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Sharing with you every month the good, the bad and the ugly side of public policy.

A Treatise on Policing: George Floyd, Lest We Forget

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We have been given so many reasons explaining why police reform is a lost cause, at least in the short run. However, the killings of African Americans at the hands of the police sometimes, back-to-back-to-back, have not abated, keeping alive the age-long debate about the uneasy relationship between the police and communities of color. The *George Floyd Justice in Policing Act of 2021* which was introduced in the United States House of Representatives on February 24, 2021, was designed to address this social pandemic. It is a combo of human rights and police reform bill aimed at combatting police misconduct, excessive use of force, and racial bias in policing. The bill addresses a wide range of policies and issues regarding policing practices and law enforcement accountability. Among others, it refutes the rationale behind qualified immunity and includes measures to increase accountability for law enforcement misconduct. If passed, it will enhance transparency, improve data collection, and drastically reduce discriminatory policing practices. The legislation is endorsed by more than 100 civil rights groups, including the NAACP, the NAACP Legal Defense and Educational Fund, National Urban League, Amnesty International, and National Action Network. While it has been passed in the House twice, the Senate has yet to follow suit.

There are various explanations as to why the legislation stalled in the Senate, Republican opposition being the most conspicuous one. But there are other reasons as well that make it impossible to move the needle on this bill, or on any other kind of meaningful police reform for that matter. One of them is the perennial powerful opposition mounted by the police union. Another stumbling block is the recalcitrant racism that permeates the rank and file of police departments across the nation. In addition to this endemic social cancer, there is also the nagging issue of qualified immunity which is nothing more than a catalyst for rogue behavior. These concerns amid others as well as the lack of progress on reform may have prompted some to ask that the police be defunded altogether. As many have opined, including my humble self, defunding the police is a non-starter. To be clear, to a large extent, majority of police officers are good 'cops' who take their responsibility to protect and serve very seriously and do a darn good job of ensuring our public safety. When on the beat, many of them put their lives on the line to save ours. While the bad ones almost always get the most publicity, the good ones, like every unsung hero, more often than not go unnoticed. That is why, for me the call to defund the police is not only absurd but equally unwise.

Luckily, other more measured suggestions to reform the police system have been floated. The most promising of them is the idea of community policing made popular by the Obama-Biden administration. It has also been suggested that with respect to distress calls, we need to be more selective regarding the nature of emergencies cops are called upon to answer. Proponents of this argument note that in some



instances, social worker or psychiatric personnel may be all that is needed, with cops only playing a secondary role if and when needed. Additionally, questions are being asked while concerns have been expressed about the frequency and necessity of routine traffic stops especially in neighborhoods belonging to communities of color. This is amid concerns about how many of these 'routine stops' have unnecessarily turned fatal. Equally disturbing are concerns about rules of engagement and how often cops unnecessarily escalate situations which otherwise could have been easily deescalated thereby saving lives rather than snuffing them. Perhaps the most worrisome problem is the quality of training they get with respect to taking a suspect into custody, especially during a routine stop. Why does it take four or more armed police officers to subdue an unarmed man to the point that he had to be choked to death before he can be taken to custody as was the case with Eric Garner and then George Floyd? Perhaps, it is time to revisit that training manual. In any case, given the defeat that the George Floyd Act recently suffered in the Senate and considering that the composition of that body may not undergo any drastic change at least in the near future, the possibility of having a long-term legislative solution is pretty bleak. In other words, because of the current gridlock in the Senate, it is not unreasonable to expect that it would be relatively difficult to codify any significant police reform into law. Admittedly, some of the above issues can be addressed by Executive Orders, however, that won't give us the comprehensive and lasting remedy that the urgency of this situation requires.

Be that as it may, there is something we can do in the interim, and while it is still not a panacea for fixing this problem definitively, it can at least buy us the valuable time we so need to preserve lives while we wait for a more holistic approach, hence my suggestion for the immediate. Wayne Lapierre once said that one way to stop a bad guy with a gun is a good guy with a gun. I never thought I would be borrowing anything from Lapierre until now. Nevertheless, while I completely disagree with the context in which he used it, the phraseology actually makes more sense when it is applied to police reform. By that I mean that perhaps the best way to stop a bad cop is have a good cop expose the bad officer, instead of covering up the crime. Make no mistake about it, the 'blue wall of silence' is well and alive within the law enforcement ecosphere where it is common practice not to report on a colleague's errors, misconducts, or crimes, including police brutality. It is part of that bona fide 'cop culture' that constitutes an iron-cast barrier against stopping bad officers. The Code of Silence in law enforcement is very problematic and comprehensively substantiated in the report released by the *National Institute of Ethics*. The research gathered from 25 law enforcement academies across 16 states concluded that 79% of officers believe the Code of Silence not only exists but it is also relatively commonly practiced by officers. Even more disturbing is the fact that over 50% of the respondents acknowledged that the Code of Silence do not bother them in the least. Quintessentially, Derek Chauvin was convicted among other things, because the blue wall collapsed on him. Had the other officers including the Chief not testified against him, or agreed to cover up for him, the outcome of that case would most probably have been dramatically different. In the shooting death of Laquan McDonald, Officer Jason Van Dyke could have walked away scot-free because his fellow officers testified that McDonald lunged towards him with a knife. Unfortunately for them, the dashcam showed that he was actually running away from the Van Dyke when he was shot sixteen times. And there are hundreds, and perhaps even thousands of similar

