

Fordham Urban Law Journal

Volume 50
Number 4 *Local Government Structure through
a Legal Lens: Conversations of Law and Local
Governance*

Article 2

2023

The Impossibility of Local Police Reform

Ava Ayers

Follow this and additional works at: <https://ir.lawnet.fordham.edu/ulj>

Recommended Citation

Ava Ayers, *The Impossibility of Local Police Reform*, 50 Fordham Urb. L.J. 609 (2023).
Available at: <https://ir.lawnet.fordham.edu/ulj/vol50/iss4/2>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Urban Law Journal by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

THE IMPOSSIBILITY OF LOCAL POLICE REFORM

Ava Ayers*

Why weren't there transformational changes to policing in the United States after the murder of George Floyd and the uprising that followed? While there are many reasons, including entrenched racism¹ and inertia, I want to point to structural factors that make police reform impossible in many localities, and surpassingly difficult in all.

First, the problems presented by policing are multidimensional. The umbrella term "police reform" covers a huge number of possible policy choices. For local legislators to responsibly evaluate those choices would require mastery of many unrelated bodies of knowledge. Even with the required policy knowledge, reformers still can't succeed without understanding and navigating relationships with numerous players inside and outside government who exercise power over local policing policy, many of whom exercise effective vetoes. Second, localities cannot implement many possible solutions, like reallocating police functions to unarmed responders, on their own; states or other municipalities must

* Associate Professor of Law, Albany Law School. She/her/hers. Formerly known as Andrew Ayers. If you want to cite previous work I published under that name, I'd be grateful if you'd use "Ava Ayers," "A. Ayers," or no first name in the citation.

Thanks to all of the participants in the *Fordham Urban Law Journal's* November 2022 Cooper-Walsh Colloquium, especially my co-panelists, Aaron Saiger, Paul Diller, Daniel Rodriguez, Maria Ponomarenko, and Rick Su. I'm also grateful to the participants in an Albany Law School James Gathii Workshop for the opportunity to workshop these ideas in an earlier form. And I especially want to thank Sofia Johnson, Peter Angelica, Katie Rubery, Alysia Lo, and the other students from the *Fordham Urban Law Journal* who've worked so hard to make this Article better. Their thoughtful comments and suggestions have improved it immeasurably.

I'm a member of the New York Commission on Ethics and Lobbying in Government, but nothing in this Article represents the views of the Commission.

1. See Hakeem Jefferson & Victor Ray, *White Backlash Is A Type Of Racial Reckoning, Too*, FIVE THIRTYEIGHT (Jan. 6, 2022), <https://fivethirtyeight.com/features/white-backlash-is-a-type-of-racial-reckoning-too/> [<https://perma.cc/8DCM-CW26>] (describing racial backlash against the Black Lives Matter movement, including evidence that the failed insurrection of January 6, 2021, was driven by white supremacist ideology).

join before change becomes possible. In short, the problems are too complicated for a small municipal government to grasp, and the solutions are often beyond such governments' reach. But shifting power to states, which are typically more conservative than cities, would likely end the prospects for meaningful change. I propose that state governments should take actions that make police reform at the local level possible, and suggest some examples of actions that would help.

Introduction	610
I. Problems Beyond Localities' Grasp.....	615
A. Too Many Proposals.....	617
B. Too Many Bodies of Knowledge	624
C. Too Many Players.....	632
II. Solutions Beyond Localities' Reach.....	639
A. Legal Barriers.....	640
B. Lack of Expertise.....	641
C. Lack of Leverage	643
D. Creating Trans-Municipal Structures.....	645
E. Deeper Social Problems.....	647
III. Can States Make Local Change Possible?.....	649
A. Removing Legal Barriers.....	649
B. Experts and Templates	650
C. Give Localities Leverage	652
D. Facilitate Trans-Municipal Solutions	652
E. Minimum Standards	653
F. Redundancy.....	654
G. Engage with Deeper Problems	654
Conclusion	654

INTRODUCTION

After the murder of George Floyd, the largest protest movement in U.S. history, building on previous activism around police violence, demanded major changes to policing in the United States.² Experts

2. See Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/4PDB-C7CD>]. See generally Jamillah Bowman Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter - Getting from Contemporary Social Movements to Structural Change*, 12 CAL. L. REV. ONLINE 1 (2021), <https://www.californialawreview.org/blacklivesmatter-getting-from-contemporary->

produced thoughtful blueprints for transformation.³ But major changes didn't happen.⁴ In many cities, police budgets rose, and overall they fell less than 1%.⁵ Democrats in state legislatures backed away from reform.⁶ New transparency laws became mired in litigation.⁷ Many localities defaulted to thin proposals like increased training.⁸ Meanwhile, police shot and killed more people than before.⁹ While

social-movements-to-structural-change [https://perma.cc/6HLB-UC4Q] (analyzing Twitter data to describe how the Black Lives Matter movement used social media).

3. See, e.g., BARRY FRIEDMAN ET AL., CHANGING THE LAW TO CHANGE POLICING: FIRST STEPS (2021), https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf [https://perma.cc/6DBX-XBN5].

4. See, e.g., Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, N.Y. TIMES (Nov. 3, 2021), <https://www.nytimes.com/2020/09/26/us/politics/minneapolis-defund-police.html> [https://perma.cc/7AZH-SSB9] (describing how Minneapolis, the city whose police killed George Floyd, backed away from its City Council's commitment to disband its police department). See generally Adam Davidson, *Managing the Police Emergency*, 100 N.C. L. REV. 1209, 1237 (2022) ("The summer 2020 protests—possibly the largest protest movement in American history—did not sufficiently motivate our traditional mechanisms of government to solve this emergency.").

For overviews of legislative changes, see *Legislative Responses for Policing-State Bill Tracking Database*, NAT'L CONF. OF STATE LEGISLATURES (Dec. 10, 2022), <https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx> [https://perma.cc/SJ3X-SF54]; see also Liz Crampton, *States Passed 243 Policing Bills — and Left activists wanting*, POLITICO (May 26, 2021, 04:30 AM), <https://www.politico.com/news/2021/05/26/states-policing-bills-490850> [https://perma.cc/SQL3-ZXFL].

5. Sarah Holder, Fola Akinnibi & Christopher Cannon, *'We Have Not Defunded Anything': Big Cities Boost Police Budgets*, BLOOMBERG (Sept. 22, 2020), <https://www.bloomberg.com/graphics/2020-city-budget-police-defunding/> [https://perma.cc/U5M5-E4HR].

6. See, e.g., Matt Friedman & Joseph Spector, *New Jersey overhauled its bail system under Christie. Now some Democrats want to roll it back*, POLITICO (Dec. 11, 2022), <https://www.politico.com/news/2022/12/11/new-jersey-bail-system-roll-back-00072781> [https://perma.cc/2ZGT-HDPZ]; Noah Lanard, *Dem Dysfunction, Tabloid Hellscape, Crime: How New York Almost Went Red*, MOTHER JONES (Dec. 6, 2022), <https://www.motherjones.com/politics/2022/12/2022-midterms-crime-new-york-hochul-zeldin-new-york-post/> [https://perma.cc/GLG8-ADUR].

7. C.J. Ciaramella, *New York Repealed Its Police Secrecy Law Two Years Ago. Departments Are Still Trying To Hide Misconduct Files*, REASON (Dec. 5, 2022), <https://reason.com/2022/12/05/new-york-repealed-its-police-secrecy-law-two-years-ago-departments-are-still-trying-to-hide-misconduct-files/> [https://perma.cc/G6KK-2A6A].

8. As Professor Michelle Jacobs observes, de-escalation training in the Minneapolis Police Department did not stop three police officers from watching as Derek Chauvin slowly murdered George Floyd. See Michelle S. Jacobs, *Sometimes They Don't Die: Can Criminal Justice Reform Measures Help Halt Police Sexual Assault On Black Women?*, 44 HARV. J.L. & GENDER 251, 286 (2021); Law Enforcement De-Escalation Training Act of 2022, Pub. L. No. 117-325, 136 Stat. 4441.

9. Andrew Ba Tran, Marisa Iati & Claire Healy, *As fatal police shootings increase, more go unreported*, WASH. POST (Dec. 6, 2022),

this Article was in the final stages of editing, news broke that Tyre Nichols had been brutally murdered by Memphis police officers, who gave him contradictory and impossible-to-follow orders while they beat him.¹⁰ Year-end reviews showed that police killed more people in 2022 than in any year of the previous decade.¹¹ Most of the 1,192 killings began with police responding to suspected non-violent offenses or cases where no crime was reported.¹²

Some jurisdictions did make significant changes in 2020 and 2021. For example, Ithaca, New York, developed a proposal to restructure its police department, so that a Division of Police would be housed within a broader Department of Public Safety.¹³ But the proposal is far from being implemented, and even if implemented, would not reduce the size of the police department.¹⁴

There are doubtless many reasons why fundamental reforms did not happen, including entrenched racism, lack of political will on the part of elected officials, and the pervasive status-quo bias in U.S. policymaking,¹⁵ among others. Among those causes was the structure of government itself, particularly local and state government.

Most police in the United States are employees of local government, and most governance of police is local governance. Therefore, the structure of local government is crucial to the prospects of police reform. Activists in the Black Lives Matter movement have focused their efforts at the level of local and county governments.¹⁶ This makes

<https://www.washingtonpost.com/investigations/interactive/2022/fatal-police-shootings-unreported/> [<https://perma.cc/2MZ7-N8KE>].

10. See Robin Stein, Alexander Cardia & Natalie Reneau, *71 Commands in 13 Minutes: Officers Gave Tyre Nichols Impossible Orders*, N.Y. TIMES (Jan. 29, 2023), <https://www.nytimes.com/2023/01/29/us/tyre-nichols-video-assault-cops.html> [<https://perma.cc/BS9F-C565>].

11. See MAPPING POLICE VIOLENCE, 2022 POLICE VIOLENCE REPORT (2022), <https://policeviolencereport.org/> [<https://perma.cc/DR8U-MGVV>].

12. *Id.*

13. See Matt Butler, *Police reform debate at Common Council turns contentious among public, council members*, ITHACA VOICE (Apr. 8, 2022), <https://ithacavoice.com/2022/04/police-reform-debate-at-common-council-turns-contentious-among-public-council-members/> [<https://perma.cc/54TA-SQTG>]; see also *Reimagining Public Safety, CITY OF ITHACA*, <https://www.cityofithaca.org/688/Reimagining-Public-Safety> [<https://perma.cc/J9XB-4RJF>] (last visited Jan. 30, 2023).

14. See Butler, *supra* note 13.

15. See MATT GROSSMAN, ARTISTS OF THE POSSIBLE: GOVERNING NETWORKS AND AMERICAN POLICY CHANGE SINCE 1945, at 5 (2014) (“The most important system-level characteristic of American policymaking is pervasive status quo bias.”).

16. See Rick Su, Anthony O’Rourke & Guyora Binder, *Defunding Police Agencies*, 71 EMORY L.J. 1197, 1213 (2022).

sense, because, as Professors Rick Su, Anthony O'Rourke, and Guyora Binder write, "policing in the United States is and historically has been quintessentially local," not only governed but primarily funded by cities and counties.¹⁷ There are, however, at least two major reasons why comprehensive, meaningful police reform can't be achieved at the local level.

The first reason, as Part I of this Article explains, is *the impossibility of expertise*.¹⁸ The problems presented by policing in the United States are multi-dimensional, and the complexity in each dimension is too much for a local legislator who is not a full-time subject-matter expert to successfully navigate. One dimension of the problems presented by policing is legal: police-reform proposals implicate multiple distinct bodies of law, including the law of local government structure and finance, the law of police tactics, the labor law that empowers police unions, and transparency laws. Another dimension is empirical: to responsibly evaluate police-reform proposals, a local legislator would need multiple kinds of empirical knowledge. They would need to understand how police actually do their work; the impacts police practices have on the community; what the community wants; and how alternatives to policing could work. They would also need to develop an understanding of systemic racism and the way it shapes both police practices and the communities where police work.

Yet another dimension of the problems presented by policing is strategic: local players and constituencies with control over police reform issues include legislators, activists, mayors, police chiefs, rank-and-file officers, police unions, state agencies that regulate and provide funding, state legislators, federal funders and regulators, and of course the voting public with its various constituencies. It's difficult to imagine any local group or government institution fully understanding all of these issues, bodies of empirical knowledge, and networks of players at once. And so, in the typical municipality, neither advocates nor local lawmakers will have the knowledge required to address the problems presented.

The second reason that comprehensive, meaningful police reform can't be achieved at the local level is that, as Part II of this Article explains, *solutions require action beyond municipalities*.¹⁹ Many of the proposals for significant or radical police reform require action beyond what municipalities can achieve. Municipalities cannot meaningfully

17. *Id.*

18. *See infra* Part I.

19. *See infra* Part II.

limit the power of police unions when state laws give those unions veto power over changes to policies on accountability or transparency.²⁰ One major proposal after George Floyd was to reallocate police functions to unarmed responders who could handle issues like homelessness, substance-abuse incidents, or even criminal investigations. But this proposal requires the involvement of service providers who typically operate at the county level or as private contractors. Even police-oversight boards, which are feasible in urban jurisdictions, cannot be sustained financially for a jurisdiction whose police force is as small as most towns.

Some scholars have argued that criminal-justice reform requires giving more power to localities.²¹ There are many reasons to support empowering localities on issues of criminal justice. Local governments may be able to tailor policies to their individual community's needs and values. Residents can "vote with their feet" by moving to a new community and localities' ability to experiment with new kinds of policies.²² Localizing policy decisions might even have benefits for democracy; perhaps democratic participation increases when policymaking happens at the local level.²³ But if this Article is right, and local police reform is effectively impossible, these benefits can't be realized unless states take action to make genuine local policymaking possible.

