

Shadows of Doubt

Stereotypes, Crime, and the Pursuit of Justice

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USE OF FORCE

Using force is part of a police officer's job. In his influential book *The Functions of the Police in Modern Society*, the sociologist Egon Bittner calls the capacity to use force the core of the police role. After describing in detail a normal working day for a pair of modern urban officers, Bittner concludes:

Whatever the substance of the task at hand, whether it involves protection against an undesired imposition, caring for those who cannot care for themselves, attempting to solve a crime, helping to save a life, abating a nuisance, or settling an explosive dispute, police intervention means above all else making use of the capacity and authority to overpower resistance to an attempted solution in the native habitat of the problem. There can be no doubt that this feature of police work is uppermost in the minds of people who solicit police aid or direct attention of the police to problems, that persons against whom the police proceed have this feature in mind and conduct themselves accordingly, and that every conceivable police intervention projects the message that force may be, and may have to be, used to achieve a desired objective.¹

Bittner argues that “the role of the police is best understood as a mechanism for the distribution of non-negotiably coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies,” and that “police authorization to use force is essentially unrestricted.” There are restrictions on the use of lethal force, against

the use of force “to advance . . . own personal interest or the private interests of other persons,” and against frivolous or malicious use of force. But in 1970 Bittner found that these restrictions carried little weight because police had few guidelines on how to act and after-the-fact reviews of police actions were “exceedingly rare.”²

Word and Manner

Most police officers today, in most encounters, probably use this discretion responsibly. But in American history there have been some conspicuous exceptions to the responsible use of police force.

Extreme brutality by police against black civilians was once commonplace and routinized. In the South, the police used discretionary force to maintain a caste hierarchy as well as to enforce the law. Often, when the law would have protected black citizens, enforcing the law was a secondary goal.³ But whatever the police did, they did brutally. Gunnar Myrdal, in his 1944 study *An American Dilemma*, reported on the use of bodily punishment at the slightest sign of insubordination, as well as routine assaults on black arrestees and prisoners: “When once the beating habit is developed in a police department, it is, according to all experience, difficult to stop. It appeals to primitive sadistic impulses ordinarily held down by education and other social controls.”⁴

This violence was motivated, in part, by the “common belief” that blacks “respond only to violent methods.”⁵ This belief was reinforced by the fact that the only black civilians that a southern police officer encountered in the course of his working life were thought to be “criminals, prostitutes, and loiterers” or “stool pigeons” seeking immunity for petty crimes in order to provide information on more significant targets. These interactions with the public are “strongly selective and only magnify his prejudices,” with the result that “probably no group of whites in America have a lower opinion of the

Negro people and are more fixed in their view than Southern policemen.”⁶

In his 1963 *Letter from Birmingham Jail*, Martin Luther King Jr. explains that his campaign of direct action was motivated, in part, by the city’s “ugly record of brutality” against its black residents, including “grossly unjust treatment in the courts” and numerous “unsolved bombings” of homes and churches.⁷ The letter was addressed to a group of local clergymen who had urged restraint and praised the local police force for maintaining order without resorting to violence. On the latter point, King responded as follows:

I doubt that you would have so warmly commended the police force if you had seen its dogs sinking their teeth into unarmed, nonviolent Negroes. I doubt that you would so quickly commend the policemen if you were to observe their ugly and inhumane treatment of Negroes here in the city jail; if you were to watch them push and curse old Negro women and young Negro girls; if you were to see them slap and kick old Negro men and young boys; if you were to observe them, as they did on two occasions, refuse to give us food because we wanted to sing our grace together. I cannot join you in your praise of the Birmingham police department.⁸

The “unspeakable horrors of police brutality” is also among the long list of injustices cataloged in King’s “I Have a Dream” speech.⁹

Moving forward in time, James Forman describes his experience working with court-involved teens at the Maya Angelou Public Charter School in Washington, DC, in the spring of 2000 as follows:

About once a week that entire spring, a team of officers would descend on our block, throw students against the wall, and search them for weapons or drugs. I had learned the concepts of “stop-and-frisk” and “search and seizure” in law school, and as a lawyer, I had filed

hundreds of motions alleging that the police lacked “reasonable articulable suspicion” or “probable cause,” the legal standards for conducting searches of this kind. But the searches on our corner defied those standards: if the police had a rationale for choosing their targets among the assembled teenagers, I couldn’t see it. Nor was I prepared for the force and violence that can accompany these police actions. . . . When the police rushed onto our corner, our students were forced to “assume the position,” with their legs spread, faces against the wall or squad car, and hands behind their heads. Then they were searched, with the officers feeling every inch of their bodies, turning backpacks and pockets inside out, leaving the sidewalks strewn with notebooks, broken pencils, lipstick, and combs. Not once, over the course of about ten searches, did the police recover anything illegal. . . . Unable to distinguish between a student on break and a drug dealer working the corner, the police treat them both as menaces to public safety. . . . In the ghetto, you are not presumed innocent until proven otherwise. Rather, you are presumed guilty, or at least suspicious, and you must spend an extraordinary amount of energy—through careful attention to dress, behavior, and speech—to mark yourself as innocent.¹⁰

Anecdotal evidence of this kind is consistent with statistical analyses of large-scale data sets. For example, in the case of New York’s stop-and-frisk program, the same forms used to compute rates of contraband recovery can be used to examine whether the use of nonlethal force varies systematically by the race and ethnicity of the suspect. In a study based on these data, Roland Fryer has argued that, relative to whites, blacks and Hispanics are more likely to be held, pushed, struck, sprayed, cuffed, or threatened with a weapon during a police stop. These differences cannot be accounted for by variation across stops in nonracial demographic, behavioral, or environmental characteristics. And even greater differences in treatment are observed in

the Police-Public Contact Survey, which relies on a nationwide sample of citizen reports.¹¹

Such indiscriminate and excessive use of force against innocents has implications for attitudes toward the police and the willingness of witnesses to cooperate with law enforcement officials investigating serious crimes. In *Locking Up Our Own*, James Forman references a 1936 report by the Commission on Interracial Cooperation that laments the light sentences of black homicide offenders whose victims were also black. The very same report also mentions the rough treatment that innocent blacks routinely experienced at the hands of law enforcement officials:

White police were not only indifferent to black suffering; they were also “abusive in word and manner” toward black citizens. This caused a vicious cycle: black citizens often refused to cooperate with police, which stymied police investigations, halfhearted to begin with, leaving blacks yet more vulnerable. This description of the problem—dispiritingly similar, in many respects, to accounts of the dysfunctional relationship between police departments and black communities today—led the group to call for hiring black police.¹²

The irony is that most of the officers involved in the raids at the Maya Angelou School were themselves black, and “shared racial identity did little to make the encounters less humiliating.”¹³ Breaking the vicious cycle of excessive force, witness recalcitrance, and unpunished crime will require more than a change in the racial composition of the law enforcement community.

The Talk

On July 16, 2013, three days after a Florida jury found George Zimmerman not guilty of second-degree murder in the shooting death of

Trayvon Martin, then attorney general Eric Holder addressed the NAACP (National Association for the Advancement of Colored People) Annual Convention. He spoke about the “complicated and emotionally-charged issues” that the case has raised in the following terms:

Years ago, some of these same issues drove my father to sit down with me to have a conversation—which is no doubt familiar to many of you—about how as a young black man I should interact with the police, what to say, and how to conduct myself if I was ever stopped or confronted in a way I thought was unwarranted. . . . Trayvon’s death last spring caused me to sit down to have a conversation with my own 15 year old son, like my dad did with me. This was a father-son tradition I hoped would not need to be handed down. But as a father who loves his son and who is more knowing in the ways of the world, I had to do this to protect my boy. I am his father and it is my responsibility, not to burden him with the baggage of eras long gone, but to make him aware of the world he must still confront. This is a sad reality in a nation that is changing for the better in so many ways.¹⁴

Holder was describing here a conversation that was instantly familiar to many in his audience as “the talk.” It takes different forms in different households but generally is as follows:

If you are pulled over in your car, keep your hands on the steering wheel. Give the officer your license. If your registration is in your glove box, tell the officer that you’re going to retrieve it from there, and move slowly.

If you are stopped by an officer while you are on the street, keep your hands visible. Don’t say anything besides “yes” and “no.” Be compliant. Be polite.¹⁵

The purpose of this ritual, as Holder made clear, is to protect one's children. In cases where the script is followed, the interaction between officer and suspect takes a different path, as indeed it is designed to do.

But this makes any statistical inferences of police use of force (lethal and nonlethal) very difficult to make based simply on recorded data. The interaction contains race-contingent textures that simply cannot be captured quantitatively. For instance, suppose that one found that the rate at which police use force in encounters with black citizens is roughly comparable to the rate experienced by white citizens. Can one treat this as evidence of the absence of bias? Not if these encounters were qualitatively different in a manner contingent on race. Those encounters in which the citizen is mindful of the importance of being compliant and polite ought to result in fewer incidents of the use of force.¹⁶

Further complicating matters is that people who believe that they have been singled out because of their race may be angered by this and induced to act in ways that are far from compliant or polite. Just as Brent Staples grew tired of whistling Vivaldi to put others at ease on the streets of Chicago, even those who have been exposed to the talk may be unable to restrain feelings of frustration or anger. This can change the dynamic of the interaction between officer and citizen in entirely different ways.

