

2019

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Recommended Citation

Tracey L. Meares, *Synthesizing Narratives of Policing and Making a Case for Policing as a Public Good*, 63 St. Louis U. L.J. (2019).

Available at: <https://scholarship.law.slu.edu/lj/vol63/iss4/3>

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SYNTHESIZING NARRATIVES OF POLICING AND MAKING A CASE FOR POLICING AS A PUBLIC GOOD

TRACEY L. MEARES*

INTRODUCTION

Since 2014, in what I will call the “New Reform Era,” many discussions of policing are dominated by two conceptions often juxtaposed against one another. Probably the dominant conception of policing offered from police officers and agencies is that it ought to be effective. By effective, they mean that policing’s primary goal should be to reduce crime or prevent it.¹ Folks interested in the project of police reform typically offer a different conception of the goal of policing—one that emphasizes lawfulness. Reformers often describe lawfulness in terms of commitments to constitutional law.² Of course, these two ideals need not describe competing visions. Yet, when one looks to the scholarly literature pertaining to these two topics, especially the criminological and legal literatures, it is easy to see the ways in which they *have* been and are portrayed to be in competition. In this short essay, I have two goals. First, I would like to offer an explanation for the competition between the two conceptions and to recount some earlier work in which I attempted to reconcile these two conceptions. Second, I would like to integrate an increasingly prominent idea—abolition—

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1. Note, of course, that the prevention goal could be more far reaching than the way police executives typically use that term with respect to what might be required from government to intervene in terms of coordination for social supports. For a particular progressive example of this approach, see MATTHEW WARD, W. MIDLANDS POLICE & CRIME COMM’R, STRATEGIC POLICING & CRIME REPORT, Apr. 4, 2017, <https://www.westmidlands-pcc.gov.uk/media/451199/07ii-SPCB-04-April-17-Standing-Up-for-Young-People-Part-2.pdf> [<https://perma.cc/2XVL-S2Q4>] (last visited Mar. 13, 2019).

2. There is no reason why lawful policing is required to be circumscribed only by constitutional law. There are many bodies of law that shape and regulate policing and could regulate it even if they do not now. See Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1865 (2015) (discussing the value of state legislation to authorize and constrain policing); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 785–87, 803 (2011) (discussing various bodies of law that circumscribe policing including international treaties, federal statutory law, state constitutions, statutes and regulations).

into this discussion and offer some thoughts on the ways in which setting these two ideals as oppositional complicates the possibility of abolitionist frameworks as productive for police *transformation*. In the process, I hope to assist a more general conversation about criminal justice reconceptualization.

I. POLICE EFFECTIVENESS V. POLICE LAWFULNESS

Begin with the idea of policing effectiveness. Being effective at crime reduction is congruent with how police agents think of themselves. If you ask a police officer what policing is for, he or she is likely to say, “The job of the police is to keep the public safe.” Many, including the police themselves, take that statement to mean that police ought to be effective “crime fighters.”³ This conception of policing has led to many negative consequences in terms of police management of the organization,⁴ workplace conditions for officers,⁵ and strife between agencies and the communities they serve.⁶

Lawfulness is another way in which scholars, policy-makers, and practitioners judge the good in policing. Of course, police as upholders of the law could be considered just an aspect of the police effectiveness vision of policing, but usually those who demand police lawfulness are not talking about police enforcing the criminal laws that a polity has adopted. Rather, they are more typically talking about police commitments to lawfulness, in word or deed, when carrying out the tasks of enforcing criminal law such as adherence to constitutional law, to police procedures or to other relevant state and municipal law.

3. See Ronald van Steden et al., *Overlapping Values, Mutual Prejudices Empirical Research into the Ethos of Police Officers and Private Security Guards*, 47 ADMIN. & SOC’Y. 220, 242–43 (2015); but see FORREST STUART, *DOWN, OUT, AND UNDER ARREST: POLICING AND EVERYDAY LIFE IN SKID ROW* (2016).