Part III argues that meaningful police reform will require major action at the state legislative level.²⁴ Shifting power to states would likely prevent meaningful change, because states tend to be more conservative than localities.²⁵ States can still give local communities a

20. See *infra* note 55 and accompanying text.

21. See WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 7 (2011); Elizabeth G. Janszky, Note, *Defining "Local" in a Localized Criminal Justice System*, 94 N.Y.U. L. REV. 1318, 1320 (2019) ("Unlike some democratizers, who care primarily about increasing public participation in the criminal system through a variety of means, localizers specifically want to push power down into the hands of the 'local community.'").

22. See Myrna H. Wooders, *Multijurisdictional economies, the Tiebout Hypothesis, and sorting*, 96 PROC. NATL. ACAD. SCI. USA 10585, 10585 (1999) (discussing the claim that "when it is efficient to have multiple jurisdictions providing local public goods, then competition between jurisdictions for residents will lead to a near-optimal outcome").

23. See Harry B. Dodsworth, *Identifying the Most Democratic Institution to Lead Criminal Justice Reform*, 116 NW. U. L. REV. 561, 571–72 (2021). Dodsworth usefully observes that reformers who support localization differ on what level of locality should be empowered: neighborhoods, cities, counties, or some other unit. See *id.* at 572–74.

24. See *infra* Part III.

25. Republicans control 57 state legislative chambers, while Democrats control 40. See *State legislative elections, 2022*, BALLOTEDIA,

major voice in the shape of police reform; this paper proposes legislative actions that will give the communities the power they need to make change possible.

I. PROBLEMS BEYOND LOCALITIES' GRASP

The first structural obstacle to local police reform is the effective impossibility of gaining the expertise required to effectuate it. If police reform comprised only a single question, such as whether to allow or prohibit, say, the use of tear gas in residential areas, it would be reasonable to think that a single person or group of people could research the issue, master it, and draft changes to local laws or policies. Perhaps the same person, having mastered the issue, could then engage in the coalition-building and management necessary to make those changes a reality. But police reform is not a single issue.

Imagine you are a legislator in a small- to medium-sized city or town, one of the municipalities with less than 225,000 people in which more than 80% of Americans live.²⁶ Your legislative role is probably not your full-time job.²⁷ Much of your work as a legislator focuses on issues like ensuring that water or sewer services are being provided to your

https://ballotpedia.org/State_legislative_elections,_2022 [https://perma.cc/P2U7-3QLX] (last visited Jan. 15, 2023). But more than three fourths of people in large cities live under Democratic governance. See *Who Runs the Cities?*, BALLOTPEDIA, https://ballotpedia.org/Party_affiliation_of_the_mayors_of_the_100_largest_cities#Who_runs_the_cities.3F [https://perma.cc/68CH-6JMV] (last visited Jan. 13, 2023) (“At the start of 2022, 76.1% of the population of the top 100 cities lived in cities with Democratic mayors, and 16.23% lived in cities with Republican mayors.”); *Mayoral Partisanship: 2016-2022 (62-67% of mayors of large cities are Democratic)*, BALLOTPEDIA, https://614allotpedia.org/Party_affiliation_of_the_mayors_of_the_100_largest_cities#Mayoral_partisanship:_2016-2022 [https://perma.cc/H4KH-77UW] (last visited Mar. 19, 2023); David A. Graham, *Red State, Blue City*, ATLANTIC (Mar. 2017), <https://www.theatlantic.com/magazine/archive/2017/03/red-state-blue-city/513857/> [https://perma.cc/QS7B-NQ8X]; see also Drew Desilver, *Chart of the Week: The Most Liberal and Conservative Big Cities*, PEW RSCH. FACT TANK (Aug. 8, 2014), <https://www.pewresearch.org/fact-tank/2014/08/08/chart-of-the-week-the-most-liberal-and-conservative-big-cities/> [https://perma.cc/J9MB-EVVL].

26. Eighty percent of Americans live outside of the 100 largest cities. See *Municipal Government*, BALLOTPEDIA, https://ballotpedia.org/Municipal_Government [https://perma.cc/9B9V-Q2SZ] (last visited Mar. 19, 2023). The 100th largest city is Hialeah, Florida, with 223,109 people. See *Largest Cities in the US By Population*, BALLOTPEDIA, https://ballotpedia.org/Largest_cities_in_the_United_States_by_population [https://perma.cc/R9TT-ET48] (last visited Mar. 19, 2023).

27. Of the 20,000 cities in the U.S., 11 out of every 12 are governed by part time legislatures. Kellen Zale, *Part time Government*, 80 OHIO ST. L.J. 987, 988 (2019).

constituents.²⁸ You might have one or two staff working at the legislature to support you, and they are almost certainly not subject-matter experts in policing.²⁹ You hear regularly from police about their needs and recommendations, and there are a few community advocacy groups that also make recommendations. You receive little training in policing issues. You sincerely want to make your community better, and you are deeply motivated to address policing and its problems. Where do you start?

Policing in the United States presents multidimensional problems. By “dimension,” I mean an aspect of the problem to be considered. A one-dimensional problem is one that needs to be evaluated in only one way. For example, if a voter must decide whether to support a referendum ending a prohibition on alcohol or marijuana, they might approach it by considering only whether the prohibition is good or bad for society.³⁰ Of course, this may be a difficult problem, but it at least only involves that one dimension.

On the other hand, an activist who wants to reform or improve elections in the United States must consider many dimensions of the problem. One dimension is legal: what are the laws that currently exist, and what potential reforms would survive judicial scrutiny? Another is empirical: what policy changes would have the best empirical outcome? Finally, another is strategic: what players must be influenced to make the desired reforms a reality, and how can they be influenced?

To be sure, any problem can be framed as more or less complex. A good lawyer can find a legal dimension in any social problem. But no individual actor has the power to insist that other people stop talking broadly about “police reform” and focus exclusively on some binary choice instead. The point of this Article is that “police reform,” as it

28. See Richard A. Briffault, *Beyond Congress: The Study Of State and Local Legislatures*, 7 N.Y.U. J. LEGIS. & PUB. POL’Y 23, 27 (2003) (“Local legislatures are engaged with narrowly focused matters all the time — they are busy renaming streets, rezoning individual plots of land, and handling other very minor matters. They are legislatures, but they are frequently concerned with a very different type of legislation.”).

29. During 2020 and 2021, I worked directly with more than a dozen municipalities across New York State on police-reform issues, and studied the process of dozens more municipalities’ process; none of the jurisdictions that I am familiar with had a policing expert on their legislative staff.

30. True, the voter would be free to consider other factors, like whether they personally want to use the substance, or whether voting in one way or another would feel good to them. And the voter might consider whether their choice would put their municipality in conflict with federal law, or any number of other issues. When I say the problem is one dimensional, I am giving my own assessment of it, not insisting that everyone would agree with the way I reduced the problem to one dimension.

has generally been framed, is multi-dimensional, and that each dimension is, for most local governments, prohibitively complex.

A. Too Many Proposals

In the wake of George Floyd’s murder, and long before it happened, advocates and policymakers have considered a broad diversity of ideas for changes in policing. The umbrella term “police reform” covers multiple proposals, not any single one, and while no doubt some of them needn’t be taken seriously, there are far too many serious proposals for a responsible local policymaker to responsibly evaluate in any reasonable amount of time. The proposals that have drawn the most focus in recent years have covered a range of issues wide enough to intimidate any responsible policymaker.

Some proposals involve what Barry Friedman calls “transforming” or “replacing” police and the role they play.³¹ These include proposals to reallocate police resources so that non-police personnel respond to some situations that police currently respond to, like mental health crises, substance abuse issues, and many other issues.³² Other transformative proposals include proposals to abolish police agencies altogether,³³ or to disband specific police agencies.³⁴

These transformational proposals differ from more incremental suggestions that seek to change the way police do what they do. Some incrementalist proposals would change police tactics by banning specific practice like chokeholds or tactical teams.³⁵ Other proposals would end federal government programs that transfer military to

31. See Barry Friedman, *Are Police the Key to Public Safety?: The Case of the Unhoused*, 59 AM. CRIM. L. REV. 1597, 1601 (2022).

32. See “Invest-Divest,” MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/invest-divest/> [<https://perma.cc/9TN3-Q6RX>] (last visited Mar. 19, 2023) (advocating “[a] reallocation of funds at the federal, state and local level from policing and incarceration (The Edward Byrne Memorial Justice Assistance Grant (JAG) Program, Community Oriented Policing Services (COPS) program, Victims of Crime Act (VOCA)) to long-term safety strategies such as education, local restorative justice services, and employment programs”). As Professor Jessica M. Eaglin explains, the call to “defund” police can be understood in multiple ways, including not only “recalibration” (shifting funds from police to other agencies) but also abolition, using conditions on police funding to promote accountability, or reducing police power through an overall reduction in police funding. See Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. ONLINE 120, 124–34 (2021).

33. See Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [<https://perma.cc/652N-3JSH>].

34. See generally Anthony O’Rourke, Rick Su & Guyora Binder, *Disbanding Police Agencies*, 121 COLUM. L. REV. 1327 (2021).

35. See FRIEDMAN ET AL., *supra* note 3, at 4.

police.³⁶ Others aim to change police culture, hoping to select or train officers to have a “guardian” mentality that focuses on building trust with the community, rather than a “warrior” mentality” that focuses on gaining compliance through the threat of force.³⁷ Other proposals would limit police ability to confiscate property.³⁸ Keeping police out of schools is another often-heard demand, and at least 33 school districts eliminated school police officers after the uprising of 2020.³⁹ And still other proposals would try to change the way police do their jobs by changing training and recruitment practices.⁴⁰ Each of these proposals has pros and cons that a responsible policymaker would want to evaluate, and doing so would demand significant amounts of time, research, and thought.

Another group of proposals — remember, we’re reviewing these to picture ourselves in the position of a local legislator trying to set their priorities — tries to improve policing through transparency: granting the public more access to information about police work and related governance structures, including public access to police disciplinary

36. Casey Delehanty et al., *Militarization and police violence: The case of the 1033 program*, RSCH. & POL., April–June 2017, at 1.

37. See Tom Tyler, *Reimagining American Policing*, 11 U.C. IRVINE L. REV. 1387, 1387 (2021) (advocating for a shift “from a warrior culture, one built around gaining compliance through the threat or use of force, to a guardian- or service-oriented culture, one focused on gaining acceptance by building trust and confidence among people in the community”); see also Michael D. White, Henry F. Fradella, & Michaela Flippin, *How Can We Achieve Accountability In Policing? The (Not-So-Secret) Ingredients To Effective Police Reform*, 25 LEWIS & CLARK L. REV. 405, 436–38 (2021); Joshua Kleinfeld et al., *White Paper of Democratic Criminal Justice*, 111 NW. U. L. REV. 1693, 1699 (2017) (among other proposals, “selecting and training officers to have a guardian rather than warrior mentality”).

38. See, e.g., Fifth Amendment Integrity Restoration Act (“FAIR Act”), H.R. 2857, 117th Cong. (2021–22) (guaranteeing various procedural protections for people whose property has been seized by law enforcement officials, including a prompt hearing); see also Press Release, ACLU, Congress Introduces Bipartisan Bill To Address Policing For Profit (Mar. 2019), <https://www.aclu.org/press-releases/congress-introduces-bipartisan-bill-address-policing-profit> [<https://perma.cc/5HGV-JHGS>] (supporting the FAIR Act).

39. Sarah Schwartz et al., *These Districts Defunded Their School Police. What Happened Next?*, EDUC. WEEK (June 4, 2021), <https://www.edweek.org/leadership/these-districts-defunded-their-school-police-what-happened-next/2021/06> [<https://perma.cc/A3A6-MHHT>]. See, e.g., Anya Kamenetz, *Why There’s A Push To Get Police Out Of Schools*, NPR (June 23, 2020), <https://www.npr.org/2020/06/23/881608999/why-theres-a-push-to-get-police-out-of-schools> [<https://perma.cc/CUR5-YZHP>].

40. See, e.g., Rashawn Ray and Clark Neily, *A better path forward for criminal justice: Police reform*, BROOKINGS INST. (Apr. 2021), <https://www.brookings.edu/research/a-better-path-forward-for-criminal-justice-police-reform/> [<https://perma.cc/WT4W-SN4U>] (making recommendations including the creation of national standards for training and de-escalation).

records and bodycam or dashcam footage.⁴¹ Of course, transparency is only useful if there is information for the public to access; to further this goal, another important group of proposals would increase the collection of data on policing. Currently, according to a report by the Policing Project at New York University Law School, only 20 states require data collection on traffic stops, and even those 20 states in many cases do not store data in a way that facilitates access and analysis.⁴² My own experience working with police departments in New York State was that none collect racial data on traffic stops, which makes it extremely difficult to measure racial profiling.

Other proposals related to increasing transparency would require that data collected is not kept in the hands of law enforcement, to protect those who have been victimized by law enforcement, especially Black women, from being vulnerable to further abuses at the hands of officers who can access their information through data collected to protect the public.⁴³ Keeping data in the hands of third parties could also increase public trust in the integrity of that data; it's harder to destroy, alter, or selectively release evidence if it's in someone else's possession.

Still another group of proposals relates to accountability and oversight processes. Some proposals would create oversight mechanisms at the local level,⁴⁴ including the creation or expansion of

41. See FRIEDMAN ET AL., *supra* note 3, at 5 (discussing the failure of bodycam use to lead to transparency in the absence of a “sound policy for release of the video to the public after critical incidents”); see also Gus Bova, *After Uvalde, Texas Could Finally Fix Notorious Flaw in Public Information Act*, TEX. OBSERVER (Dec. 15, 2022), <https://www.texasobserver.org/uvalde-dead-suspect-loophole-open-records/> [<https://perma.cc/3FCY-7ABR>] (discussing “dead suspect loophole” that prevents public disclosure of records relating to cases in which suspects died); Texas H.B. 30, 87th Leg. (2021–22).

