of police brutality or excessive violence in response to BLM protests that followed the police murder of George Floyd. See Greg Doucette & Jason E. Miller, *George Floyd Protest—Police Brutality Videos on Twitter*, GOOGLE DOCS, https://docs.google.com/spreadsheets/u/1/d/1YmZeSxpz52qT-10tkCjWOwOGkQql7Wd1P7ZM1wMW0E/htmlview?pru=AAABcq16DI8*mIHYeMnoj9XWUp3Svb_KZA [https://perma.cc/QD4B-AYXP] (last visited July 21, 2022). For a write-up about this effort to document police violence, see Daniel Politi, *Activists Create Public Online Spreadsheet of Police Violence Videos*, SLATE (June 6, 2020, 6:08 PM), <https://slate.com/news-and-politics/2020/06/george-floyd-public-spreadsheet-police-violence-videos.html> [https://perma.cc/R8EY-F9GM].

²⁷⁰ See Aaron Chalfin & Jacob Kaplan, *How Many Complaints Against Police Officers Can Be Abated by Incapacitating a Few “Bad Apples?”*, 20 CRIMINOLOGY & PUB. POL’Y 351 (2021), <https://onlinelibrary.wiley.com/doi/10.1111/1745-9133.12542>.

²⁷¹ Just as judges or lawyers who demonstrate serious deficiencies in their private lives invite public skepticism about their professional judgment, police who engage in seriously problematic conduct while off duty may also tarnish the public’s view of their professional capacities. For example, a series of deeply troubling studies shows that the romantic partners of police officers experience domestic violence at rates substantially higher than people in the community more generally. See Conor Friedersdorf, *Police Have a Much Bigger Domestic-Abuse Problem than the NFL Does*, THE ATLANTIC (Sept. 19, 2014), <https://www.theatlantic.com/national/archive/2014/09/police-officers-who-hit-their-wives-or-girlfriends/380329/> [https://perma.cc/FN9D-7BE7].

²⁷² Tregle et al., *supra* note 229.

²⁷³ See, e.g., Evan Hill et al., *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/video/us/100000007159353/george-floyd-arrest-death-video.html> [https://perma.cc/6QHE-QHKH] (providing video of the police murder of George Floyd).

²⁷⁴ See, e.g., Matthew Vann & Erik Ortiz, *Walter Scott Shooting: Michael Slager, Ex-Officer, Sentenced to 20 Years in Prison*, NBC NEWS (Dec. 9, 2017, 11:25 AM), <https://www.nbcnews.com/storyline/walter-scott-shooting/walter-scott-shooting-michael-slager-ex-officer-sentenced-20-years-n825006> [https://perma.cc/LWN8-Q2XS] (providing video of the police murder of Walter Scott).

relatively isolated in a meaningful sense,²⁷⁵ they cause substantial moral harm. More specifically, the modeling power of these cases (combined with their expressive content and coercive effect) explains and justifies the outrage they provoke. It is this outrage that sparks so much scholarly interest in policing in the first place and drives protestors into the streets around the world.²⁷⁶ No account of policing can begin to make sense of the scholarly and public reaction to police misconduct without taking these moral harms seriously.²⁷⁷

IV. VIRTUE-CENTERED POLICE REFORM

Individuating the five axes of police influence over civilian flourishing provides a comprehensive picture of the troubling implications of American policing, and offering several advantages. I address each of these merits briefly in closing.

A. *The Organizational Power of Virtue Analysis*

The axes permit us to organize and contextualize the abundant policing critiques and reform proposals raised in the literature to date. In doing so, we see that many scholars have focused narrowly on only one or two relevant dimensions of policing. Perhaps the outright majority of policing literature concerns the security axis—the relationship between policing and the physical health or safety of civilians.²⁷⁸ Because physical safety is quite plausibly a precondition for community flourishing,²⁷⁹ focusing there is appropriate (albeit not to the exclusion of the other four axes). Improving the capacity of the police to keep the community safe is also the most obvious goal for proposals untethered from a comprehensive moral view of

²⁷⁵ Despite constituting a small fraction of the total interactions between civilians and police, it is inappropriate to regard them as isolated when American police kill so many more civilians—both objectively and relatively—than police in other parts of the world. See Cheatham & Maizland, *supra* note 204.