In *Race, Crime, and the Law*, Randall Kennedy makes this point using a hypothetical interaction between a "nonracist, courteous officer" and a black civilian:

[The] quality of the interaction between officials and at least some of those stopped for questioning is likely to be degraded by everyone's knowledge that race played a role in the decision to question. Officers who begin by seeking to discharge their duties with courteousness will confront people who will resent being stopped in part because

of their racial heritage. The people stopped will vent their resentment. The officer . . . will respond in some defensive manner, which will in turn provoke further negative responses from those who feel aggrieved. That, in turn, will further aggravate the officer, leading to a deteriorating relationship that will often create bruised feelings, sometimes generate needless arrests, and occasionally spark violence.¹⁷

These words were written more than two decades ago, long before the arrests of Sandra Bland and Henry Louis Gates Jr., whom they seem to describe almost perfectly.

Two Arrests

On July 10, 2015, Sandra Bland was driving in Prairie View, Texas, when she saw a police vehicle closing in behind her. She moved over to let it through but did so without signaling, and so the trooper stopped her. After completing the necessary paperwork, the officer returned to Bland's vehicle, observed that she seemed irate, and asked her to put out her cigarette. She refused to do so, asserting a right to smoke in her car, at which point the trooper ordered her out of the vehicle. When she again refused to comply, he attempted to drag her out by force. Unable to do so, he drew his Taser and threatened to "light her up." She then exited her vehicle, was physically restrained, and was arrested for assaulting a public servant. These events were recorded on the officer's dashboard camera.¹⁸

Three days later Bland was found hanging lifeless in her jail cell, and the death was ruled a suicide. The arresting officer, Brian Encina, was charged with perjury in connection with the incident and fired from his job. The charges were subsequently dropped on the condition that he "never seek, accept or engage in employment in any capacity with law enforcement."¹⁹ A number of policy violations

were uncovered at the facility where Bland had been held, and her family settled a wrongful death lawsuit against the county for \$1.9 million and a commitment to change several procedures at the jail.²⁰

Sandra Bland's arrest and her terrible and lonely death were entirely avoidable events. The officer had no need to mention that she seemed irritated, to ask her to put out her cigarette when no further interaction between the two was necessary, to attempt to drag her out of her vehicle, to threaten her with a weapon, to pin her forcefully to the ground, or to respond with callous indifference when she disclosed that she had epilepsy. That all this occurred in the knowledge that it was being recorded makes it all the more disturbing, and it is hard to imagine what would have transpired had no dashboard camera been present.

When two strangers interact they each bring to the encounter a personal history, and in America these histories are deeply contingent on racial identity. Sandra Bland had accumulated numerous traffic tickets, fines, and court costs in this area and elsewhere over several years.²¹ Inspired by the movie *Selma*, she had been posting video commentary on civil rights and racial justice on her Facebook page for several months before her death. She suffered from occasional bouts of untreated depression and frequent financial difficulties. We cannot know precisely what role her race played in affecting the behavior of the officer, or his race in her interpretation of his actions. But these factors were surely not without significance.

Another interaction in which beliefs about bias appear to have played a role involved Harvard professor Henry Louis Gates Jr., who was arrested on his front porch in July 2009. The incident drew national attention, eventually culminating in a "beer summit" at the White House involving Gates, the arresting officer James Crowley, and both the president and the vice president of the United States.

What appears to have happened is this.²² Upon returning home from the airport after a trip to China, Gates found his front door

damaged and jammed. He entered through the rear of the house with a key and then, with the help of his limousine driver, forced open the front door to get his luggage through. A neighbor who witnessed this activity called the police to report a possible burglary in progress. Crowley was the first officer at the scene.

At this point the accounts of the two parties diverge, but they agree on the following points: Gates refused to step outside when asked to do so, was followed into the home by the officer, provided identification establishing that he was the rightful occupant, followed the officer out onto the porch, accused him of being racially motivated, and was arrested for disorderly conduct. The charges were dropped five days later.

A grainy, widely circulated photograph of Gates in handcuffs shows him straddled by two white officers, with a black officer, Leon Lashley, in the foreground.²³ Lashley was subsequently interviewed by Anderson Cooper on CNN, where he defended the conduct of his colleague and insisted that racism was not involved.²⁴ But he also added the following cryptic comment: “Would it have been different if I had shown up first? I think it probably would have been different.” When asked what he meant by this, he said simply: “Black man to black man, it probably would have been different.”

Although we can never know for sure, there are many reasons to think that the encounter would have followed a different trajectory had Lashley been first officer on the scene. Perhaps he would have been quicker to recognize that the “slight, elderly man” at the door was unlikely to be a burglar, and would have been less fearful and more courteous. But even if Lashley had behaved in every respect as Crowley did, the encounter would probably have evolved differently because Gates would have been less inclined to believe that the officer’s actions were motivated by racial animus.

Interactions between strangers take paths that depend not only on words and actions but also on imputed motives and character. And these inferences are shaped by the racial identities of all parties involved. We have seen how this phenomenon affects offender-victim interactions in the case of robbery, and the likelihood that escalating disputes can turn violent and possibly homicidal. Police-citizen interactions are no different. Even if a white police officer behaves in exactly the same way toward all suspects, regardless of race, he will be viewed and treated in a manner that is not similarly neutral. Black men who suspect the officer's motives may react with an abundance of caution, taking elaborate steps to avoid being seen as provocative. Or they may react, as Gates did, with indignation and outrage. In either case, the reaction will be contingent on race, even if the officer's behavior is not.

In fact, the problem is far more general. If a doctor appears inattentive to a patient, and both are white, the latter may attribute this to poor training or a momentary lapse. If the patient is black, there is the additional suspicion that the behavior is racially motivated. The same words and actions are assigned different meanings in the two cases and lead to different reactions and responses. This raises a serious problem when one is called on to make statistical inferences from aggregate data. Quantitative measures of conduct are harder to interpret when the qualitative nature of police-citizen interactions is shaped by the racial identities of the interacting parties. This is especially important when considering police homicides, as we will see in Chapter 8.

Trust

Terrence Cunningham, president of the International Association of Chiefs of Police, gave a speech at the association's 2016 annual

conference that was remarkable for its candor. He acknowledged and apologized for the police profession's role in "society's historical mistreatment of communities of color" and recognized that this had led to a "historic cycle of mistrust" between law enforcement officers and some of the communities they serve:

There have been times when law enforcement officers, because of the laws enacted by federal, state, and local governments, have been the face of oppression for far too many of our fellow citizens. In the past, the laws adopted by our society have required police officers to perform many unpalatable tasks, such as ensuring legalized discrimination or even denying the basic rights of citizenship to many of our fellow Americans.

While this is no longer the case, this dark side of our shared history has created a multigenerational—almost inherited—mistrust between many communities of color and their law enforcement agencies.²⁵

Officers are no longer called on to enforce segregation laws.²⁶ Nevertheless, the dark side of this shared history is not entirely in the past.

The Department of Justice opened an investigation of the Ferguson Police Department in September 2014 in the wake of sustained and significant public protests after the shooting of Michael Brown by Officer Darren Wilson. The resulting report described a department whose enforcement practices were driven by a "focus on revenue rather than by public safety needs," pressured by a city that "budgets for sizeable increases in municipal fines and fees each year, exhorts police and court staff to deliver those revenue increases, and closely monitors whether those increases are achieved." The result was a pattern of "unnecessarily aggressive and at times unlawful policing" involving "stops without reasonable suspicion and arrests

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without probable cause . . . retaliation for protected expression . . . and excessive force.”²⁷

The weight of these practices falls disproportionately on the city’s black community, which is subjected to “routinely disrespectful treatment.” The department “appears to bring certain offenses almost exclusively against African Americans,” and “police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes.” Not surprisingly, there is “deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy.” As a result, “the partnerships necessary for public safety are, in some areas, entirely absent.”²⁸

While this report on the Ferguson Police Department was scathing, a separate and concurrent report by the Justice Department found that the decision not to prosecute Wilson for the shooting of Brown was justified, and that the officer’s actions were not “objectively unreasonable” under the circumstances.²⁹ Furthermore, the very same study by Roland Fryer that documented significant disparities in the use of nonlethal force claimed an absence of bias in police use of lethal force.³⁰ Is it possible that there are biases in stops and searches and the use of nonlethal force but not in the application of lethal force? We turn to this question next.

chapter 8

LETHAL FORCE

Chapter 4 began with Grace Doyle’s quote about how she killed her husband before he could kill her. Police officers, too, sometimes shoot to save their lives—at least in the way that they perceive the situation. These perceptions may well be shaped by stereotypes based on statistical generalizations or implicit and explicit bias. But given a perceived threat, the preemptive motive for killing is operative for police officers, just as it is for civilians.

