

MAKING THE OPTIMISTIC CASE FOR POLICING REFORM:
POLICE AS PARTNERS AND REFORM AS TRUE TO
DEMOCRATIC VALUES AND AMERICA’S VISION OF ITSELF

*Dr. Ihsan Alkhatib**

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*Dr. Alkhatib earned his J.D. from the University Of Toledo in 1999, and soon after began practicing law in Dearborn, Michigan. In 2008, he earned his PhD in Political Science from Wayne State University in Detroit, Michigan. Alkhatib has been involved in civil rights and human rights advocacy for more than twenty years. He served as President of the American Arab Anti-Discrimination Committee Detroit chapter and the president of its advisory board. Currently, he serves on the advisory board of the American Human Rights Council. Alkhatib is currently working full time as an associate professor with research and teaching interests in Arab Americans’ and Muslim Americans’ encounters with the legal and political system.

In a sense, we've come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the "unalienable Rights" of "Life, Liberty, and the pursuit of Happiness."¹

—Martin Luther King, Jr.

Our reaction to the truth today says what kind of society we want to be. Do we really want the truth, or do we want a truth that fits our narrative?²

—Daniel Cameron, Attorney General of Kentucky

For those of us who desire a more perfect union, police use of force has become our Gettysburg. Of course, black lives matter as much as any other lives. Yet, we do this principle a disservice if we do not adhere to strict standards of evidence and take at face value descriptive statistics that are consistent with our preconceived ideas. 'Stay Woke'—but critically so.³

—Roland G. Fryer, Jr.

¹ See Martin Luther King, Jr., *I Have a Dream*, Speech at the March on Washington (Aug. 28, 1963) (quoting THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776)).

² Ben Tobin, *Read What Daniel Cameron Said About the Grand Jury's Findings in the Breonna Taylor Case*, LOUISVILLE COURIER J. (Sept. 30, 2020, 7:39 AM), <https://www.courier-journal.com/story/news/local/breonna-taylor/2020/09/23/breonna-taylor-decision-kentucky-ag-daniel-cameron/3507419001/> (responding to the Black Lives Matter movement's widely accepted narrative that that Breonna Taylor's death was a crime and the result of racist policing practices).

³ Roland G. Fryer, Jr., *Reconciling Results on Racial Differences in Police Shootings*, AM. ECON. REV. 1, 5–6 (May 2018), https://scholar.harvard.edu/files/fryer/files/fryer_police_aer.pdf.

I. INTRODUCTION

The killing of George Floyd on May 25, 2020 in Minneapolis put the issue of policing reform front and center in American politics and media coverage. The need for such reform is undeniable and efforts have been made at the city, state, and national level to improve American policing. Professor Claudia Flores, along with five of her colleagues at the University of Chicago's School of Law, propose reform guided by American obligations to international human rights standards.⁴ While the proposed reform is useful since it does provide guidance as to limits on the use of deadly force, it is neither necessary nor sufficient to improve American policing and use-of-force policies. The political feasibility of the proposed reform is prejudiced by their presentation on race and policing as well as their advocacy for reform on the basis of UN-related obligations. Any police reform in the United States will be a result of the political process. It is important to understand and represent all relevant stakeholders to make reform a reality. Alienating important constituencies makes even the most sensible and uncontroversial reforms difficult to achieve. That is perhaps the central weakness of Professor Flores's and her colleagues' study and its policy proposals.

II. ON POLICE AND POLICING

The dominant narrative today with respect to policing is that the institution of policing is afflicted by racism and that abuses of force, deadly and non-deadly alike, are rooted in systemic racism. The oft-repeated assertion is that policing in America has racist roots.⁵ In *The 1619 Project*, Nikole Hannah-Jones makes the argument that this country was racist ab initio,⁶ a thesis Flores clearly adopts. But the history of policing in America is not the history of policing in the American South. Contemporary American policing in Boston, New York, Chicago, or Philadelphia cannot be connected to "slave patrols" that existed in the American

⁴ Claudia Flores et al., *Global Impunity: How Police Laws & Policies in the World's Wealthiest Countries Fail International Human Rights Standards*, 49 GA. J. INT'L & COMP. L. 243 (2021).