4. See Malcolm K. Sparrow, *Measuring Performance in a Modern Police Organization*, 3 PSYCHOSOCIOLOGICAL ISSUES HUM. RESOURCE MGMT. 1, 4–5 (2015) (offering the brilliant metaphor that running a policing agency is at least as difficult as flying a Boeing 767 and yet no one would fly a plane with reference to one gauge—altitude—but instead a pilot wants to know something about speed, pitch, yaw, roll and pressure, not to mention measures of conditions both outside of and inside of the plane).

5. See Saki Knafo, *A Black Police Officer’s Fight Against the N.Y.P.D.*, N. Y. TIMES, Feb. 18, 2016, <https://www.nytimes.com/2016/02/21/magazine/a-black-police-officers-fight-against-the-nypd.html> [<https://perma.cc/7H46-SYFU>] (last visited Oct. 27, 2018); Linda Duxbury & Michael Halinski, *It’s not all about guns and gangs: role overload as a source of stress for male and female police officers*, 28 POLICING & SOC’Y. 930, 931 (2018); Akiva M. Liberman et al., *Routine Occupational Stress and Psychological Distress in Police*, 25 POLICING INT. J. POLICE STRATEGIES & MGMT. 421, 423, 432 (2002).

6. See Tracey L. Meares, *The Path Forward: Improving the Dynamics of Police-Community Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1361–62, 1364–66 (2017); Tom R. Tyler et al., *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men’s Legal Socialization*, 11 J. EMPIRICAL LEGAL STUD. 751, 751–52, 757, 771, 776 (2014).

Constitutional law looms large here for many reasons. One is about legal socialization. Lay understandings of legality and the role of legal regulation is often associated with references to constitutionality.⁷ Here is a quick example to motivate the insight regarding everyday legal socialization: Has any one of you ever experienced a conversation with a child in which the child says, “I refuse to tell you what happened because it might incriminate me,” or, “I have a First Amendment right to speak in this house?” In either case, it does not make much sense to say to the child that your house is not the state because from their perspective, it is. A second reason has to do with the reality of police regulation in this country. Unlike the U.K., the U.S. does not have an auditing body at the federal level that ensures the comportment of policing agencies of generally applicable legislation.⁸ Instead, in the U.S., the federal government intervenes into the operation of state and municipal criminal justice agencies only in cases of constitutional violation, and even then, only when violations at the agency level are pervasive and systematic (and then *only* when the political agenda of the Attorney General is in alignment with such an intervention).⁹ The bottom line is that relegating police lawfulness to alignment with constitutional law is a very weak notion of police lawfulness.

While I have set lawfulness and effectiveness in opposition to one another, let us dispense at the outset with the idea that these two notions must inevitably collide. My claim is a positive and not a normative one in that I observe in the world that these two ideas often are pitted against one another. One need only read pronouncements from former Attorney General Jeff Sessions to see this point,¹⁰ but, and much more seriously, one can also observe the opposition in the scholarly literature on policing.

The conventional wisdom, at least from the 1960s until the mid-1990s in the United States, was that police had very little impact on crime rates following the 1967 ground-breaking report of the President’s Commission on Law Enforcement and Administration of Justice: *The Challenge of Crime in a Free*

7. See, e.g., Laura Beth Nielsen, *Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment*, 34 L. SOC. REV. 1055, 1074, 1087–88 (2000) (discussing regulation of public speech); see generally PATRICIA EWICK & SUSAN S. SILBEY, *THE COMMON PLACE OF LAW: STORIES FROM EVERYDAY LIFE* (1998).

8. Tim Newburn, “*Tough on Crime*”: *Penal Policy in England and Wales*, 36 CRIME & JUST. 425, 449 (2007) (stating that “a dedicated unit was created within the Home Office in 2003 to promote local activism, and considerable further legislation (the Criminal Justice and Court Services Act 2000, the Criminal Justice and Police Act 2001, the Police Reform Act 2002, and, in particular, the Anti-social Behaviour Act 2003) has added a raft of additional powers that the authorities have been encouraged to use vigorously.”).