Indeed, in the United States, preemption is the only reason why police may lawfully try to kill someone, even though they are allowed to use nonlethal force for a wide variety of reasons. According to the 1985 Supreme Court ruling in the case of *Tennessee v. Garner*, police officers may not use deadly force against a suspect trying to escape “unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”¹

Police officers in the United States have good reason to fear being killed while they are working, probably more than members of any other lawful occupation. In 2010, police were 11 percent of the victims of workplace homicide, even though they were less than two-thirds of 1 percent of total workers.² Over the decade 2007–2016, 485 officers across forty-six states were feloniously killed in the line of duty.³ Thus it should not be surprising that sometimes police kill civilians.

But how many civilians do police kill? To this day there is no reliable official data source that can answer this question, a situation that then FBI director James Comey described in 2015 as “embarrassing and ridiculous.”⁴ As Paul Butler observes, the “information about itself that a society collects—and does not collect—is always revealing about the values of that society. We know, as we should, exactly how many police officers are killed in the line of duty. But we do not know, as we should, exactly how many civilians are killed by the police.”⁵

Newspapers have stepped into the breach, with the *Washington Post* and the *Guardian* each collecting and posting data on such incidents, based largely on local media reports.⁶ According to the latter source, police killed 1,146 civilians in 2015 and 1,093 in 2016. By way of comparison, the average annual loss of life from terrorism in the United States between 1995 and 2014 was about 163, about one-seventh the average annual loss of life from police use of lethal force in recent years.⁷

Police-related killings—both civilians killed by police and officers killed in the line of duty—are far more prevalent in the United States than in other countries at comparable levels of economic development. While approximately fifty police officers are killed annually in the United States, just three on-duty officers were killed in the United Kingdom over the entire five-year period between 2010 and 2014, for an average of 0.6 per year. Between 2008 and 2012, two on-duty officers were killed in Germany, or 0.4 per year.

In contrast to the approximately 1,100 civilians killed by police annually in the United States, German police kill about 6–9 civilians a year. In England and Wales the corresponding rate is about 2 per year on average, and none were killed between 2012 and 2014.⁸ The mechanisms explored in Chapter 4 suggest that killings of police by civilians should correlate with killings of civilians by police, and at

least in international comparisons they appear to do so. The United Kingdom and Germany seem to be in a different world from the United States.

Guns and Kevlar

The most obvious explanation for why police-related killings are so rare in the United Kingdom and Germany relative to the United States is the prevalence of firearms. With few exceptions, civilians in the United Kingdom and Germany don't have guns, but large numbers of civilians in the United States have access to weapons. In all three countries, firearms are responsible for almost all police deaths by assault.⁹ Police have much less reason to fear civilians in Europe, and civilians there don't have to worry about how they can demonstrate that they are not carrying a gun.

The inference is that tougher gun control laws in the United States would make both police and civilians safer—police would be safer because civilians would not be able to kill them so easily, and civilians would be safer because police would feel less urgency to preemptively kill.

The Law Center to Prevent Gun Violence grades each state's laws on how well, in its opinion, they avert gun violence (it does not grade the District of Columbia). The grade can be interpreted as a measure of how strict gun control law is in that state. Most states get Fs, and no state gets straight As.¹⁰ We can use this rating to take a rough and preliminary look at how gun control laws correlate with police-related killings, by combining it with the LEOKA (Law Enforcement Officers Killed and Assaulted) database compiled by the FBI and the *Guardian* data on civilians killed by police.

Comparing states receiving an A or B grade with states receiving an F, the raw correlations indicate that police are a lot safer in states

with strict gun control. The rate of police deaths from assault by civilians, averaged over the period 2006–2015, are 0.97 and 1.91 per million residents in the strict and lax gun control states, respectively. Civilians overall seem safer from police in these states also, but the effect is not large; the rates of civilian deaths from assault by police over the period 2015–2016 are 2.48 and 3.01 per million residents in the strict and lax gun control states, respectively. Black civilians are less safe—the victimization rates being 7.37 and 6.61, respectively. The general murder rate is also somewhat lower in states with strict gun control (4.32 versus 5.56).¹¹

No causal inference can be drawn from these correlations, of course, but it does not appear that in states where police are a lot safer they are much more relaxed around civilians, especially black civilians.

Another way to examine the link between greater police safety and the incidence of police homicide is to trace the effects of a major innovation in protective gear: Kevlar.¹²

Kevlar is a fabric used to make soft and lightweight body armor that can stop a .38 caliber lead bullet. It was invented by Stephanie Kwolek in 1965, and by 2008 over 70 percent of law enforcement agencies had issued it to all officers, and 53 percent required officers to wear the vest while on duty.¹³ During the decades when Kevlar was being adopted (1976–2012), the rate at which police were killed per year of service fell by three-quarters.¹⁴ Kevlar was not responsible for the entire decline, although it probably played a major role.

As far as we can tell, police killings of civilians did not fall when civilian killings of police fell.¹⁵ Two sources of data are available on civilians killed by police before 2015, one from the FBI and one from the Centers for Disease Control and Prevention, both of which are known to be seriously incomplete. Over the 1976–2012 period, both series were mostly flat, with a gentle upward trend. Again, this evidence

is very weak, but it suggests that improvements in police safety do not easily or automatically translate into declines in the use of lethal force.

The Fear Hypothesis

Police killings in the United States have an unmistakable racial dimension. In his 1944 book *An American Dilemma*, Gunnar Myrdal notes that a majority of the whites who killed blacks in the 1930s were police officers. In fact, during the 1930s, African Americans were killed by police at more than four times the rate at which they were lynched.¹⁶ It remains true today that close to a majority of the whites who kill blacks are police officers.¹⁷

This phenomenon has achieved great visibility in recent years, with the increasing emergence of video evidence from witnesses as well as police body cameras and dashboard cameras. But the phenomenon is not new. In 1933, for instance, 5,000 people attended the protest funeral of Grover Davis, a blind black man shot by Atlanta police, and in 1938 about 2,000 marched in Washington, DC, with several thousand more lining the streets, to protest the shooting of Wallace McKnight in the back by an officer “over a bag of food.”¹⁸

Many of today’s videos depict white officers shooting black civilians under conditions where there was no objective threat to the officer or anyone else. In some cases, there was not even a credible perception of a threat—for instance, in the shooting of Laquan McDonald by Jason Van Dyke in Chicago, or that of Walter Scott by Michael Slager in North Charleston. The officers in these cases were indicted on murder charges after video evidence emerged, with Slager eventually pleading guilty to a civil rights violation under federal law and Van Dyke convicted of second-degree murder.

In most instances, however, officers have successfully argued that they were reasonable in perceiving a threat even when none was subsequently found to exist. This was the case, for instance, in the shooting of twelve-year-old Tamir Rice by Timothy Loehmann in Cleveland. Rice possessed a replica pistol that Loehmann claims he mistook as a functioning firearm.¹⁹ Although the victim's family received a substantial settlement from the city, no charges were filed against the officer.

Similarly, no charges were filed against Darren Wilson for the fatal shooting of Michael Brown in Ferguson, Missouri, in August 2014. Wilson convinced a grand jury that Brown was a genuine threat, using language that was quite extraordinary. He felt like “a five-year old holding on to Hulk Hogan,” while Brown looked “like a demon,” made a “grunting, aggravated sound,” and was “almost bulking up to run through the shots, like it was making him mad that I was shooting at him.”²⁰ Wilson was six feet four inches tall, and weighed about 210 pounds, while Brown was an inch taller and weighed 289 pounds. Perhaps the officer's statements were embellishments meant to convince grand jurors that he was in genuine fear, but as Jamelle Bouie has observed, his language “sits flush with a century of stereotypes and a bundle of recent research on implicit bias and racial perceptions of pain.”²¹ Even if Wilson embellished his testimony to convince others that he had acted in fear, it is telling that he believed these remarks to be persuasive.

A number of witnesses offered conflicting sworn testimony in this case, but—as we discuss in Chapter 9—a federal investigation concluded that some of the most credible of these corroborated the officer's account. While Wilson may well have faced a real threat from Brown, this was clearly not the case when South Carolina trooper Sean Groubert shot Levar Jones in September 2014. On leaving work,

Jones entered his pickup truck, drove around the corner into a gas station, and exited his vehicle, not realizing that a police car was following him on account of a seat belt violation. Officer Groubert pulled up behind the truck, exited his own vehicle, and asked Jones for his license and registration. Jones reached back into his vehicle to grab his wallet, at which point he was shot at several times and suffered a nonfatal bullet wound. The entire incident was captured on the officer's dashboard camera, and Groubert was dismissed from his position with the South Carolina Highway Patrol on the grounds that he "reacted to a perceived threat when there was none."²² He later pleaded guilty to charges of assault and battery.