²⁷⁶ See Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 203–04.

²⁷⁷ Even if widespread outrage were not morally justifiable, its mere existence would carry normative significance. Under the framework provided by strong virtue jurisprudence, however, police misconduct is distinctively bad when compared to analogous forms of misconduct by civilians.

²⁷⁸ See, e.g., Baughman, *supra* note 88, at 104–11.

²⁷⁹ See *supra* II.B.ii.

policing because it fits cleanly within the narrowest and most basic expectations for the contemporary role of police.²⁸⁰

Evidence-based policing scholarship primarily focuses here,²⁸¹ as do many legal scholars.²⁸² Thus, when Barry Friedman calls for the disaggregation of police functions, his argument rests substantially on concerns of this sort.²⁸³ And when Tracey Meares advocates for the importance of building the perception of police legitimacy, her stated objective is similar.²⁸⁴ Certain critiques of racial biases in policing also reflect concerns for the safety of those pockets of the community that disproportionately bear the risk of physical harm at the hands of police.²⁸⁵

Literature on the impediments to reform—especially the power of police unions—often contends with the structural axis. For instance, when Benjamin Levin explores the defiance of police unions in the face of calls for accountability and reform, his work explores the structural relationship between police and their communities.²⁸⁶ A similar concern appears to motivate Catherine L. Fisk and L. Song Richardson in proposing to modify the internal architecture of police unions.²⁸⁷ Jocelyn Simonson’s recent work about shifting power from police to communities also substantially implicates the structural axis.²⁸⁸

Because policing scholars often obscure their underlying moral commitments, however, they engage less clearly and comprehensively with moral harms, and thus with the coercive, expressive, and modeling axes.²⁸⁹ I noted some limited exceptions

²⁸⁰ See, e.g., Thomson-DeVeaux et al., *supra* note 11; Ray, *supra* note 11. Police accept this framing as well. See N.Y.C. POLICE DEP’T, *supra* note 78.

²⁸¹ See, e.g., Lum, *supra* note 3, at 19; Lawrence W. Sherman, *Evidence-Based Policing and Fatal Police Shootings: Promise, Problems, and Prospects*, 687 ANNALS AM. ACAD. POL. & SOC. SCI. 8, 19 (2020), <https://journals.sagepub.com/doi/pdf/10.1177/0002716220902073>.

²⁸² See Baughman, *supra* note 88, at 54; Stoughton, *supra* note 1, at 2183.

²⁸³ See Friedman, *Policing Function*, *supra* note 1, at 979.

²⁸⁴ See Meares, *supra* note 1.

²⁸⁵ See, e.g., Friedman, *Policing Function*, *supra* note 1, at 925–26.

²⁸⁶ See Levin, *supra* note 1.

²⁸⁷ See Fisk & Richardson, *supra* note 1.

²⁸⁸ See Simonson, *supra* note 1.

²⁸⁹ Some scholars appear to recognize moral harms but struggle to characterize them appropriately. For instance, Kramer and Remster describe a range of non-violent policing harms as “slow violence” in the

above,²⁹⁰ but it is worth revisiting those exceptions with the preceding analysis in place. Monica Bell's work on legal estrangement arguably interacts with the expressive and modeling axes, though not in an explicitly virtue-centered way. She explores the link between policing and what she calls "legal estrangement," a concept that encompasses "legal cynicism" within over-targeted communities about the functions and promises of the law.²⁹¹ Adopting the virtues as a framework only heightens the normative force behind Bell's conclusions. Similarly, although Simonson's "power lens" directly implicates the structural axis, the considerations that push her to advocate for shifting power toward over-policed communities—the reparative, anti-subordination, and democratic benefits of doing so²⁹²—speak powerfully to the expressive function of different configurations of police power.²⁹³

