

MOVING FROM POLICIES TO PERFORMANCE: COMPLEXITIES
AND EVIDENCE

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I. INTRODUCTION

Police use of violence against civilians is one of the most significant socio-legal problems of our time.¹ The rule of law is rendered meaningless if civilians cannot trust the police to respect their rights. For many, especially poor people and members of minority communities, the threat of violence at the hands of police is almost as significant as concern about ordinary crime. In recent years, the public's attention has become increasingly focused on police killings of civilians in the United States and around the world. To address this issue, countries across the globe have passed statutes, regulations, and voluntary codes of conduct that regulate when law enforcement agents are permitted to use violence. Despite the ubiquity of the problem, these laws and policies are a jumble of differing standards. Some are laws enacted by legislatures, some are local ordinances, and some are self-imposed, voluntary codes of conduct created by police agencies themselves. Some policies are comprehensive and place significant limitations on when law enforcement can employ violence. Others are little more than loose standards that permit law enforcement personnel to decide for themselves when and how to use violence against civilians.²

¹ The problem of police brutality is global and persistent and has generated substantial scholarship and advocacy work. *See generally* JILL NELSON, POLICE BRUTALITY: AN ANTHOLOGY (Jill Nelson ed., 2000) (tracing the history of police violence in the United States and analyzing reasons for its persistence); HUMAN RTS. WATCH, "KETTILING" PROTESTERS IN THE BRONX: SYSTEMIC POLICE BRUTALITY AND ITS COSTS IN THE UNITED STATES (2020), <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states> (describing the police response to anti-brutality protests and a history of police brutality in the United States); AMNESTY INTERNATIONAL, "MY JOB IS TO KILL": ONGOING HUMAN RIGHTS VIOLATIONS AND IMPUNITY IN THE PHILIPPINES (2020), <https://www.amnesty.org/download/Documents/ASA3530852020ENGLISH.PDF> (documenting abuse by government law enforcement agents); AMNESTY INTERNATIONAL, NIGERIA: TIME TO END IMPUNITY TORTURE AND OTHER VIOLATIONS BY SPECIAL ANTI-ROBBERY SQUAD (SARS) (2020), <https://www.amnesty.org/download/Documents/AFR4495052020ENGLISH.PDF> (describing abusive practices by law enforcement agents against civilians).

² The *Police Use of Force Project* maintains a database of use-of-force policies. *See generally* POLICE USE OF FORCE PROJECT, <http://useofforceproject.org/> (last visited Feb. 21, 2021). The Project analyzed use-of-force policies for the 100 largest cities in the United States and graded them on certain characteristics, such as mandatory de-escalation policies or a requirement of warning before shooting. For example, until very recently the Kansas City, Missouri policy did not require de-escalation, did not ban chokeholds or strangleholds, did not require officers to exhaust all other means before shooting, and did not prohibit shooting at moving vehicles. *Response to Resistance*, KAN. CITY MO. POLICE DEP'T (Oct. 11, 2013), <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/571ff92759827e8a71070967/1461713191849/Kansas+City+use+of+force+policy.pdf>.

Alongside this patchwork of laws and policies are international human rights standards that define the rights to which civilians are entitled. Prominent among them is the right to be free from unwarranted force or violence.³ Human rights standards are binding commitments by states to make the rule of law a lived reality for their citizenry. Even when using force to protect civilians and enforce the law, these standards impose limits on the actions law enforcement bodies and their personnel may take.

In an important new article, Claudia Flores and her co-authors have analyzed a sample of laws and policies regarding police use of lethal force to assess whether they comport with relevant international human rights standards.⁴ Flores and her team found that most of the policies studied were inadequate on one or more important dimensions. The Flores study is a significant step forward in the struggle to prohibit the abuse of civilians at the hands of law enforcement. Such policies are the foundation of reasonable limits on police violence. Without adequate policies, civilians—especially the poor and members of disfavored minority groups—are left to rely on little more than hope to ensure that police will not abuse them. But as the authors acknowledge, policies are not themselves sufficient to ensure law enforcement agents respect the rights of all citizens.

The goal of this response is not to critique or comment on the clear erudition of Flores's work. Instead, I take up the implicit challenge issued in Part V: how to move from *policies* to *praxis*. Even if all states took the authors' advice and modified their policies to comply with international human rights standards, civilians would still need to rely on law enforcement agents to actually follow those rules. There is substantial evidence that even where there are restrictive policies in place, law enforcement agents still resort to inappropriate violence and civilians are still subject to abuse.⁵ My contribution proceeds in two parts.

