

Challenges and Opportunities for Justice Reform after Minneapolis

Black Lives Matter protests in the wake of George Floyd's death in Minneapolis will soon enter a fourth week amid calls to Defund the Police led by activists and embraced by a growing number of elected officials. The killing of Mr. Floyd by former police officer Derek Chauvin was only the most recent example police brutality toward Black Americans. But the cruelty of his death, and the recent killing of Ahmaud Arbery by two white men who chased him in their truck, bring into stark relief the two pandemics ravaging America today: a virus that has killed over one hundred thousand Americans while decimating communities of color, and the 400-year scourge of racism that laid bare disparities in health, criminal justice and wealth inequality.

This exposed nerve inspired worldwide response from an intergenerational and interracial coalition- the force of which is impossible to ignore. Global outcry spurred swift public and private sectors responses. This week alone, NASCAR banned all Confederate flags from their events. And on Thursday, in response to the shooting death by Louisville Police of Breonna Taylor, the city council passed a ban on no-knock warrants. Meanwhile, Senator Rand Paul (R-KY) is sponsoring a bill to eliminate them nationally. Other municipalities and States are moving quickly to enact their own criminal justice reforms, while the House of Representatives, in an unprecedented show of support, promoted a package of bills meant to provide national guidelines for law enforcement. Challenges and opportunities lay ahead during this pivotal moment in our country.

On Monday June 8th, House Speaker Nancy Pelosi and the [Democratic majority presented a package of reforms](#) penned by the Congressional Black Caucus, House Judiciary Committee, and Senators Kamala Harris and Cory Booker. Among the key elements, the bill would ban chokeholds, create a National Police Misconduct Registry, incentivize racial bias training for officers, promote a 'duty to intervene', and set restrictions on the transfer of military-grade equipment to local law enforcement entities in an attempt to reduce further militarization of local police departments. Under the proposed legislation, federal uniformed police officers would be required to wear body cameras. Anti-lynching language was also included.

Locally, states like New York are taking a harder look at rules governing accountability and transparency. The New York City Police Department already bans chokeholds but the State now wants to attach criminal consequences for its use by making it a class C felony, punishable by up to 15 years in prison. Other bills designate the attorney general as an independent prosecutor for matters relating to the deaths of unarmed civilians caused by law enforcement, codifying in law an Executive Order previously signed by Governor Cuomo. Other proposals provide access to disciplinary records for police officers, firefighters or corrections officers without their written consent and another will reverse a 1976 statute known as Section 50-a originally enacted to exempt police officers from being cross-examined during criminal prosecutions. The [recent viral video of Amy Cooper calling 911](#) on a Black man in Central Park inspired another provision in the reform package that criminalizes false race-based 911 reports.

While these proposals are important, many consider them, low hanging fruit – that is, they’ve been introduced before but languished in legislative committees without support to pass. The Defund the Police campaign, therefore, is both a proxy for comprehensive action as well as a strong message to law enforcement agencies and elected officials that inaction is unacceptable. Truthfully, the *Defund* mantra is less about punitive budget cuts than a repurposing of those funds for services designed to reduce the need for police intervention.

Pelosi and presumptive Democratic nominee Joe Biden do not support the *Defund* campaign though both are clearly pushing substantive changes in criminal justice. Their objections could stem from the ease with which the overt message can be easily coopted and turned against Democrats this Fall. As expected, [President Trump and Republicans have already jumped on the Defund narrative](#) to say Democrats are soft on law and order. Despite the tactic, the President signaled he’s working on an Executive Order on policing while a handful of GOP Senators led by Tim Scott (G-SC), craft their own criminal justice bill.

The country’s current laser focus on justice reform notwithstanding, the push will encounter some headwinds. There are over 18,000 law enforcement agencies across the country suggesting that federal oversight and compliance will be difficult. Officers are street level bureaucrats who, according to researcher Michael Lipsky “interact directly with citizens in the course of their jobs and have substantial discretion in the execution of their work.”¹ Furthermore, police are encouraged to maintain authority on the street which, some argue, plays heavily into organizational culture that reinforces peer pressure and prevents second-guessing of colleagues in real time.²

Multiplicity of police departments poses challenges for more standardized training as well, particularly when it comes to inclusivity and diversity. [The NYPD boasts an intensive immersion program](#) aimed at multi-cultural education and pays a [Florida-based group over \\$4.5 million for implicit bias training](#). Whether other jurisdictions can or would support similar indicatives to train their recruits and current officers alike is unclear and perhaps financially untenable. Lack of consensus around use of specific tactics is also a hinderance without strong federal directives. For example, the neck restraint that killed George Floyd is used by other jurisdictions despite abundant, though some argue inconclusive, evidence that such tactics could cause serious injury and even death.

Furthermore, police unions may prove a formidable obstacle. To be clear, all unions have a mandate to protect and advocate for its members but the collective bargaining agreements governing law enforcement are notoriously complicated and create substantial impediments to discipline or

¹ LIPSKY, M. (1980). *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*. Russell Sage Foundation.

² Ianni, E. R. (1983). *Two Cultures of Policing: Street Cops and Management Cops*. Transaction Books.

termination of police officers. In fact law enforcement unions remain strong even as others across the country have lost membership. Their power and resources make it possible for them to wield substantial power in persuading legislators and executives to align with their interests. But so powerful is the video of George Floyd's death, New York City PBA President Pat Lynch, a fierce and unapologetic defender of police officers, surprisingly called it "murder". Whether he and other union leaders will be amenable to extensive modifications at the bargaining table remains to be seen.

There is reason for optimism. Organizations and political leaders in response to pressure, or perhaps in anticipation of it, are using their platforms to address diversity. Electoral trends and grassroots activism also provide a window of opportunity.

Unlike the older civil rights movements that produced several key leaders who engaged and negotiated with the political class, recent protests feature activism in towns and cities across the country under the broad banner of Black Lives Matter. The hyper-localized nature of their civic engagement narrows the focus to specific jurisdictions and toward elected and appointed actors who face real consequences to their election ambitions.

Also, Democrats and progressives already maintaining a resistance posture in response to Trump Administration policies, can use numerical advantages in governing bodies to respond to calls for action. Democratic victories in 2018 that flipped the House and several state and local legislatures, including the New York State Senate, provide an opportunity to dust off policy proposals that languished in committees for years without action.

There's also evidence that key populations are adding their voice to the debate. [A Brookings report of new polling](#) shows that white working class women, a key Trump constituency, feels increasingly disillusioned with the Administration, joining a growing number of white men who could vote with Democrats this year.

The graphic nature of the video showing George Floyd's death and other shootings of unarmed African Americans in recent weeks, sparked sudden outrage that has crossed political, racial and geographic boundaries. [An overwhelming number of Americans now believe the need for change](#) is more acute than ever. While state and local governments may be better positioned than Congress to affect change in the near term, the speed at which public and private institutions have signaled disapproval with the status quo is in itself remarkable and portend a transformative few months.

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