

SAFETY INSIDE AND OUT: WHY INTERNATIONAL HUMAN RIGHTS STANDARDS FAIL TO CURB THE WORST EXCESSES OF POLICE POLICIES AND PRACTICES

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I. INTRODUCTION

Feeling safe and being safe are vital human needs on a macro and micro level.¹ Paradoxically, the securitizing systems individuals and societies establish often fail to appropriately meet those needs.² Rather, they frequently reinforce patterns of fear, prejudice, and anxiety. The briefest glance at a list of the many thousands of lives lost annually at the hands of law enforcement,³ even before getting into their highly racialized patterning, suggests a need to more holistically explore a tragedy repeated with tragic regularity. Seeking to better understand this enduring phenomenon might prompt individuals to ask questions they would otherwise rather avoid: how did it come to be that those police officers thought what they did in those situations was the right, the best, or the only thing to do, or, if the thinking mind was bypassed in the moment—why was that and what took over? Where does this behavioral pattern come from and what is bolstering the fear and prejudice behind it? To what extent is this violence structural and systemic, and symptomatic of something much more fundamental in how we arrange our world and our lives within the conditioning influences of society? It can be difficult to sit with these and other uncomfortable questions. However, we do not find their answers in the hole-ridden safety blankets of legal judgment and moral condemnation. Failure to engage comprehensively with how human beings operate internally and externally to seek their own version of safety might be a reason why the ‘security’ society seeks in over-targeting the poor and marginalized is far from normatively desirable as an ethical or a pragmatic consideration. Exploring, more fully, the default recourse to scapegoat and condemn, might also help explain why, more than half a century from the introduction of an international framework of human rights law, basic principles of respect, equality, and fairness have not become more fully engrained into law enforcement. It might help us make connections as to why human rights in so many parts of the world today are still more honored in the breach. Deaths at the hands of police officers, and the deaths of police officers themselves, are not isolated aberrations, but link to

¹ See JOHN BOWLBY, *A SECURE BASE: CLINICAL APPLICATIONS FOR ATTACHMENT THEORY* (1988). See also STEPHEN W. PORGES, *THE POCKET GUIDE TO THE POLYVAGAL THEORY: THE TRANSFORMATIVE POWER OF FEELING SAFE* (2017). STEPHEN W. PORGES, *THE POLYVAGAL THEORY, NEUROPHYSIOLOGY, FOUNDATION OF EMOTIONS, ATTACHMENT, COMMUNICATION AND SELF-REGULATION* (2017).

² LUCIA ZEDNER, *SECURITY* (2009) (articulating security as about emotional as well as physical security); see also Brandon Hamber et al., *Discourse in Transition: Reimagining Women's Security*, 20(4) INT'L REL. 487, 487–502 (2006).

³ *Police Killings by Country 2021*, WORLD POPULATION REVIEW, <https://worldpopulationreview.com/country-rankings/police-killings-by-country> (last visited Jan. 28, 2021).

broader questions. They tell us something of how little we know about ourselves, and how poorly we have ordered our world to deliver love, kindness and connection. We cling to a fiction that, if only we had the correct laws, policies and training regimes, and more resources put into public security, these would deliver what we need.

Viewing security in artificially siloed ways as something that can be delivered by edict, devoid of factoring in the role of unconscious processes, avoids the uncomfortable fact that what humans repress will continually come to the surface, and what is unresolved is destined to be repeated. Tied to a highly blinkered view of what security is or could be, is an unwarranted privileging of the police as an institution key to societal and individual wellbeing. There is a sense that if we could improve policing, make it more human rights compliant, more community focused, its worst vestiges would somehow melt away and render society safer. There is now no shortage of examples where these approaches have been tried while ultimately resulting in no broader improvement. Even before Covid-19, the world did not feel particularly safe for those of certain genders or races, or those otherwise “othered” by society. Meantime, governments, law enforcement agencies, and many academics have insisted on positing, as part of the solution, that which is manifestly part of the problem. Where focus and spending, domestically and globally, is geared towards regime security, with its attendant, masculinized notions of military defense and an over-reliance on outdated, highly racialized, gendered, and otherwise dysfunctional law enforcement systems, one will find a lack of security. Instead, such a focus results in ethnic profiling and “otherization,” and fear is entrenched rather than dissipated. In an environment framed by this narrative of securitization, human beings feel insecure in their inside and outside worlds and search for others to blame.