⁵ See, e.g., Orlando Patterson, *The Long Reach of Racism in the U.S.—Despite Great Progress Across Two Centuries, Exclusion and Injustice Remain the Reality for Too Many Black Americans*, WALL ST. J. (June 6, 2020), <https://www.wsj.com/articles/the-long-reach-of-racism-in-the-u-s-11591372542>.

⁶ Nikole Hannah-Jones, *The Idea of America*, in *The 1619 Project*, N.Y. TIMES MAG. (SPECIAL ISSUE), Aug. 18, 2019, at 14.

South prior to the Civil War.⁷ Use and abuse of force by American police officers, whether deadly or non-deadly, is not limited to Black communities and the problem transcends race. Most of the victims of excessive use of force are not Black; the question is why the ratio of Black individuals fatally shot by police is almost twice their proportional rate in the population?⁸

Building from the slave-patrol stigma, Flores presents policing simplistically as nothing more than state coercion: “[T]he use of force as a form of coercion is a common denominator in law enforcement around the world.”⁹ Yet police represent not only state authority but crime control as well.¹⁰ Flores discusses policing without mentioning its vital crime-control functionality. Policing is not only about the state asserting itself; it is about protecting law-abiding citizens from criminals. Modern police deal with arson, robberies, domestic violence, rape, homicides, and gang violence on a daily basis.

To reduce policing to state coercion of the population is inaccurate insofar as it is incomplete. The history of policing, especially in Western democracies, is the history of constant improvement in response to the need for “legitimacy, the maintenance of democratic values, the protection of human rights, transparency, the promotion of force efficiency and discipline and the enhancement of police community relations which, in turn, can improve the capacity of police bodies to discharge their functions.”¹¹ Failure to acknowledge the evolution and improvement of contemporary police forces results in unrealistic and possibly counterproductive understandings of police, policing, and reforms thereof.

David Alan Sklansky writes about the change in policing that has occurred over the past half century:

The virtually all-white, virtually all-male departments of the 1950s and 1960s have given way to departments with large numbers of female and minority officers, often led by female or minority chiefs. Openly gay and lesbian officers, too, are

⁷ Historian Gary Potter describes slave patrols as police patrols that had three main responsibilities: “(1) to chase down, apprehend, and return to their owners, runaway slaves; (2) to provide a form of organized terror to deter slave revolts; and, (3) to maintain a form of discipline for slave-workers who were subject to summary justice, outside the law.” Gary Potter, *The History of Policing in the United States*, ECU ONLINE, <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf> (last visited June 17, 2021).

⁸ John Malcolm & Charles “Cully” Stimson, Comment, *Reform of Policing: What Makes Sense—and What Doesn’t*, HERITAGE FOUND. (June 12, 2020), <https://www.heritage.org/crime-and-justice/commentary/reform-policing-what-makes-sense-and-what-doesnt>.

⁹ Flores et al., *supra* note 4, at 4.

¹⁰ See Allen E. Liska, *Specifying and Testing the Threat Hypothesis: Police Use of Deadly Force*, in *SOCIAL THREAT AND SOCIAL CONTROL* 53, 53 (Allen E. Liska ed., 1992).