In Part II, this response argues that improvements in law enforcement practices are difficult to achieve because of two issues that are immensely important yet largely ignored. First, scholars in favor of police reform have not conceptualized the problem as a legal compliance problem. There is robust literature on why people do or do not obey the law, literature that typically takes as its object of concern civilians who do not obey the law. I argue that law enforcement agents are similarly situated, and the factors that influence whether civilians comply with the law also influence those in law enforcement. Second, with respect to the

³ See generally Jonathan Herring & Jesse Wall, *The Nature and Significance of the Right to Bodily Integrity*, 76 CAMBRIDGE L.J. 566 (2017) (analyzing how the right to bodily integrity prohibits violence against persons in various forms).

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 generally Lynne Peeples, *Brutality and Racial Bias: What the Data Say*, 583 NATURE 22 (2020) (presenting evidence on the extent of police violence against civilians in the United States).

challenges faced by developing countries, I argue that human rights standards often came as essentially top-down, Western-focused edicts. Initially, with some prominent exceptions, developing countries were not meaningfully included in the process of developing these standards. And human rights standards that affect law enforcement practices affected newly independent states in particularly important ways: they prohibited many of the same practices that colonial authorities used to assert power over the local population,⁶ and restricted core executive functions of newly independent states. It should come as no surprise that developing countries face many of the same police abuse problems as wealthier states. This is exacerbated by the reality that there are so few developed countries with enviable records on police violence. The United States, the United Kingdom, France, and China often attempt to exert influence in developing countries, and all have significant domestic policing problems.⁷ Without a state to serve as a credible example, reform has been fragile and slow, and is often relegated to local advocates and international organizations.

In Part III, I shift focus from policy to praxis. I identify some reforms that might be useful, particularly in developing countries, drawing on literature from randomized control trials that shows particular promise for the reduction of police violence. There is no magic formula; reforming police practices is difficult and complex. But some approaches have potential. In the end, the goal of this response is to help advance the conversation from improving written policies to ensuring that those policies affect the behavior of police and the lived experiences of ordinary civilians.

⁶ See generally Aoife Duffy, *Legacies of British Colonial Violence: Viewing Kenyan Detention Camps through the Hanslope Disclosure*, 33 L. & HIST. REV. 489 (2015) (describing colonial-era police brutality against local populations in Kenya).

⁷ See, e.g., FATAL FORCE, WASH. POST (last visited Jan. 27, 2021), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (database documenting fatal police shootings in the United States); Eleanor Beardsley, "No Justice in France, Either": French Protest Police Killings in U.S. and at Home, NPR (June 4, 2020), <https://www.npr.org/2020/06/04/869877701/no-justice-in-france-either-french-protest-police-killings-in-u-s-and-at-home> (describing accusations of police brutality in France); Kojo Koram, *Systemic Racism and Police Brutality Are British Problems Too*, THE GUARDIAN (June 4, 2020), <https://www.theguardian.com/commentisfree/2020/jun/04/systemic-racism-police-brutality-british-problems-black-lives-matter> (describing police violence in the United Kingdom); Didi Kirsten Tatlow, *Accusations of Brutality Cast Harsh Light on Chinese Police*, N.Y. TIMES (May 19, 2016), <https://www.nytimes.com/2016/05/20/world/asia/china-police-brutality-gansu.html> (describing police violence in China).

II. THE COMPLEXITIES OF POLICE REFORM

Police reform is difficult to achieve for countless reasons, many of which are well studied by scholars and advocates.⁸ However, two factors have not received sufficient attention. The first is a conceptual problem. Reform advocates often focus on changing codes of conduct or other laws governing police behavior. This focus is a necessary first step, but it obscures an embedded assumption: that there is something particular about law enforcement agents that makes them likely to comply with changes in the rules. I argue that thinking of law enforcement agents as ordinary people would be more helpful. They are as likely as any other individuals to comply with, disobey, challenge, or ignore the laws and rules governing their conduct.⁹ Although a full argument is beyond the scope of this short response, I sketch out some implications of this conceptual shift. The second factor is of particular importance in developing countries. Many human rights norms were developed principally by Western advocates and were promoted by Western governments.¹⁰ Of course, many of the norms are universal, and I do not argue that people or States in the developing world do not share these basic norms. In addition, I do not argue that Western human rights norms are superior to indigenous or local norms in other parts of the world. Rather, I argue that human rights standards, including standards for police conduct, risk being seen as norms imposed from the outside by former colonial powers with little regard for local conditions. Thus, even if the substance of the rules is consistent with local norms and needs, and even if there are local advocates promoting the changes, there may still be resistance at some level due in part to this perception.