42. MARIE PRYOR, FARHANG HEYDARI, PHILIP ATIBA GOF & BARRY FRIEDMAN, *COLLECTING, ANALYZING, AND RESPONDING TO STOP DATA: A GUIDEBOOK FOR LAW ENFORCEMENT AGENCIES, GOVERNMENT, AND COMMUNITIES* (2020).

43. Jacobs, *supra* note 8, at 293–94.

44. See generally White et al., *supra* note 37.

civilian review boards⁴⁵ and other local oversight structures like police commissions.⁴⁶

The topic of accountability elicits proposals for inter-municipal or trans-municipal cooperation, an important subject to which this Article will return later, because it is often beyond the capacity of any individual municipality to keep abusive officers off the job once they have been identified. One group of proposals for state or national policymakers would create a state or national decertification database through which officers accused of misconduct could be identified by any jurisdiction to which they apply for a job.⁴⁷ Another group of proposals would change in state-level oversight structures, empowering state attorneys general to prosecute crimes by police officers⁴⁸ or otherwise removing responsibility for prosecuting police crimes from the prosecutors' offices with which police ordinarily work.⁴⁹

Another important category of proposals deals with those who have been mistreated by police. Some proposals would ensure that women and children victimized by police sexual misconduct have “somewhere they can go to safely receive treatment without the police being involved,” with personnel training in forensic nursing who can keep victims safe and provide them with services they need.⁵⁰ Another idea

45. See Kleinfeld et al., *supra* note 37, at 1700; Andrew Denney, *Civilian Oversight is a Solution to Police Misconduct. But is it Effective?*, FREETHINK (Apr. 15, 2019, 10:00 AM), <https://www.freethink.com/articles/civilian-oversight-of-police-seems-like-a-commonsense-solution-to-police-misconduct-but-is-it-effective> [<https://perma.cc/VL4U-MKLA>] (noting that very few of the roughly 18,000 law-enforcement agencies in the United States have civilian oversight bodies).

46. See, e.g., *NY Police Commission*, CITY OF MIDDLETOWN, <https://www.middleton-ny.com/en/public-safety/police-commission.html> [<https://perma.cc/EYU3-7LBL>] (last visited Feb. 17, 2023).

47. See FRIEDMAN ET AL., *supra* note 3, at 3.

48. See, e.g., N.Y. Exec. Order 147 (July 8, 2015) (requiring state attorney general to investigate all deaths of unarmed civilians in police custody); see also Jason Mazzone & Stephen Rushin, *State Attorneys General as Agents of Police Reform*, 69 DUKE L.J. 999, 1050 (2020).

49. See generally Somil Trivedi & Nicole Gonzalez Van Cleve, *To Serve and Protect Each Other: How Police-Prosecutor Codependence Enables Police Misconduct*, 100 B.U. L. REV. 895 (2020). See also FRIEDMAN ET AL., *supra* note 3, at 5 (“Independent investigations and prosecutions of officers engaged in critical incidents are necessary to reduce conflicts of interest and promote public faith that officers are being held to the legal standards that the state has set for them.”); Danyelle Solomon, *The Intersection of Policing and Race*, CTR. FOR AM. PROGRESS (Sept. 1, 2016), <https://www.americanprogress.org/article/the-intersection-of-policing-and-race> [<https://perma.cc/Q7EG-X9A5>] (recommending, *inter alia*, the use of special prosecutors in police cases).

50. Jacobs, *supra* note 8, at 294.

is to compensate victims of police violence.⁵¹ As long as police continue to engage in violence, there will be a need for effective ways to help those who have been subject to it.

The judicial system is an important player in policing. Accordingly, a group of proposals would reform litigation rules and procedural doctrines, for example by abolishing the doctrine of qualified immunity or by reforming police indemnification.⁵² While after-the-fact liability can't directly prevent police violence, legal doctrines that give police impunity for misconduct can plausibly be said to make abuse more likely.

Another important category of proposal deals with governance. Some proposals would affect who controls the police and policing policies, like proposals to change the structure through which police are supervised and through which rules governing police are made. For example, municipalities might wish to create (or abolish) police commissions, or to democratize the process of rulemaking through which policing policies are created. Other proposals call for community control of policing institutions.⁵³ Another proposal would appoint emergency managers who could “abrogate union contracts, fire problem officers, change policies, reorient budgets, and radically alter the operation of the police to create structural changes that greatly reduce the police’s power to inflict violence.”⁵⁴

And there are still other ways to approach the problem. Importantly, some proposals would limit the power of police unions, for example, by keeping certain issues outside of the scope of collective bargaining or by restricting campaign contributions from police unions.⁵⁵

51. Valena E. Beety, *Compensating Victims of Police Violence*, 70 EMORY L.J. ONLINE 47, 49 (2021).

52. See Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 938–43 (2014).

53. See K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CAL. L. REV. 679, 683 (2020).

54. Adam A. Davidson, *Managing the Police Emergency*, 100 N.C. L. REV. 1209, 1216 (2022).

55. The question whether police disciplinary procedures must be subject to collective bargaining is, as of this writing, currently pending before the New York Court of Appeals, in a case where the city of Rochester gave its police review board power over police discipline without first negotiating that issue with the police union. See *Matter of Rochester Police Locust Club v. City of Rochester*, 148 N.Y.S.3d 794 (2021), *leave to appeal granted*, 177 N.E.3d 1292 (2021); see also *Matter of Patrolmen’s Benevolent Ass’n. of N.Y., Inc. v. N.Y. State Pub. Emp. Relations Bd.*, 6 N.Y.S.2d 1, 2–3 (2006). See generally Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85

This list of various kinds of proposals is long, and it is still far from comprehensive; it includes only policies *directly* related to policing. Many other reforms have been proposed in criminal justice areas that relate to police interactions, such as reforms to correctional policies, reduction in oppressive practice of imposing fines and fees on those in the criminal justice system, better funding for public defense, and others.⁵⁶

Some of the most significant work on policing issues also shows that policing problems are inextricably bound up with other structural issues. For example, Professor Monica Bell has argued that residential segregation and policing have a “mutually constitutive” relationship,⁵⁷ and that “deeper structural problems” like residential segregation “virtually guarantee” the failure of efforts to transform policing.⁵⁸ If residential segregation makes it impossible to transform policing, then the incrementalistic proposals above will not suffice without deeper structural reforms that would alleviate residential segregation and other forms of structural racism.

Deeper reforms might also be needed in another direction: the conceptualization of public safety itself. Professor Barry Friedman argues that our use of the concept of public safety is unduly limited because it excludes crucial threats to safety like lack of healthcare or lacking housing, and that this impairs our discourse and thinking about policing.⁵⁹ If we conceptualize public safety as freedom from crime, it becomes easy to prioritize crime control over addressing other needs that are equally vital. Moreover, Friedman and other scholars argue that a lack of empirically informed cost-benefit analysis undermines our governance on public safety issues.⁶⁰ Professor Rachel Barkow explains how the structure of criminal-justice governance, by empowering elected district attorneys and legislatures rather than

GEO. WASH. L. REV. 712 (2017); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191 (2017).

For an example of a proposal that would take police discipline out of collective bargaining, see N.Y. Legis. S. 4434 Reg. Sess. 2021–22 (2021), <https://www.nysenate.gov/legislation/bills/2021/s4434> [<https://perma.cc/BH5S-FUG7>].

56. See, e.g., *Criminal Justice Reform*, EQUAL JUST. INITIATIVE, <https://eji.org/criminal-justice-reform/> [<https://perma.cc/5ZNS-GCD6>] (last visited Mar. 19, 2023) (detailing a variety of reforms).

57. Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655 (2020) (“[T]here is a mutually constitutive relationship between daily practices of urban policing and residential segregation, a relationship of mutual reproduction.”).

58. *Id.* at 656; see also Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2066 (2017).

59. See Friedman, *supra* note 31, at 1597.

60. *Id.* at 1601.

expert agencies, prevents expertise from informing policy choices.⁶¹ It is disturbing how little of the empirical research on criminal-justice issues makes it into policymakers' discussions of those issues. All of these arguments suggest that police reform will require deep changes in the way we think and talk about public safety.

This long, and no doubt incomplete, list of significant policy proposals on policing begins to show how multidimensional the problem is. Compare policing, for example, to the debate over abortion rights. While there are deep complexities to the issue, U.S. political discourse typically frames it as a binary choice: should "we" allow abortions, or prohibit them?

To be sure, these frames are socially constructed, not natural. Abortion could be, and sometimes is, framed as a part of the larger question of access to healthcare, which is a broader issue with more facets because it involves questions of *how*, rather than just questions of *whether*.⁶² Similarly, policy questions around, say, fracking are sometimes framed as a binary choice about whether to allow or disallow that specific resource extraction practice. Fracking, meanwhile, can alternatively be framed as part of a broader question of how to address climate change.⁶³

Socially constructed as these frames may be, there is little question that policing and police reform are represented in U.S. political discourse as multidimensional problems. The phrase "police reform" is used not to refer to a single binary policy choice but to cover multiple possible approaches to a variety of challenges. Those challenges include police tactics and practices; transparency, accountability, liability, and oversight; governance of police; and questions about the fundamental role that police play in our society. Just understanding the proposals alone, before we begin to gather the knowledge required to evaluate them, represents a problem of deep complexity. Understanding the relevant legal doctrines, empirical conditions, and players who have veto power over reforms means adding multiple

61. See generally RACHEL ELISE BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* (2019).

62. See Yvonne Lindgren, *The Rhetoric of Choice: Restoring Healthcare to the Abortion Right*, 64 HASTINGS L.J. 385, 388 (2013) (discussing how some ways of talking about abortion frame it as "an aspect of healthcare").

63. See Ole W. Pedersen, *Fracking Frames and the Courts*, 20 ENV'T L. REV. 202, 211 (2018) ("By insisting that environmental impacts arising from [greenhouse gas] emissions will be assessed at a later stage, the courts implicitly endorse, the dominant government frame which favours hydraulic fracking at the expense of 'challenger' frames which frame hydraulic fracking by reference to the local environmental impacts and/or climate change impacts.").

levels of complexity to a problem that is already well beyond the capacity of most local legislators to master.

The obvious policymaking response to a problem with this many proposals is to proceed piecemeal. But political momentum for transformational change does not last. By the time some changes have been made, others are out of reach. And if municipalities reach for the lowest-hanging fruit, as is natural when the public demands quick action, they necessarily avoid the most difficult conversations, which is no way to prioritize.

B. Too Many Bodies of Knowledge

Not only are the proposals maximally complex; the tools required to evaluate those proposals themselves are also complex. If a responsible local legislator, or an advocate working with local government, wanted to answer the question “What should we do to make policing better?” — phrased that broadly — they would need to know more than any one person could learn in a lifetime.

This hypothetical legislator might start with the law of policing, including police tactics and the legal standards that apply to them, which is a legal field unto itself.⁶⁴ They would also need expertise on the law governing police unions and the issues over which they have influence, including labor law and civil service law.⁶⁵ Importantly, a good deal of “law” in this area is informal and uncodified; the beliefs of those who practice in this area can take on a power of their own.⁶⁶

To evaluate whether police-reform proposals could successfully be passed and withstand legal challenges, a busy legislator will also need an understanding of the law of local government’s structure and powers, including questions like the city council’s power to amend the local charter, the power of local ordinances to overrule collective bargaining agreements, and the lawfulness of independent boards and commissions. All of these factors affect whether a proposal is within the power of the various governmental actors to pass it. To evaluate proposals that would shift police responsibilities to unarmed responders, the local legislator will need to know what law governs those responders. And since all reforms must be funded, our legislator

64. *See generally* RACHEL HARMON, *THE LAW OF THE POLICE* (2021).

65. *See supra* note 55 and accompanying text.

66. This comment is based on my experience talking to various lawyers who work in the field of police union negotiation.

will need to understand often-opaque local budgeting processes⁶⁷ and obligations imposed under state or federal grants, which may come with conditions that constrain and incentivize.⁶⁸

When the legislator turns to proposals involving police accountability, another wide array of legal topics becomes relevant. The law of liability for police misconduct easily fills casebooks.⁶⁹ The law of transparency is another deep topic, not easily mastered. And the law governing oversight institutions like state attorneys general, civilian oversight boards, and comptrollers is, again, complex and often obscure.

In addition to all this legal knowledge, a policymaker seeking to responsibly evaluate the wide variety of proposals that come under the umbrella of “police reform” would also need multiple kinds of empirical knowledge. First, and perhaps most importantly, the policymaker would need knowledge of what police are actually doing. Police tactics on the street can depart from the practices that trainings and regulations might anticipate. Our legislator will need to know not only what rules govern police but how police behave in response to those rules. How do police do their work?⁷⁰

Our legislator would also need knowledge of the scope of police abuses. This information is crucially limited by a lack of transparency and available data. For example, data on police sexual misconduct, which disproportionately harms Black women, is available only because scholars, advocates, and others have gathered it from the sources they have access to.⁷¹ Existing systems fail to capture the extent of police abuses for many reasons; for example, as Professor Michelle Jacobs points out, “[v]ulnerable women who are targeted by the police do not come forward because they know no one will believe them if they are engaged in sex work or if they are drug addicts.”⁷² In

67. Policing is the biggest expenditure for local governments, behind education (which is typically handled by special districts, and thus not part of the ordinary budgeting process). *See Government Payroll*, U.S. CENSUS BUREAU (Aug. 20, 2021), <https://www.census.gov/library/visualizations/2021/econ/government-payroll.html> [<https://perma.cc/QRG3-SDTK>].