¹¹ Dermot P. J. Walsh & Vicky Conway, *Police Governance and Accountability: Overview of Current Issues*, *CRIME, L. & SOC. CHANGE* 55, 63 (2011).

increasingly commonplace. Today's Los Angeles Police Department is not the homogeneous workplace celebrated on *Dragnet*—and neither is the police force of any other large American city.¹²

Flores's presentation of policing in America risks alienating hundreds of thousands of American police officers and their politically influential supporters and leaves itself open for criticism as uninformed and perhaps even biased. What do "slave patrols" have to do with modern policing in Chicago and Minneapolis? Are the slave patrol officers alive today? The connection is made on an ideological basis, not necessarily a factual basis. Policing, like all human endeavors, is framed by its past but is categorically not stuck there. As Walsh and Conway note: "Policing itself has changed immensely over the past 50 years in response to the demands imposed upon it by an increasingly diverse, technological, urbanised, globalised, mobile, sophisticated, rights-conscious and knowledge-based society."¹³

III. POLICE USE OF DEADLY FORCE ON UNARMED CIVILIANS: CASES THAT FIT A NARRATIVE

No one doubts that policing in America has a use-of-force problem that is not limited to the use of deadly force. Police have broad discretion in the use of force.¹⁴ But is this an inherent issue of race? Flores and her co-authors refer to a number of tragic cases worldwide where deadly force was abused against unarmed civilians.¹⁵ As to cases from the United States, they cite the police killings of four Americans: George Floyd, Breonna Taylor, Laquan McDonald, and Eric Garner.¹⁶ All were Black. But other tragic, high profile cases occurred where the police used deadly force against unarmed civilians of other races or ethnicities. One is the case of Tony Timpa in Dallas, Texas, which was, like George Floyd's, recorded and widely viewed.¹⁷ Timpa, a mentally ill man who was off his medication and was scared, called 911 asking for police assistance.¹⁸ The Dallas

¹² David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1210 (2006).

¹³ Walsh & Conway, *supra* note 11, at 61.

¹⁴ See generally ALEX S. VITALE, *THE END OF POLICING* (Verso Books 2017) (discussing the history of police and the problems with modern day policing); and FRANKLIN E. ZIMRING, *WHEN POLICE KILL* (Harvard Univ. Press 2017) (analyzing police use of force and possible methods for reducing use of deadly force).

¹⁵ Flores et al., *supra* note 4, at 1.

¹⁶ *Id.* at 1.

¹⁷ Dall. Morning News, *Dallas Police Body Cameras Show Moment Tony Timpa Stopped Breathing*, YOUTUBE (July 30, 2019), https://www.youtube.com/watch?v=_c-E_i8Q5G0.

¹⁸ See *id.*

Morning News summarized his killing with this title and headline: “‘You’re Gonna Kill Me!’: Dallas Police Body Cam Footage Reveals the Final Minutes of Tony Timpa’s Life. Timpa wailed and pleaded for help more than 30 times as officers pinned his shoulders, knees and neck to the ground in 2016.”¹⁹ The headline accurately describes the body camera footage, and it is painful to watch officers mocking Mr. Timpa and joking as he died.

Timpa’s is not the only case of tragic police killings of unarmed civilians who are not Black. Another case where police engaged in outrageous use of excessive force was the killing of Daniel Shaver, an unarmed civilian, in Mesa, Arizona.²⁰ The problem started when someone reported a man pointing a rifle from a hotel window and police arrived to investigate.²¹ After tense moments of confusing commands, Mr. Shaver, while begging not to be shot, was killed instantly with five shots from an AR-15.²² The video is as disturbing as George Floyd’s video. Another outrageous use of deadly force that does not fit the dominant race and policing narrative is that by a Black officer killing an unarmed Black man in Prince George’s County, Maryland.²³ William Green was handcuffed behind his back and placed in the backseat of the police car when he was shot six times by Black police officer Michael Owen, Jr.²⁴

A claim often made in support of the police-as-systemically-racist theory is that the police shoot Black Americans at a rate higher than their share of the population.²⁵ But according to John Malcolm this is the wrong benchmark. The right benchmark is the percentage of African Americans who commit crime:

In 2019, for instance, police officers fatally shot 1,033 people, 235 (23% of the total) of whom were African Americans—only 14 of which, it turns out, were unarmed, down from 38 in 2015, according to The Washington Post.