In July 2016, during a traffic stop in Falcon Heights, Minnesota, Philando Castile was shot and killed in the presence of his girlfriend, Diamond Reynolds, and her four-year-old daughter by Officer Jeronimo Yanez. Castile had provided the officer with his proof of insurance, informed him calmly and respectfully that he was in possession of a licensed firearm, and was reaching for his wallet to produce his driver's license when Yanez appeared to panic, thinking Castile was reaching for a gun. In announcing charges of second-degree manslaughter against the officer, the county attorney John Choi offered the following reasoning:

When evaluating the reasonableness of a police officer's use of deadly force, we must take into account that police officers are often required to react quickly—in tense, uncertain and rapidly evolving situations. To justify the use of deadly force, it is not enough, however, for the police officer to merely express a subjective fear of death or great bodily harm. Unreasonable fear cannot justify the use of deadly force. The use of deadly force must be objectively reasonable and necessary, given the totality of the circumstances. Based upon our thorough and exhaustive review of the facts of this case, it is my conclusion that

the use of deadly force by Officer Yanez was not justified and that sufficient facts exist to prove this to be true.²³

In an emotional statement to investigators on the day after the shooting, Yanez repeatedly confessed to being scared and fearing for his life. He believed that Castile fit the description of a robbery suspect, on account of his dreadlocks, glasses, and “a wide set nose,” and this presumably contributed to his level of fear.²⁴ A jury later found this fear to be warranted, and he was acquitted at trial.

But the question remains: Would Castile have been shot under the same circumstances had he been a white driver with a young woman in the seat beside him and a four-year-old child in the back? Mark Dayton, the governor of Minnesota, did not think so.²⁵ Neither did Peter Moskos, a professor at the John Jay College of Criminal Justice and a former Baltimore police officer, who wrote on his blog: “Honestly, in this shooting, with this cop, in this locale, I don’t think there’s a chance in hell Castile would have been shot had he been white.”²⁶

The Jones and Castile cases, among many others, suggest that the fear experienced by officers is often amplified when they face a citizen who is young, black, and male. That is, the level of threat perceived is out of proportion with the threat actually present. From this perspective, which we call the *fear hypothesis*, black civilians face a heightened likelihood of being subject to police use of lethal force because they are more commonly stereotyped as dangerous.

While the 250–300 deaths that African Americans suffer at the hands of police every year are not a large source of mortality for African Americans overall (around 300 times as many die every year from heart disease), these deaths result from deliberate government actions—actions by people who are sworn to protect the safety of all citizens. As Paul Butler has observed, there is “a categorical moral

difference between antisocial conduct that is harshly punished . . . and authorized violence by the state committed with impunity.”²⁷ To many, the unpunished killings reveal a widespread attitude that black lives don’t matter.

Some historical evidence in support of the fear hypothesis may be found in a report issued by the Kerner Commission, which was established in order to better understand the violence that engulfed many American cities during the summer of 1967.

The Summer of 1967

The summer of 1967 was a tumultuous one, with prolonged and violent civil disturbances breaking out in scores of American cities.²⁸ The resulting deployment of police and military resources led to the greatest concentration of civilian deaths at the hands of law enforcement officers in recent history. In Newark and Detroit alone, more than fifty civilians were killed in less than a week; the current rate of civilian deaths at the hands of police officers is about three a day in the nation as a whole.

Even as riots were still raging in Detroit, President Johnson established the National Advisory Commission on Civil Disorders under the leadership of Illinois governor Otto Kerner. Seven months later, the Kerner Commission released a report with the following ominous warning: “Our nation is moving toward two societies, one black, one white—separate and unequal.”

As part of its mandate, the commission was tasked with uncovering what had happened and why. To address the latter question, the commissioners tabulated grievances voiced by members of the affected communities. At the top of this list—ahead of unemployment, inadequate housing and education, white attitudes, and the administration of justice—was a category called “police practices.”

In fact, the triggering incident in many of the riots examined in the report was some form of police action. In the case of Newark it was the arrest of taxi driver and army veteran John Smith, who was falsely rumored to have been killed in custody. And in Detroit it was the raid on a blind pig (an unlicensed drinking and gambling establishment) during a large party for servicemen.²⁹

In Chapter 4, we observed that a climate of fear amplifies violence by increasing the incentive to kill preemptively. This effect is documented very clearly in the Kerner report. The police and National Guard members tasked with quelling the riots were largely young, inexperienced, and unfamiliar with the local conditions and communities. They were especially fearful of sniper attacks, and this led to indiscriminate firing and multiple fatalities. At around 6 p.m. on July 15, for instance, the following sequence of events occurred in Newark:

National Guardsmen and state troopers were directing mass fire at the Hayes Housing project in response to what they believed were snipers.

On the 10th floor, Eloise Spellman, the mother of several children, fell, a bullet through her neck.

Across the street, a number of persons, standing in an apartment window, were watching the firing directed at the housing project. Suddenly, several troopers whirled and began firing in the general direction of the spectators. Mrs. Hattie Gainer, a grandmother, sank to the floor.

A block away Rebecca Brown's 2-year-old daughter was standing at the window. Mrs. Brown rushed to drag her to safety. As Mrs. Brown was, momentarily, framed in the window, a bullet spun into her back.

All three women died.³⁰

According to the report, “the amount of sniping attributed to rioters—by law enforcement officials as well as the press—was highly exaggerated.” In particular, “most reported sniping incidents were demonstrated to be gunfire by either police or National Guardsmen. . . . The climate of fear and expectation of violence created by such exaggerated, sometimes totally erroneous, reports demonstrates the serious risks of overreaction and excessive use of force.” According to one police source: “Guardsmen were firing upon police and police were firing back at them.”³¹

The report offers several reasons for the exaggerated fear of sniper attack:

Several problems contributed to the misconceptions regarding snipers: the lack of communications; the fact that one shot might be reported half a dozen times by half a dozen different persons as it caromed and reverberated a mile or more through the city; the fact that the National Guard troops lacked riot training. They were, said a police official, “young and very scared.”

In contrast with the jumpiness exhibited by the police and National Guard members, one section of Detroit was policed by a group of professional soldiers, one-fifth of them black, under the command of Lieutenant General Throckmorton. The behavior and experience of this group is instructive.

According to Lieutenant General Throckmorton and Colonel Boling, the city, at this time, was saturated with fear. The National Guardsmen were afraid, the residents were afraid, and the police were afraid. . . . The general and his staff felt that the major task of the troops was to reduce the fear and restore an air of normalcy.

In order to accomplish this, every effort was made to establish contact and rapport between the troops and the residents. Troopers . . .

began helping to clean up the streets, collect garbage, and trace persons who had disappeared in the confusion. Residents in the neighborhoods responded with soup and sandwiches for the troops. . . .

Within hours after the arrival of the paratroops, the area occupied by them was the quietest in the city, bearing out General Throckmorton's view that the key to quelling a disorder is to saturate an area with "calm, determined, and hardened professional soldiers." . . . Troopers had strict orders not to fire unless they could see the specific person at whom they were aiming. Mass fire was forbidden.

During five days in the city, 2,700 Army troops expended only 201 rounds of ammunition, almost all during the first few hours, after which even stricter fire discipline was enforced. (In contrast, New Jersey National Guardsmen and state police expended 3,326 rounds of ammunition in three days in Newark.) Hundreds of reports of sniper fire—most of them false—continued to pour into police headquarters; the Army logged only 10. No paratrooper was injured by a gunshot.³²

Not only did Throckmorton's troops inflict less violence on innocent civilians, but they were also more effective in executing their mission. This phenomenon is familiar to military units involved in occupations of civilian areas. A U.S. Army counterinsurgency manual, for instance, states that "many of the . . . best weapons for countering an insurgency do not shoot."³³

What happened in Newark and Detroit in the summer of 1967 happens routinely on a much smaller scale across the country. Officers armed with lethal weapons confront civilians whom they may have reason to fear. The fears are not without basis, but exaggerated perceptions of danger can result in the unwarranted killing of innocents.

The fear hypothesis is about disparate treatment: Are officers more likely to shoot a black civilian than a white civilian who is otherwise

identical in appearance, indicia, location, and behavior? We next consider an alternative hypothesis, focused on the rate at which police make contact with people belonging to different groups. As we have seen, there are large differences across groups in rates of offending, victimization, stops, and arrests, which means that the population as a whole is not the right benchmark to assess disparities in the use of lethal force. To determine the extent to which racial bias is implicated in police killings, we need to examine deaths in relation to some measure of police-citizen contact.

The Contact Hypothesis

In October 2015, the Harvard economist Sendhil Mullainathan published an article in the *New York Times* in which he made the following claims:

According to the F.B.I.'s Supplementary Homicide Report, 31.8 percent of people shot by the police were African-American, a proportion more than two and a half times the 13.2 percent of African-Americans in the general population. . . . But this data does not prove that biased police officers are more likely to shoot blacks in any given encounter. . . . Having more encounters with police officers, even with officers entirely free of racial bias, can create a greater risk of a fatal shooting.