Attempts to secure safety in our own minds, our personal lives, or on a societal level, through law enforcement or otherwise, are not unrelated. The systems and processes we struggle with, internally and externally, to deliver security and wellbeing, often exacerbate narrow, threat-based, blame-oriented thinking. Limiting belief systems and dysfunctional coping mechanisms, paradoxically, can leave us feeling more precarious and insecure about ourselves and others. Human beings naturally have a tendency to think well of and protect themselves and the groupings with which we identify.⁴ The resulting us-them dichotomies, played out societally and structurally through law enforcement, are a reflection of the insecurity inherent in the human condition and manifest the human difficulty in managing uncomfortable feelings and fears with ease and compassion.⁵

⁴ See, e.g., Leonie Huddy, *Group Identity and Political Cohesion*, in OXFORD HANDBOOK OF POLITICAL PSYCHOLOGY 511–58 (D.O. Sears, L. Huddy & R. Jervis eds., 2003). M.B. Brewer, & W. Gardner, *Who is this “We”? Levels of Collective Identity and Self Representations*, 71 J. PERSONALITY & SOC. PSYCH. 83 (1996).

⁵ See PORGES, *supra* note 1. See also B. Simon & B. Klandermans, *Politicized Collective Identity: A Social Psychological Analysis*, 56 AMERICAN PSYCH. 319 (2001).

A growing refugee crisis, the increasingly untenable disparity between rich and poor, almost ceaseless military campaigns, the hungry and malnourished, the destruction of the planet, lack of services to promote good mental health, the enduring, shapeshifting nature of endemic societal racism, sexism and other 'isms,' all now played out against a backdrop of global pandemic, are just some of the symptoms of a hugely insecure world. In legal terms, a system of international human rights laws has, to date, been our best guess to soften the edges, elevate respect and mitigate the worst aspects of wrongdoing by our governments. There is a continued sense, evident in the trajectory of police reform globally over the past three decades,⁶ that if we seek to tether our law enforcement systems more firmly to human rights norms and obligations this will deliver what the focus on regime security has thus far failed to offer.

This paper argues the answers lie elsewhere—not least because, as acknowledged by a range of scholars, public policing was birthed from an imperialism not so easily overthrown.⁷ Human rights law—though a teetering step in the direction of articulating what we want and expect from policing, is very far from a panacea. Add human rights and stir, which is a key aspect of what has been happening from the mid-1980s on, in terms of police and security sector reform,⁸ is not a sufficient recipe for better understanding or delivering what human beings need to be safe.

⁶ See, e.g., M. O'RAWE & L. MOORE, HUMAN RIGHTS ON DUTY: PRINCIPLES FOR BETTER POLICING: INTERNATIONAL LESSONS FOR NORTHERN IRELAND (Committee on the Administration of Justice, Belfast 1997); INDEP. COMM'N ON POLICING FOR N. IR., A NEW BEGINNING: POLICING IN NORTHERN IRELAND (1999); PETER NEYROUD & ALAN BECKLEY, POLICING, ETHICS AND HUMAN RIGHTS (Willan 2001); DAVID BAYLEY, CHANGING THE GUARD (OUP 2006); BARRY RYAN, STATEBUILDING AND POLICE REFORM: THE FREEDOM OF SECURITY (Routledge 2011); GRAHAM ELLISON & NATHAN PINO, GLOBALIZATION, POLICE REFORM AND DEVELOPMENT (Palgrave Macmillan 2012); Barry J. Ryan, *Becoming Montenegrin: Biopower, Police Reform and Human Rights*, 23 INT'L J. HUM. RTS. 476–92 (2019); Tobias Flessenkemper, *European Union Approaches to Police and Human Rights in the Western Balkans*, 23 INT'L J. HUM. RTS. 454 (2019).