¹⁹ Cary Aspinwall & Dave Boucher, ‘You’re Gonna Kill Me!’: Dallas Police Body Cam Footage Reveals the Final Minutes of Tony Timpa’s Life, DALL. MORNING NEWS (July 30, 2019, 7:05 PM), <https://www.dallasnews.com/news/investigations/2019/07/31/you-re-gonna-kill-me-dallas-police-body-cam-footage-reveals-the-final-minutes-of-tony-timpa-s-life/>.

²⁰ L.A. Times, *Body-Cam Video of Daniel Shaver Shooting*, YOUTUBE (Dec. 8, 2017), <https://www.youtube.com/watch?v=VBUX0jUKxc&t=5s>.

²¹ *Id.*

²² *Id.*

²³ Scott Calvert, *Maryland County to Pay \$20 Million to Settle Suit over Police Shooting of Black Man*, WALL ST. J., Sept. 29, 2020, at A3.

²⁴ *Id.*

²⁵ See *Fatal Force*, WASH. POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (last visited June 17, 2021) (noting that “[a]lthough half of the people shot and killed by police are White, Black Americans are shot at a disproportionate rate. They account for less than 13 percent of the U.S. population, but are killed by police at more than twice the rate of White Americans.”).

While that's certainly higher than the percentage of African Americans in the population, it's lower than the percentage of African Americans who commit serious crimes in this country.

According to FBI statistics, African Americans make up more than half of known homicide and robbery offenders, despite constituting only 13% of the population.²⁶ The police-Black encounters and deadly police shootings are much higher for Blacks than Black demographic numbers would suggest because of the high crime rate in the Black community.

IV. CHOICE OF COUNTRIES TO EXAMINE: THE CASE OF INDIA

Flores and her co-authors examined the compliance of a number of countries with the germane obligations of international law vis-à-vis police use-of-deadly-force directives stating that they chose “the largest cities of the twenty-nine wealthiest countries.”²⁷ They chose the twenty-nine countries with the biggest Gross Domestic Product (GDP), and refer to these countries as “the world’s most well-resourced countries.”²⁸ One can infer that their premise is that a bigger GDP means that these countries have the resources to upgrade their legal system to comply with international law obligations. But can one realistically call all of them “wealthy” and “well-resourced”? Is GDP the right benchmark? If a person makes \$50,000 and has two dependents, is he in the same economic situation as a person who makes \$50,000 and has nine dependents?

More practically, is India “well-resourced” and “wealthy”? While India’s per capita is \$2,099.60, Australia’s is \$55,060.30.²⁹ The better measure of wealthy and well-resourced is GDP per capita. Australia is wealthy and well-resourced; India is not. India is in fact greatly resource-constrained.³⁰

²⁶ See Malcolm & Stimson, *supra* note 8 (pointing out higher arrest rates among African Americans is key to the general conservative viewpoint on race and policing). See, e.g., HEATHER MAC DONALD, *THE WAR ON COPS: HOW THE NEW ATTACK ON LAW AND ORDER MAKES EVERYONE LESS SAFE* 27 (2016). The real issue of injustice, historical and current, that contributes to the crime rate among minorities is beyond the scope of this article.

²⁷ Flores et al., *supra* note 4, at 2.

²⁸ *Id.* at 2–3.

²⁹ *GDP Per Capita (Current US\$)*, WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last visited Jan. 26, 2021).

³⁰ *GDP Per Capita (Current US\$)*, WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD> (last visited Jan. 26, 2021) (noting India had a GDP value of \$2,099.60 in 2019 and Australia had a GDP value of \$55,057.20 in 2019).

V. POLICING IN AUTHORITARIAN REGIMES: IT'S NOT ONLY POLICE

Another issue with the choice of cases in the Flores study is the inclusion of undemocratic countries with terrible human rights records, most notably Iran.³¹ In the study, Iran fares better as to compliance with international human rights obligations than France and Italy, democracies with excellent human rights records.³² The failure to account for the health of the respective democracies in the nations observed is a severe flaw in the study. Such a flaw may not be unique to the study; indeed, one of the controversies of the United Nations (UN) is the functioning of the UN Human Rights Council.³³ Notorious abusers of human rights end up serving on the UNHRC, the highest human rights body in the world, because of UN rules that have members elected by the countries of their geographic group.³⁴ But that is the UN; it is another matter to favorably cite Iran, a repressive theocracy, in an independent study advocating for respect of human rights against police abuses of force.