9. See Law Enforcement Misconduct Statute 42 U.S.C. § 14141, (2012).

10. *Trump Administration to Oppose Chicago Police Reform Plan: Sessions*, REUTERS, <https://www.reuters.com/article/us-usa-police-chicago/trump-administration-to-oppose-chicago-police-reform-plan-sessions-idUSKCN1MK03Z> [<https://perma.cc/N379-BBGW>] (last visited Oct. 27, 2018).

Society,¹¹ which detailed the relationship between so-called root causes and crime. Thought leaders at the vanguard of the professionalism era in policing thought that police should focus on other tasks such as bringing offenders to justice regardless of whether such work affected the crime rate, or peacekeeping tasks such as intervening in domestic disputes, or providing help and assistance to those in need, or even traffic control. Note that none of these roles casts police officers in the now prevailing image of crime fighters in a war against crime—and the militaristic consequences of that imagery. But scholars, notably James Q. Wilson, pushed policing executives and scholars to think of policing differently and, in particular, to make crime reduction a primary goal of policing.¹² Empirical work devoted to demonstrating connections between policing strategies and crime followed.¹³ The criminological research supporting police effectiveness at crime reduction, with its focus on the econometrics of tactics and strategies to reduce crime, has largely ignored the lawfulness or unlawfulness of the police action to achieve crime reduction. One might occasionally find a rare social scientist who points to police lawbreaking as a potential “cost” to balance against the “benefit” of crime-reducing policing.¹⁴ But for the most part, social scientists hone in on one outcome of police strategy and tactics—the texts to which various approaches do or do not impact crime—without thinking about other impacts. This empirical approach presumes that policing takes place lawfully.

The myopia of the empirics camp allowed scholars concerned with the lawfulness of police action to write as if police effectiveness largely was irrelevant to their own work. Consider the words of Judge Shira Scheindlin, the trial judge who presided over the New York City Stop, Question and Frisk case, *Floyd et al v. New York City*.¹⁵ In her *Floyd* opinion, Judge Scheindlin cabined off the relevance of law enforcement effectiveness from her assessment of the constitutional violations in question. When the defendants attempted to present evidence on the effectiveness of Stop, Question and Frisk in reducing crime in New York City, the judge refused to allow it, stating, “[T]his case is not about the effectiveness of stop and frisk in deterring or combating crime. This Court’s

11. PRESIDENT’S COMM’N ON LAW ENF’T & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 17, 25, 35–36, 40, 57, 96, 169, 248, 262, 273–275, 280, 302 (1968).

12. See James Q. Wilson & Barbara Boland, *The Effect of the Police on Crime*, 12 LAW & SOC’Y. REV. 367, 383 (1978) (first scholarly article urging police to use “Terry” stops as a method to crime reduction); James Q. Wilson & Barbara Boland, *The Effects of the Police on Crime: A Response to Jacob and Rich*, 16 LAW & SOC’Y. REV. 163, 169 (1981); Robert J. Sampson & Jacqueline Cohen, *Deterrent Effects of the Police on Crime: A Replication and Theoretical Extension*, 22 LAW & SOC’Y. REV. 163, 166, 182 (1988).

13. See Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10 ANN. REV. L. & SOC. SCI. 335, 348–49 (2014).

14. See, e.g., Ralph B. Taylor & Brian A. Lawton, *An integrated contextual model of confidence in local police*, 15 POLICE Q. 414, 432 (2012).