⁷ See, e.g., Claudia Flores et al., *Global Impunity: How Police Laws And Policies In The World's Wealthiest Countries Fail International Human Rights Standards*, 49 GA. J. INT'L & COMP. L. 243 (2021); Uladzimir Dzenisevich & Maja Daruwala, *The Police We Have and Where it Came From: An Analysis*, COMMONWEALTH HUM. RTS. INITIATIVE, <https://www.humanrightsinitiative.org/blog/the-police-we-have-and-where-it-came-from-an-analysis> (last visited Mar. 24, 2021).

⁸ See also DAVID BAYLEY, PATTERNS OF POLICING: A COMPARATIVE INTERNATIONAL ANALYSIS (1985); JEAN-PAUL BRODEUR, COMPARISONS IN POLICING: AN INTERNATIONAL PERSPECTIVE (1995); PETER K MANNING, DEMOCRATIC POLICING IN A CHANGING WORLD (2010); OTWIN MARENIN, POLICING CHANGE, CHANGING POLICE: INTERNATIONAL PERSPECTIVES (1996); JOHN ETERNO & DILIP DAS, POLICE PRACTICES IN GLOBAL PERSPECTIVE (2010); ANDREW GOLDSMITH & JAMES SHEPTYCKI, CRAFTING TRANSNATIONAL POLICING: POLICE CAPACITY-BUILDING AND GLOBAL POLICING REFORM (2007); JAMES SHEPTYCKI, ISSUES IN TRANSNATIONAL POLICING (2000).

Just over 200 years ago, to cope with the “Irish problem” manifesting in cyclical agrarian violence, Robert Peel instituted a system of public policing⁹ that grew legs and travelled the world. At base, this was a colonial model concerned with state monopoly on the use of “legitimate” force. It was designed to meet regime ends, and though, in one sense, a product of its times, this force-based model continues to be constitutive of 21st century security endeavors.¹⁰

Even though many of the current iterations of public policing have lost some of their more overtly militaristic, colonialist, and macho edges, vestiges of that birthing continue to shape law enforcement to this day. Institutions and practices born of colonialism and the construction of a racialized worldview cannot separate entirely from what seeded them.¹¹ So why do policymakers continue to look for solutions in institutions, structures and processes which are so inherently problematic? From the late-1980s on, human rights have been injected into reforming policing and security agencies.¹² However, the outcomes have tended to be characterized more by the continuation of many dysfunctional aspects of command control systems¹³ than a flourishing human rights culture¹⁴ and a safer world. No matter how the image of public policing is touched up, airbrushed or

⁹ See, e.g., Galen Broeker, *Robert Peel and the Peace Preservation Force*, 33 J. MOD. HIST. 363, 365 (1961); GLORIA WEKKER, *WHITE INNOCENCE: PARADOXES OF COLONIALISM AND RACE* (2016).

¹⁰ See M. FAKHRY DAVIDS, *INTERNAL RACISM: A PSYCHOANALYTIC APPROACH TO RACE AND DIFFERENCE* 6 (Ann Scott ed., 2011) (the book argues we cannot work with the outward manifestations of racism without understanding the inner processes which underpin it).

¹¹ See, e.g., PAUL CHEVGINY, *THE EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS* (1995); Jan H. French, *Rethinking Police Violence in Brazil: Unmasking the Public Secret of Race*, 55 LATIN AM. POL. & SOC’Y 161 (2013); GRAHAM ELLISON & NATHAN W. PINO, *GLOBALIZATION, POLICE REFORM AND DEVELOPMENT: DOING IT THE WESTERN WAY?* (2012).

¹² See O’Rawe & Moore, *supra* note 6.

¹³ Paquita de Zulueta, *Compassion in 21st Century Medicine: Is It Sustainable?*, 8 CLINICAL ETHICS 119 (2013). The article argues that:

[c]ommand and control management demotivates and demoralises leading to questionable efficiency bought at a high price in terms of human suffering. It does not need to be this way. Clearly numerous factors are at work, some of them related to experiential avoidance of emotions, some of them related to greed, power, and fear of losing control. But it could also be that we are so wrapped up in the *zeitgeist*, we do not realise how far we moved away from our humanity.