B. *The Revelatory Power of Virtue Analysis*

By uncovering the tendency of scholars to focus on only part of the picture, virtue analysis reveals the importance of certain underappreciated elements of policing practices, especially those that bear the more elusive moral harms addressed by the final three axes. More specifically, reform advocates should not lose sight of the conditioning effect of the countless commands that police issue to civilians and the expressive and modeling power of the numerous but anecdotal cases of the most egregious police misconduct that trigger media coverage and protests.

Policing commands acquire special significance under strong virtue jurisprudence because they collectively provide for the most overt form of virtue (and vice) cultivation engaged in by police. Reform efforts therefore need to contend with the nature of police-civilian interaction more generally. It is not merely inappropriate as a structural matter for public servants to bully or demean members of the public; that conduct also undermines a key moral function of the law in a well-

absence of a moral vocabulary for capturing the corrosive effects of racial disparities in law enforcement. *See generally* Kramer & Remster, *supra* note 103.

²⁹⁰ *See supra* note 4.

²⁹¹ Bell, *Legal Estrangement*, *supra* note 1, at 2086; *see also* Meares, *supra* note 1, at 1359–60.

²⁹² *See supra* note 4.

²⁹³ It is plausible that multiple moral frameworks could account for Simonson's premises, but they would have to do so in different ways. The virtues offer a scaffolding for Simonson's position that would take reparative, antisubordination, and democratic considerations seriously based on their implications for the virtue-centered flourishing of different subgroups within the community.

calibrated legal system. This is a plausible result that should align with the unarticulated intuitions of many scholars and advocates working on policing.

Similarly, as the public increasingly responds more forcefully to individual cases of police brutality, it has become important to be able to explain the resonance of these cases. Absent some conception of the moral harms that flow from such incidents, it can be difficult to marshal these examples as evidence for the need for specific reforms above and beyond relying on them as outrageous anecdotes.²⁹⁴ Virtue analysis explains the meaning of these cases: they do more than supply scattered evidence of the need to address the security axis, where some might dismiss them as bearing questionable statistical significance. Virtue analysis allows us to posit that such cases—and police agencies' responses to them, which are often cruel in a most disturbing and calculated way²⁹⁵—reveal much about the power of the police to express or model virtue and vice.

Indeed, in revealing these underappreciated implications of policing practices, the virtues make the case for themselves as a particularly promising framework. Virtue jurisprudence offers a plainspoken account of these moral harms: policing, perversely and all too frequently, involves state-sanctioned immorality that also makes civilians morally worse people. Part of what makes police misconduct galling is precisely the vice it expresses and models. This compelling conclusion helps explain widespread outrage about American policing.

C. *The Justificatory Power of Virtue Analysis*

Third, the foregoing analysis helps to justify the scholarly focus on certain issues, such as racist or brutal policing, because the axes allow us to refract these phenomena and reveal the multifaceted nature of what previously seemed like one-dimensional critiques. For example, police brutality deserves its place at the heart of reform efforts because it directly undermines essential preconditions to human flourishing and causes the precise harms that police agencies supposedly serve to prevent. But it also imposes heavy moral harms, including by conditioning civilians into servility.

Racial biases also belong at the core of police-reform conversations; they have layered effects that seriously implicate all five axes. The traditional impulse to analyze racial bias along the security axis is not entirely misplaced because such

²⁹⁴ Many scholars rely on egregious cases as animating examples to launch papers on policing. *See, e.g.*, Hing, *supra* note 10, at 560; Sinha, *Virtuous Law-Breaking*, *supra* note 25, at 203–04.