68. *See* Su et al., *supra* note 16, at 1197.

69. Since liability for police misconduct implicates many of the same principles as other government officials’ conduct, our legislator might start with, but probably would not want to limit themselves to, casebooks like JOHN JEFFRIES JR. ET AL., *CIVIL RIGHTS ACTIONS: ENFORCING THE CONSTITUTION* (4th ed. 2018).

70. *See generally* THE STANFORD OPEN POLICING PROJECT (2020), <https://openpolicing.stanford.edu/> [<https://perma.cc/GXF5-7MFP>] (gathering data on policing practices).

71. *See* Jacobs, *supra* note 8, at 260–64.

72. *See id.* at 278; *see also* ANDREA RITCHIE, *INVISIBLE NO MORE* 105 (2017).

14 states, a “Law Enforcement Officer’s Bill of Rights” gives police more due-process protections against questioning than non-police have in other contexts, and these protections can prevent the disclosure of accurate information about incidents of apparent abuse.⁷³ Furthermore, the much-discussed “blue wall of silence” prevents many incidents of abuse from being reported.⁷⁴

Our legislator seeking police reform needs to understand not just the police, but also several important aspects of the communities in which they work: how are those communities affected, and what do the people in those communities want? Evaluating proposals for police reform requires understanding how police practices affect communities, since the goal of police reform is to make things better for those communities along various dimensions. To what extent do police practices help prevent crime and violence? To what extent do those practices build or destroy trust? To what extent do they force communities to live in fear of police themselves?

Consider also the importance of knowing what the community wants. Open forums generally do a rather bad job of communicating public opinion, for any number of reasons, and surveys can also be unreliable. Responding to the will of the people is an admirable goal, but identifying their will is a question on which researchers who conduct polling and interviewing receive extensive training; it is not a simple matter.

Empirical knowledge, too, is required on questions of how alternatives to policing could work. Mental-health response and substance-abuse treatment, for example, are complex fields in which training and expertise are the norm for practitioners. To evaluate the wisdom of letting state or county officials or private service providers take over these functions, it would be helpful to know what those providers do now and how well it works.

It is difficult to imagine any single legislator or advocate being able to assemble all of this knowledge. Part-time local legislators might,

73. See *Blue Shield*, MARSHALL PROJECT (Apr. 27, 2015, 12:06 PM), <https://www.themarshallproject.org/2015/04/27/blue-shield> [https://perma.cc/4C88-VSSR]; see also Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights*, 14 B.U. PUB. INT. L.J. 185, 187 (2005).

74. See RICH MORIN ET AL., PEW RSCH. CTR., *BEHIND THE BADGE* 1, 33 (2017), https://assets.pewresearch.org/wp-content/uploads/sites/3/2017/01/06171402/Police-Report_FINAL_web.pdf [https://perma.cc/8RSA-UD9X]. For an ongoing list of examples of the blue wall of silence in action, see *Blue Wall of Silence*, MARSHALL PROJECT (Dec. 10, 2021, 4:14 PM), <https://www.themarshallproject.org/records/605-blue-wall-of-silence> [https://perma.cc/R6QV-H54E].

realistically, develop knowledge in one or two of these areas. Even for a mayor whose full-time job is governing, heavy reliance on staff expertise is inevitable. But the people with the most expertise in these areas, legal and empirical, are often not the people committed to reform, because the people who spend the most time working in this area are, after all, police. And police rarely use that expertise to develop proposals for transformational change.

The lack of relevant expertise among municipal policymakers and the challenges it presents are particularly acute in smaller communities. The number of local government employees in the United States is large; according to Professor Nestor Davidson, “as of 2013, local governments employed just under fourteen million of the nearly twenty-two million public employees across the nation, as compared to just under six million state employees and just under three million federal employees.”⁷⁵ Those fourteen million employees work for about 90,000 local governments,⁷⁶ of which 50,000 are special districts or independent school districts.⁷⁷ The remaining general-purpose governments comprise about 3,000 counties, 16,300 towns, and 20,000 cities.⁷⁸ An approximation of 90,000 governments⁷⁹ and fourteen million employees⁸⁰ suggests a rough average of about 155 employees per local government. But that doesn’t mean the average police-

75. Nestor Davidson, *Localist Administrative Law*, 126 *YALE L.J.* 564, 594 n.134 (2017); see also *Employment*, NAT’L ASS’N OF STATE RET. ADM’RS, <https://www.nasra.org/content.asp?contentid=181> [https://perma.cc/PE4E-4NCG] (last visited Feb. 13, 2023).

76. See *Census Bureau Reports There Are 89,004 Local Governments in the United States*, U.S. CENSUS BUREAU (Aug. 30, 2012) [hereinafter 89,004 Local Governments], <https://www.census.gov/newsroom/releases/archives/governments/cb12-161.html> [https://perma.cc/9KGG-JGSX]; see also AM. COUNTS STAFF, FROM MUNICIPALITIES TO SPECIAL DISTRICTS, OFFICIAL COUNT OF EVERY TYPE OF LOCAL GOVERNMENT IN 2017 CENSUS OF GOVERNMENTS 2 (2019), https://www.census.gov/content/dam/Census/library/visualizations/2019/econ/from_municipalities_to_special_districts_america_counts_october_2019.pdf [https://perma.cc/8AAV-CKGF].

77. AMERICA COUNTS STAFF, *supra* note 76.

78. See RICHARD BRIFFAULT & LAURIE REYNOLDS, *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW* 8–14 (6th ed. 2016) (giving numbers of each of the various kinds of local governments: 90,000 total; 3,028 counties, varying in population from 71 to 10.1 million, with 703 counties having fewer than 10,000 people each and an average population of 100,000, and employing more than 19,000 county elected officials and 3.3 million county employees; 19,580 municipal corporations, with about 85% of cities having fewer than 10,000 inhabitants, accounting for only 9.1% of the population, and 203 cities with populations of 10,000 or more home to 99 million people, or half the urban population; and 16,519 town governments).

79. See *id.*

80. See Davidson, *supra* note 75.

reform proposal is considered by a government entity with 155 employees. Forty percent of direct local government spending goes to elementary and secondary education, which is handled by school districts rather than municipalities, so a corresponding proportion of staff will be unavailable to work on police policy for the municipalities whose responsibility it is.⁸¹

In fact, the Bureau of Labor Statistics estimates there are 100,000 lawyers working for local governments, excluding schools and hospitals.⁸² If schools are 55% of local government entities and lawyers are distributed accordingly,⁸³ this implies 45,000 lawyers for 40,000 local governments: an average of barely more than one lawyer per local government. Not one lawyer per local legislature, but one lawyer for the entire local government, with all of its departments.

This estimate seems plausible. More than half of America's population lives in municipalities with populations of less than 50,000 people.⁸⁴ Many government employees work for smaller municipalities in which the government may have only a handful of personnel, or only one part time staff person, potentially tasked with pursuing the specific policy changes involved in police reform. For example, Albany, New York, with a population of about 100,000 people, had only two staff people working directly for its city council when it considered reform proposals after George Floyd's murder, and one of those staffers left part way through.⁸⁵

81. See *State and Local Expenditures*, URB. INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/state-and-local-expenditures> [https://perma.cc/F9Y4-TR9D] (last visited Feb. 13, 2023).

82. See *May 2021 National Industry-Specific Occupational Employment and Wage Estimates NAICS 999300 - Local Government, excluding schools and hospitals (OEWS Designation)*, U.S. BUREAU OF LAB. STAT. (Mar. 31, 2022), https://www.bls.gov/oes/current/naics4_999300.htm#23-0000 [https://perma.cc/5K8N-3CGN].

83. I get 55% from the Census's report that 50,000 of the 90,000 local government entities are independent school districts. The true number will be higher, because not all schools are run by independent school districts. See AM. COUNTS STAFF, *supra* note 76.

84. As of 2019, according to the Census Bureau, about 63% of Americans lived in an incorporated place, and about 76% of incorporated places had fewer than 5,000 people. Nearly 39% of the population lived in a city with a population of 50,000 or more. Amel Toukabri & Lauren Medina, *Latest City and Town Population Estimates of the Decade Show Three-Fourths of the Nation's Incorporated Places Have Fewer than 5,000 People*, U.S. CENSUS BUREAU (May 21, 2020), <https://www.census.gov/library/stories/2020/05/america-a-nation-of-small-towns.html> [https://perma.cc/NR5G-64M7].

85. This observation is based on my personal experiences.

Even in larger municipalities, the separation of functions between different departments makes it difficult for a single actor or cohesive group of actors to acquire the requisite knowledge of specific issues in police reform, such as police tactics and the legislative process. People who understand any given problem are unlikely to understand the problems that overlap with it: for example, understanding accountability structures within a police department is no guarantee that one will understand the governance issues involved in creating a police commission to improve those accountability structures. One can be expert on police internal discipline without ever having thought about a police commission.

Activist groups may also struggle with a silo effect that limits their ability to pool expertise. Local activist groups may have a deep understanding of problems in their own community, but deep expertise on law and policy issues tends to be concentrated among larger, more well-established groups.⁸⁶ The Black Lives Matter movement arose as a relatively decentralized network; as historian Clayborne Carson notes, “[t]he very strength of the Black Lives Matter movement is that it is decentralized and a lot of the protest is more spontaneous.”⁸⁷ There is doubtless power in a movement that has both protest-focused ad hoc groups and expert groups that are able to offer draft legislation or detailed policy proposals. Knowledge about the impact of police practices lives in communities, and transformational change can’t be meaningful unless that local knowledge is part of it.⁸⁸ My point is just that someone in the community needs to be able to help legislators develop proposals for reform that can successfully pass the local legislature and be implemented, and a spontaneous grouping of community members may or may not include experts able to develop such proposals, depending on who happens to be available and who happens to join.⁸⁹

86. See, e.g., *Reforming Police*, ACLU, <https://www.aclu.org/issues/criminal-law-reform/reforming-police> [https://perma.cc/2D7B-M94N] (last visited Feb. 13, 2023).

87. Melissa De Witte, *Leaderless, Decentralized Protest Is a Strength and a Weakness, Warns Civil Rights Scholar Clayborne Carson*, STANFORD NEWS SERV. (June 4, 2020), <https://news.stanford.edu/press-releases/2020/06/04/leaderless-protetrength-weakness/> [https://perma.cc/TJJ7-BUNW]. Carson continued: “But that’s also a weakness.” *Id.*

88. For an example of creative, community-based tactics for holding police accountable, see Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391 (2016).

89. On the question of the general public’s understanding of policy issues, see CHRISTOPHER H. ACHEN & LARRY M. BARTELS, *DEMOCRACY FOR REALISTS* (2016). See also Luis Garicano & Yanhui Wu, *Knowledge, Communication, and Organizational Capabilities*, 23 ORG. SCI. 1382, 1382 (2012) (“[O]rganizations exist, to

This dearth of expertise — at the very least, major gaps in any would-be reformer’s expertise, and in many cases a complete lack of expertise on various topics on the reform side in a given community — empowers police. Police are often treated as experts.⁹⁰ This is acutely true in the courts, where, as Professor Sheila Bedi explains, the Supreme Court has treated police as if their training and experience equip them to make expert on-the-spot judgments about how to protect communities from harm.⁹¹ In fact, some evidence suggests officers may be *worse* than members of the general public in identifying threats, because police are more suspicious and sometimes see threats where there are none, as the many police killings of unarmed civilians demonstrate.⁹² Worse, police training sometimes instructs officers in how to behave unlawfully.⁹³ Even if police are experts on what they have experienced or what they’ve been trained on, there are other issues, like governance and accountability or when to replace police with unarmed responders, on which police have no experience relevant to important aspects of the issue. In other words, police are sometimes experts and sometimes not.

Nonetheless, police often receive deference in policymaking conversations, just as they do in courts. Members of the community may also feel socially compelled to offer deference to police officers because of the perception that police take unique risks, despite the fact that the dangers of policing are vastly overstated.⁹⁴

Community members may also feel compelled to defer simply because police officers have experience doing the job that is the subject of conversations about police reform, and because they spend their

a large extent, to coordinate and integrate disparate information and narrowly specialized knowledge to achieve efficient economic outcomes.”).

90. See generally Anna Lvovsky, *Rethinking Police Expertise*, 131 YALE L.J. 475 (2021).

91. Sheila A. Bedi, *The Myths of Effective Law Enforcement and the Demand to Defund The Police*, 17 STAN. J. C.R. & C.L. 499, 507, 531 (2022) (discussing *Terry v. Ohio*, 392 U.S. 1 (1968)).

92. See *id.* at 523; see also Renée McDonald Hutchins, *Stop Terry: Reasonable Suspicion, Race, and a Proposal to Limit Terry Stops*, 16 N.Y.U.J. LEGIS. & PUB. POL’Y 883, 902 (2013).

93. Bedi, *supra* note 91, at 531–32.

94. See *id.* at 507–08; see also Jordan Blair Woods, *Policing, Danger Narratives, and Routine Traffic Stops*, 117 MICH. L. REV. 635, 640 (2019).

professional lives engaging with others who are doing the same work.⁹⁵ An ordinary member of the public, by contrast, does not spend their life engaged with policing, and so has little reason to learn the laws that apply to, say, police discipline and collective bargaining. When a police representative responds to a given policy proposal by saying, “that would have to be negotiated in collective bargaining,” proponents of the change may simply not know what to say.