Although writing about medicine, there are very clear parallels, offering the possibility of connecting to a new multi-faceted discourse in terms of what is needed to heal society.

¹⁴ See, e.g., SAMUEL WALKER, *THE NEW WORLD OF POLICE ACCOUNTABILITY* (3d ed. 2019); Mary O’Rawe, *Policing Change in Northern Ireland: To Reform or Not to Transform?*, in *NORTHERN IRELAND AFTER THE TROUBLES: A SOCIETY IN TRANSITION?* (Colin Coulter & Michael Murray eds., 2008).

softened, nor how collaborative and community-focused the discourse, policing institutions, by their history and nature, remain force-based, highly secretive arms of government. As Walker notes:

The history of police reform is filled with stories of highly publicized changes that promised much but evaporated over the long run with only minimal impact Many cynics believe that . . . police subculture is resistant to all efforts to achieve accountability. Regrettably, a review of police history lends an uncomfortable amount of support to this very pessimistic view.¹⁵

Such largely self-referential organizations are imbued with self-preservation cultures and subcultures that are highly resistant to change.¹⁶ Masters at manipulating reality,¹⁷ policing institutions either stave off requisite change, pretend that it has occurred,¹⁸ or reinvent themselves as the best (or indeed only) means to deliver whatever is required. Policing agencies have insinuated themselves into the fabric of societal understandings as a staple and much-needed constant.¹⁹ Public policing feeds and feeds off an overestimation of order as a consummate human good, and highly valorizes suspect notions of crime and punishment as means of controlling the poor and marginalized.²⁰ While not irreformable, law enforcement agencies cannot transform. Sprawling, weaponized bureaucracies, based on fear, deterrence, command, and control are a wrongheaded starting point to the facilitation of security and peace in body and mind.

At base, law enforcement is tied up with political agendas and a very narrow construction of social harm.²¹ This worldview constructs criminality as the key-poison that requires to be removed from the lifeblood of society. Ironically, there

¹⁵ Walker, *supra* note 14, at 17.

¹⁶ See generally Janet Chan, *Changing Police Culture*, 36 BRIT. J. CRIMINOLOGY 109 (1996); JANET CHAN, *CHANGING POLICE CULTURE: POLICING IN A MULTI-CULTURAL SOCIETY* (Cambridge Univ. Press 1997); H. Skolnick, *Enduring Issues of Police Culture and Demographics*, 18 J. RSCH. & POL'Y 35, 35–45 (2008); ROBERT REINER, *THE POLITICS OF THE POLICE* (Oxford Univ. Press, 4th ed. 2010); Nick Caveney et al., *Police Reform, Austerity and 'Cop Culture': Time To Change the Record?*, 10 POLICING & SOC'Y 1210 (2019); Walker, *supra* note 14, at 6.

¹⁷ P. K. Manning, *Police: Mandate, Strategies, and Appearances*, in *POLICE AND SOCIETY: TOUCHSTONE READINGS* 97–125 (Victor E. Kappeler ed., 1995).

¹⁸ See *Crime Statistics are Manipulated, Says Police Chief*, BBC NEWS (Nov. 20, 2013), <https://www.bbc.co.uk/news/uk-25022680>.

¹⁹ See, e.g., ROBERT REINER, *THE POLITICS OF THE POLICE* 3 (Oxford Univ. Press, 4th ed. 2010).

²⁰ See *BEYOND CRIMINOLOGY: TAKING HARM SERIOUSLY* (Paddy Hillyard, Christina Pantazis, Steve Tombs & Dave Gordon eds., 2004).