²⁹⁵ *See infra* Section IV.D.

biases result in communities of color disproportionately suffering health- and safety-related harms at the hands of police.²⁹⁶ But racial biases also acutely compound historical, structural disadvantages that have persistently harmed those very communities. These biases also have morally corrosive effects. They manifest, *inter alia*, in imbalances in the application of coercive methods to communities of color, cultivating distinctive and harmful attitudes among their members. They also express the state's acceptance of the subordinate status of communities of color and ensure that officers model vice to the populace as a whole, normalizing a tolerance for racial bias among civilians.²⁹⁷

D. *The Normative Power of Virtue Analysis*

Finally, and most importantly, the virtues shift the conversation toward the moral level where so much disagreement about policing begins, and they do so with significant normative force. The account provided above springs from a cohesive and venerable theoretical base. More specifically, three thin, plausible, and interrelated commitments about the role of the law in a virtue-centered society bring into focus five dimensions of police influence on civilian flourishing. In turn, we have selected an uncontroversial moral assumption to pair with each of those dimensions to gauge the collective deficiencies of American policing. We need not grasp at—and, therefore, need not seek to justify—independent moral considerations to explain our concerns on an ad hoc basis. Ostensibly disparate worries about racism, brutality, legitimacy, trust, accountability, discipline, collective bargaining, and more all find theoretical support in the same place. Indeed, as we noted above, virtue jurisprudence even provides the lens through which we can refract these concerns to appreciate their multiple dimensions.²⁹⁸

Having identified our moral premises, we are positioned to derive substantive guidance on the objectives of reform. First, by privileging the interests and the

²⁹⁶ As some have observed, prejudiced policing also undermines the efficacy of police along the security axis by generating resistance to cooperation among disadvantaged communities. See Bell, *Legal Estrangement*, *supra* note 1, at 2059.

²⁹⁷ Notably, reform proposals also cut across multiple axes, sometimes in complex ways unnoticed by their advocates. For instance, defenders of body cameras—which are designed to record police behavior for later review—argue they may reduce police brutality by enhancing accountability. Lum, *supra* note 3, at 21. If cameras have the intended effect, they might also improve police performance along the coercive axis as well. Body cameras may also implicate the structural axis, depending (for example) on whether civilians are entitled to access the footage. Yet reliance on body cameras also tacitly concedes that too many officers have abused their authority and that, unless they are closely watched, they cannot be trusted to interact responsibly with their communities. That concession, amply supported though it is, has ramifications for the expressive and modeling axes.

²⁹⁸ See *supra* Section IV.C.

collective preferences of the communities served by police, the structural axis underscores the importance of reforms aimed at improving transparency. Communities cannot properly assess the efficacy of police in sustaining their flourishing without proper data—how successful police are at solving and preventing crime, how and when they use force, how they discipline their members, and so forth. Reforms aimed at promoting transparency are therefore distinctive. For similar structural reasons, it is also appropriate for communities to be able to call officers to account. Responsiveness to community concerns, especially in a context where policing demonstrably falls short of supporting civilian flourishing, simply reflects the instrumental role of police in a democratic society.

Second, and more broadly, the routine failure of police to meet even the lowest meaningful standard on each of the five axes points to the need for sweeping reforms or even abolition—changes that could address not just the deficits of police performance on the security axis, but their enduring structural and moral deficiencies as well.²⁹⁹ That means more than simply cutting back the scope of police duties or weakening their tools for resisting change, but reducing their coercive power and their cultural and moral significance to curb their capacity to cultivate, model, and express vice on behalf of the state.

We can back our way into a similar conclusion via weak virtue jurisprudence. Above, we identified a reasonably conservative battery of qualities that a virtuous police officer would consistently manifest, including benevolence, courage, justice, intelligence, integrity, humility, and lawfulness. This is a perfectly fair list of demands from communities that entrust the police with such power and discretion. But it is also a long list, a difficult list for hundreds of thousands of officers to master and manifest consistently, often under duress, and especially when they are routinely

²⁹⁹ There are other reasons to think that substantial changes will be necessary. For one, the patchwork of limited reforms enacted in recent years has done little to improve the performance of police on the security axis. Most significantly, the rate at which American police kill civilians appears to be increasing. *See supra* note 11. Additionally, evidence on the efficacy of measures, like body cameras for reducing non-lethal force, is mixed at best. Norwood, *supra* note 95.