⁸ See generally Stephen Rushin, *Federal Enforcement of Police Reform*, 82 *FORDHAM L. REV.* 3189 (2014) (arguing that police reform has been made more difficult in part because of lax enforcement of the principal federal statute designed to curb police violence); Joanna C. Schwartz, *Police Indemnification*, 89 *N.Y.U. L. REV.* 885 (2014) (showing that changing the behavior of individual officers is made more difficult because they can generally avoid personal liability for their misconduct); Stephen Rushin, *Using Data to Reduce Police Violence*, 57 *B.C. L. REV.* 117 (2016) (arguing that the increased use of large datasets has the potential to change police practices).

⁹ My intuition is that law enforcement agents, as human beings, are no more likely to obey rules than other people, but the law treats them as if they are. The doctrine of qualified immunity lends support to this intuition, although there are not studies that would definitively prove it. Qualified immunity protects police from personal liability in virtually all cases of misconduct. Part of the reason for this is that the doctrine requires courts to assume that police have obeyed the law and puts the burden on aggrieved parties to demonstrate otherwise. See, e.g., *Harlow v. Fitzgerald*, 457 U.S. 800, 818–19 (1982).

¹⁰ See, e.g., Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 *HARV. INT'L L. J.* 201, 214–16 (2001) (arguing that conventional “human rights” almost exclusively reflect Western perspectives).

A. Reform as a Compliance Problem

Most advocates appear to assume, quite appropriately, that police reform is primarily a matter of command and control: with the right policies in place and effective leadership and training, law enforcement agents will conform their behavior to the law. This assumption is reasonable. Law enforcement personnel are agents of the state, act with state authority, and are subject to the laws and policies of the state. As such, policies are necessary, but they are not sufficient. Attempts to change police behavior might be more productive if scholars viewed law enforcement agents as ordinary individuals who are subject to the same pressures as anyone else.

Scholars have long examined why people obey laws. There are many theories about why people do or do not comply with the law, but two approaches merit particular attention with respect to police behavior. The first is the rational choice perspective, which proceeds from the assumption that individuals act to maximize their utility.¹¹ On this theory, individuals comply with the law if they determine that the costs of disobeying the law are greater than the costs of obeying the law. The individual calculation is different for every person, but scholars mainly focus on two variables: (i) the likelihood that non-compliance will be detected; and (ii) the severity of the penalty if non-compliance is detected and punished.¹² Of course, life is never this simple, but the main insight—that people perform a rough cost-benefit analysis vis-à-vis choices of legal compliance—may be helpful in understanding the behavior of law enforcement agents.

Although hard evidence is difficult to amass on such an inherently theoretical subject matter, there are several reasons law enforcement agents might be acting rationally when they do not comply with restrictions on the use of force. First, one important component of the calculation is the perceived likelihood of detection. With civilians acting in public, such a calculation might entail wondering whether a bystander or victim would report the act to law enforcement. For a variety of reasons, ordinary citizens usually perceive that the more egregious the crime, the greater the likelihood of its eventual detection. Contrast this to the calculation law enforcement personnel might face. While mobile phone cameras and other technologies have changed the reality slightly, any such calculation done by a member of law enforcement will typically involve two additional actors external to the individual conducting the mental calculus: the person being

¹¹ See Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 172–76 (1968) (describing the rational choice model of legal compliance).

¹² See Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 176 (1968) (arguing that a “person commits an offense if the expected utility to him exceeds the utility he could get by using his time and other resources at other activities”).

confronted by the officer, and any other police officers that may be present. Under normal circumstances, one of the first actions taken in a scenario that might necessitate force is to clear the area of civilians. To the extent the misconduct was a violation of law but not of the norms or beliefs of others in law enforcement, the actor might reasonably conclude that law enforcement witnesses would not reveal the misconduct. Furthermore, police abuse is often directed against individuals with relatively low social capital, such as poor people and minorities.¹³ Thus, even if police misconduct is witnessed by members of these groups, witnesses may be hesitant to report the officer or may be dismissed as not credible if they do. Accordingly, officers might rationally conclude that they are unlikely to be discovered or reported if they engage in misconduct, making the misconduct more likely.