²¹ *Id.* (“The principal aim of a social harm approach is to move beyond the narrow confines of criminology . . . to a focus on all the different types of harms, which people experience from the cradle to the grave.”).

is little evidence that the criminal law and the criminal justice system does much to prevent crime.²² Meanwhile, the structural violence that hurts and harms us and shores up stereotyping and prejudice is either not recognized, rendered invisible or goes unrecorded. Similarly, highly individualized notions of human rights distract attention on many levels from more fundamental questions of what human beings require to feel safe.²³ The fear of conceiving other ways of being leads to expending disproportionate energy and money on the relatively small degree of change possible in highly centralized, bureaucratic, law enforcement agencies, rather than understanding twenty first century humanity as capable of something more therapeutic and preventative. Governments could be spending money on enhancing wellbeing through more holistic education systems, more prenatal, parenting, and early years support, more green spaces and opportunities to be in them, more youth workers and social workers with manageable case-loads, more mind-body connection, and more support for mental health. Instead, we entrench the existence and widen the reach of a 200-year failed experiment in enforcing safety. Part of the problem is one of framing. Societally, we are obsessed with crime and fear of crime.²⁴ We thus turn to law as the craved Lacanian “master signifier.”²⁵ Perhaps, adopting the lens of social harm framed within a polyvagal-informed²⁶ view of the world, would serve to improve wellbeing and quality of life could create a healthier basis for nurturing societal living.

Given policing’s colonialist Irish roots, it is perhaps fitting that Northern Ireland, as it emerged from decades of violent political conflict in the late 1990s, had an opportunity to fundamentally rethink a law enforcement system which had been highly damaged, distorted, and rendered hugely discriminatory by virtue of its history.²⁷

In 1999, an Independent Commission on Policing²⁸ produced a blueprint for policing based on human rights and community engagement, premised on

²² Paddy Hillyard, *Criminal Obsessions: Crime Isn’t the Only Harm*, 62 CRIM. JUST. MATTERS 26 (2005).

²³ See, e.g., PORGES, *supra* note 1.

²⁴ See, e.g., Hillyard, *supra* note 22.

²⁵ See, e.g., *Jacques Lacan (1901–1981)*, INTERNET ENCYCLOPEDIA PHIL., <https://iep.utm.edu/lacweb/> (last visited June 17, 2021). A “Master Signifier” plays a key role in how human beings give meaning to the world. Law, for example, is a word that seems to indicate to subjects that it contains or can deliver what “really matters” about human existence. It points to itself rather than other signifiers. Lacan suggests that human beings are “decentred,” that our desires become “inmixed” with the imperatives of and stipulated within, the natural language of our society in terms of what we take for granted. *Id.*

²⁶ See PORGES, *supra* note 1.

²⁷ INDEP. COMM’N ON POLICING FOR N. IR., A NEW BEGINNING: POLICING IN NORTHERN IRELAND (1999).

²⁸ INDEP. COMM’N ON POLICING FOR N. IR., A NEW BEGINNING: POLICING IN NORTHERN IRELAND (1999).

notions of “nodal governance.”²⁹ This saw the police as a much smaller cog in the delivery of a broader conception of policing. Although the suggested reforms were to be rolled out under the meta-auspices of a civilian Policing Board, within a networked framework of community safety and district policing partnerships, the more radical elements of the proposals were ditched in the implementation phase. Instead, the police organization was facilitated by government, and the police-orientated oversight process put in place, to quickly recolonize³⁰ what was supposed to be policing space and a policing budget. The relatively radical attempt to supplant and avoid too heavy a focus on the police underwrote human rights as the core business of policing.³¹ As part of this endeavor, it recommended an independent Policing Board with power to allocate policing funding to everything from public parks and children’s playschemes to drug rehabilitation centers and mental health services. In practice, the police stepped forward to claim and receive a disproportionately large slice of the pie. Community Safety Partnerships never really materialized as envisaged and the “new man” of policing was rendered toothless.³² In short, the praxis fell tragically short of the principles.

In 2001–2002, as these new policing arrangements rolled out, the budget allocated for pre-school, family-oriented initiatives in Northern Ireland stood at 0.2% of the budget allocated for law and order.³³ By 2008–2009, while the nation’s security budget stood at £1.2 billion, the allocation reserved for the flagship early years Sure Start program³⁴ was £16 million, roughly equivalent to what the Police Service of Northern Ireland spent the same year on “Supplies, Catering and Publications” and less than half what the police required for “Incidental Expenses.”³⁵ The period of 2009–2017 saw the most resource-starved councils in the UK abandon the original Sure Start Deal with over thirty percent closure of centers in England and Wales.³⁶

²⁹ Clifford Shearing & Jennifer Wood, *Nodal Governance, Democracy, and the New ‘Denizens’*, 30 J. L. & Soc’y 400 (2003).