Further, just as police have the power to model virtue and vice, so do other arms of the state. When government officials undertake serious efforts at reforming problematic policing practices, they express their commitment to equality, and they model a form of virtue by reflecting a responsiveness to the inequities, violence and other manifest deficiencies of the current configuration of police agencies. By contrast, ducking the issue or continuing to nibble ineffectually around the edges models vice and expresses official indifference to the plight of communities of color and civilians who consistently experience state-sanctioned fear and violence.

called upon to address issues for which they may be poorly trained.³⁰⁰ Put another way, what civilians should be able to expect of the armed agents of the state as a theoretical matter is also, plainly, too much to ask as a practical matter. The response must be to close the gap between what civilians are entitled to demand and what police provide. Increasing the capacities of the police—for example, through modified training—has thus far proved unavailing, so we must instead seriously consider significantly reducing the powers and prominence of police.³⁰¹

We might characterize the reform objective here as *humbling the police* because the most alarming moral indicator of the need for reform is a specific form of arrogance that afflicts police agencies. That arrogance is most evident in the wake of various policing failures, both large and small. Some cases of police misconduct reflect egregious decisions by individual officers while others result from genuine but understandable errors of judgment made under difficult circumstances.³⁰² The latter may follow from relatively minor flaws of character—or even just bad luck—magnified in significance by the stakes of an officer getting it wrong. But whether the underlying failing is grave or venial, police agencies tend to compound those errors by displaying an aggressive and defiant face to the communities they have let down.

For example, it is common for police unions to issue inflammatory statements after their members erroneously kill civilians, often with the manifest purpose of trolling the families of their victims. After Cleveland police shot and killed twelve-

³⁰⁰ Friedman, *Policing Function*, *supra* note 1, at 962.

³⁰¹ The foregoing analysis suggests that the alternative—maintaining the prominence of police but making them “better”—is much more difficult than some might hope. Even if we focus primarily on improving police performance on the security axis, and even if we set aside budgetary constraints for the sake of argument, the path forward would be unclear. See Barry Friedman, *We Spend \$100 Billion on Policing. We Have No Idea How It Works.*, WASH. POST (Mar. 10, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/03/10/we-spend-100-billion-on-policing-we-have-no-idea-what-works/#click=https://t.co/SwpGG7LuIY>. But identifying the structural and moral implications of policing further complicates efforts to throw money at the problem. For one, enriching police agencies will likely give them even greater power to resist civilian control. Thus, even if more money helped improve the performance of police on the security axis, it would likely harm their performance on the structural axis. Additionally, it would take more than money to eradicate the cultural problems within law enforcement agencies that cause so much moral harm.

³⁰² Of course, police arrogance or misplaced perceptions of entitlement often anchor these egregious cases in the first instance as well. For example, in January of 2023, police in Memphis brutally beat Tyre Nichols to death at least in part “for perceived disrespect or disobedience.” See Stein et al., *supra* note 165.

year-old Tamir Rice—who was playing with a toy gun in the park³⁰³—Rice’s family sued the city.³⁰⁴ When the family settled the suit, the president of the local police union issued the following statement: “[W]e can only hope the Rice family and their attorneys will use a portion of this settlement to help educate the youth of Cleveland in the dangers associated with the mishandling of both real and facsimile firearms.”³⁰⁵ The same union later raffled a handgun to raise money for an officer accused of fatally shooting an unarmed teenager.³⁰⁶

It is not only police unions that double down aggressively after police make mistakes or engage in misconduct. Police in Ferguson, Missouri arrested the wrong man, and instead of releasing him, badly beat him and then charged him with destruction of property for bleeding on their uniforms.³⁰⁷ Officers in Los Angeles “frequently harass the families of people they have killed, including taunting them at vigils, parking outside their homes, and following them and pulling them over for no reason.”³⁰⁸ Officers in Louisiana sought the incarceration of a law professor because he re-published a public video of the police strip-searching his clients (one of whom was a minor) during a traffic search.³⁰⁹ In other instances, police show a tendency to react sharply to minor discipline for manifestly inappropriate conduct.