Officers might also conclude that even if they are detected, they are unlikely to face substantial consequences. The reasons for this are complex and differ by country, but the situation in the United States is illustrative: allegations of police misconduct are routinely dismissed in court under the doctrine of qualified immunity.¹⁴ Qualified immunity protects law enforcement agents from liability even if they have violated the victim's constitutional rights, with exceedingly narrow exceptions. Law enforcement agents are liable only if they violated "clearly established law,"¹⁵ which is supposed to protect "all but the plainly incompetent or those who knowingly violate the law."¹⁶ Officers are rarely held liable under this standard.¹⁷ Thus, under the rational choice approach, officers have little reason to expect consequences for their actions.

A second major approach is the normative, or constructivist, approach.¹⁸ Scholars in this tradition argue that people comply with laws if they believe the relevant authority has the power and the right to set and enforce the rules.¹⁹ These categories are rough approximations, and it is beyond the scope of this response to give a full account of their many strands.²⁰ Further, most individuals do not simply "select" a single reason for their legal compliance or non-compliance;

¹³ See generally Cassandra Chaney & Ray V. Robertson, *Racism and Police Brutality in America*, 17 J. AFR. AM. STUD. 480 (2013) (describing linkages between police violence and racism in the United States).

¹⁴ See, e.g., Joanna C. Schwartz, *After Qualified Immunity*, 120 COLUM. L. REV. 309, 310 & n.3 (2020) (showing that qualified immunity cases routinely favor the government).

¹⁵ Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

¹⁶ Malley v. Briggs, 475 U.S. 335, 341 (1986).

¹⁷ See, e.g., Joanna C. Schwartz, *After Qualified Immunity*, 120 COLUM. L. REV. 309, 310 (2020) (reporting on qualified immunity cases and relative success rates).

¹⁸ See TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 3 (1990) (contrasting normative reasons for legal compliance with other frameworks).

¹⁹ *Id.* at 4.

²⁰ For an explanation of the variations on rational choice theory, see Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1051, 1060–66 (2000).

people comply with the law for different reasons at different times. Nonetheless, the approaches are instructive. The normative approach asks whether individuals believe the law is legitimate, considered from multiple perspectives. It is both the perceived legitimacy of the law's content and the authority of those making and enforcing it that matters.²¹ Scholars in this vein argue that people "obey the law because they believe that it is proper to do so."²² This belief might arise because individuals believe the law is just or because they believe the lawmaking authority has the power and legitimacy to enforce it, even if they disagree with its content.²³

Consider how this might affect attempts to enforce police use-of-force policies. Affected officers might agree with the regulations and modify their behavior, or they might disagree under the belief that their behavior is appropriate or necessary to protect society. If they disagree with the content of the regulations, regulatory changes are unlikely to solve the problem. Instead of obeying the new regulations out of a sense of duty—the implicit assumption of many scholars and advocates—officers may instead conclude that the regulations do not comport with their "moral values" or sense of what is appropriate for a situation.²⁴ Paradoxically, just as it is important for community members to believe that police are "supporting and defending community norms" as they enforce the law,²⁵ it may be essential that law enforcement agents believe the community's norms comport with their own.

In addition to concerns about the legitimacy of the content of laws and policies, officers may also disagree with the legitimacy of the lawmaking or enforcing body behind them. If use-of-force policies are perceived as impositions by illegitimate outsiders—either because they come from international standards or are imposed by a court—officers may reject them outright.

Before moving on, a caveat is in order. My discussion of rational choice and normative theories is not an argument against the imposition and enforcement of strict use-of-force policies. I would object to any model that left it to law enforcement agencies to regulate themselves. Recognizing the importance of legitimacy is not the same thing as abdicating legislative power and handing it over to the police themselves. Instead, I argue that it is important to recognize that law enforcement agents are subject to the same incentives, beliefs, and considerations as ordinary people when they choose to comply or not to comply with laws and

²¹ See generally TYLER, *supra* note 18, at 19–39.

²² *Id.* at 178.

²³ *Id.*

²⁴ Jason Sunshine & Tom Tyler, *Moral Solidarity, Identification with the Community, and the Importance of Procedural Justice: The Police as Prototypical Representatives of a Group's Moral Values*, 66 SOC. PSYCHOL. Q. 153, 163 (2003).