³⁰ O’Rawe & Moore, *supra* note 6.

³¹ INDEP. COMM’N ON POLICING FOR N. IR., *supra* note 27.

³² Mary O’Rawe, *Constitutional and Institutional Dimension: Transitional Policing Arrangements in Northern Ireland: The Can’t and the Won’t of the Change Dialectic*, 26 FORDHAM INT’L L. J. 1015 (2003).

³³ *Id.*

³⁴ *Id.* The Sure Start program is premised on development of open-access, neighborhood-based facilities for parents and preschool children.

³⁵ Patty Hillyard & Mike Tomlinson, *Patterns of Policing and Policing Pattern*, 27 J. L. & Soc’y. 394, 405 (2000); M. O’Rawe, *Constitutional and Institutional Dimension: Transitional Policing Arrangements in Northern Ireland: The Can’t and the Won’t of the Change Dialectic*, 26 FORDHAM INT’L L. J. 1015 (2003); M. O’Rawe, *Policing Reform and Human Rights, Northern Ireland and Beyond* (2010) (unpublished Ph.D. thesis, Ulster University) (on file in the Ulster Repository, Ulster University).

³⁶ GEORGE SMITH ET AL., *STOP START: SURVIVAL, DECLINE OR CLOSURE? CHILDREN’S CENTRES IN ENGLAND*, 2018 (The Sutton Trust, 2018), <https://www.suttontrust.com/wp-content/uploads/2018/04/StopStart-FINAL.pdf>.

Human rights policies and practices are a significant feature of the Police Service of Northern Ireland, and the organization is a much more universally accepted feature of the security landscape than its predecessor, the Royal Ulster Constabulary (RUC).³⁷ However, it will never do for security what that early years neighborhood-based provision and a move away from a law and order mentality might have done. The police organization has had its edges softened, but still retains a regime security mindset incongruent with a reality where: '[o]nly one in every five . . . calls for service relate to crime . . . and one in every three calls . . . relates to a person who is in need of special care, support or protection because of age, disability or risk of abuse or neglect.'³⁸

Most issues coming to police attention globally relate to mental health, poverty, and discrimination.³⁹ Mission creep, by which police activity comes to colonize non-traditional spaces and social concerns best addressed by properly trained experts, is a problem.⁴⁰ So too is the notion that human rights can fix what is wrong with policing. The narrative which privileges the extended reach of the public police as a societal good, has obscured the invisible costs of having the wrong people with the wrong training approaching these issues in manifestly inappropriate ways. Meanwhile, what used to be the bread and butter issues of policing continue to morph with this increasingly digital age. All of this begs the question of why many nations see the need to continue hugely expensive, highly bureaucratic organizations ill-fitted for the needs of the twenty first Century. Why is an organization with force in its back pocket still the first responder to so many situations for which it is ill-equipped and ill-resourced? What are the viable alternatives for governments seeking to respond to such situations? Perhaps it is time society recognized that the retention and reform of public law enforcement, even liberally sprinkled with human rights, does not ultimately create safety within and without for human beings.

³⁷ See, e.g., *More Catholics Satisfied with RUC*, BBC NEWS (Apr. 14, 2000), http://news.bbc.co.uk/1/hi/northern_ireland/713560.stm.

³⁸ See POLICE SERVICE N. IR., POLICE SERVICE OF NORTHERN IRELAND CHIEF CONSTABLE'S ANNUAL REPORT 2017–2018 3 (June 29, 2018) (emphasis added), <https://www.psni.police.uk/globalassets/inside-the-psni/our-departments/finance-and-support-services/documents/2018-psni-main-report.pdf>.