³⁰³ Colleen Long, *Family Asks Feds to Reopen Case on 12-Year-Old Tamir Rice, Who Was Shot and Killed by Cleveland Police in 2014*, CHI. TRIB. (Apr. 16, 2021, 9:59 AM), <https://www.chicagotribune.com/nation-world/ct-aud-nw-tamir-rice-shooting-20210416-cnzwresbbfw7m5b7kt6hdqx2q-story.html> [https://perma.cc/2HKZ-AAB9].

³⁰⁴ Mitch Smith, *Tamir Rice’s Family to Receive \$6 Million From Cleveland*, N.Y. TIMES (Apr. 25, 2016), <https://www.nytimes.com/2016/04/26/us/tamir-rice-family-cleveland-settlement.html> [https://perma.cc/VQJ5-WUPA].

³⁰⁵ Eric Heisig, *Tamir Rice Settlement Should Help Educate Kids on Guns, Cleveland Police Union President Says*, CLEVELAND.COM (Apr. 25, 2016, 8:40 PM), https://www.cleveland.com/court-justice/2016/04/tamir_rice_settlement_should_h.html [https://perma.cc/9MZZ-XVB5].

³⁰⁶ *Cleveland Police Union to Raffle Gun in Fundraiser for Officer Accused of Shooting Teen*, FOX 8 (July 28, 2015, 5:44 PM), <https://fox8.com/news/cleveland-police-union-to-affle-gun-in-fundraiser-for-officer-accused-of-shooting-teen/> [https://perma.cc/VB78-FGF5].

³⁰⁷ Michael Daly, *The Day Ferguson Cops Were Caught in a Bloody Lie*, DAILY BEAST (Apr. 14, 2017, 3:07 PM), <https://www.thedailybeast.com/the-day-ferguson-cops-were-caught-in-a-bloody-lie> [https://perma.cc/K65C-KJY3].

³⁰⁸ Sam Levin, *‘We’re Terrorized’: LA Sheriffs Frequently Harass Families of People They Kill, Says Report*, THE GUARDIAN (May 4, 2021, 5:07 PM), <https://amp.theguardian.com/us-news/2021/may/04/los-angeles-sheriffs-harass-families-of-victims-report?> [https://perma.cc/RPA3-9EL8].

³⁰⁹ Hassan Kanu, *Police Crusade to Jail Law Prof over Video Release Reflects ‘Culture of Impunity,’* REUTERS (Jan. 13, 2022), <https://www.reuters.com/legal/government/police-crusade-jail-law-prof-over-video-release-reflects-culture-impunity-2022-01-13/> [https://perma.cc/NSB7-KAUV].

After a pair of officers in Buffalo were captured on video pushing an older civilian to the ground and leaving him to lie unconscious on the pavement, bleeding from his head,³¹⁰ the two were suspended.³¹¹ In response, fifty-seven officers—the entire Emergency Response Team—resigned in protest.³¹²

This sort of conduct is quite simply indefensible. We cannot chalk it up to snap judgments made urgently under difficult circumstances. One might explain it—though certainly not justify it—by appeal to a misdirected sense of loyalty that develops among officers and pits them inappropriately against civilians. But it reflects a higher-order or meta-arrogance that compounds misconduct and insulates police from apologizing or even explaining themselves to the communities they purport to serve.³¹³

Notably, this arrogance poisons all five axes. Police have demonstrated the power and inclination to assert their self-interest over the interests of civilians, even as they frequently harm community health and safety, cultivate vice via inappropriate retail commands, express poisonous views on behalf of the state, and model vicious dispositions. Yet police groups are frequently unapologetic for these deficiencies, forcefully resisting change, and widely refusing to acknowledge their shortcomings. That attitude amplifies their misconduct in the most morally egregious ways. In short, police are sub-optimally calibrated as a tool to promote civilian well-being, yet too many of them simply do not care. Civilians thus need to humble the police.