²⁵ *Id.* at 162.

policies. They are not empty vessels waiting for orders with which they will comply; they are autonomous agents who choose between compliance or non-compliance like anyone else.

This recognition suggests possible avenues toward reform. First, with respect to the likelihood that misconduct will be detected, use-of-force policies should contain mandates requiring officers to report the misconduct of others. In the Flores study, the authors rightly focused on other, more urgent dimensions of the policies studied, but mandatory reporting should be a feature of any use-of-force policy. Second, with respect to the low risk of personal sanctions for police misconduct, reform of qualified immunity is an urgent need; policies cannot be effective if violations do not lead to sanctions. Third, participation in the rulemaking process by all affected parties would increase their legitimacy. More must be done to ensure that the norms of law enforcement agencies comport with the content of the laws and policies regulating them: bolstering the perceived legitimacy of the rules must be an ongoing project. It is not enough to change the rules; officers must be convinced that the rules are legitimate. This is not to suggest that those who fail to comply are justified in doing so. Instead, the point is that reform *begins* when the rules change; rule changes are not the end of the process. And an excellent starting point will involve a seat at the table for the law enforcement personnel ultimately impacted.

B. The Legacy of Colonialism Complicates Police Reform in Many States

Police abuse of civilians is a global problem. Although recent events in the United States have received substantial attention, there are also many cases of police abuse in developing countries—as highlighted in the Flores study. This response is concerned with the implementation difficulties faced by police reform advocates in developing nations and identifies two principal causes for such difficulties. First, much of the substance of human rights law, including protections against police violence, was developed by Western States, potentially undermining the credibility of those norms in developing countries left out of the process.²⁶ Second, restrictions on police behavior address core executive functions. Inherent in sovereignty is the power to control one's own police forces. States have a monopoly on the legitimate use of violence within their territories; international human rights norms restrict this function. What makes this problematic is that human rights norms largely developed at the end of the colonial

²⁶ See, e.g., Mutua, *supra* note 10, at 214–16 (arguing that the rights typically considered “human rights” reflect mostly Western perspectives).

era, often by the same governments that had perpetrated or ignored abusive practices against local populations.²⁷ There is an irony in formerly abusive colonial powers promoting restrictions on the ways that sovereign States can address their own citizens. While restrictions on police conduct in the form of international legal standards are commendable and necessary, local resistance to outside regulation should not be surprising.

For most advocates there is a specific set of rights and immunities that constitute “human rights.”²⁸ Contemporary human rights law mostly finds its roots in the *Universal Declaration of Human Rights* and other foundational instruments of the United Nations system, though the origins of the underlying concepts are varied and ancient.²⁹ Omitted from this is a widespread recognition, particularly among Western scholars, that human rights laws and norms are hotly contested. Indeed, many scholars contest the very idea of a *universal* set of human rights.³⁰ For example, most Western scholars believe that human rights law prioritizes civil and political rights, such as the right to vote or the right to free speech, over economic rights, such as the right to earn a living or the right to development.³¹ Recognizing this point matters for police reform advocates. To the extent that individuals in developing countries view standards as coming from the outside, the standards themselves will be less credible. Recall that under the normative theory of compliance, the legitimacy of the content, origins, and execution of laws and policies is relevant. People may be less likely to comply with laws that are viewed as foreign or other to them and their community. Even if this is not the empirical reality behind a legal norm, the perception alone may undermine compliance.

Particularly in former colonies, standards promoted by former colonial abusers are likely to be seen as illegitimate and regarded with suspicion.³² In Nigeria, for example, there is evidence of police abuse of citizens, as noted in the Flores study. Unsurprisingly, there is also evidence that the public is skeptical of Nigerian police. When the British colonized Nigeria, they created police forces that

²⁷ See generally Barbara Oomen, *Donor-Driven Justice and Its Discontents: The Case of Rwanda*, 36 DEV. & CHANGE 887 (2005) (describing the phenomenon of donor states imposing human rights reforms in formerly colonized states).

²⁸ For a full version of this argument, see Patrick J. Keenan, *Financial Globalization and Human Rights*, 46 COLUM. J. TRANSNAT'L L. 509, 548–49 (2008).

²⁹ See generally Kenneth Cmiel, *The Recent History of Human Rights*, 109 AM. HIST. REV. 117 (2004) (describing the evolution of human rights norms and their manifestations in law).

³⁰ For a complete version of this argument, see Mutua, *supra* note 10.