15. *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

mandate is solely to judge the constitutionality of police behaviour, not its effectiveness as a law . . . “The enshrinement of constitutional rights necessarily takes certain policy choices off the table.”¹⁶

According to this view, requiring police to adhere to rules that limit their discretion *always* results in more liberty for individuals. If there is more crime that results from constraints on police discretion, then that consequence is simply a price we pay for more freedom in society. Note that this view ignores the possibility that living a life with lower levels of crime—especially violent crime—could also be freedom enhancing.¹⁷ In a world in which we think police play some role in the production of public safety and also believe that their role should importantly be constrained by legal dictates, the idea that lawfulness should always come at the cost of increased safety or vice versa is a serious problem. Such a framework suggests that simultaneous attention to lawfulness and effectiveness is impossible.

In other work, I have outlined a vision of policing that is attentive to both lawfulness and effectiveness on behalf of police, but also captures important dimensions of police activities relevant to compliance by lay people.¹⁸ I have argued that grounding policing in public legitimacy rather than deterrence and utilizing the social psychological concept of legitimacy as an organizing principle for police work (rather than crime fighting) makes room for police effectiveness at crime reduction as well as making salient practices that communities care about.¹⁹ Attention to the procedural justice of policing problematizes the ease with which policing organizations can point to public safety (defined as police activities designed to reduce crime) as the primary justification for their existence and behaviors.

The body of work on procedural justice also underscores the way in which focusing only on lawfulness of police behavior—especially lawfulness expressed solely in constitutional terms—can miss important factors that the public cares about when evaluating police. More specifically, constitutional law, the primary code of police regulation, does not emphasize the importance of quality of police treatment and does not discuss the impact of police work upon dignity, identity, or status—all of which are key aspects of procedural justice. This is not to say that constitutional (or other) law *could* focus on these things. Importantly, though, constitutional law does *not* focus on these things. The

16. *Id.* at 556 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008)).

17. See PATRICK SHARKEY, *UNEASY PEACE: THE GREAT CRIME DECLINE, THE RENEWAL OF CITY LIFE, AND THE NEXT WAR ON VIOLENCE* xviii–xix (1 edition ed. 2018) (explaining the benefits formerly high crime communities enjoy when violent crime decreases).

18. See Tracey L. Meares, *Policing in the 21st Century: The Importance of Public Security Policing the Police: Keynote Address*, 2016 UNIV. CHI. LEGAL F. 1–12 (2016); Tracey L. Meares, *Good Cop: Knowing the Difference between Lawful or Effective Policing and Rightful Policing—And Why It Matters* 54 WM. & MARY L. REV. 1865, 1875 (2012).

19. See *id.*

jurisprudence of constitutional policing, especially as prescribed by the Fourth Amendment, is focused on the justifications for an officer's actions when deciding whether to interact with someone as opposed to addressing the quality of the police officer's treatment of an individual and how that treatment impacts a person's dignity, identity, or status. Tom Tyler, Jacob Gardner, and I have conducted a study in which we show that when lay people evaluate police behavior they tend to focus on factors that comprise the four components of procedural justice as opposed to aspects of constitutionality.²⁰ This does not mean that people do not care about legality; rather, we show that people's understandings of the legality of police behavior is filtered through their perceptions of the procedural justice of police action.²¹

Critics of the procedural justice focused notion of legitimacy have worried about how policing organizations use the research. Their arguments take various forms, but their common root suggests that because procedural justice is focused on the public's perception of legal authorities, those authorities may engage in strategies to enhance *perception* without really changing the *substance* of what they do or the ways they think about the people they police. In short, a focus on legitimacy might lead to fake police behavior.²² Another worry is that agencies simply do not have the capacity to reach the goals that the theory specifies, and, since police are an armed and often present danger to those with whom they interact, it is risky to wait until things get better. Advocates of this view urge us to "reduce the footprint of police."²³ Their concerns taken together are, I think, an entry point to discuss abolition.

II. THE PRODUCTIVITY OF ABOLITIONIST FRAMEWORKS FOR POLICE TRANSFORMATION

In an essay for the *Boston Review* published about a year ago, I argued that police must be abolished before policing can be transformed.²⁴ In the essay, I argue that critics of police abolition caricature the abolitionists' view when they assume that police abolition simply means no police. That attack is unsurprising given that it comes from those who are committed to the notion that crime reduction by police is self-justifying—an approach too many effectiveness

20. See Tracey L. Meares et. al., *Lawful Or Fair? How Cops and Laypeople Perceive Good Policing Criminal Law*, 105 J. CRIM. L. & CRIMINOLOGY 297, 324 (2015).