examples across the states not counting those we may never learn of. To be sure, there is no gainsaying that the blue wall of silence perpetuates racist policing and wrongful convictions.

We can begin to chip away the influence of the blue wall by rewarding the whistleblowers and making it so convenient for the good cops to uncover the bad cops. We must also at the same time offer them (the good cops) the necessary protection including complete anonymity in order to avoid retaliation. What makes this option so enticing is that we may not have to deal with the shenanigans of the Senate since it can actually be promulgated by an Executive Order. Moreover, no matter the political affiliation, most lawmakers would be hard-pressed to explain to their constituents why they oppose outing a bad cop potentially guilty of a crime, including murder. While this might not prove to be the slam-dunk panacea we all hope for, however, it can move the needle significantly forward on police reform. This is because for bad cops, the measure would act as a deterrence for fear of getting caught and/or brought to justice. Should that happen, it would trigger a trend that can dramatically reduce the incident of police brutality.

This brings me back to the question of qualified immunity. For some time now, I have been trying to wrap my arms around this issue and the more I try the more it just does not make any sense to me. One of the major tenets of the rule of law in a democracy such as ours is that nobody, not even the President is above the law. Let us not forget as I stated earlier that the vast majority of cops are good officers, laying out their lives on the beat every day and night. Apparently, qualified immunity would not apply to these officers because they have not done anything wrong and therefore would have no need for it. And, just in case they are wrongly accused of a crime, we have the judicial system as a buffer to protect their rights by affirming their innocence after a due process. If that is the case, it is commonsensical to assume that ONLY cops who have committed crimes would benefit from immunity. What that means is that by default, advocates of qualified immunity may effectively be insinuating that cops seeking immunity must have violated the law. Otherwise, why would they need it? In my opinion, granting a person who has committed a crime is quintessentially the definition of being above the law and therefore undemocratic. Besides, it will not only validate rogue behavior, but it will also actually encourage it.

For those who reject Critical Race Theory in our classrooms, here is another reason they should give a second reflection on that thought. Most of what we are currently experiencing with regards to police brutality is rooted in our history. Right from its inception, the relationship between the police and communities of color was intentionally designed to perform exactly what we are witnessing today: suppress and in many cases, deny the rights of African Americans and other communities of color. Originally, when this Union was founded, the dominating theme of policing was to put Blacks 'in their place', make sure that they are contained and limit in as much as possible their abilities to participate in the political process. Even the good officers struggle sometimes with issues of fairness and especially with the nuances implicitly implied in how the law instructs them to deal with communities of color. Police brutality on communities of color is a systemic problem and therefore requires a systemic solution. The wound is too infested and too wide to be covered by a bandage. Cops who are already



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imbibed with racial bias are certainly more prone to abusing that power. Politicizing police power in the manner some entities of our government currently does is in itself an expression of implicit racial bias.

There are 18,000 police departments across the nation and waiting for each one of them to undergo a meaningful and comprehensive reform and get it right would literally take an eternity, if it is at all possible. It really doesn't take a brain surgeon to figure out that it would take a federal response for any chance of a systemic and durable solution. If all this is not a good enough reason to bring back the *George Floyd Justice in Policing Act* to the legislative table, then Eric Garner (2014), Michael Brown (2014), Tamir Rice (2014), Laquan McDonald (2014) Walter Scott (2015), Alton Sterling (2016), Philando Castile (2016), Stephon Clark (2018), Breonna Taylor (2020), George Floyd (2020), Daunte Wright (2021), Jayland Walker (2022) and all those who would certainly follow, would have died in vain. It remains to see if our elected officers would have the courage to do the right thing. In the meantime, we can at least try to mitigate the situation by making it more difficult for the bad ones to brutalize defenseless citizens, sometimes with impunity. Until next time, take care of yourself and of each other.