³¹ See Arjun Sengupta, *On the Theory and Practice of the Right to Development*, 24 HUM. RTS. Q. 837, 838–41 (2002) (describing debates about the relative status of civil and political rights versus economic, social, and cultural rights).

³² See generally Bonny Ibhawoh, *Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State*, 22 HUM. RTS. Q. 838 (2000) (showing that many African States question the legitimacy of Western human rights doctrines).

were abusive of the local population.³³ This abuse continued even after independence.³⁴ More recently, researchers found that “members of the public are very cynical about the law, and that there are high perceptions of police corruption and police abuse among the citizens.”³⁵ It appears that contemporary policing in Nigeria has many consistent features with policing during colonial times. Police act as they were taught to act, and police agencies function as they were designed to function. When confronted with Western-promoted restrictions on police behavior—as welcome as those changes would be to many Nigerians—it should come as no surprise that the police are slow to reform. If their behavior is seen as common or even appropriate, there is little likelihood that police abusers will be turned into face sanctions. And when reform standards are perceived as illegitimate, they are unlikely to be embraced.

III. EVIDENCE-BASED REFORM

There is a growing body of evidence regarding police reform,³⁶ including some evidence from randomized control trials regarding police practices. In randomized control trials (“RCTs”), scholars randomly assign comparable individuals into groups, each of which receives a different intervention.³⁷ Because the

³³ See Etannibi E.O. Alemika, *Policing and Perceptions of Police in Nigeria*, 11 POLICE STUD.: INT’L REV. POLICE DEV. 161, 163–66 (1988) (describing the history of policing in colonial Nigeria).

³⁴ *Id.*

³⁵ See Oluwagbenga Michael Akinlabi, *Do the Police Really Protect and Serve the Public? Police Deviance and Public Cynicism Towards the Law in Nigeria*, 17 CRIMINOLOGY & CRIM. JUST. 158, 166 (2016).

³⁶ For a fuller exploration of the uses of data in police reform, see generally Stephen Rushin, *Using Data to Reduce Police Violence*, 57 B.C. L. REV. 117 (2016). Rushin argues that the federal government could harness existing or planned databases in a variety of ways to reform police practices. *Id.* at 121–25. Rushin’s work highlights the potential of evidence to drive reform and the relative dearth of evidence currently. Interestingly, initial empirical studies have cast doubt on usual frameworks of police reform, showing them to be based on intuitions and assumptions rather than facts. For example, one recent study in the United States found that “the body of evidence supporting the effectiveness of ‘the five most common reform proposals’ is generally thin and, in some cases, nearly nonexistent.” See Robin S. Engel, Hannah D. McManus & Gabrielle T. Isaza, *Moving Beyond “Best Practice”: Experiences in Police Reform and a Call for Evidence to Reduce Officer-Involved Shootings*, 687 ANNALS OF THE AM. ACAD. OF POLITICAL AND SOCIAL SCIENCE 146, 152 (2020).

³⁷ ABHIJIT V. BANERJEE & ESTHER DUFLO, POOR ECONOMICS: A RADICAL RETHINKING OF THE WAY TO FIGHT GLOBAL POVERTY 14 (2011) (“In [a randomized control trial], individuals or communities are randomly assigned to different ‘treatments’—different programs or different versions of the same program. Since the individuals assigned to different treatments are exactly comparable (because they were chosen at random), any difference between them is the effect of the treatment.”).

two groups are comparable, if there are different outcomes researchers can conclude that the difference in outcome is due to different treatment. RCTs are a well-established method used to investigate public health issues, but only in the past two decades have they been commonly used to test social policies.³⁸

In this Part, I offer two brief illustrations of the kinds of evidence that might prove useful to reform efforts. The studies I highlight are illustrations of potentially useful reforms; they are not proof that any particular intervention can or should be implemented broadly. One study comes from India.³⁹ There, researchers were seeking to identify ways to improve public perception of police behavior to increase community-police cooperation, reduce police corruption and abuse, and increase police effectiveness.⁴⁰ Researchers implemented a series of changes in police stations serving up to eight million people.⁴¹ Because the communities served were similar to each other in all relevant ways and different stations received different interventions, researchers believed that they could attribute any changes in outcome to the interventions and not to some other factor. The study produced a number of important results,⁴² but three stand out. Researchers found that increased training, particularly training in how to better engage with victims and members of the public, had demonstrable positive effects on outcomes.⁴³ Next, incentive programs affected performance positively. When officers knew there were clear and likely rewards or penalties associated with their behavior, they were more effective and the public was more satisfied.⁴⁴ Finally, researchers found that programs that did not enjoy the support of powerful managers were unlikely to actually affect the behavior of ordinary police officers.⁴⁵

This evidence suggests ways to link changes in written policies to changes in behavior. First, training matters. This is an assumed part of any use-of-force policy, including those in the Flores study, but it bears emphasizing nonetheless.