Most importantly, Flores's study ignores the fact that in authoritarian countries, policing is not limited to conventional police. In Iran, for instance, there is the secret police agencies and the Basij, in addition to traditional police:

The mission of the Basij as a whole can be broadly defined as helping to maintain law and order; enforcing ideological and Islamic values and combating the “Western cultural onslaught”;

³¹ See U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. & LAB., IRAN 2020 HUMAN RIGHTS REPORT 2 (2020), <https://www.state.gov/wp-content/uploads/2021/03/IRAN-2020-HUMAN-RIGHTS-REPORT.pdf> (“The government effectively took no steps to investigate, prosecute, punish, or otherwise hold accountable officials who committed these abuses, many of which were perpetrated as a matter of government policy.”).

³² Compare Flores et al., *supra* note 4, at 293 (grading Tehran, Iran, 23 out of 100 while Rome, Italy, and Paris, France, each received a grade of 5), with U.S. DEP'T STATE, BUREAU OF DEMOCRACY, H.R. & LAB., FRANCE 2020 HUM. RTS. REP. 1 (2021), <https://www.state.gov/wp-content/uploads/2021/03/France-2020-Human-Rights-Report.pdf> (“The government took steps to investigate, prosecute, and punish officials who committed human rights abuses.”), and U.S. DEP'T STATE, BUREAU OF DEMOCRACY, H.R. & LAB., ITALY 2020 HUMAN RIGHTS REPORT 1 (2021), <https://www.state.gov/wp-content/uploads/2021/03/Italy-2020-Human-Rights-Report.pdf> (“The government identified, investigated, prosecuted, and punished officials who committed human rights abuses.”).

³³ Tzvi Kahn, Policy Brief, *UN Elects Worst Violators to Human Rights Council*, FOUND. FOR DEF. DEMOCRACIES (Oct. 15, 2020), <https://www.fdd.org/analysis/2020/10/15/worst-violators-elected-to-unhrc/>.

³⁴ *Membership of the Human Rights Council*, U.N. HUM. RTS. COUNCIL, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/Membership.aspx> (last visited Apr. 9, 2021).

assisting the IRGC in defending the country against foreign threats; and involvement in state-run economic projects.

In terms of maintaining law and order, Basij members act as “morality police” in towns and cities by enforcing the wearing of the hijab; arresting women for violating the dress code; prohibiting male-female fraternization; monitoring citizens’ activities; confiscating satellite dishes and “obscene” material; intelligence gathering; and even harassing government critics and intellectuals. Basij volunteers also act as bailiffs for local courts.³⁵

Neither the secret police nor the Basij are bound by regular police rules. How much of Iran’s policing is done by regular police, the secret police, or the Basij? Because of Iran’s historic absence of transparency,³⁶ this is no easy query to answer. The score or grade, as to human rights and policing in Iran, is arguably meaningless. The means cannot be separated from the ends.

VI. SCORE FOR COMPLIANCE AND POLICE KILLINGS

Grades assigned by the Flores study for a city’s compliance with human rights as to police use of deadly force ranged from 72 for New York City to 5 for Rome, Mumbai, and Paris.³⁷ Riad received a zero even though it has not been known for making international headlines for police fatal shootings. What is the significance of this grade? Flores developed the score to measure the extent of compliance with human rights obligations as to the police use of deadly force operationalized on the basis of meeting human rights obligations.³⁸ But compliance is a means to an end. The end is respect for human rights and fewer police killings. When one examines the incidence of police killings in countries whose cities are included in the study,³⁹ they find that the score and the number of killings bear no meaningful relationship. Because the World Population Review does not have data on all police killings in all the countries that Flores and her co-authors included in their study, Table 1 only includes the countries that have such data.