Moreover, as Professor Rachel Moran notes, “[o]ur nation’s laws—drafted, enacted, and interpreted primarily by white people who have rarely suffered the discomfiture of serving as an unwarranted target of police suspicion or brutality—also reflect [a] trust in the inherent goodness of police officers.”⁹⁶ Laws and policies created by members of the white majority may reflect a trust in police, and a deference to their perspective, that does not reflect the experience of Black community members.

The problem is not that no one besides the police has the requisite expertise. In most cases, someone does. There are labor lawyers knowledgeable about collective bargaining and the civil-service protections that apply to police officers, civil-rights lawyers who frequently litigate limitations on police tactics as well as the legal procedural obstacles like qualified immunity that block those lawsuits, consultants who work on policing policies generally, and scholars who study all of these issues. But the sheer range of issues effectively

95. Juror deference to police has been a problem, perhaps for these reasons. *See, e.g., State v. Green*, No. 2020AP1275-CR, 2021 WL 545784, at *1 (Wis. Ct. App. Nov. 23, 2021) (per curiam):

[T]he trial court asked the panel whether they would “tend to give more weight and credibility to the testimony of a police officer simply because that person is a police officer?” Several of the panel members raised their hands, including Juror 17. When the court questioned Juror 17, the following exchange occurred:

JUROR 17: I think it’s along the same lines as the other people. Just, you know, I was raised to respect, you know, officers, and knowing they take an oath to protect and serve they are the, you know, good guys. Just being raised that way, you know, back of my mind always.

THE COURT: So, you would tend to believe them over a regular citizen?

JUROR 17: Correct.

THE COURT: If it was one on one?

JUROR 17: Yeah. I mean, like I said, you know, you’re taught from a child to, you know, obey the police and your elders so —

THE COURT: Okay.

96. Rachel Moran, *In Police We Trust*, 62 *VILL. L. REV.* 953, 955 (2017).

guarantees that the knowledge relevant to policing issues will be compartmentalized. If no one person has the capacity to learn all of the relevant material, then multiple people will have to divide it up.

Even when this knowledge exists, in educational institutions or higher levels of government or consulting firms, the challenge involved in accessing it can be preclusive. Consultants cost money; state-level agencies are busy and not always accessible to local governments; academics are busy.⁹⁷ Thus, expertise is distributed away from the people who need it. A local legislator who wants to understand how to make policing better can rarely, as a practical matter, seek the wisdom of all of these experts and then integrate it into a police reform proposal.

A great deal of policy change depends on relationships between participants in networks of policymakers and activists.⁹⁸ Inevitably, many of these relationships are built around informal conversations between two people or in small groups. In such conversations, a multidimensional issue like police reform usually means that there is an imbalance in expertise: perhaps only one person is a lawyer, perhaps one person has a background in union/labor issues, and perhaps one person is a police officer. The possibility of an unbalanced conversation increases exponentially with the diversity of relevant issues.

Because police are perceived to be experts on many of the topics related to policing,⁹⁹ the dearth of expertise on the reform side gives them immense power to prevent reform without directly opposing it — simply by observing the complexity of the issues involved, which they, and not the reformers, understand.

C. Too Many Players

So far, this Article has argued that police-reform issues involve two dimensions of complexity: many proposals and many bodies of knowledge. Players in the field of police reform add a third complexity dimension.

Anyone hoping to effectuate policy change must consider not just the issue but the players who hold formal or informal power. Police reform at the local level alone involves multiple players. One group of players is the local legislature, whose workings are often mysterious

97. Each of these observations is based on my personal experience.

98. See GROSSMAN, *supra* note 15, at 189.

99. See *supra* notes 90–98 and accompanying text.

even to people familiar with federal or state legislative processes.¹⁰⁰ To take just one example, local legislatures do not follow the familiar bicameral model; unicameral legislatures are the norm.¹⁰¹ As Professor Paul Diller observes, this makes the local legislatures less vulnerable to vetoes than Congress; so does the fact that local legislatures often lack the extensive committee structure in which so many federal bills die.¹⁰² And local legislatures are less likely to suffer partisan deadlocks because most cities are overwhelmingly Democratic.¹⁰³ But, as Diller notes, deadlocks in local legislatures nonetheless happen all the time.¹⁰⁴ Anyone who thinks that a supermajority of Democrats guarantees consensus has never been around a supermajority of Democrats. And, as Diller writes, “[p]owerful city councilors can bottle up legislation singlehandedly.”¹⁰⁵ Moreover, opportunities for persuasion can be limited, because, as Professor Richard Briffault observes, “there isn’t a lot of deliberation in state and local legislatures.”¹⁰⁶ Local legislatures may have fewer veto points than Congress, but they are also more informal (sometimes to the point of being chaotic), more idiosyncratic, less predictable, and highly capable of killing proposals that come before them.

100. For example, many local governments lack the three-branch structure that federal and state legislatures share. See Linda Gallagher, *Who’s the Boss? Separation of Powers in Local Government*, MRSC (Feb. 18, 2021), <https://mrsc.org/stay-informed/mrsc-insight/february-2021/separation-of-powers-in-local-government> [<https://perma.cc/7CHU-7STR>]

101. Noah M. Kazis, *American Unicameralism: The Structure of Local Legislatures*, 96 HASTINGS L.J. 1147, 1149 (2018) (as of 2014, “America’s last bicameral local government [in Everett, Massachusetts,] was no more”).

102. Paul Diller, *Why Do Cities Innovate in Public Health? Implications Of Scale and Structure*, 91 WASH. U. L. REV. 1219, 1266–68 (2014).

103. *Id.* at 1267.

104. See *id.*; see also, e.g., Jackie Fortiér, *LA City Council Remains Deadlocked*, LAIST (Oct. 14, 2022), <https://laist.com/news/politics/la-city-council-remains-deadlocked> [<https://perma.cc/VUD5-SQR8>]; Corey Buchanan, *Lake Oswego City Council deadlocked in debate over First Addition Tree Removals*, LAKE OSWEGO REV. (Sept. 7, 2022), <https://pamplinmedia.com/lor/48-news/556897-445796-lake-oswego-city-council-deadlocked-in-debate-over-first-addition-tree-removals> [<https://perma.cc/JS7N-CMY3>] (“The Tuesday, Sept. 6 Lake Oswego City Council meeting featured accusations of harassment and vandalism, back-and-forths between councilors about whether conviction or the letter of the law should take precedence and the questioning of whether the city of Lake Oswego’s tree code is compliant with state law.”); Isaac Avilucea, *Trenton council salary ordinance dies in deadlock*, TRENTONIAN (Aug. 5, 2022, 3:55 PM), <https://www.trentonian.com/2022/08/05/trenton-council-salary-ordinance-dies-in-deadlock/> [<https://perma.cc/B2W7-4BCZ>].

105. See Diller, *supra* note 102, at 1267.

106. Briffault, *supra* note 28, at 26.

Moreover, as Professor Kellen Zale explains, most local legislatures are part time, with their members working full time at other jobs. This creates a power vacuum: “a part time city council has less power—in terms of capacity, resources, and political capital—than a full time city council.”¹⁰⁷ When the city council can’t exercise power, other institutions fill the gap: “[S]tates, other city officials, other units of local government, or private actors, each of which exercising power in ways that may diverge from how that power would have been exercised by city council.”¹⁰⁸ For an advocate, it can be challenging to figure out what is within the council’s power.

Another player is the local mayor or other chief executive. Professor Richard Schragger writes that “[t]he institution of the mayoralty is vaguely disreputable yet deeply democratic.”¹⁰⁹ The mayor is typically a weak player:

The council may have final say over appointments; budget authority may be administrative; department heads or commission boards may be insulated from mayoral control by set terms of office; other executive officials may be elected city-wide; unions may have charter-protected rights; or significant power may be vested in a chief administrative officer who is answerable only indirectly to the mayor. Numerous boards and commissions—mandated by the city charter or by state law—may come between the mayor and the city’s executive departments.¹¹⁰

For reformers who want to effectuate local change, it can be difficult even to get a grasp on what the mayor’s capabilities are, much less how to persuade the mayor how to use them.

The police department, of course, is another significant player in police-reform decisions. It is difficult for members of the public, or even members of the local legislature, to understand the power relationships between the mayor and the police department. Furthermore, the police department has multiple internal constituencies, often impenetrable to outsiders because of the rarity of candid public conversation about who within a department believes what.

Another powerful player that any reform needs to strategize around is police unions.¹¹¹ Professor Stephen Rushin has shown that a

107. Zale, *supra* note 27, at 991.

108. *Id.*

109. Richard Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542, 2544 (2006).

110. *Id.* at 2549.

111. *See supra* note 58 and accompanying text.

substantial number of collective bargaining agreements limit the effectiveness of accountability mechanisms.¹¹² For example, some agreements require the erasure of past disciplinary complaints, which harms efforts to identify officers with a pattern of misconduct.¹¹³ Other agreements limit civilian oversight,¹¹⁴ or officer interrogations.¹¹⁵

And many jurisdictions have multiple police unions, each with their own collective bargaining agreement. Collective bargaining agreements' effectiveness as an obstruction of reform is amplified by the practicalities involved in their existence: when a reform proposal arises, union negotiators and their counterparts in the local executive branch may decide that a proposal would best be addressed when the contract is up—in other words, in a later year. Delay often means denial, because political momentum for reform can dissipate rapidly.¹¹⁶

And no list of players in police reform policymaking can omit police themselves, who are powerful stakeholders in part because they are perceived as experts, as discussed above.¹¹⁷

All of the players listed so far are at the local level. But a local reformer can't expect success without also strategizing ways to deal with more lawyers of government, each with multiple players, decisionmakers and stakeholders of their own. State and federal governments are yet more players in the complex web of police reform.¹¹⁸

Localities are, in theory, creatures of the state, giving state governments immense power over local policing.¹¹⁹ States have exercised this power to prevent localities from reducing police budgets, as part of what Professors Su, O'Rourke, and Binder have called the “web of direct legal constraints on local decisions to fund or defund law enforcement.”¹²⁰ States have passed anti-defunding mechanisms that

112. See Rushin, *supra* note 55, at 1198.

113. *Id.* at 1195–96.

114. *Id.* at 1197 n.25 (discussing Baltimore).

115. *Id.* at 1224–27 (listing multiple jurisdictions).

116. This observation is based on a municipality that I worked with during 2020–21. Several local legislators circulated a draft statute that would have significantly increased oversight and accountability of the police department, but when union affiliates raised the idea that the proposal would have to be subject to collective bargaining, it was put aside, and discussion never, to my knowledge, resumed.

117. See *supra* notes 90–98 and accompanying text.

118. I am grateful to Sofia Johnson for helping to clarify this discussion.

119. See Aaron Saiger, *Local Government as a Choice of Agency Form*, 77 OHIO STATE L.J. 423, 423 (2016) (“[S]tate agencies and local jurisdictions are functionally similar. Both are organized to afford state governments, which have broad scope and general jurisdiction, the benefits of specialization.”).

120. See Su et al., *supra* note 16, at 1203.

function as a ratchet, “bribing local governments to increase police spending and then mandating them to maintain it, at the eventual cost of cutting social services.”¹²¹ States may also simply mandate local governments to “fund police agencies at certain levels of spending, staffing, pay, benefits, or job security”; they may also require that police perform specified functions, thus preventing states from allocating those functions to unarmed responders.¹²²

More insidiously, states authorize localities to collect fines and fees from people who encounter the criminal-justice system, and to seize and forfeit property; those fines and fees then become a part of municipalities’ budgets, and dependence on that revenue stream, and the police who provide it, functions as a further obstacle to meaningful reform.¹²³

The federal government, too, prevents localities from implementing meaningful police reform. The Supremacy Clause gives the federal government power to impose various controls on states and localities. But as Su, O’Rourke, and Binder demonstrate, federal grants can block reform just as powerfully.¹²⁴ Programs like the Edward R. Byrne Memorial Justice Assistance Grant (JAG) Program and the Community Oriented Policing Services (COPS) Program, on which many municipalities have come to depend, incentivize arrest-based approaches to policing, resulting in more low-level arrests,¹²⁵ and thus undermine one of the demands of contemporary reformers.¹²⁶

Multiple nested general-purpose governments make policy change difficult.¹²⁷ Hooghe and Marks describe this problem in part as one of coordination: “To the extent that policies of one jurisdiction have spillovers (i.e. negative or positive externalities) for other jurisdictions, so coordination is necessary to avoid socially perverse outcomes.”¹²⁸ But spillovers aren’t the biggest obstacle for police reform.

121. *Id.* at 1197.

122. *Id.* at 1203.

123. *Id.* at 1261–63.

124. *See id.* 1236–39.

125. *See id.*

126. *See, e.g.*, Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313 (2012); *see also* BECCA CADOFF, PREETI CHAUHAN & ERICA BOND, MISDEMEANOR ENFORCEMENT TRENDS ACROSS SEVEN U.S. JURISDICTIONS 2 (2020), https://datacollaborativeforjustice.org/wp-content/uploads/2020/10/2020_20_10_Crosssite-Draft-Final.pdf [<https://perma.cc/9H6G-GZ28>].

127. *See* Liesbet Hooghe & Gary Marks, *Unraveling the Central State, but How? Types of Multi-Level Governance*, 97 AM. POLI. SCI. REV. 233 (2003).

128. *Id.* at 239.

Most of these players have more than just influence over policing policy; they can also exercise veto powers and unilaterally prevent changes from taking place. This can occur even when those changes are supported by other powerful players, and even when the public wants them.

Within a given locality, the legislature can veto significant changes in a number of ways. If the police department is willing to make a certain policy change, the legislature can pass a law prohibiting that change, or can decline to pass passing legislation to ratify them, if such legislation is needed. The legislature can also refuse to fund policies it dislikes.

The mayor or chief executive exercises a comparable veto power, both through literal vetoes and through decisions not to propose funding for proposals in the budget they prepare.