³⁸ *Id.*

³⁹ Abhijit Banerjee et al., *Improving Police Performance in Rajasthan, India: Experimental Evidence on Incentives, Managerial Autonomy and Training* 3–4 (Nat'l Bureau of Econ. Research, Working Paper No. 17912, 2012), https://www.nber.org/system/files/working_papers/w17912/w17912.pdf.

⁴⁰ See *Police Performance and Public Perception in Rajasthan, India*, ABDUL LATIF JAMEEL POVERTY ACTION LAB, <https://www.povertyactionlab.org/evaluation/police-performance-and-public-perception-rajasthan-india> (describing motivations for the study).

⁴¹ Abhijit Banerjee et al., *Improving Police Performance in Rajasthan, India: Experimental Evidence on Incentives, Managerial Autonomy and Training* 3–4 (Nat'l Bureau of Econ. Research, Working Paper No. 17912, 2012), https://www.nber.org/system/files/working_papers/w17912/w17912.pdf.

⁴² See Banerjee et al., *supra* note 39, at 3–4.

⁴³ *Id.* at 4 (finding that after training, police staff “were more polite with crime victims attempting to register a crime, and the victims were overall much more satisfied with the police”).

⁴⁴ *Id.*

⁴⁵ *Id.* at 5 (explaining why some interventions failed to affect behavior).

Second, all three of the positive results suggest that interventions viewed as legitimate and certain are more likely to succeed than those viewed as illegitimate. When police officers knew that good behavior was likely to lead to a reward or bad behavior to a sanction, their performance improved.⁴⁶ This suggests that the insight from the rationalist perspective is at least plausible: people act to maximize their welfare. Furthermore, that the interventions failed when not supported by management lends supports to the normative hypothesis. Lack of buy-in from management signals that new policies are illegitimate. It is not clear if lack of buy-in undermined confidence in the content of the rules or the authority providing the rules, but it is clear that a lack of leadership buy-in undermines efficacy.

Finally, a second study shows some of the difficulties in moving from policy to practice. Researchers attempted to change the way police recruits were trained in Chicago by introducing a variety of new training methodologies aimed at improving offer-civilian interactions.⁴⁷ Despite the changes, recruits did not demonstrate any significant change in how they were likely to treat members of the public, including no change in the likelihood that they would resort to force.⁴⁸ Indeed, researchers found that despite the changes in training method, recruits' "desire to resolve situations with force increased significantly" during their time in training.⁴⁹

This study shows the limitations of policy changes and provides a possible explanation. Researchers in the Chicago study concluded that part of the reason the intervention was unsuccessful was that the new methods amounted to "swimming upstream against a socialization process that favored toughness and officer safety."⁵⁰ This is an important caution: policy changes happen alongside, and must be considered in conjunction with, a host of other variables. Every well-meaning change in policy may be accompanied with active officer resistance at the level of implementation. The culture of police organizations, a notoriously difficult variable to identify, much less study in any systematic way, affects the way policy changes will impact performance.

⁴⁶ *Id.*

⁴⁷ See Dennis P. Rosenbaum & Daniel S. Lawrence, *Teaching Procedural Justice and Communication Skills During Police-Community Encounters: Results of a Randomized Control Trial with Police Recruits*, 13 J. EXPERIMENTAL CRIMINOLOGY 293, 299–300 (2017) (describing changes in curriculum made as part of a randomized control trial).

⁴⁸ *Id.* at 310–11 (describing the lack of change in recruit attitudes).

⁴⁹ *Id.*

⁵⁰ *Id.* at 313.

IV. CONCLUSION

The study undertaken by Claudia Flores and her co-authors is an important foundation upon which to build. They identified deficiencies in every use-of-force policy they studied. They are correct to argue that these deficiencies must be addressed as part of any sensible reform program. In this response, I have attempted to identify some of the reasons translating policy changes to performance improvements is difficult and have shown that there is hope to be found in evidence-based reforms.