There are at least two salient and related dimensions to this injunction. The first is attitudinal. Police agencies must be compelled to internalize their demerits, and to justify their power and performance, in earnest, to the civilians they serve. The pressure to do so will only arise if civilians adopt sufficiently deep and widespread skepticism of the police.³¹⁴ A more comprehensive tally of the harms of policing,

³¹⁰ Neil Vigdor et al., *Buffalo Police Officers Suspended After Shoving 75-Year-Old Protester*, N.Y. TIMES (Feb. 23, 2021), <https://www.nytimes.com/2020/06/05/us/buffalo-police-shove-protester-unrest.html> [https://perma.cc/8KVC-ATQN] (publishing video of the incident).

³¹¹ Scheiber et al., *supra* note 158.

³¹² *Id.*

³¹³ See generally THOMAS HURKA, VIRTUE, VICE, AND VALUE (2001) (arguing that attitudes of inappropriate valence toward goods and evils in the world constitute vice).

³¹⁴ This explains one important contribution of calls for abolition. Even if efforts at abolition are ultimately unavailing, abolitionist arguments demand justification of the status quo from their opponents. By working from the assumption of the necessity for a radical reconfiguration of police agencies, abolitionist arguments sidestep the heavy institutional inertia that facilitates societal acceptance of oppressive policing practices.

such as the one offered in this Article, may help to nudge the needle in the proper direction. More helpful still would be improved media coverage of police violence³¹⁵ and a greater focus on inculcating skepticism of police in the richer, whiter pockets of communities that have had less occasion to confront the breadth of harms imposed by our police agencies.³¹⁶

The second dimension of humbling the police encompasses practical changes to the configuration of police power. Which sorts of reforms can address the structural, pre-conditional, and moral harms identified above? That question is complex and warrants its own dedicated treatment, but we can draw a few preliminary conclusions. The practical thrust of humbling the police involves reducing or eliminating the power of police to cause harm along so many axes. That means significantly shrinking the power and profile of police agencies, if not abolishing them altogether. Narrowing or disaggregating the role of police may offer a meaningful start because it could facilitate a reduction in their importance and influence.³¹⁷ In fact, evidence suggests officers will welcome at least a partial

³¹⁵ There is a tendency in media coverage of police violence to do the exact opposite of what is required on this front—to use passive voice or other semantic constructions to obscure the responsibility of police for civilian killings, or even to place the agency on the civilian victims themselves. This phenomenon is particularly pronounced in headlines. See, e.g., Jill Cowan et al., *Officer Whose Bullet Killed a 14-Year-Old Girl Wanted to 'Change' the Police*, N.Y. TIMES (Dec. 31, 2021), <https://www.nytimes.com/2021/12/30/us/los-angeles-police-burlington-shooting-william-dorsey-jones.html?smtyp=cur&smid=tw-nytimes> [<https://perma.cc/S6EM-2LBQ>]; Jill Cowan & Giulia Heyward, *Teen Who Sought New Life Found Death at Hands of the Police, Father Says*, N.Y. TIMES (Dec. 30, 2021), <https://www.nytimes.com/2021/12/28/us/la-police-shooting-valentina-orellana-peralta.html> [<https://perma.cc/YJS8-WNRT>]. Some refer to versions of this linguistic tic—phrasing such as “mistakes were made”—as the “past exonerative tense.” John M. Broder, *Familiar Fallback for Officials: 'Mistakes Were Made,'* N.Y. TIMES (Mar. 4, 2007), <https://www.nytimes.com/2007/03/14/washington/14mistakes.html> [<https://perma.cc/CK8A-RWB9>]. The use of the past exonerative tense, or related exculpatory language, is distinctly unhelpful in compelling police to confront their own role in undermining civilian flourishing.