21. See *id.* at 332.

22. See PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 197, 198 (2017).

23. See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement Essay*, 126 YALE L. J. 2054, 2149 (2016).

24. Tracy Meares, *Policing: A Public Good Gone Bad*, BOS. REV., Aug. 1, 2017, <https://bostonreview.net/law-justice/tracy-l-meares-policing-public-good-gone-bad> [<https://perma.cc/X2TU-GDEE>] (last visited Oct. 27, 2018).

proponents take. This argument is a straw man.²⁵ Obviously, residents of cities such as Chicago, Milwaukee, or Baltimore (where I serve on the Consent Decree Monitoring Team) are struggling with unacceptably high levels of violence and care about reducing it. In Chicago, for example, protests against police violence shut down Lake Shore Drive, and protests against the failure of city government to address high levels of violence in some neighborhoods also shut down the Dan Ryan Expressway, which is the main city highway running south through Chicago.²⁶ In my *Boston Review* essay I quote Mariame Kaba, “For me prison abolition is two things: It’s the complete and utter dismantling of prison and policing and surveillance as they currently exist within our culture. And it’s also the building up of new ways of intersecting and new ways of relating with each other.”²⁷

Of course, residents of the cities I just named, and many more, care about being safe—from each other and from police excess. Reducing the footprint of policing is an obvious solution to the latter problem, but it is not clear that it addresses the former.

A great deal of the energy around criminal justice abolition is understandably focused on the dismantling of criminal justice institutions. There is a lot of too much within policing—too much stopping, too much frisking, too much police attention to low-level violations, and too many activities classified as violations.²⁸ And there is too much police violence against citizens in too many places. All of this is true even granting the great success of the crime decline we have seen over the last few decades in which policing has no doubt played a role.²⁹ The worry is that a focus on dismantling without a theory of the goal of building up puts us at risk of just reduction of the bad, which is something—something incredibly important—but it’s not enough.

Reduction of the bad is more humane, but it’s not a citizenship project. And I believe abolition is fundamentally a citizenship project.

My friend and colleague, Paul Butler, is working on a new project on abolition. The project involves applying criminal law concepts to

25. Dan Berger, *What Abolitionists Do*, JACOBIN, Aug. 24, 2017, <http://jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration> [<https://perma.cc/NCM8-U4Y7>] (last visited Oct. 27, 2018).

26. Todd Lighty, *Police arrest anti-violence protesters trying to march on Kennedy Expressway near O’Hare*, CHI. TRIB., Sept. 3, 2018, <https://www.chicagotribune.com/news/ctmet-kennedy-expressway-protest-chicago-20180904-story.html> [<https://perma.cc/V3C6-DVZA>] (last visited Jan. 18, 2019).

27. Meares, *supra* note 24.

28. Stephen Carter, *Law Puts Us All in Same Danger as Eric Garner*, BLOOMBERG, Dec. 4, 2014 <https://www.bloomberg.com/opinion/articles/2014-12-04/law-puts-us-all-in-same-danger-as-eric-garner> [<https://perma.cc/63GP-NBCG>] (last visited Oct. 28, 2018) (On this last point, consider my colleague, Stephen Carter’s admonition to his students, “Never to support a law you are not willing to kill to enforce”).

29. SHARKEY, *supra* note 17.

understandings of abolition. In describing the paper at a recent conference, Paul made a very important statement drawing on the great W.E.B. DuBois when he said something like abolition of slavery was never just about abolishing the legal category of enslaved people, it was also about the project of establishing citizenship for the formerly enslaved.³⁰ That is about dismantling, yes, but it is also about building up.