The police department, too, often serves as a veto player. In many cases, police can simply not comply with policies issued by other players, and lack of transparency can leave them unaware of the noncompliance. In other cases, police can draw on the deference given to them by other players to persuade others not to promulgate new policies. Even a police department with significant constituencies supporting reform may be unable to achieve change. As Professor Walker notes, federal consent decrees that aim to create a culture of accountability within police departments may fail simply because the police department lacks the capacity to collect the data and information necessary for accountability.¹²⁹ In other cases, police can wield their political influence to block new policies by threatening (explicitly or implicitly) to portray other players as “soft on crime,” an accusation regarded as deadly by many elected officials.¹³⁰

Police unions can wield the same threat to portray adversaries as soft on crime. But they have other sources of power that make them veto players. Chief among these is collective bargaining. State laws that

129. Samuel Walker, *“Not Dead Yet”: The National Police Crisis, a New Conversation about Policing, and the Prospects For Accountability-Related Police Reform*, 2018 U. ILL. L. REV. 1777, 1821 (2018) (“[I]f a police department lacks the necessary experience, skills, and technological infrastructure to achieve the complex set of reforms required by a consent decree, how then can we expect it to transform itself? The best answer would appear to lie in the combined impact of both the compulsory element of judicial oversight and the role of the court-appointed Monitors.”).

130. See, e.g., Danielle Wallace, *NYC Police Union Says Manhattan DA Bragg ‘Emboldened’ Criminals, Cops ‘Not Safe’ after Biden Visit*, FOX NEWS (Feb. 4, 2022, 6:51 AM), <https://www.foxnews.com/politics/nyc-manhattan-da-alvin-bragg-emboldened-criminals> [<https://perma.cc/FT7W-C332>].

require collective bargaining of issues affecting the terms and conditions of employment¹³¹ give unions the power to insist that a policy change cannot be implemented except through collective bargaining negotiations. In many cases, this will cause local policymakers to simply drop the issue.¹³² If the locality does pursue a policy change, the unions can file a lawsuit, which can take years to work its way through courts, and during those years political momentum for reform may well have dissolved.

State government veto powers make those at the local level look small by comparison. Local governments are creatures of their states. And state governments are often more conservative and pro-police than the governments of cities.¹³³ Thus, cities that want to experiment with police reform often face more skeptical state legislatures — or, at least, state legislatures with little urge to help.¹³⁴

The federal government is another potential veto player. Outside the police reform context, there are examples of both practical and legal interference. The Trump administration's response to the Covid-19 pandemic,¹³⁵ which included a racist and ethnocentric policy of focusing on border restrictions and blaming China for the pandemic, undermined trust in government at all levels and made it more difficult for communities to alleviate the racially disproportionate effects of the pandemic.¹³⁶ And the administration's insistence on treating the virus as a minor threat undermined state and local responses.¹³⁷ In immigration law, the federal government relies significantly on states and localities to identify noncitizens who are legally deportable, and "sanctuary" policies significantly obstruct those deportations.¹³⁸

131. See, e.g., N.Y. CIV. SERV. LAW § 204(2) (McKinney 2023) (requiring public employers to bargain over "the terms and conditions of employment").

132. This is drawn on my personal experience of a policy proposal on which I worked being abandoned in a local legislature after one person raised a concern that it would have to be subject to collective bargaining.

133. See generally Paul A. Diller, *Reorienting Home Rule: Part I—the Urban Disadvantage in National and State Lawmaking*, 77 LA. L. REV. 287, 292–97 (2016).

134. See Rick Su, Marissa Roy & Nestor Davidson, *Preemption of Police Reform: A Roadblock To Racial Justice*, 94 TEMP. L. REV. 663, 664 (2022).

135. Sheila Grigsby et al., *Resistance to Racial Equity in U.S. Federalism and Its Impact on Fragmented Regions*, 50 AM. REV. PUB. ADMIN. 658, 658–60 (2020).

136. *Id.* at 659.

137. *Id.* at 660 ("In the context of federal inaction or support, a local community cannot actually lead in any real way.").

138. See David K. Hausman, *Sanctuary Policies Reduce Deportations without Increasing Crime*, 117 PNAS 27262, 27262 (2020), <https://www.pnas.org/doi/10.1073/pnas.2014673117> [<https://perma.cc/Y97C-CNQ3>].

Despite these veto powers, state and federal governments can also be potential sources of reform policies. In these cases, veto powers work both ways; localities can effectively veto policies created at the state or federal level. Localities can obstruct federal policies.¹³⁹ For example, the immigration sanctuary movement has had significant success reducing federal deportations. This, no doubt, is why gun-rights activists have followed its lead in creating a “Second Amendment sanctuaries” movement dedicated to undermining or nullifying gun-control laws.¹⁴⁰ In lower-profile cases, localities can undermine or effectively nullify state law through more bureaucratic means. Many localities effectively ignored former Governor Andrew Cuomo’s order to consider significant police reform, instead holding minimal public meetings and releasing brief “plans” that really contained no changes at all.¹⁴¹ The plan submitted by the village of Avon, New York, for example, is one page long.¹⁴²

While the high number of veto players relevant to police reform is significant, most of these vetoes will rarely have to be exercised to prevent transformational changes to police reform. Simple inertia will do most of the work, and the difficulty of grasping the proposals and the bodies of knowledge required to evaluate them will do the rest. Many of the veto players identified here can exercise their veto simply through inaction.

II. SOLUTIONS BEYOND LOCALITIES’ REACH

The last Section explained that policing problems are multidimensional in ways that make it impossible for most localities to

139. See Heather K. Gerken & Joshua Revesz, *Progressive Federalism: A User’s Guide*, DEMOCRACY: J. OF IDEAS, Spring 2017, <https://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/> [<https://perma.cc/XF7B-BAP4>] (“Using the power they wield in states and cities across the country, progressives can do a good deal more than mourn and obstruct. They can resist Washington overreach, shape national policies, and force the Republicans to compromise.”).

140. See Shawn E. Fields, *Second Amendment Sanctuaries*, 115 NW. U. L. REV. 437, 438 (2020).

141. These plans can be perused at *Police Reform and Reinvention Collaborative: Police Reform Plans*, N.Y. STATE, <https://policereform.ny.gov/police-reform-plans> [<https://perma.cc/QC6Y-5XPQ>] (last visited Mar. 19, 2023).

142. *Village of Avon - Police Reform Plan*, N.Y. STATE, <https://policereform.ny.gov/system/files/documents/2021/04/avon-village-police-department-plan.pdf> [<https://perma.cc/W8FL-ERLL>] (last visited Mar. 19, 2023). Avon’s plan commits to outlawing racial profiling, continuing to train police and review its policies, meet with community members, and — in its only apparently move towards seeking a change in the status quo — notes that it cannot afford mental health responders and will ask the State of New York for help in this area. See *id.*

effectively address them: the proposals are numerous, complex, and non-overlapping, the knowledge required to evaluate them is vast, and the number of veto players is big enough to obstruct many of the most serious ideas. Fundamental change is impossible without the ability to understand and navigate a problem. This Section will argue that it is not just the problems that are beyond municipalities: it is also, in many cases, the solutions.

There are several reasons why solutions to policing problems might be beyond local governments' reach. This Section will review several. First, in some cases legal barriers exist at the state or even federal level that prevent localities from acting. When this is the case, as with unions and collective bargaining, local action is impossible without state action. Second, solutions might require expertise that localities don't have. Third, solutions might require leverage that localities can't muster. For example, municipalities in some cases appear to lack the leverage or power to achieve compliance with policy changes they attempt to implement. Recently, Pittsburgh police have reportedly resumed conducting traffic stops for minor offenses despite a law prohibiting them from doing so.¹⁴³ Fourth, some policies require multiple participants beyond any single municipalities. For example, replacing some police functions with unarmed first responder generally requires action by other municipalities and/or higher levels of government. Finally, when policing problems are interconnected with deeper social problems like residential segregation, municipalities themselves lack power to effectuate change without coordinated action from other levels of government.

A. Legal Barriers

Sometimes reforms are simply prohibited. Many of the proposals discussed in the previous Section would encounter legal barriers that prevent localities from adopting those proposals without support from state or federal institutions. For example, collective bargaining laws give police unions the power to block many proposals for police accountability by insisting that those proposals be addressed through the collective bargaining process.¹⁴⁴ The solution is to remove issues of

143. See Kiley Koscinski, *Pittsburgh Police Resume Secondary traffic Stops despite City Ordinance against Them*, 90.5 WESA (Jan. 12, 2023), <https://www.wesa.fm/politics-government/2023-01-12/pittsburgh-police-resume-secondary-traffic-stops-despite-city-ordinance-against-them> [<https://perma.cc/SQFT-V97W>].

144. See Brian Mogck, *A Proposal for Police Reform: Require Effective Accountability Measures in Police Union Contracts as a Condition of Tax-Exempt*

accountability from collective bargaining. Only state legislatures can effectively enact this kind of change.

And collective bargaining is just one of the many areas in which states can prevent reform. As Su, O'Rourke, and Binder point out, states can also prevent reductions in funding for the police.¹⁴⁵ Many reforms to police-misconduct litigation, too, are beyond localities' reach. Local governments cannot end the doctrine of qualified immunity. (They could, perhaps, commit to waiving that immunity, but localities would need to navigate the complexities of individual-capacity litigation where individual officers waive their rights, such as in cases under 42 U.S.C. § 1983).

Along with these legal barriers, states also have significant practical power to prevent reform by setting norms. For example, state criminal-justice agencies may set standards for police behavior through state-provided trainings. Local departments who have taken the trainings can then feel that they are doing everything they need to do.¹⁴⁶ In areas like data collection, the state may provide templates or forms, and, again, local departments may feel that they are doing what's needed when they comply with state standards. Norm-setting, in this way, becomes a barrier to reform.

B. Lack of Expertise

The lack of expertise described in Part I is also a problem when municipalities try to identify options for policy change.¹⁴⁷ Despite state and federally-imposed obstacles, some issues are within the control of local governments, so long as state government allow them the option. The core example is police tactics: local governments can decide whether, for example, police will be allowed to use certain weapons,

Status, CHI. L. REV. ONLINE (2020), <https://lawreviewblog.uchicago.edu/2020/08/07/police-unions-mogck/> [<https://perma.cc/L3KP-YUBC>].

145. Su et al., *supra* note 16.

146. For example, when the town of Fishkill, NY, prepared its state-mandated police reform plan, the first item it cited was "ACCREDITATION." See *Fishkill, Police Reform, Modernization & Reinvention Collaborative Plan*, N.Y. STATE (Mar. 18, 2021), <https://policereform.ny.gov/system/files/documents/2021/04/fishkilltownpolicedepartmentplan.pdf> [<https://perma.cc/JJB4-FUV5>]. Much of the report discusses accreditation and compliance with state standards. Receiving accreditation is not reform. See generally Jay Fortenbery, *Improving Motivation and Productivity of Police Officers*, L. ENF'T BULL. (Aug. 4, 2015), <https://leb.fbi.gov/articles/featured-articles/improving-motivation-and-productivity-of-police-officers> [<https://perma.cc/75AC-8X5Q>] (noting that "doing the bare minimum necessary" is a recurring problem among police officers).

147. See *supra* Section I.B.

like tear gas,¹⁴⁸ or certain practices, like car chases.¹⁴⁹ The use of chokeholds by police is currently the subject of both local and state laws.¹⁵⁰ Tactical questions like these can be answered in police regulations (often called “general orders”) or local legislation.

Even when questions *can* be addressed at the local level, however, the imbalance in perceived expertise between police and non-police often precludes meaningful deliberation.¹⁵¹ If police insist a tactic is a necessary arrow in their quiver, elected officials may be highly reluctant to contradict them. The imbalance of expertise is an imbalance of power, and in practice it is often insurmountable by municipalities acting alone.

148. See Dave Lucas, *Albany Common Council Votes Down Tear Gas Ban*, WAMC NE. PUB. RADIO (Sept. 9, 2021), <https://www.wamc.org/news/2021-09-09/albanys-proposed-local-law-c-fails-again> [<https://perma.cc/Z595-8DNK>]; see also Lindsey Van Ness, *Tear Gas Bans: A Policing Change Not Gaining Traction*, PEW STATELINE (Aug. 4, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/08/04/tear-gas-bans-a-policing-change-not-gaining-traction> [<https://perma.cc/Y8YD-3Z4S>].

149. See SEATTLE POLICE DEPARTMENT MANUAL § 13.031 (2021), <https://www.seattle.gov/police-manual/title-13--vehicle-operations/13031--vehicle-eluding/pursuits> [<https://perma.cc/5CSD-U743>]; Albany, N.Y. Police Dep’t, General Order No. 3.1.15, Pursuit Situations (June 13, 2017), <https://www.albanyny.gov/DocumentCenter/View/4051/GO-3115-Pursuit-Situations-PDF> [<https://perma.cc/6RRY-9EVV>] (prohibiting high-speed pursuit under most circumstances); Dana Difilippo, *In reversal, New Jersey to again allow cops to chase car thieves*, N.J. MONITOR (Apr. 29, 2022), <https://newjerseymonitor.com/2022/04/29/n-j-reverses-policy-that-barred-cops-from-pursuing-stolen-vehicles/> [<https://perma.cc/TGY6-TN7X>].