³⁵ Hossein Aryan, Comment, *Iran’s Basij Force—the Mainstay of Domestic Security*, RADIOFREEEUROPE/RADIOLIBERTY (Dec. 7, 2008, 13:57 GMT), https://www.rferl.org/a/Irans_Basij_Force_Mainstay_Of_Domestic_Security/1357081.html.

³⁶ *Id.*

³⁷ See Flores et al., *supra* note 4, at 293.

³⁸ *Id.* at p. 4–5.

³⁹ *Police Killings by Country 2021*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/police-killings-by-country> (last visited Apr. 13, 2021).

City (State)	Grade ⁴⁰	Police Killings Rate per 10 Million (Countrywide) ⁴¹
New York City (United States)	72	28.4
Mexico City (Mexico)	70	30
Buenos Aires (Argentina)	70	21.6
Toronto (Canada)	63	9.7
Amsterdam (Netherlands)	40	2.3
London (United Kingdom)	38	.5
Oslo (Norway)	33	1.9
Tokyo (Japan)	25	.2
Warsaw (Poland)	25	.5
Tehran (Iran)	23	36.6
Berlin (Germany)	20	1.3
Mumbai (India)	5	12.54
Paris (France)	5	3.8

The table above shows the absence of a relationship between compliance and police killings. Accordingly, one can conclude that compliance is neither necessary nor sufficient for the reduction of police killings. Crime level and the availability of guns are far more critical factors. For countries like Japan, the UK, Norway, and Poland, mandating a compliance system along the lines suggested by Flores as a matter of public policy, is a solution looking for a problem.

None of the evaluated cities in the Flores study received a maximum score of 100.⁴² The authors concluded that “[t]he failure of States to make this most basic commitment to use lethal force against their own population *only* where necessary, proportional, accountable, and legal can and has had dire consequences around the world.”⁴³ This conclusion is unwarranted when examining the grades given for compliance in each city and the number of police killings for their respective countries.⁴⁴ There are 197-countries in the world.⁴⁵ What is dire around the world is that while the global police killing rate is 130.9 per ten million, a handful of countries present the lion’s share of police killings: Brazil (6,160), Venezuela (5,287), the Philippines (3,451), and India (1,731).⁴⁶ Even the killing of one innocent life is one death too many. But just looking at the number to

⁴⁰ Flores et al., *supra* note 4, Figure 1.

⁴¹ *Police Killings by Country 2021*, *supra* note 39.

⁴² See Flores et al., *supra* note 4, at 293.

⁴³ Flores et al., *supra* note 4, at 286.

⁴⁴ See *supra* note 4, Figure 1. Note that numbers of killings per city are not available, and thus the number of police killings per whole country is a proxy.

⁴⁵ *How Many Countries Are There 2021*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/how-many-countries-are-there> (last visited Jan. 26, 2021).

⁴⁶ *Police Killings by Country 2021*, *supra* note 39.

determine the nature of the problem, police killings are at the pressing crisis level for only a handful of countries.

VII. RACE AND POLICING: THE SCHOLARSHIP

In her concluding segment, Flores reviews leading scholarship on the use of deadly force. She writes: “Moreover, decades of research has shed light on the arbitrary, and too often discriminatory, factors that influence law enforcement officers’ decisions to employ force while on duty.”⁴⁷ As to race, she writes: “Racial bias, whether conscious or unconscious, has been found particularly influential and endemic in police officers’ choice of when to use force and how much force is required.”⁴⁸ In footnote 178, she cites only one scholarly work in support of this assertion, which “found that officers were quicker to shoot an armed Black target, relative to an armed white target and quicker to press ‘don’t shoot’ for the unarmed white target, relative to the unarmed Black target.”⁴⁹ But more recent scholarship by Harvard economist Roland Fryer Jr. found:

On non-lethal uses of force, there are racial differences—sometimes quite large—in police use of force, even after controlling for a large set of controls designed to account for important contextual and behavioral factors at the time of the police-civilian interaction. As the intensity of use of force increases from putting hands on a civilian to striking them with a baton, the overall probability of such an incident occurring decreases but the racial difference remains roughly constant. On the most extreme uses of force, however—officer-involved shootings with a Taser or lethal weapon—there are no racial differences in either the raw data or when accounting for controls.⁵⁰

Flores and her co-authors’ choice to list American police killings of only African Americans in the first paragraph of their paper⁵¹ gives the impression that police use of force is a race and policing problem. Yet Fryer’s rigorous empirical

⁴⁷ Flores et al., *supra* note 4, at 287.

⁴⁸ *Id.* at 36.

⁴⁹ *Id.* at 36 n.184 (citing POL’YLINK & ADVANCEMENT PROJECT, COMMUNITY-CENTERED POLICING TOOLS: LIMITING POLICE USE OF FORCE 1, 7 (Oct. 2014)).

⁵⁰ Roland G. Fryer, Jr., *An Empirical Analysis of Racial Differences in Police Use of Force* 29–30 (Nat’l Bureau of Econ. Rsch., Working Paper No. 22399, 2018), <http://www.nber.org/papers/w22399>.

⁵¹ Flores et al., *supra* note 4, at 1.

study found no evidence of race discrimination in the use of deadly force.⁵² Instead, Fryer found evidence of racial differences or discrimination in the use of non-deadly force, an area that is not the subject of the reform proposed by Flores:

Interestingly, as the intensity of force increases (e.g. handcuffing civilians without arrest, drawing or pointing a weapon, or using pepper spray or a baton), the probability that any civilian is subjected to such treatment is small, but the racial difference remains surprisingly constant. For instance, 0.26 percent of interactions between police and civilians involve an officer drawing a weapon; 0.02 percent involve using a baton. These are rare events. Yet, the results indicate that they are significantly more rare for whites than blacks. With all controls, blacks are 21 percent more likely than whites to be involved in an interaction with police in which at least a weapon is drawn and the difference is statistically significant.⁵³

The reforms Flores recommends would not help remedy the kind of race discrimination in policing of which Fryer found evidence. While they might have intuitive appeal, they are incongruous with the empirical record. To improve American police-Black relations it is important to focus on the less deadly but more common forms of discrimination.

VIII. THE DECLARATION OF INDEPENDENCE, LEGITIMACY, & POLICE-COMMUNITY RELATIONS

The Supreme Court's standard for police use of force makes police accountability for use of deadly force difficult.⁵⁴ The standard the Court established for determining whether the officer was justified in the use of force is that of a reasonableness.⁵⁵ "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."⁵⁶

The number of people killed by American police officers can be reduced with restrictions on the use of deadly force and that has taken place in a number of cities in the United States.⁵⁷ The country is receptive to policing reform as

⁵² See Fryer, *supra* note 50, at 30.

⁵³ *Id.* at 4.

⁵⁴ ZIMRING, *supra* note 14.

⁵⁵ *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

⁵⁶ *Id.*

⁵⁷ *Id.*

evidenced by the number of states and cities that have already responded to protests by imposing limits on police use of force.⁵⁸ For example, in December 2020, Columbus, Ohio created the voter-approved Police Civilian Review Board,⁵⁹ a move supported by the city's police chief, who said "the board provide[s] transparency and accountability, and protect[s] the public as well as officers, when the facts are in question."⁶⁰

The police comprise a primary stakeholder in policing reform and serve as an important political constituency with major influence. Reform will be easier to sell if police officers are treated as partners and not as suspects. They are unlikely to participate fully if they feel misrepresented as merely a racist tool of state control and coercion. Inaccurately claiming that all policing in the United States has its origin in slave patrols and that the police are racist, especially in the use of deadly force, misrepresents the police. Even liberal states like California have had difficulty passing police reform for this reason: "Despite being led by a Democratic governor and supermajority in the legislature, several police-reform bills failed to pass in the state this year, a sign of the continued support for law enforcement and the influence of their unions even amid protests calling for overhauls."⁶¹