My argument is that policing is a project of citizenship and that conceptualizing it and carrying it out as a public good makes citizenship real. I wrote in the *Boston Review*,

When the public at large experiences the ‘good’ of policing only by concentrating the costs of producing that good on a small group—such as black people, and particularly black men—it is hard to say that the good is ‘good’ or even truly public. We need to create a kind of policing that we *all* can enjoy.³¹

Police transformation requires deep thinking about what it means to say that a public good is both public and good. History looms large in this effort. It has become increasingly common to point out the roots of American policing in nineteenth century slave patrols, and there are racial through-lines from enforcement of Jim Crow to today’s mass imprisonment of African Americans.³² It is also important to note historical and contemporary connections between policing and immigration control³³ as well as regulation of sexuality and gender presentation.³⁴ It is clear that a necessary first step to redeeming this public good is to find a new symbolic language for thinking about its role in society.

This is particularly crucial with regard to the role that police play in generating our understanding of ourselves as citizens given that police have served to enforce strict limits on who could enjoy the rights of citizenship. Police

30. See W. E. Burghardt Du Bois, *Reconstruction and its Benefits*, 15 AM. HIST. REV. 781, 788 (1910) (In which DuBois made the then controversial argument regarding the benefits of Reconstruction to the American Historical Association against the prevailing Dunning School, which promoted the idea that Reconstruction was a failure. He was roundly repudiated, and no African American was invited to speak to the AHA again until 1940. Today, of course, many of DuBois’s insights are taken for granted).

31. Meares, *supra* note 24.

32. Hubert Williams & Patrick V. Murphy, *Evolving Strategy of Police: A Minority View*, U.S. DEPT. JUST., <https://www.ncjrs.gov/pdffiles1/nij/121019.pdf> [<https://perma.cc/26Y7-VYFV>] (last visited Jan. 18, 2019); *Legal Scholar: Jim Crow Still Exists in America*, NPR, Jan. 16, 2012, <https://www.npr.org/2012/01/16/145175694/legal-scholar-jim-crow-still-exists-in-america> [<https://perma.cc/5XS9-VX56>] (last visited Jan. 28, 2019).

33. See KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* 4 (2010).

34. See Leslie J. Moran & Andrew N. Sharpe, *Violence, identity and policing: The Case of violence against transgender people*, 4 CRIM. JUST. 395, 396 (2004); ANDREA J. RITCHIE ET AL., *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* ix, xiv–xv, 127 (2017).

officers are state authorities who play a critical role in helping people to decipher their environment and where they fit in society. Criminologist Ian Loader and sociologist Aogán Mulcahy put it this way:

[Police are] an interpretive lens through which people make sense of, and give order to, their world . . . a vehicle that enables individuals and groups to make sense of their past, form judgments on the present, and project various imagined futures. As an institution intimately concerned with the viability of the state . . . policing remains closely tied to the maintenance of ontological security, the production of subjectivities, and the articulation of collective identities.

The project of coming up with this symbolic language for police transformation is a task we all must engage in together. It is a necessary part of the building up, and we must do it while we are engaged in the task of dismantling what we do now. And this process deserves theory. To make the argument more concrete, consider political theorist Bonnie Honig's recent essay entitled, *Public Things*.³⁵ Honig makes an argument about the importance of "pursuing in common objects of common desires." In the essay she is primarily concerned with the dangers of privatization, but the thrust of her argument is relevant to our work. Her worry is that by theorizing only about the demos—constitutions, proper procedures, commitments to formal equality, boundaries—the *subjects* of democracy, we lose sight of the *objects* of democracy.

The idea of a public thing prefigures a public good. We have to be committed to the public thing before we can work on symbolic language that creates the good. As Honig says, "Being shared or public means that they are sites of confrontation and encounter, enjoyment and conflict, and they are accessible to all."³⁶ As Honig and others note,³⁷ privatization undermines the public good, but I believe that narratives that cannot see the possibility of reconciling the possibility of assisting a community's residents in the task of addressing private predation while being scrupulously attentive to the dictates of the law also undermine our ability to work on the public good. The impossibility of reconciling these two ideas necessarily leads to the notion that it is better for the state to step back from what I believe to be its obligation to help citizens in the project of security.

