A crisis in policing that drew national attention three years ago with the death of teenager Michael Brown in Ferguson, Missouri at the hands of a police officer, has sparked a national conversation in which we are asking ourselves, “What are police for?” “How should policing agencies carry out their jobs?” and “What role should citizens play in structuring that role and holding police accountable to the goals and projects that citizens nominate?” The answers to these questions revolve fundamentally around changing the narrative of policing from one centered in the concept of “public safety” to one centered in the concept of “public security.”

There are three policies that the federal government should encourage state and local law enforcement to adopt that will help us to begin moving in that direction. First, law enforcement agencies must commit to protecting all lives as a central part of their mission, which, among other things, requires meaningful review of police use of force by a review board composed of both police officials and civilians. Second, law enforcement agencies must regularly train police officers in the ideas of procedural justice and legitimacy and not simply aggressive police tactics aimed at crime reduction. Finally, law enforcement agencies must better reflect the communities they serve, including addressing historic gender disparities in policing by hiring more women.
Almost weekly this summer it seemed that the news media reported on an incident in which police killed or shot a civilian—often unarmed and a person of color. Less frequently, there was the shocking news of police officers being targeted and killed by snipers. These tragic events have shaped our understanding of the current crisis in policing that began three years ago with the death of teenager Michael Brown in Ferguson, Missouri at the hands of a police officer. A national conversation was sparked then, which has continued and grown. We are asking ourselves, “What are police for;” “How should policing agencies carry out their jobs;” and “What role should citizens play in structuring that role and holding police accountable to the goals and projects that citizens nominate?” The answers to these questions revolve fundamentally around changing the narrative of policing from one centered in the concept of “public safety” to one centered in the concept of “public security.” And there are three policy recommendations that will help us move in that direction.

The idea of public safety emphasizes the role of police in keeping people safe from one another. It might even promote aggressive policing for the purpose of averting private predation. The idea of public security on the other hand does not lose sight of the role of law enforcement in keeping crime down; however, public security recognizes that people do not feel safe in their communities when they are subject to government overreach—especially government overreach carried out in the name of the pursuit of public safety. To put it simply, crime reduction cannot be its own warrant. To achieve public security, legal authorities and especially policing agencies must commit to building trust among citizens.

To that end, the President’s Task Force on 21st Century Policing1 outlined a number of recommendations—59 to be exact—designed to enhance public trust and legitimacy of policing agencies while also insuring public safety.2 The foundation of those recommendations is the first one, which exhorts agencies to make legitimacy and procedural justice central to the mission of policing.3

Researchers have studied public evaluations of police officers, judges, political leaders, managers, and teachers, and the findings—which are the bases for procedural justice—are consistent; conclusions regarding legitimacy are tied more closely to judgments of the

---

1 Walton Hale Hamilton Professor of Law, Yale Law School.
2 I served as a member of this task force, which President Obama commissioned “to identify best policing practices and offer recommendations on how those practices can promote effective crime reduction while building public trust.” To this end, “the task force conducted seven public listening sessions across the country and received testimony and recommendations from a wide range of community and faith leaders, law enforcement officers, academics, and others to ensure its recommendations would be informed by a diverse range of voices.” President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing, Dep’t of Justice iii (May 2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (hereinafter Final Report).
3 Id. at iii–iv.
4 Id. at 11.
fairness of actions than to evaluations of the fairness or effectiveness of outcomes. In the social psychological literature, judgments regarding fairness depend primarily upon a model that has four dimensions. First, participation is an important element. People report higher levels of satisfaction in encounters with authorities when they have an opportunity to explain their situation and perspective on it. Second, people care a great deal about the fairness of decision-making by authorities. That is, they look to indicia of decision-maker neutrality, objectivity and factuality of decision-making, consistency in decision-making, and transparency. Third, people care a great deal about how they are treated by organization leaders. Specifically, people desire to be treated with dignity, with respect for their rights and with politeness. Fourth, in their interactions with authorities, people want to believe that authorities are acting out of a sense of benevolence toward them. That is, people attempt to discern why authorities are acting the way they do by assessing how they are acting. They want to trust that the motivations of the authorities are sincere, benevolent and well-intentioned—what we call motive-based trust. Basically, members of the public want to believe that the authority they are dealing with—let’s say a police officer—believes that they count. And the public makes this assessment by evaluating how the police officer treats them.

This dynamic is inherently relational, not instrumental. Rather than being primarily concerned with outcomes and individual maximization of utility, legitimacy-based compliance is centered upon individual identity. One implication of this is that when police generate good feelings in their everyday contacts, it turns out people also are motivated to help them fight crime. And we can expect all of this to lead to lower crime rates in communities. Additionally, safer communities are not the only important result of law enforcement authorities and other representatives of government treating people with dignity and fairness. Another potential result is healthy and democratic communities. Finally, research shows that this approach leads to policing that is better and healthier for cops on the street.

Commitment to procedural justice principles requires cultural change, and, of course such cultural change requires policy and organizational change. Here are three on which to focus.