150. See Barry Kamins, *New Legislation Implementing Police Reform in New York*, N.Y.L.J. (Aug. 3, 2020), <https://www.law.com/newyorklawjournal/2020/08/03/new-legislation-implementing-police-reform-in-new-york> [<https://perma.cc/N6PS-T2BF>] (noting the New York State law prohibiting chokeholds); see also Farnoush Amiri, Colleen Slevin & Camille Fassett, *In Year Since George Floyd’s Death, Some States Ban or Limit Police Chokeholds*, L.A. TIMES (May 24, 2021), <https://www.latimes.com/world-nation/story/2021-05-24/george-floyd-killing-states-limit-ban-chokeholds> [<https://perma.cc/9BBT-XQ58>]; Press Release, N.Y.C. Council, Council Votes on Six Bills to Reform NYPD (June 18, 2020), <https://council.nyc.gov/press/2020/06/18/1990/> [<https://perma.cc/GBX3-LAAJ>] (reporting on local measure to criminalize the use of chokeholds by law enforcement); N.Y.C. ADMIN. CODE § 10-181(a) (prohibiting “restrain[ing] an individual in a manner that restricts the flow of air or blood by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm” during an arrest); Police Benevolent Assoc. of the City of N.Y. v. City of N.Y., 205 A.D.3d 552 (N.Y. App. Div. 2022) (upholding N.Y.C. ADMIN. CODE § 10-181(a)).

151. See *supra* notes 96–102 and accompanying text.

C. Lack of Leverage

Some problems are theoretically within the reach of local governments, but as a practical matter those governments lack the leverage to make them a reality.

One example of this is transparency and data-gathering. Gathering accurate information about policing is difficult. Statistics are often incomplete.¹⁵² Even the rules that govern police departments are sometimes not available online, preventing constituents from knowing the rules they are policed by, although new laws and practices are changing this.¹⁵³ Local journalists and advocates struggle to force police to comply with existing transparency laws.¹⁵⁴ The only available means for enforcing these laws is typically lawsuits. But local residents who lack resources are forced to depend on statewide advocacy groups to file lawsuits to enforce the law. This process is slow, cumbersome, and outsources transparency in an often wasteful manner.

States have the power to make transparency a reality in ways that localities do not. However, many states do not exercise this power; in New York, for example, the state-level transparency entity is just advisory.¹⁵⁵ States could give a state entity the power to force disclosure of documents that the public has a right to access with real consequences, like suspension of funding, for localities that fail to comply.

The state could play a similar role to ensure that accurate data on policing is available. When police departments nationwide failed to gather data on police sexual misconduct, scholar Philip Stinson built a database, using media stories, that gathered evidence of police sexual

152. *See Is crime going up, down or sideways? Don't ask the FBI*, WASH. POST (Dec. 27, 2022), <https://www.washingtonpost.com/opinions/2022/12/27/fbi-crime-statistics-unreliable/> [<https://perma.cc/ETZ6-NCBR>] (“[T]he number of fatal police shootings has been rising in recent years, The Post’s tally shows. Yet the FBI has reported a decline between 2015 and 2021.”).

153. For example, in California, California state law requires all policies to be posted online. *See* CAL. PENAL CODE § 13650 (West 2021).

154. *See* Kallie Cox & William H. Freivogel, *Police Misconduct Records Secret, Difficult to Access*, ABC NEWS (May 12, 2021), <https://abcnews.go.com/Politics/wireStory/police-misconduct-records-secret-difficult-access-77644241> [<https://perma.cc/7LCW-RFBX>].

155. *See* Matter of Thomas v. N.Y.C. Dep’t of Educ., 103 A.D.3d 495, 498 (N.Y. App. Div. 2013) (“[A]dvisory opinions issued by the Committee on Open Government ‘are not binding authority, but may be considered to be persuasive based on the strength of their reasoning and analysis.’”); *see also* Comm. on Open Gov’t, *Open Meetings Law (OML) Advisory Opinions*, N.Y. STATE, <https://opengovernment.ny.gov/open-meetings-law-oml-advisory-opinions> [<https://perma.cc/9ULA-SWRF>] (last visited Mar. 19, 2023).

misconduct and other misconduct.¹⁵⁶ This responsibility should not fall to private actors. As Professor Michelle Jacobs points out, most cases of police sexual misconduct do not make the news, and so any publicly assembled dataset is significantly limited.¹⁵⁷ State actors could proactively gather data on police misconduct and distribute it to voters and journalists, ensuring that the public was aware of the scope of the problem.

Some data-handling reforms are lawful for municipalities to consider, but local legislators may not be aware of them. For example, third-party entities could take possession of video and other recordings from body cameras and dashboard cameras, to avoid police departments exercising control over them in improper ways. Municipalities now have the power to make this kind of reform a reality, but may not know it, or may not take it seriously once they hear police's response to the idea. States could facilitate local decisions in this area by giving localities a menu of regulatory choices and forcing local governments to choose between them.¹⁵⁸

Another area in which leverage is key is achieving compliance with reforms once they are adopted. In New York City, even after a disciplinary matrix was adopted to regularize police discipline, the commissioner effectively overruled it, announcing that she would reduce dozens of penalties on the ground that they were “manifestly unfair” to police officers.¹⁵⁹ Noncompliance and negation of policies after their adoption are two significant dangers that municipalities may lack the leverage to avoid.

156. PHILIP M. STINSON, *POLICE CRIME: THE CRIMINAL BEHAVIOR OF SWORN LAW ENFORCEMENT OFFICERS* (2015), https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1036&context=crim_just_pub [<https://perma.cc/GG9X-CY4M>]; PHILIP M. STINSON, *POLICE INTEGRITY RESEARCH FOR THE COMMON GOOD*, HENRY A. WALLACE POLICE CRIME DATABASE (2020), <https://policecrime.bgsu.edu> [<https://perma.cc/VT6H-D7ZP>]; *see also* Jacobs, *supra* note 8, at 260–62.

157. Jacobs, *supra* note 8, at 263.

158. Admittedly this bears some resemblance to Nudging. *See generally* RICHARD THALER & CASS SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2009).

159. Craig McCarthy, *NYPD to change disciplinary guidelines after cases ‘manifestly unfair’ to cops*, N.Y. POST (Dec. 14, 2022), <https://nypost.com/2022/12/14/police-commissioner-to-change-disciplinary-guidelines-after-manifestly-unfair-penalties/> [<https://perma.cc/AD7F-2MJW>].

D. Creating Trans-Municipal Structures

The problem of the “wandering officer” illustrates a third obstacle to local solutions for policing problems.¹⁶⁰ Police who have been disciplined in one jurisdiction can seek employment in another. States have rudimentary systems for keeping track of officers with professional disciplinary records, but these are relatively easy to evade. Only a central authority can solve this problem, because one municipality can’t stop another municipality from hiring an officer it disciplined. Creating an effective central registry would perhaps not be as effective as creating a system of professional licensing, in which a state authority would take away an officer’s ability to practice anywhere, but it would at least allow municipalities to research applicants for jobs to make sure they haven’t committed abuses elsewhere. In this way, without telling municipalities what to do, an effective central registry would be a way of making sure that municipalities have the ability to not hire officers with documented records of abuse. The Biden administration has promised to create a “National Law Enforcement Accountability Database,” but so far it hasn’t done so.¹⁶¹

A similar problem prevents localities from making the transformational changes that many in the Black Lives Matter movement advocate for: the replacement of police with unarmed first responders. Someone with other kinds of training could better handle many of the situations to which police respond, such as responding to homelessness, to substance abuse, or to mental health crises.¹⁶² In Albany, New York, the single biggest reason for people calling the police is to ask them to take a report¹⁶³ — something which would not seem to require a gun or training in the use of force. Others have advocated ending armed responses to traffic violations.

Many of these reallocations of responsibility would require identifying someone who could take the place of police: someone with the training, say, required to respond to someone experiencing

160. See Ben Grunwald & John Rappaport, *The Wandering Officer*, 129 *YALE L.J.* 1676, 1676 (2020).

161. See Jamiles Lartey, *Biden Promised a Police Misconduct Database. He’s Yet to Deliver.*, MARSHALL PROJECT (Feb. 4, 2023), <https://www.themarshallproject.org/2023/02/04/biden-promised-a-police-misconduct-database-he-s-yet-to-deliver> [<https://perma.cc/TV5U-4TVG>].

162. Friedman, *supra* note 31, at 1606–08 (commenting on law enforcement’s responses to homelessness).

163. See PowerPoint Presentation by Albany Police Department (on file with author).

homelessness, or someone with substance abuse or mental health problems. These discrete skill sets are sometimes lumped together under the heading “social services.” And they do not exist in most local governments.

As Professor Maria Ponomarenko has written, the governmental response to “complex, multicausal problems like crime or homelessness”¹⁶⁴ is fragmented. “[T]here is no one decision maker responsible for implementing society’s approach to the needs of the unhoused.”¹⁶⁵ And the same is true for other services. Efforts to address needs for housing, healthcare, and substance-abuse treatment are “funded and overseen by other government units.”¹⁶⁶ Instead, multiple government agencies and decisionmakers at multiple levels of government share responsibility. As a result, there is no single decisionmaker with the power to shift responsibility from police to unarmed personnel — or even any single decisionmaker with the power to take over the response from police.

Who would the unarmed responders be? If a locality doesn’t have a social-services department, it will have to contract with counties, the state, or private services providers. Many of those entities might be unwilling or unable to cooperate. Government agencies cannot provide services without budgetary authorization, which at the state level requires legislative action.¹⁶⁷

Furthermore, private contractors can present their own problems to police for reform. For example, in Bridgeport, Connecticut, local officials had wanted a “no officer response model,” in which counselors responded instead of police officers. But when they hired a private contractor, the contractor implemented a “victim advocate model,” in which counselors’ role was basically to follow up on police calls.¹⁶⁸ Conceptualizing a program doesn’t mean it will be successfully implemented. Nor is there any guarantee that qualified service

164. Maria Ponomarenko, *Our Fragmented Approach to Public Safety*, 59 AM. CRIM. L. REV. 1665, 1679 (2022).

165. *Id.* at 1667.

166. *Id.* at 1665.

167. See generally CONGRESSIONAL RSCH. SERV., THE APPROPRIATIONS PROCESS: A BRIEF OVERVIEW (2022), <https://crsreports.congress.gov/product/pdf/R/R47106> [<https://perma.cc/D8BK-TWVQ>].

168. Brian Lockhart, *Bridgeport counselors hired to aid police helping other departments instead*, CT. POST (Jan. 17, 2023), <https://www.ctpost.com/news/article/bridgeport-police-social-workers-help-17715928.php> [<https://perma.cc/BP3Q-KPV2>].

providers will find it ethical or appropriate to provide services in partnership with law enforcement.¹⁶⁹

Apart from the difficulty in finding someone to provide unarmed-response services, replacing police in a given area of need would prompt a need to deal with the police union's protests and potential litigation over any reduction in personnel. This is most likely why most of the reallocation programs so far have involved programs that add to existing police, rather than replace them.¹⁷⁰

In short, reallocation of services is not something localities can accomplish on their own. Neither are certain forms of accountability.

Civilian review boards, another popular proposal in the wake of the George Floyd murder, require staff to function, including investigators to find facts, lawyers to assess compliance with laws and advise board members on the board's own power, and administrative staff to keep it all running. This isn't feasible in a rural jurisdiction where the police department in question has, say, five members. To operate a police oversight board, localities have to cooperate with other localities, or with county-level personnel. But this becomes complicated: if the purpose of a police-review board is to represent the values of a community, can members from one town sit in judgment over the actions of police in another? Can a county-wide board fairly judge the actions of police in both rural and urban communities, when the county has both within its borders? These questions cannot be answered by municipalities alone.

E. Deeper Social Problems

Problems deeper than those discussed so far require more fundamental legal and structural change. Police culture, for example, is widely cited as a cause of police abuses.¹⁷¹ Cultures develop within

169. See Caitlin Becker, *We Social Workers Should Remember Our Values and Stop Policing*, FILTER (Oct. 19, 2021), <https://filtermag.org/social-workers-stop-policing/> [https://perma.cc/3MUB-LX9G].

170. See, e.g., Tanner Harding, *Sheriff's Office kicks off unarmed response pilot program*, ITHACA.COM (June 15, 2022), https://www.ithaca.com/news/tompkins_county/sheriff-s-office-kicks-off-unarmed-response-pilot-program/article_bb457b86-ed1c-11ec-ba3e-bf3bd0bb2cde.html [https://perma.cc/YAG9-A5LV]; see also Rob Waters, *Enlisting Mental Health Workers, Not Cops, In Mobile Crisis Response*, 40 HEALTH AFFS. (June 2021), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.00678> [https://perma.cc/YL2W-DYDL] (describing the Crisis Assistance Helping Out On The Streets (CAHOOTS) program in Oregon).

171. See generally LUKE WILLIAM HUNT, *THE POLICE IDENTITY CRISIS: HERO, WARRIOR*, GUARDIAN, ALGORITHM (2021).

departments that are defined by municipal boundaries, which are in turn defined by decades of racist policy that segregates neighborhoods and reserves resources for white communities at the expense of communities of color.¹⁷² Those communities of color are then targeted for abusive policing by departments whose view of the people they serve is colored by the racism that defined the boundaries of community. Being policed in mostly white suburbs and being policed in communities of color are very different experiences, in part because police perspectives are informed by “symbolic ideas that emphasized the violence of black neighborhoods and the economic value of white neighborhoods.”¹⁷³

It is beyond the reach of localities to resolve the clash of worldviews between police and members of the public, particularly members of overpoliced communities of color. Police often perceive themselves as besieged warriors surrounded by hostile forces. Members of communities of color often perceive police as a hostile occupying force.¹⁷⁴ These are fundamentally different ways of perceiving the world, with accompanying narratives that are sustained by the insular culture of police departments, on the police side, and by the continual reminder of police racism and hostility that communities of color experience every time another incident of police racism or violence makes the news. Narratives and evidence coming from national media sustain this worldview, far beyond the reach of any locality.