The path to public security—the place where people can feel safe from both private predation and state excess—emphasizes the centrality of law to the police officer's task, not only in the sense that a police officer must carry out her duties lawfully, but also in the sense that a police officer ought to *understand* herself as a legal authority. As legal authorities, police officers play a critical

35. Bonnie Honig, *Public Things: Jonathan Lear's Radical Hope, Lars von Trier's Melancholia, and the Democratic Need*, 68 POL. RES. Q. 623, 624 (2015).

36. *Id.*

37. Ian Loader & Neil Walker, *Policing as a Public Good: Reconstituting the Connections between Policing and the State*, 5 THEORETICAL CRIMINOLOGY 9, 25 (2001).

role in conveying important information to members of the public about their role and status as citizens. The relationship that members of the public have with legal authorities is foundational to their understanding of themselves as citizens.³⁸ I want to suggest that a critical step in making policing a public thing is a commitment to thinking through not only how the work of policing is carried out, but also, and more importantly, in how it is structured and made accountable to the people the agency serves. And with a great deal of work, attention to history and acknowledgement of past and current wrongdoing, policing can become a public good.

The operational question is important here. How do we motivate this theory to make it real on the ground? Here are two points:

First, I think the theory of procedural justice is complimentary to Honig's discussion of public things. Procedural justice provides a way of understanding how the public things can be sites of what she calls "contestation and encounter." Our processes of creating and re-creating public things must be attentive to the ways in which the public comes to conclusions about fairness. Procedural justice provides a roadmap.³⁹

Second, current theorizing about public goods is helpful, but often unnecessarily restrictive in that conceptions focus on the problems of privatization—Honig is no exception.⁴⁰ Theorists occupy the political spectrum.⁴¹ Eli Lehrer, President of the R Street Institute, argues that public goods contribute to a sense of "national cohesion."⁴² I understand him to be arguing in favor of robust support for infrastructure broadly conceived. We probably agree on little else—in particular I disagree with his idea that public goods are inconsistent with and in opposition to social insurance spending because social insurance spending is supportive of a politics of rights while public good spending is not—⁴³ but this is a start.

38. Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 ANNALS. AM. ACAD. POL. & SOC. SCI. 159, 160 (2014).

39. Meares, *supra* note 6.

40. MICHAEL HARDT ET AL., *THE PRESIDENT'S HOUSE IS EMPTY: LOSING AND GAINING PUBLIC GOODS* (2017).

41. Eli Lehrer, *A Politics of Public Goods*, NAT'L AFFAIRS, <https://www.nationalaffairs.com/publications/detail/a-politics-of-public-goods> [<https://perma.cc/2QKM-JSHE>] (last visited Nov. 1, 2018).

42. *Id.*

43. A short rant: Lehrer's argument that Americans generally do love to help the poor has been patently falsified once we consider race. It has been racism that has driven both the decline in public trust and the switch from public goods to social insurance. The movement of black people into public spaces (public education, for example) has led conservatives to champion vouchers, charters, and "choice" while also vilifying "big government" overreach. I am also concerned that Lehrer does not view education as a public good (big tipoff). Any race blind approach is probably absurd given the fact that American politics clearly are aligned along racial lines on the questions

CONCLUSION

This conference was conceived, I think, as a step in the project of working toward a new model of shaping public good for the citizens of St. Louis forged from tragedy. As this work continues, I hope the organizers, participants, and residents of this City continue to seriously heed the call of “Moving Forward Through Ferguson,” because that work provides a critical foundation for us all to move forward.

that matter here. But I do agree with Lehrer that public goods are really healthy. If you can remove racism, we are all conservatives.