This claim is based on nationwide data. Since rates of killing vary tremendously across the country, this is almost certainly the wrong level at which to begin analysis. But we can see where it leads us.

Arrest data let us measure this possibility. For the entire country, 28.9 percent of arrestees were African American. This number is not very different from the 31.8 percent of police-shooting victims who

were African Americans. If police discrimination were a big factor in the actual killings (and every place were roughly the same), we would have expected a larger gap between the arrest rate and the police-killing rate.

This, in turn, suggests that removing police racial bias will have little effect on the killing rate.

Mullainathan was correct in pointing out that there is rough parity between the arrest rate and the rate at which black civilians face lethal force. But in inferring that removing bias will have a negligible impact, he was making several implicit assumptions. One of these is that encounters between black civilians and police are as likely to be objectively threatening to officers as encounters between other civilians and police.

But is the assumption reasonable? As we saw in Chapter 3, racial stereotypes can provide incentives for black offenders to specialize in robbery as opposed to other crimes of appropriation such as burglary and motor vehicle theft, while the opposite is true for white offenders. And within this set of crimes, robbery is the one that triggers the most immediate and widespread police action. Victims are able to provide descriptions to police officers within minutes of the crime, and officers accordingly take actions to apprehend offenders. But this means that innocent individuals who are most likely to fit the description of a robbery offender will also be most likely to be stopped and to have contact with police—as in the case of Philando Castile. A large number of contacts with innocents also arise through certain policing strategies, such as New York City’s stop-and-frisk policy.

And whenever a contact occurs, there is always the possibility of an arrest on some charge. In fact, officers are obliged to take punitive action if they uncover a small amount of marijuana possession, even

if the stop was motivated by more serious considerations such as robbery or gun law violations.³⁴ Furthermore, even without any prior violation, arrests can result from contacts that escalate in unpredictable ways when citizens suspect that they are being racially profiled. We saw this in Chapter 7, for the cases of Sandra Bland and Henry Louis Gates.

As a result, the arrest pool for black civilians looks quite different from that of white civilians. It is inflated by the arrest of individuals on minor infractions that would not have arisen, or would have remained undetected, if the civilian in question had not been black. The arrests of Rashon Nelson and Donte Robinson at a Philadelphia Starbucks in April 2018 illustrate this point.³⁵ These two men were seated in the coffee shop, waiting for an associate, but had not made a purchase. A manager called the police, and the two were arrested when they refused demands to leave. A video of the incident attracted national media attention, and the men eventually reached settlements with both the city and the company. Starbucks also closed down several thousand stores for a day of “racial bias training” for its employees.

The ubiquity of mobile devices capable of recording video and audio has brought many such incidents to light. And since the individuals who are caught up in this way are not generally objectively threatening to officers, we ought not to expect parity between arrest rates and the rate of lethal force experienced by black civilians even in the absence of bias.³⁶ Put differently, the respective rates of arrest and lethal force that we see in the data are entirely consistent with the presence of racial bias.

This does not mean, of course, that the evidence is conclusive. To make a more confident claim one would need to consider a pool of police-civilian contacts that are roughly comparable across groups, at least in the level of threat faced by officers. One could then ex-

amine whether contacts with members of one group were systematically more likely to result in a shooting. And for this we need data not only on those who were shot and killed but also on those who could have been shot but were not, including some who were peacefully disarmed.

Another Harvard economist, Roland Fryer, has attempted to do precisely this.³⁷ Fryer looks at shootings, not killings—incidents in which an officer discharges his or her weapon, whether or not anyone is actually hit.³⁸ He uses detailed incident reports obtained from the Houston Police Department, and so does not face the problem of aggregating across vastly differing environments. He wants to find out how likely an officer is to shoot in an encounter with a white civilian as compared with an encounter with a black civilian, holding all other relevant factors constant. But he can't observe every encounter that police have with civilians while on duty—buying coffee, directing traffic, sharing jokes with friends, giving directions, and so on. Instead, he has to settle for observing arrests for just a few crimes, for which he codes large amounts of data from Houston Police Department reports.

These are arrests for which it seems most likely that lethal force might be justified: attempted capital murder of a police officer, aggravated assault on a public safety officer, resisting arrest, evading arrest, and interfering in an arrest. He has an arrest pool (reports of arrests that seem especially likely to lead to shootings) and a shooting pool (reports of shootings). The shooting pool is not a subset of the arrest pool: the two pools are from different sources, and either pool can contain interactions that are not in the other.

What does he find? In the raw data, blacks were just as likely to be in the shooting pool (to be shot at) as they were to be in the arrest pool (to be arrested for the sort of activity that might endanger an officer's life). When Fryer adds a large number of controls based on

incident reports, the result persists. Holding constant all the information in the incident reports, he finds no evidence that black civilians are subjected to biased treatment by the Houston Police Department, and describes this as “the most surprising finding of my career.”³⁹

The Fryer study raises many questions, some of which future researchers may be able to address. To begin with, there is direct evidence that black arrestees are systematically different on average than white arrestees in his arrest pool. According to the incident reports from which these pools are constructed, two-thirds of white arrestees and one-half of black arrestees “attacked or drew weapon,” a difference that is statistically significant. On this measure at least, the black arrestees were less threatening on average and ought to have faced a lower rate of lethal force than the white arrestees. Fryer’s statistical methods are designed to adjust for this possibility so that a net measure of bias can be inferred. That he finds no evidence of bias after this adjustment is therefore noteworthy and suggests that officers in Houston tend to treat genuinely threatening individuals in a manner that is not contingent on race. But what about nonthreatening individuals?

Many of the civilians whose injuries or deaths have attracted national attention—Philando Castile and Levar Jones among them—were not engaged in acts that would have led to inclusion in the kind of arrest pool constructed by Fryer. In fact there was no basis for them to end up in any pool of arrestees at all. Fryer’s results are therefore consistent with the possibility that Houston police officers are relatively color-blind when dealing with genuinely threatening situations, but mistakenly perceive interactions with harmless black civilians as threatening from time to time. And even these findings may not generalize to other jurisdictions, given the enormous regional variability in police use of lethal force. They may not even generalize to all of Houston, since around a third of the civilians killed by police in

Houston according to the *Guardian* data set were killed by law enforcement agencies other than the Houston Police Department.⁴⁰

Weapon Recovery

A different approach to testing for disparate treatment in the use of lethal force is to consider whether black victims are less likely to be armed than victims belonging to other groups, under the assumption that armed victims are more likely to be objectively threatening to officers. Possession of a weapon does not imply the existence of a threat—as the Philando Castile case illustrates—and threats can certainly arise from unarmed civilians. Of the 491 officers feloniously killed over the 2006–2015 period, for instance, 24 were killed with their own weapon.⁴¹ Nevertheless, most officers are killed with weapons other than their own, primarily firearms.

The data on victims of fatal police shootings reveal disparities in the frequency with which victims from different groups were unarmed. For the period 2015–2016, about 21 percent of black victims in the *Guardian* database were classified as unarmed, while the corresponding proportions for whites and Hispanics were 17 percent and 18 percent, respectively. The *Washington Post* database treats all manner of objects—from toy weapons and flashlights to crowbars and chainsaws—as arms, so the proportion of unarmed victims is much lower.⁴² Still, the basic pattern remains: over the same period, 11 percent of black victims were classified as unarmed, while the corresponding proportions for whites and Hispanics were 6 percent and 8 percent, respectively.

The *Post* data also record whether an attack was in progress at the time of the police shooting, and this makes clear that most of the victims of lethal force were plausibly dangerous to officers and fellow citizens. Over the two-year period, about two-thirds of incidents

involved an attack in progress, with virtually identical rates for cases with black and white victims. In the 2015 data a greater proportion of whites were engaged in an attack relative to blacks, but this pattern was reversed in 2016, with no net difference overall. In both years, Hispanics were less likely than whites and blacks to be engaged in an attack when killed.⁴³

Some attacks on police or other civilians are designed to provoke a lethal response, a phenomenon known as suicide-by-cop. Such incidents are not rare—one study of officer-involved shootings in Los Angeles County estimated that 13 percent of the resulting fatalities were of this nature, and a more recent study with a large sample including cases throughout North America found that over a third of shootings were precipitated by suicidal individuals. In most cases the victims possessed loaded and operational firearms, though some instances involved unloaded, inoperable, or replica weapons.⁴⁴ It is possible that the incidence of suicide-by-cop varies systematically by victim identity, which makes detecting bias in the data even more challenging. For instance, in the *Post* data, about 6 percent of white victims and 3–4 percent of black and Hispanic victims possessed toy weapons.

As Sendhil Mullainathan observed when evaluating the data, the rate at which civilians are exposed to lethal force varies dramatically across locations.⁴⁵ A detailed examination of these variations can tell us something about where exactly the fear hypothesis may be most relevant, and why the aggregate data appear to support the contact hypothesis.