The reforms proposed by Flores and her co-authors are sensible and would assuredly help improve policing and reduce the use of deadly force. However, arguing that the United States is obligated to make these changes because of international law and the UN will work against adoption of the reform. Politics is the reason: even when international human rights obligations were not the issue, the Republican-dominated Senate and the Democratic-dominated House—while in agreement on the need for policing reform—failed to pass policing reform due to partisan disagreement and division.⁶² Arguing for reform on the basis of internal human rights obligations and the UN will make reform more of a partisan issue:

⁵⁸ See Sara Randazzo, *Across U.S., 2021 Ushers in Laws Prompted by Pandemic and Protests*, WALL ST. J., Jan. 2, 2021, at A3.

⁵⁹ Adora Namigadde, *Columbus Mayor Announces Structure for Civilian Review Board*, WOSU PUB. MEDIA (Dec. 16, 2020, 3:56 PM), <https://radio.wosu.org/post/columbus-mayor-announces-structure-civilian-review-board#stream/0>.

⁶⁰ Ben Kesling, *Columbus, Ohio, Police Officer Relieved of Duties After Killing Black Man*, WALL ST. J. (Dec. 23, 2020, 11:51 AM), <https://www.wsj.com/articles/columbus-ohio-police-officer-relieved-of-duties-after-killing-of-black-man-11608738794>.

⁶¹ Christine Mai-Duc & Alejandro Lazo, *Police-Reform Bills Stall in California*, WALL ST. J. (Sept. 3, 2020), <https://www.wsj.com/articles/police-reform-measures-stall-in-california-11599053689>.

⁶² Doyle McManus, *Column: Congress had a Chance for Bipartisan Police Reform. Both Parties Failed*, L.A. TIMES (June 28, 2020), <https://www.latimes.com/politics/story/2020-06-28/congress-had-a-chance-to-pass-police-reform-both-parties-failed>.

Americans' views of the UN have generally remained steady, but partisan divides have widened since 2013. The share of Democrats who have a positive view of the UN is generally higher than the share of Republicans who say the same, but the partisan gap has been especially large since 2013. That year, 72% of Democrats and 41% of Republicans expressed a favorable view—a difference of 31 percentage points. This year, Democrats are 41 points more likely than Republicans to see the UN positively (77% vs. 36%). The share of Republicans who currently have a favorable view of the UN is at its lowest point in almost 30 years of Pew Research Center surveys.⁶³

The sensible reform proposed by Flores and her co-authors will be easier to promote if the argument for adoption is based on a document all Americans are familiar with and respect. Martin Luther King Jr. mobilized for civil rights basing his argument on the Declaration of Independence and its promises.⁶⁴ Excessive use of force by the police, especially deadly force, is not consistent with the country's vision of itself: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."⁶⁵

"[L]egitimacy," the "maintenance of democratic values," and "enhancement of police community relations" are core objectives of policing.⁶⁶ The reforms recommended by Flores and her co-authors will face less political resistance if they are promoted as more consistent with the country's democratic values, helping the country live up to the promises of its Declaration of Independence, ensuring police legitimacy, and improving police-community relations by effectively limiting police use of deadly force.

⁶³ Moira Fagan & Christine Huang, *United Nations Gets Mostly Positive Marks from People Around the World*, PEW RSCH. CTR. (Sept. 23, 2019), <https://www.pewresearch.org/fact-tank/2019/09/23/united-nations-gets-mostly-positive-marks-from-people-around-the-world>.

⁶⁴ See Martin Luther King, Jr., *I Have a Dream*, Speech at the March on Washington (Aug. 28, 1963) (quoting THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776)).

⁶⁵ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

⁶⁶ Walsh & Conway, *supra* note 11, at 63.