³¹⁶ The widespread calls for police reform after the murder of George Floyd have largely dissipated. In fact, many politicians who promised to “defund the police” in 2020 increased police budgets in 2021. Char Adams, *Cities Vowed in 2020 to Cut Police Funding—But Budgets Expanded in 2021*, NBC NEWS (Dec. 28, 2021, 6:33 PM), <https://www.nbcnews.com/news/nbcblk/cities-vowed-2020-cut-police-funding-budgets-expanded-2021-rcna9864> [<https://perma.cc/MR6Z-6YDH>]. Notably, civilians of color remain more likely than whites to support defunding the police or other more drastic measures. See Kim Parker & Kiley Hurst, *Growing Share of Americans Say They Want More Spending on Police in Their Area*, PEW RSCH. CTR. (Oct. 26, 2021), <https://www.pewresearch.org/fact-tank/2021/10/26/growing-share-of-americans-say-they-want-more-spending-on-police-in-their-area/> [<https://perma.cc/47MU-4SU9>]; Michelle S. Phelps et al., “*We’re Still Dying Quicker Than We Can Effect Change*”: *#BlackLivesMatter and the Limits of 21st-Century Policing Reform*, 127 AM. J. SOCIO. 867 (2021).

³¹⁷ Friedman, *Policing Function*, *supra* note 1, at 926; HUM. RTS. WATCH, *supra* note 10.

reduction in their responsibilities—for example, to direct their efforts away from certain social problems and toward crime.³¹⁸ Defunding police, reducing their collective bargaining power, relying more on alternative community arrangements for security, or abolishing (and potentially partially reconstituting)³¹⁹ police agencies might all advance this goal.³²⁰ Compelling arguments may exist for each of these—or yet other—proposals, alone or in combination. Crucially, the virtues frame the requirements for making those arguments successfully.

Perhaps the biggest impediment to police reform or abolition is civilian fear of increased crime.³²¹ The foregoing analysis is not intended to provide a strategic guide to enacting changes so much as to provide a principled basis for identifying the proper objectives of reform. But the latter bears on the former. Skillfully deployed, a more comprehensive picture of the costs of American policing may help to shift momentum in favor of meaningful change. At minimum, tolerating vicious policing out of fear means acquiescing to subjugation, a massive strike against our collective character. We are entitled to better, and we are morally obliged to demand it.

CONCLUSION

The virtues provide clear and powerful guidance for untangling the complex interplay of harms and benefits that accompany policing. They outline a way forward on debates about police reform by underscoring the inescapable relevance of moral considerations and by explicitly empowering a more comprehensive conversation than traditional approaches to policing. Some scholars may nevertheless remain skeptical of the virtues, whether in general or as a device for analyzing policing. That skepticism itself stands to contribute to the debate, but only if properly surfaced and explored. Ultimately, police reform arguments are moral arguments, and it will be impossible to move the debate forward with clarity until contributors routinely identify and defend their moral assumptions.

³¹⁸ Meares, *supra* note 1, at 1365.

³¹⁹ The troubling history of American police agencies plausibly renders it impossible for those agencies to regain their requisite moral authority without being functionally and symbolically rebooted.

³²⁰ Each of these approaches could present distinctive configurations of tradeoffs that can be measured for their effects along the five axes. The axes thus supply a framework for comparing radically different approaches to police reform.

³²¹ See Paige E. Vaughn et al., *Mass Support for Proposals to Reshape Policing Depends on the Implications for Crime and Safety*, CRIMINOLOGY & PUB. POL'Y 125 (2022).