Geography

The variation across regions in the rate at which civilians are subject to lethal force in the United States is staggering. Figure 8.1 shows the number of people killed annually by police per million residents for

LETHAL FORCE

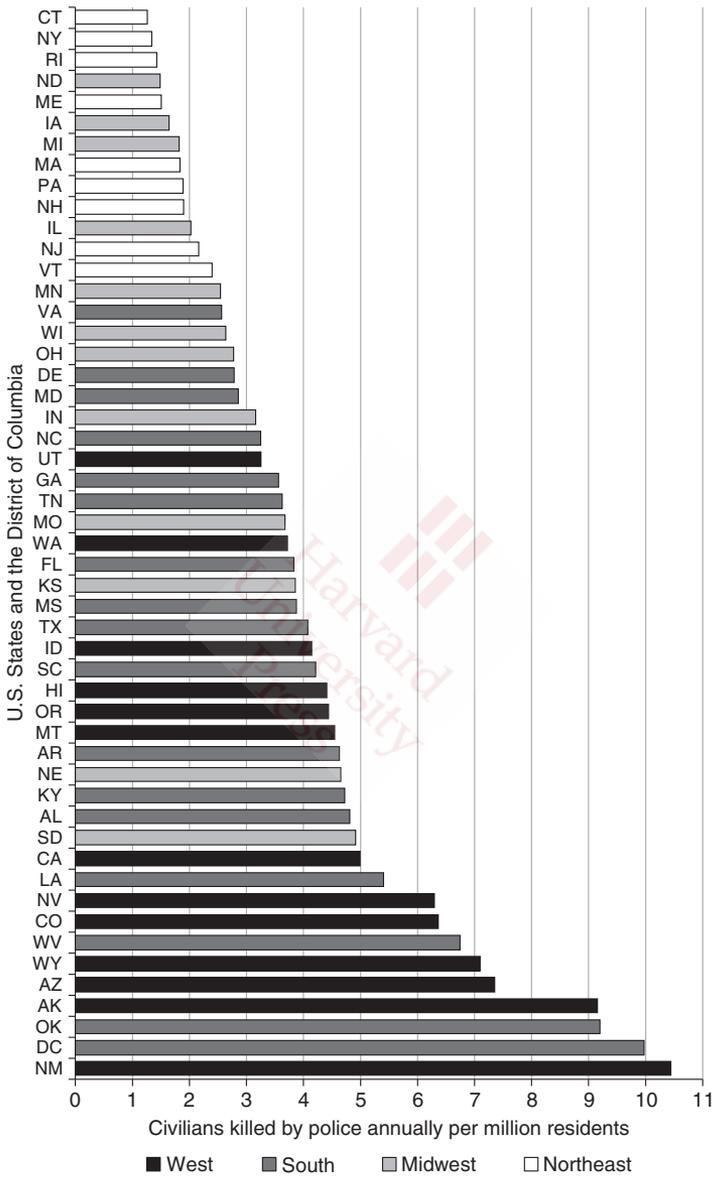


FIGURE 8.1. Average annual number of civilians killed by police, per million residents, for 2015–2016, based on the *Guardian* database.

all fifty states and the District of Columbia, with different shades identifying the four census regions of the country—Northeast, Midwest, South, and West. The figure is based on the *Guardian* data for the period 2015–2016.⁴⁶ The deadliest state, New Mexico, has more than eight times the rate of lethal force than the least deadly, which is Connecticut.

Although some of the variation across states is due to random factors that may not persist, we still see a great deal of clustering by region. The nine states in the Northeast—composed of New England and the Middle Atlantic States (New York, New Jersey, and Pennsylvania)—are among the safest as far as police use of lethal force is concerned. The Midwest is next, followed by the South and West. In the South the safest states are those adjacent to the Northeast—Delaware, Maryland, and Virginia.

Eight states—Colorado, Nevada, Arizona, West Virginia, Wyoming, Alaska, Oklahoma, and New Mexico—together with the District of Columbia, all have more than six civilians killed annually per million residents. Six of these eight states are in the West, with the remaining two in the South. Each of them has a black population well below the national average, ranging from less than 1 percent in Wyoming to 8 percent in Nevada. The District of Columbia is clearly an outlier here: it is a majority black urban center while the other regions are relatively rural and predominantly white.

What accounts for such large geographic variations? One possibility is preemption—perhaps police kill more frequently at locations where they are in more danger. We have already seen—based on variations across states in gun laws, and the effects of the introduction of Kevlar—that support for this hypothesis is relatively weak. However, the correlation between police victimization and police homicide is still positive, as can be seen in Figure 8.2. States where civilians were more likely to be killed by police (in 2015–2016) also

SHADOWS OF DOUBT

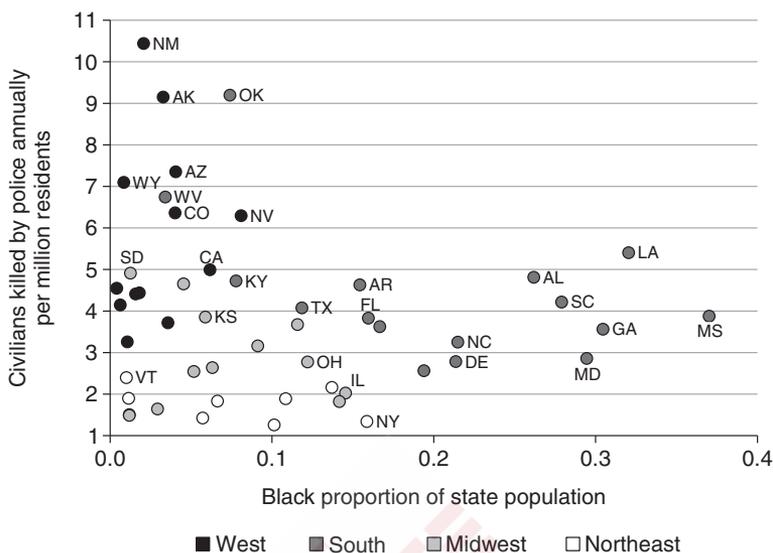


FIGURE 8.3. Average annual number of civilians killed by police, per million residents, for 2015–2016, based on the *Guardian* database, and the black proportion of the state population based on the 2010 Census.

The nine areas (eight states and the District of Columbia) where civilians were killed at the highest rates vary widely with respect to the rates at which officers were killed, ranging from none in Wyoming to 0.56 annually per million residents in Alaska. Again, some of this variation is random: we are looking at a ten-year period in which four officers in Alaska were feloniously killed, so the high rate is a consequence of the small size of the resident population.

Over the decade 2006–2015, thirty-three police officers were killed in Louisiana, Alaska, and South Dakota combined, but in Connecticut, Maine, Rhode Island, and Vermont, which have a greater combined population, none were killed.⁴⁷ And there are some states in which the mismatch between officers killed and civilians killed by

officers is considerable: Oklahoma is among the safer states for officers while it has among the highest rates of civilian deaths.

Next consider the racial composition of states in relation to the rates of use of lethal force, as shown in Figure 8.3. We have omitted from the figure the District of Columbia, which is majority black and unusual in other respects. The eight states with the greatest incidence of lethal police force all have small black populations. The states with the largest black populations all lie in the South, and lie in an intermediate range as far as lethal force is concerned—above the rate of the Northeast but below the cluster of eight states with the highest rates. All the states of the original confederacy—South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas—lie within this intermediate range, with civilians killed at rates ranging from 3.6 in Georgia to 5.4 in Louisiana.

Finally, consider the variation across states in the rates at which black citizens were subject to lethal force, relative to their presence in the residential population (Figure 8.4). Again we see enormous geographic variation. In eleven states, police officers did not kill any black civilians in 2015–2016, and these span the entire range of overall use of lethal force, from Connecticut to New Mexico. These states belong to a group of fifteen in which black civilians faced lethal force at lower rates than white civilians (these states are shown to the left of the steeper dotted line). Some other states, such as Arizona and Alabama, lie close to the line, indicating rough parity in black and white rates of victimization. Arizona and New Mexico together accounted for 137 deaths, with half the victims being white, 37 percent Hispanic, 10 percent Native American, and 2 percent black.⁴⁸

One might expect that the eleven secessionist states of the former Confederacy would exhibit high rates of lethal force against black civilians relative to whites, but this is not the case.⁴⁹ Many of these states are arrayed close to the steeper dotted line in Figure 8.4, which