Racism among police, of course, is not the only form of racism that affects the achievability of transformational change in policing. Many other fundamental social problems intersect with the problems of policing. Mass incarceration’s destruction of communities of color; segregated education; racism in housing — all of these issues affect who is on a given street when a police officer patrols, who wears the badge,

172. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

173. See Daanika Gordon, *The Police as Place-Consolidators: The Organizational Amplification of Urban Inequality*, 45 L. & SOC. INQUIRY 1, 1 (2020) (“I find that the police drew upon symbolic ideas that emphasized the violence of black neighborhoods and the economic value of white neighborhoods in developing local strategies.”).

174. With good reason, scholars and organizers have argued. See M Adams & Max Rameau, *Black Community Control Over Police*, 2016 WIS. L. REV. 515, 521 (“Black communities are effectively domestic colonies in the United States and the police serve as an occupying force in those communities.”); see also *id.* (“The problem that we face is that the ghetto is a domestic colony that’s constantly drained without being replenished. And you are always telling us to lift ourselves by our own bootstraps, and yet we are being robbed every day.” (quoting Martin Luther King, Jr., *Address to the Southern Christian Leadership Conference: Where Do We Go from Here?* (Aug. 16, 1967))).

and how they interact with each other.¹⁷⁵ Municipalities can have an impact on all of these problems, but no single municipality can solve them.

III. CAN STATES MAKE LOCAL CHANGE POSSIBLE?

This Article has argued that current legal and government structures make local police reform impossible. But no advocate of police reforms would want to recommend moving the debate to the state level. States are generally more conservative than the cities within them that are willing to enact reform.¹⁷⁶ Part of the reason for this, it seems, is that state officials represent constituencies that include more rural areas than city legislators. Members of the public in rural areas are less willing to accept the reality of structural racism. Harry Dodsworth finds that in Illinois, the farther respondents were from a city, the less they tended to agree with the statement that “[t]he criminal justice system is biased against black people.”¹⁷⁷ Moving decisions to the state level could therefore result in less reform, not more.

The key, then, is to find ways to change the current structure while keeping decision-making local. This Part will suggest seven such ways, closely following the observations of the last section, with a couple of additions.

A. Removing Legal Barriers

First, local police reform should not be against the law. State laws that require collective bargaining of topics like police oversight should be amended so that municipalities can make decisions about police accountability without going through the collective bargaining process.

The same is true for legal provisions that incentivize the status quo. As discussed above, some grants force localities to maintain police funding.¹⁷⁸ These grants would ideally be replaced with funding that supports whatever form of public safety personnel the municipality chooses to deploy.

175. See Su et al., *supra* note 16, at 1200 nn.6–8 (noting that residential segregation and high real-estate process are associated with higher police budgets, as is higher Black population).

176. See Paul A. Diller, *Reorienting Home Rule: Part I—The Urban Disadvantage in National and State Lawmaking*, 77 LA. L. REV. 287, 292–97 (2016).

177. Dodsworth, *supra* note 23, at 593 (internal citations omitted).

178. See *supra* note 68 and accompanying text; Su et al., *supra* note 16, at 1203.

B. Experts and Templates

The challenges of gaining local expertise on police reform perhaps can't be surmounted without abolishing the American system of local governments that largely control policing. But that doesn't mean the imbalance of expertise must be tolerated. States could provide major support to local governments in various forms, each of which would empower states rather than replacing them as decisionmakers. One way to provide expertise is to offer resources for expert consultations, including making experts available for consultation with municipalities who want to make changes, and providing collections of sample policies to local officials.

In North Carolina, the School of Government offers consultations to local-level officials who seek advice on subjects including criminal justice.¹⁷⁹ New York State offers significant support, in the form of consulting, training, and materials, for local governments on matters like government ethics, consolidation and dissolution of local governments, land use planning, and other issues.¹⁸⁰ During the conversations about police reform mandated by New York's Executive Order 203, however, none of the local governments I spoke with had received, or were aware of, any consulting services available from the State to help with policing or criminal justice issues.¹⁸¹

State criminal-justice agencies could make it part of their mission to provide consulting services to localities that want to engage in police reform. This could come in the form of not just direct consultations, but also briefings for stakeholders and written materials. Crucially, this consulting could include templates for new policies. For example, jurisdictions that wish to consider shifting responsibilities from police to unarmed responders would benefit immensely from sample policies

179. See *Frequently Asked Questions*, UNIV. OF N.C. SCH. OF GOV'T, <https://www.sog.unc.edu/resources/faq-collections/frequently-asked-questions-about-school-government> [<https://perma.cc/A3GJ-TP5F>] (last visited Mar. 19, 2023). I was kindly given a tour of the University of North Carolina's School of Government in 2018, for which I'm grateful to its dean, Michael R. Smith, and the other staff and faculty who spent the day with me.

180. See, e.g., *Local Government Services and Support*, N.Y. STATE, <https://dos.ny.gov/services-and-support> [<https://perma.cc/78GY-VSCY>] (last visited Mar. 19, 2023) (noting the resources offered by the New York State Department of State).

181. Instead, the State offered written guidance. See N.Y.S. POLICE REFORM & REINVENTION COLLABORATIVE: RESOURCES & GUIDE FOR PUBLIC OFFICIALS & CITIZENS (2020), https://www.governor.ny.gov/sites/default/files/atoms/files/Police_Reform_Workbook81720.pdf [<https://perma.cc/4ZZA-WAC9>].

and guidance on how to do so. The same is true for civilian oversight entities.

Another important form of support is policy templates. States could provide sample policies for oversight structures, for unarmed responders, or any other policy at the local level. Of course, templates can easily become prescriptions, but providing templates for alternative possibilities rather than just a single template could help ensure that template policies help localities identify options, rather than just pushing them to adopt a specific policy.

In the absence of state-level support of this kind, other actors step into the void. The National League of Cities, for example, offers “A Toolkit For Cities and Towns” that gives ideas for reimagining public safety.¹⁸² More troublingly, Lexipol, a private company, provides sample policies to police departments around the country, including what it claims are 95% of all police departments in California.¹⁸³ These policies are often incorporated wholesale into police rules and procedures. However, Lexipol’s policies are in some cases very flawed. For example, in Washington, the city of Spokane enacted a policy based on Lexipol’s templates where police officers would question or detain people to enforce federal immigration laws.¹⁸⁴ Advocates sued the city because the policy was unlawful, and they obtained a settlement in which the city paid damages and agreed to discontinue this policy.¹⁸⁵ Lexipol’s primary goal is not to achieve transformational change in policing, and so if localities want to aim for meaningful change, they will need to find other experts.¹⁸⁶ The enticing convenience of Lexipol is, in that sense, all the more important a reason

182. NAT’L LEAGUE OF CITIES, REIMAGINING PUBLIC SAFETY A TOOLKIT FOR CITIES AND TOWNS (2021), <https://www.nlc.org/resource/reimagining-public-safety-a-toolkit-for-cities-and-towns/> [<https://perma.cc/6HJX-Q5CY>].

183. Greg Moran, *A little known private company has an outside role writing policies for police departments*, SAN DIEGO UNION-TRIBUNE (Nov. 8, 2020), <https://www.sandiegouniontribune.com/news/public-safety/story/2020-11-08/an-unknown-private-company-has-an-outside-role-writing-policies-for-police-departments> [<https://perma.cc/7DY3-252C>]; see also Ingrid V. Eagly & Joanna C. Schwartz, *Lexipol: The Privatization of Police Policymaking*, 96 TEX. L. REV. 891 (2018).

184. See Press Release, ACLU of Washington, Victory in Lawsuit: Spokane Police Will No Longer Unlawfully Detain Immigrants (Jan. 10, 2018), <https://www.aclu-wa.org/news/victory-lawsuit-spokane-police-will-no-longer-unlawfully-detain-immigrants> [<https://perma.cc/9AJZ-EC77>].

185. *Id.*

186. The company describes itself as “an entire risk management solution for public safety and local government.” *Our Mission*, LEXIPOL, <https://www.lexipol.com/about/> [<https://perma.cc/88B2-3MQ5>] (last visited Jan. 20, 2023).

for states to provide alternative forms of expertise, support, and policy templates that treat meaningful reform as a real option.

C. Give Localities Leverage

How can a state government give localities more power to obtain compliance with existing policies? The answer will likely vary depending on the policy. In the context of transparency, one answer is to remove the temptation for noncompliance by removing the data and documents in question from police control. Giving bodycam and dashcam footage to an independent third party like a police commission, civilian review board, or city auditor ensures that there will be no compliance issues. In other cases, the state could give the localities rewards to offer or consequences to threaten. For example, localities could be given the power to terminate percentages of the existing police force if benchmarks aren't met.

D. Facilitate Trans-Municipal Solutions

For problems like reallocating police functions, or creating meaningful oversight entities, states can help put solutions within reach for localities. In each area, states could designate the entities that are to offer support to municipalities: for example, requiring that county social-services agencies offer to enter into arrangements to provide social-services workers who could respond to homelessness, substance abuse, or mental-health crisis instead of police. States could also pass laws that would obviate police unions' ability to interfere with these choices by insisting on collective bargaining.

The same principle could work with oversight entities. One option is for states to facilitate cooperation between municipalities.¹⁸⁷ A single police-oversight board can serve multiple communities. However, negotiating an agreement of this kind this can be prohibitively challenging for an understaffed municipality, particularly when there are no good templates to work from and legal obstacles like negotiations with each municipality's various police unions to deal with. To solve this resourcing problem, instead of leaving it up to municipalities to decide how to facilitate inter-municipal cooperation or trans-municipal cooperation, states could designate groups of

187. See generally GERALD E. FRUG, RICHARD T. FORD & DAVID J. BARRON, LOCAL GOVERNMENT LAW: CASES AND MATERIALS 538-48 (6th ed. 2015) (discussing interlocal agreements and cooperation).

localities who could cooperate to establish civilian oversight entities.¹⁸⁸ In a minimal version, this could look like a dating service: looking for partners to hire staff to oversee your police? We'll connect you! In a more developed version, states could legislatively create the structure of police-oversight entities, just as they now legislatively create options for structuring local governments themselves. Minimally, the state could offer templates and guidelines.

None of these options give control to the state. They simply remove obstacles that prevent municipalities from achieving the reforms that so many advocates have demanded.

E. Minimum Standards

Another way states can remove obstacles to reform is to clarify what experts already know: there are minimum standards of transparency and accountability, among other areas, below which no locality should go. A civilian police-review board is not meaningful unless it has full access to data about the incidents it reviews; states could say, in legislation, that review boards must have the same level of access as the chief of police, guaranteeing that, at least in that one way, localities cannot adopt a civilian review board that further undermines public confidence. Similar minimum standards can be adopted for transparency: for example, police departments could be required to proactively make data available without waiting for a freedom-of-information request. States, too, could require the collection of data.

Minimum standards are already used in many areas, including police tactics, where some tactics, like chokeholds, are prohibited at the state level. As noted earlier, there is a danger that localities could come to view compliance with state minimum standards as evidence that they're doing all they need to. One way to manage this risk is through state legislation explicitly giving municipalities the option to adopt more progressive policies than what the minimum standards require, or even requiring that local legislatures vote up-or-down on such policies. State laws can also take such policies out of the realm of collective bargaining. All of this empowers localities to take the action that obstacles not of their making now prevent.

188. For an example of regional agencies and potential challenges in creating them, see *id.* at 557 (discussing the Georgia Regional Transportation Authority).

F. Redundancy

Another way states can, and do, facilitate local power to make meaningful choices about police reform is to provide redundant systems. Accountability mechanisms at the local level are often insufficient. States should, and already do, offer redundant accountability mechanisms that become active in the case of local failure to ensure accountability.¹⁸⁹ Some of these mechanisms may be triggered regardless of local action, such as investigations of death in police custody.

Redundant systems can also be used for transparency: if the locality fails to make certain information available, a state-level official will make decisions. (This would be a much better solution than litigation.)

G. Engage with Deeper Problems

Finally, deeper problems like residential segregation may be inextricably intermingled with policing issues, localities acting alone cannot solve these problems. No single action by states or the federal government will solve residential segregation, entrenched structural racism, or other such problems. Nevertheless, it's worth understanding that solutions to the problems of policing may depend on progress in those other areas, and vice versa.

CONCLUSION

This Article has argued that transformational changes in policing are impossible in most localities because of the nature of the problem of “police reform” and the structure of local government. “Police reform” is an umbrella term that covers a vast range of proposals on a wide variety of topics. The knowledge required to responsibly evaluate those proposals, or even to evaluate them irresponsibly, is correspondingly vast. The resources typically available to local governments do not allow for responsible evaluation of the possibilities represented by the idea of “police reform.” Some changes are outright barred by law, while others are simply beyond the capacity of municipalities to achieve.

189. For example, the New York State Law Enforcement Investigative Misconduct Office (LEMIO), part of the state attorney general's office, has jurisdiction to investigate law-enforcement agencies throughout the state. *See* N.Y. EXEC. LAW § 75 (creating LEMIO); *see also* LEMIO, N.Y. ATT'Y GEN., <https://ag.ny.gov/bureau/LEMIO> [<https://perma.cc/PA4J-NU4X>] (last visited Jan. 20, 2023).

Envisioning transformational change is never easy. Without sufficient resources it is impossible.

Despite the limits on localities, states should not take over conversations about police reform. Instead, they should focus on removing legal barriers to reform at the local level, and providing resources that will make it possible for municipalities to make informed choices. Envisioning transformational change requires time, money, and expertise that localities don't have. States and the federal government can, and should, provide them. The alternative is growing frustration and a loss of legitimacy for the local governments whose people demand change that is always out of reach.