³⁹ See, e.g., RISDON N. SLATE ET AL., THE CRIMINALIZATION OF MENTAL ILLNESS 183 (2d ed. 2013); Anthony H. Normore et al., *The Defragmentation of Mental Health Services, Police, and the Homeless*, 10 POLICING: J. POL'Y & PRAC. 134, 137–38 (2016); Dulo Nyaoro, *Policing with Prejudice: How Policing Exacerbates Poverty Among Urban Refugees*, 14 INT'L J. HUM. RTS. 126 (2010).

⁴⁰ See, e.g., David Bayley, *What do the Police Do?*, William Westley, *Responsibilities of the Police*, in POLICING: KEY READINGS 137–49 (T. Newburn ed., 2005).

The past two decades have seen the tentative emergence of a more holistic concept of Human Security⁴¹ beginning to challenge the pre-eminence of a discourse too fundamentally steeped in a law and order/crime and punishment paradigm. Reforming the police in transitional societies was quickly seen as worthless without concomitant reform of the security and criminal justice contexts in which policing operated. The growth in Security Sector Reform (SSR) initiatives globally throughout the late 1980s and 1990s was insufficient to deliver a safer, more just, and more peaceful world.⁴² The concept of Human Security began to link questions of development, security, and human rights together to gradually move conversations about freedom from fear and freedom from want to center stage as key indicators of human safety.

Since around 2016, an abolitionist voice has begun to find a more public platform in respect of policing.⁴³ Momentum has been gathering around the Black Lives Matter movement, in keeping with a dawning recognition that institutional racism, misogyny, and other forms of 'othering' are endemic to many people's lived experience of policing, whether society chooses to acknowledge this or not.⁴⁴ In such a context, the call to defund the police, while by no means mainstream, has gained traction, credibility, and legitimacy as a possible way forward.⁴⁵ In fact, it might be the only way to avoid law enforcement continuing to

⁴¹ An independent Commission for Human Security, known as the Commission on Human Security, was launched at the 2000 UN Millennium Summit; see Comm'n on Human Sec., *Human Security Now*, at iv (2003).

⁴² See, e.g., Leonie Huddy, *Group Identity and Political Cohesion*, in OXFORD HANDBOOK OF POLITICAL PSYCHOLOGY 51–58 (D.O. Sears, L. Huddy & R. Jervis eds., 2003). M.B. Brewer, & W. Gardner, *Who is this "We"? Levels of Collective Identity and Self-Representations*, 71 J. PERSONALITY & SOC. PSYCH. 83 (1996); See, e.g., M. O'RAWE & L. MOORE, HUMAN RIGHTS ON DUTY: PRINCIPLES FOR BETTER POLICING: INTERNATIONAL LESSONS FOR NORTHERN IRELAND (Committee on the Administration of Justice, Belfast 1997); INDEP. COMM'N ON POLICING FOR N. IR., A NEW BEGINNING: POLICING IN NORTHERN IRELAND (1999); PETER NEYROUD & ALAN BECKLEY, POLICING, ETHICS AND HUMAN RIGHTS (Willan 2001); DAVID BAYLEY, CHANGING THE GUARD (OUP 2006); BARRY RYAN, STATEBUILDING AND POLICE REFORM: THE FREEDOM OF SECURITY (Routledge 2011); GRAHAM ELLISON & NATHAN PINO, GLOBALIZATION, POLICE REFORM AND DEVELOPMENT (Palgrave Macmillan 2012); Barry J. Ryan, *Becoming Montenegrin: Biopower, Police Reform and Human Rights*, 23 INT'L J. HUM. RTS. 476–92 (2019); Tobias Flessenkemper, *European Union Approaches to Police and Human Rights in the Western Balkans*, 23 INT'L J. HUM. RTS. 454 (2019); ANDREW GOLDSMITH AND JAMES SHEPTYCKI (EDS), CRAFTING TRANSNATIONAL POLICING (Andrew Goldsmith & James Sheptycki eds., Oxford Hart 2007); JAMES SHEPTYCKI (ED), ISSUES IN TRANSNATIONAL POLICING (J.W.E. Sheptycki ed., Routledge 2000).