SHADOWS OF DOUBT

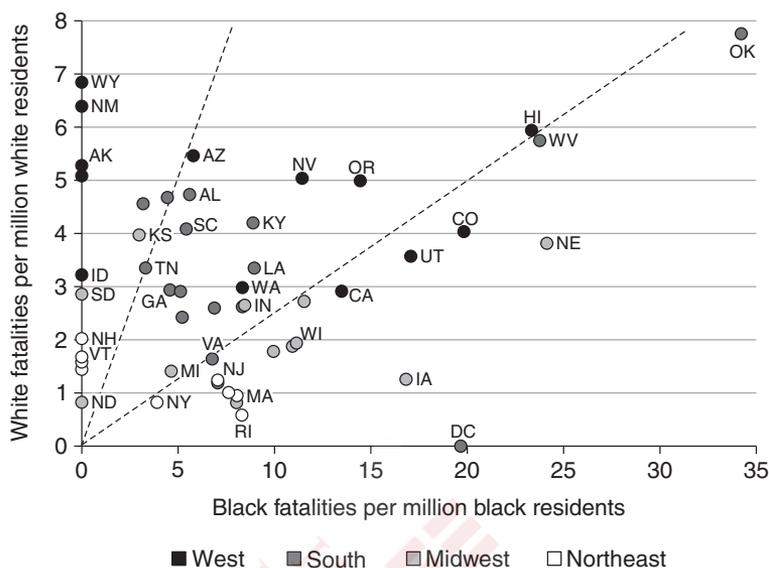


FIGURE 8.4. Average annual number of white civilians killed by police, per million white residents, and the average annual number of black civilians killed by police, per million black residents, for 2015–2016, based on the *Guardian* database and the state populations in the 2010 Census.

indicates parity between rates of lethal force faced by black civilians and white civilians. In fact, in Mississippi, Arkansas, and Tennessee, black civilians faced a lower likelihood of being killed by police than whites. This is despite the fact that white racial attitudes remain less favorable to blacks in the South than in most of the rest of the country.⁵⁰

These eleven states are not generally peaceful—they have high rates of police victimization and high overall murder rates—so the finding that black citizens face relatively low rates of lethal force and rough parity with whites in this region is puzzling. This is especially the case since the rate at which black civilians were killed by police in

these states was many times greater than the rate at which whites were killed in the 1930s.⁵¹

It is possible, of course, that killings are systematically underreported or mischaracterized, in ways that prevent them from making it into the databases compiled by media outlets.⁵² It is also possible that citizens are more cautious and compliant in their interactions with officers, or that lower levels of residential segregation in the South, relative to the Northeast and Midwest, make misinterpretation of words and actions less likely when communication crosses racial boundaries.⁵³ The bottom line is that we don't know why black civilians appear to be relatively safe from police use of lethal force in this set of states today. The data revealing this regularity were not available until very recently, and remain too limited to select among competing explanations.

At the other extreme are several states in which black civilians are killed at rates that are significantly higher than those of white civilians. To the right of the flatter dotted line in Figure 8.4 are states where the victimization rate for black civilians is more than four times that for whites. For the most part, these are states in the Northeast and Midwest, where the overall use of lethal force is relatively low.

Oklahoma is in a category of its own, with very high use of lethal force, which black civilians face to an extreme degree, even as its police officers are much less exposed to felonious killing than officers in the country at large. The District of Columbia is also unique, being a city rather than a state, with a majority black population. Use of lethal force is high and all twelve victims here were black, even as the threat faced by officers in the District is well below the national average.

To summarize, there is enormous geographic variation in the rates at which civilians are killed by police officers, as well as the degree to which African Americans face greater force relative to the general population. States with the greatest use of lethal force have

relatively small black populations and, with the notable exception of Oklahoma, are responsible for a relatively small proportion of black lives taken.

Cities

We can get a slightly more fine-grained picture of civilian deaths by looking at big cities (because of the paucity of data, we can look only at the largest cities). Table 8.1 compares police killing rates for blacks, whites, and Hispanics in five major cities.

In the two largest cities, New York and Los Angeles, two patterns stand out. The first is how different these two affluent, large, and diverse cities are: every group is much safer in New York than in the nation at large, and every group is less safe in Los Angeles than in the nation at large. Blacks in New York are almost as safe as the average white in the rest of the nation, and not much more likely to be killed by police than the average white in Los Angeles. Whites in Los Angeles are almost four times as likely to be killed by police as those in New York, though still less likely to be killed by police than blacks in the nation at large. Hispanics in Los Angeles are more than eight times as likely to be killed as Hispanics in New York.

The other pattern is the huge disparity in New York City between blacks and other groups, especially whites. There are 2.7 million whites in New York City, and slightly more than the 2.6 million in Oklahoma, but in 2015–2016 police killed 3 white civilians in New York City, while killing 42 in Oklahoma. Blacks in New York are six times as likely to be killed by police as whites, which is more than twice the national ratio. Even though black civilians in New York are almost as safe from lethal force as whites in Los Angeles, this ratio suggests that police use of force in New York has a racial dimension that is less salient in Los Angeles.

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Table 8.1 Annual rate of civilian deaths from police action, five largest American cities, 2015-2016, per million population

	Los Angeles	New York City	Chicago	Houston	Philadelphia
Black	15.1	3.4	10.7	15.1	6.0
Hispanic	7.6	0.9	1.3	4.3	2.7
White	2.3	0.6	0.6	3.7	0.9

Source: *Guardian*, “The Counted.” Note: Civilian deaths are attributed to a city if they occur within the city’s boundaries, no matter which law enforcement agency is responsible, or if a member of the city police department is responsible, no matter where the death occurred.

How do other large cities look? Chicago, Houston, and Philadelphia—the only other cities with populations over two million—are not as safe as New York, and Houston is even deadlier for whites than Los Angeles. In fact, Houston is deadlier for white civilians than New York is for black civilians. Still, as in New York, police killings are heavily concentrated on African Americans in these cities too: the ratio of black to white victimization ranges from four in Houston to eighteen in Chicago. In Chicago, blacks are killed at a rate much higher than the national average, and whites are killed at a rate much lower than the national average. Many other large cities exhibit a similar pattern, with the rate at which police kill black civilians being much higher than the rate at which they kill whites.

Putting together the information about cities and states, we can paint a general but tentative picture of police killings in the United States. The highest rates are in two kinds of areas: the rural and semirural areas of the West and Midwest, and the African American neighborhoods of large cities (other than New York). The former areas are mainly white and the latter, by definition, mainly black.

There are two salient differences between the two types of dangerous areas. The first is that the fraction of the white population

nationally that lives in the rural West is much smaller than the proportion of the black population that lives in big cities. That alone would make the national black rate higher than the national white rate. The second difference is that in the rural West there is no contrasting group. In large cities, the police agencies that kill a lot of blacks also patrol areas with a lot of whites, whom they hardly ever kill. But in the rural West there is no one whom the police agencies treat much better than whites—either because the area is almost entirely white or because the local Hispanics or Native Americans are also killed at a high rate.

Nevertheless, variation is still wide within these general categories (as we saw in the New York–Los Angeles comparison). It’s hard to believe that all of the differences between New York and Los Angeles are due to how civilians behave, and nothing is due to how police behave.

American Dilemma

The Carnegie Corporation funded a project in the 1930s that can give us some insight into how rates of police-related violence have changed over time. The project examined the so-called Negro question, and it eventually led to the publication of Gunnar Myrdal’s *American Dilemma*. As part of this project, Arthur Raper, a sociologist who had written an influential book about lynching, undertook a study of criminal justice, especially in the South, and surveyed a large number of police departments by mail about police-related homicides in the five years ending in 1940. A total of 228 departments responded. The responding departments represented about 13 percent of the national population in 1930, and about 20 percent of the national black population.

We don't know how representative Raper's respondents were of the nation at that time, but if they were reasonably representative, then the rate at which police are killed has fallen substantially.⁵⁴ Among Raper's respondents, 1.3 police officers were killed per year per million population, and current figures are between 0.1 and 0.2 per year per million. The rate at which black civilians are killed by police has also fallen, but not quite so substantially: from more than 20 per year per million to less than 10 in the *Guardian's* data set for 2015–2016. The rate for whites seems to have risen since the 1930s: 2.5 per year per million in the Raper data set, as opposed to more than 5 in the *Guardian* data set, although Raper has little data from the western states, where the rate of whites being killed is currently highest. Because Raper's data set was not designed to be representative, we cannot be sure about any trend for white civilians, but the differences for police and black civilians are so large that the direction of change seems unmistakable.

Raper's data for 1935–1940 include only deaths caused by the main police department in each city, while the *Guardian* data include deaths that occurred within the city but were caused by other law enforcement agencies, like sheriff's officers and transit police. So the reduction in killings of black civilians may be even larger than it appears, and the increase in killings of white civilians may be smaller. These other law enforcement agencies cause a significant number of deaths in the *Guardian* data, around a quarter.