I. Make the Commitment to Protecting All Lives Central to the Mission of Policing

In the United Kingdom it is quite rare for a person to lose their life at the hand of a police officer. In the United States it is not at all rare. Even while current legal structures may often

---

See Tom R. Tyler, Enhancing Police Legitimacy, 593 The ANNALS 84, 91 (2004) (making this point and collecting various studies).


find that a police officer’s action to take someone’s life ultimately is justifiable, that does not mean we should unreflectively accept that such a death is optimal. As I noted in a recent op-ed in The Washington Post, “ask whether the Federal Aviation Administration would be satisfied by the statement that a plane crash that took a single life was the result of a ‘perfect storm’ of circumstances,” which was the conclusion that former Cuyahoga County District Attorney Timothy McGinty reached in deciding not to pursue criminal charges against the officers who shot and killed twelve-year-old Tamir Rice. In the case of a plane crash, we would expect every aspect of the machine and those operating it to be examined, questioned and overhauled to ensure that the incident did not occur again. After all, safety is the cornerstone of the FAA’s mission—safety for everybody, not just pilots and other crew members. Note, though, that the “perfect storm” response is a common one after a police shooting, and too many accept this response without reflection. A real commitment to regular sentinel review of police shootings and other use of force actions (the policy change) will hopefully lead to a culture change—the idea that we can all decide that too many people are dying without having to find fault in every situation in which loss of life occurs. The President’s Task Force on 21st Century Policing recommended that law enforcement agencies conduct sentinel review by establishing Serious Incident Review Boards including police and civilians to review cases involving officer-involved shootings. Although the National Institute of Justice (NIJ) has already put out a Request for Proposals to encourage and test the benefits of sentinel review, the new administration could further support sentinel review by providing federal funding to jurisdictions seeking to carry it out.

II. Make the Commitment to Regularly Train Police Officers in the Ideas of Procedural Justice and Legitimacy

It bears repeating: crime reduction is not self-justifying. Too many interactions between police and citizens occur because police are engaged in the policing of low-level offenses ostensibly for the purpose of crime reduction. The President’s Task Force on which I served noted, however, that aggressive police action can have the counterproductive result of destroying the very reservoir of trust on which communities and policing agencies depend to function properly. As I have previously noted, “[i]t is shortsighted to credit the benefits that groups such as African Americans receive from plummeting crime rates without acknowledging the costs to them in terms of enforcement. Research is clear that how people are treated is central to how they view police and other legal authorities—even
more than whether police are effective at reducing crime.”  

It is possible to teach police officers about the theories of trust building through procedural justice. My colleague, Tom Tyler and I have worked with the Chicago Police Department to develop such training, and that training has been delivered to thousands of officers in Chicago and across the country. As The New York Times recently reported, there is new evidence of its effectiveness. For instance, the President’s Task Force on 21st Century Policing outlines a number of actions that state and local agencies can take to insure that agency staffs are appropriately trained and educated. Some states already have adopted legislation to require this training or have modified Peace Officer and Standards Training (POST) requirements, which set minimum selection and training standards for a state’s law enforcement agencies, to adopt training that includes concepts of procedural justice. For its part, the Department of Justice through Bureau of Justice Assistant initiatives could further incentivize state and localities to adopt these trainings.

III. Help Policing Agencies to Hire More Women

While policing agencies have become more diverse over time, one area that has remained persistently impervious to change is the percentage of women who work in the profession. The numbers of women in law enforcement appear to top out at around 12.7%, well below the representation of women in the general population. Our police forces should include more women because our forces should reflect the communities that they serve. There is also evidence that increasing the gender diversity of our forces will have beneficial effects along key metrics, such as the levels of force used in interactions. During my service on the President’s Task Force on 21st Century Policing, we heard testimony from female police leaders who noted that some professions organized around shift work seemed to be more open to women than does policing. One such profession is emergency room nursing. Emergency room nursing is a high-stakes, stressful job not unlike policing. The work can be organized in ways that allow nurses to work part time and still be available for other kinds of work—especially caregiving. While caregiving is not limited only to women, it was clear to Task Force members that if the profession of policing were more open to part-time work, it likely would be easier for more women to engage in the profession just as they do...

---

12 Meares, supra note 7.
15 Final Report, supra note 1, at 51–60.
16 See Kim Lonsway et al., Equality Denied: The Status of Women in Policing: 2001, NAT’L CTR. FOR WOMEN & POLICING 4 (2002), http://www.womenandpolicing.org/PDF/2002_Status_Report.pdf (“Women currently comprise 12.7% of all sworn law enforcement positions among large municipal, county, and state law enforcement agencies in the United States with 100 or more sworn officers. . . . In small and rural police agencies, women hold only 8.1% of all sworn positions. Women of color are virtually absent, with a representation of 1.2%.”).
17 Drake Baer, If You Want Less Police Violence, Hire More Female Cops, N.Y. MAG. (July 15, 2016), http://nymag.com/scienceofus/2016/07/more-female-cops-less-police-violence.html. It should go without saying that the gender of any given officer is not dispositive of their proclivity to use force, an example being the shooting of Terence Crutcher in Tulsa last month by Officer Betty Shelby.
in nursing, allowing police departments to take advantage of the benefits that a more gender-balanced police force can offer.

These are three quick action ideas that build upon work already being done at the federal, state, and local levels. Of course, much more expansive and deeper work needs to be done in this area. We have begun the important work of changing the narrative. We simply need to make good on its promise.