Mutual fear, amplified by the logic of preemption, appears to have been at work in interactions involving white officers and black civilians at the time. Drawing on prior work by H. C. Brearley, Raper observed that between 1920 and 1932, more than half of interracial homicides in which the killer's identity was known were either slayings of black civilians by white police officers or slayings of white officers by black civilians.⁵⁵

As Raper puts it, “Sensing the danger of scared policemen, Negroes in turn frequently depend on the first shot.”⁵⁶ Other sources from the time confirm the prevalence of this effect; according to “dozens of letters written by black suspects and convicts to the NAACP in the 1920s, self-defense was one of the most frequently cited causes of interracial homicide of white male citizens and police officers by black men.”⁵⁷

For black civilians, some confirmation for this conclusion comes from looking at relatively large cities. Many cities had much higher rates of killing in the 1930s than they do today. Denver, Jacksonville, and Covington, Kentucky had rates over fifty per million in the Raper data, and Atlanta, Nashville, Kansas City, and Chattanooga had rates above forty per million. A separate study found a very high rate for Washington, DC, from roughly the same period.⁵⁸ In 2015–2016, only Miami and Stockton, California had rates above forty, and only Miami a rate above fifty.⁵⁹

Restricting attention to the fifty-two cities in Raper’s data that had over 50,000 people in 1940, the picture is similar. In this group of cities as a whole, the rate at which blacks were killed by police fell from about twenty per million in 1935–1940 to about ten in 2015–2016. But the average rate at which whites were killed in these cities rose from about two to above four. (The average rate at which Hispanics were killed was about five.)⁶⁰

For African Americans especially, the level of danger in 1935–1940 does not predict the level of danger eight decades later: the correlation in per capita victimization rates was slightly negative. That is, cities that were more dangerous for blacks in 1935–1940 were a little safer on average in 2015–2016. But the correlation for whites indicates some very weak predictive ability: the correlation was low but positive.⁶¹ These low correlations are encouraging: proclivity to kill does not seem to be some deeply entrenched part of the culture of cities.

In the American South, at least, and the non-southern cities for which Raper had data, the use of lethal force by police against black civilians has declined appreciably since that time (though starting from an extremely high level). So has the rate at which police officers are killed while on duty. In these cities, there is no evidence for a decrease in the rate at which white civilians are killed. For other regions of the country we have no basis for comparison.

Simpson's Paradox

While Roland Fryer characterized his findings on the use of lethal force as the “most surprising” of his career, not everyone was surprised. Writing on his blog, Peter Moskos responded as follows:

Jonathan Ayers, Andrew Thomas, Diaz Zerifno, James Boyd, Bobby Canipe, Dylan Noble, Dillon Taylor, Michael Parker, Loren Simpson, Dion Damen, James Scott, Brandon Stanley, Daniel Shaver, and Gil Collar were all killed by police in questionable to bad circumstances. . . . What they have in common is none were black and very few people seemed to know or care when they were killed.⁶²

Recall that Moskos did not think there was “a chance in hell” that Philando Castile would have been shot had he been white. But how can these two views—bias in individual cases but not in the aggregate—be reconciled?

We have already seen that there are enormous differences across states in the use of lethal force, as well as in the demographic structure of the population. Under these conditions a surprising possibility emerges: black citizens can face higher rates of lethal force relative to arrest rates at a set of locations, viewed separately, but not in the aggregate when these locations are viewed as a whole. The following simple example illustrates this logical point.

Consider a country composed of two regions, A and B, where A has a small black population and a high rate of lethal force, and B has a large black population but a lower incidence of lethal force. Suppose that both regions have a million arrests annually, in which black citizens are 20 percent of arrests in A and 40 percent of those in B. Suppose further that there are 200 victims of lethal force in A, of whom one-fourth are black, and 50 victims in B, of whom one-half are black. Then, clearly, the rate at which black civilians face lethal force exceeds the rate at which they face arrest in both regions. By the contact hypothesis proposed by Sendhil Mullainathan, there is evidence of bias at every location.

But what about the nation as a whole? Looking at the two regions as a single entity, we have two million arrests, with 30 percent of them involving black citizens. And there are 250 victims of lethal force altogether, of whom 75 are black—a ratio of precisely 30 percent. Thus, we find no evidence of bias in a country in which each region exhibits clear evidence of bias. Of course, it is also possible to construct hypothetical examples to generate the opposite result, showing no bias in each region but bias in the aggregate.

This fallacy of composition is known as Simpson's paradox.⁶³ Recognition of this possibility cautions us against relying too much on aggregate data, especially when geographic variations are substantial. While the example above is hypothetical, one can find groupings of areas that generate the same phenomenon—for instance, with Region A representing rural and semirural areas and Region B corresponding to the large cities.

Treatment and Impact

The usual way that scholars study disparate treatment is to send “auditors”—pairs of job applicants, for instance, who are trained to

give employers almost identical information—and see whether the manner in which auditors are treated varies with such attributes as race, ethnicity, or gender. While this may be a feasible approach to test for bias in certain kinds of traffic stops, it is clearly impossible in the case of lethal force and would be highly unethical even in the case of nonlethal force.

Furthermore, it is not clear that the disparate treatment question is even meaningful in this context, since interactions that result in police killings typically involve a sequence of actions performed by multiple parties. Black and white civilians are likely to react differently to the same objective circumstances, as we have seen. Greater fear could result in more compliant behavior, while greater suspicion and hostility could have the opposite effect. Reactions to encounters with law enforcement are likely to differ widely both within and across groups, which makes it challenging to answer the equal treatment question even in principle.

The disparate treatment question also does not deal well with differences within the ranks of officers or the level of decision making at which bias arises. For instance, suppose that some officers are hot-headed and quick to shoot, while others are calm and try to defuse situations, but neither group acts in a manner that is contingent on the racial identity of suspects. Then disparities in police killings could be substantial but due largely to where hot-headed officers tended to be assigned, rather than the racial attitudes of particular individuals.⁶⁴

While the disparate treatment question seems like the obvious one to ask, on closer examination it turns out to be poorly posed. Even if it were well posed (and could be answered with data we could gather ethically), it may not be the most important question to ask. Whether or not police officers are guilty of disparate treatment on average, they are still responsible for taking more than a thousand lives a year, about

a third of which are black lives. To understand why, we need to attend to policies and practices and not just the hearts and minds of individual officers.

Recall that the issue of disparate impact involves two questions: do the policies and practices disproportionately harm members of protected classes, and are they a “business” necessity? Clearly, facing an elevated risk of death is a harm, and there is no doubt that this risk is greater for African Americans: about a quarter of the people whom police officers killed in 2015–2016 were black, which is twice as great as the black share of the general population. The disproportion is much larger in most big cities. Native Americans were also disproportionately likely to be killed in the *Guardian* data.

The business necessity or public benefit question is harder to answer, but many relationships that we have seen so far suggest that the number of police killings (of people of all identity groups) could be reduced substantially without serious offsetting problems. The comparisons with the United Kingdom and Germany, for instance, and between different states (for instance, California and New York) and different cities that we have already presented suggest that some police departments could do a much better job of keeping civilians safe.

But showing that Germany or New York City has lower rates of civilians being killed by police (and in many cases, lower rates of police being killed) does not really tell us that they are doing something right. To answer the business necessity question, we should be able to show specific policies and practices that make these places safer and that could work in the places where civilians are not safe now. That’s impossible with current knowledge, but in Chapter 12 we point to some policies that appear promising.

The policies are likely to be most effective—in terms of lives saved—in the places where rates of killing are currently the highest and the most out of line with the rest of the nation. For instance, low-

ering the overall rate of police killing in the ten largest or most dangerous states to that of Ohio would reduce the number of police homicides nationally by about one-fifth.⁶⁵

While all groups face extremely high rates of lethal force in the United States, the available evidence suggests that they do so for different reasons. African Americans are killed out of fear, anger, and loathing, while whites are killed because they tend to live in parts of the country where overall rates of lethal force are especially high. Since there seems to be two kinds of places where the rate of police killings is very high—the rural West and the black neighborhoods of large cities—this reasoning would imply that efforts should be concentrated there. It is entirely possible, and indeed likely, that the reasons for the high rate of police killings and the best policies to deal with them are different in these two kinds of places. If serious action is taken to reduce police killings, either kind of place could see the greater decrease.

This reasoning has some ironic implications, among which is the following: if the Black Lives Matter movement is successful in drawing attention to the excessive use of lethal force in the United States, leading states with the highest rates to bring these down to the current national average, some of the greatest beneficiaries could be the white residents of the rural and semirural West.

Summing Up

Chapters 5–7 showed that police are more likely to take aggressive actions of all kinds against black civilians than against white civilians: they are more likely to stop African Americans, to use force against them, and to kill them. Especially when it comes to shooting, American police are also more aggressive with just about everybody than police in other prosperous countries (although comparative international data on stops and nonlethal force are hard to come by).

Part of this greater aggressiveness is justified by circumstances and probably not discriminatory. But it is very hard to point to any rigorous evidence that the greater aggressiveness, either in general or in that directed toward African Americans, results in reduced crime or greater overall civilian safety. The important stereotypes here are probably not those held by individual officers but those held by policy-makers, both police and civilian, who have been willing to countenance aggressive tactics for many years without evidence that they work, and who have not even bothered to count how many people police kill. Disparate treatment matters too, but it is hard to measure or even define when people belonging to different identity groups differ in how they interpret and react to the words and deeds of police officers.

Courts are one place where the consequences of harsh policing tactics are revealed, especially in the willingness of witnesses to testify. The ability of police to convince potential witnesses that they will be safe is also a factor. Chapters 9 and 10 look at how these factors, and stereotypes more generally, affect the courts.