⁴³ See, e.g., Meghan G. McDowell & Luis A Fernandez, *'Disband, Disempower, and Disarm': Amplifying the Theory and Practice of Police Abolition*, 26 CRITICAL CRIMINOLOGY 373 (2018).

⁴⁴ See, e.g., JORDAN T. CAMP & CHRISTINA HEATHERTON, POLICING THE PLANET: WHY THE POLICING CRISIS LED TO BLACK LIVES MATTER (2016).

⁴⁵ See, e.g., V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453 (2019); Leah A. Jacobs,

insinuate itself into a space it is ill-fit to hold. Introducing human rights compliance into a police organization is the work of generations—and about much more than having formal laws and policies in place.⁴⁶ What if, after all that work and effort, we are left with the same patterns of prejudice and profiling, with police officers themselves feeling undervalued and put at unnecessary risk by their organizations?

In 2020, Claudia Flores and her colleagues conducted research demonstrating the United States as an outlier in its extensive failure to embed human rights legal obligations as a key indicator of effective law enforcement.⁴⁷ Flores demonstrated this stark lacuna manifests in a lack of state laws, police policies and procedures dedicated to ensuring law enforcement compliance with international human rights treaties.⁴⁸ This lack of incorporation was deemed to indicate a clear and continuing disregard for international human rights law and what it could offer in improving policing.⁴⁹ The formal inclusion of human rights in police governance instruments was viewed as the sine qua non for a broader awareness and education on the more policing specific soft law human rights instruments, such as the UN Code of Conduct for Law Enforcement Officials and the UN Principles on the Use of Force,⁵⁰ which might mitigate their lack of observance in practice. Flores' research exposed that, out of all police departments surveyed in the twenty largest cities in the United States, not one met minimum standards established by international human rights law and, nearly seventy-five years on

Mimi E. Kim, Darren L. Whitfield, Rachel E. Gartner, Meg Panichelli, Shanna K. Kattari, Margaret Mary Downey, Shanté Stuart McQueen & Sarah E. Mount, *Defund the Police: Moving Towards an Anti-Carceral Social Work*, J. OF PROGRESSIVE HUM. SERVS. (2020); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 6 (2020).

⁴⁶ RALPH CRAWSHAW, STUART CULLEN AND TOM WILLIAMSON, HUMAN RIGHTS AND POLICING: STANDARDS FOR GOOD BEHAVIOUR AND A STRATEGY FOR CHANGE 383 (2d ed. 2007) (“[T]he nature of change is becoming more complex and the impact of change is often more extensive”).

⁴⁷ See UNIV. CHI. LAW SCH., GLOB. HUM. RTS. CLINIC, DEADLY DISCRETION: THE FAILURE OF POLICE USE OF FORCE POLICIES TO MEET FUNDAMENTAL INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS 1, 3 (2020), <https://chicagounbound.uchicago.edu/ihr/14> [hereinafter DEADLY DISCRETION]. The report found that human rights standards were not fully met in the legislation of any state studied.

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 4. See, e.g., International Covenant on Civil and Political Rights, Dec. 16, 1966, 1057 U.N.T.S. 171; International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

⁵⁰ G.A. Res. 34/169, Code of Conduct for Law Enforcement Officials (Dec. 17, 1979); U.N. Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Aug. 27, 1990). See also, COUNCIL OF EUROPE COMM. OF MINISTERS, RECOMMENDATION OF THE COMMITTEE OF MINISTERS ON THE EUROPEAN CODE OF POLICE ETHICS (2001); U.N. OFF. ON DRUGS AND CRIME, HANDBOOK ON POLICE ACCOUNTABILITY, OVERSIGHT AND INTEGRITY (2011).

from the promulgation of the United Nations Declaration of Human Rights, no U.S. state had a human rights compliant state law as regards law enforcement.⁵¹

She and her team conducted further research on the twenty-nine wealthiest cities in the world and measured them against human rights indicators.⁵² The findings of this research showed that maybe the United States was not such an outlier as it first appeared. “[N]ot one jurisdiction analysed complied fully with the four principles of legality, necessity, proportionality and accountability.”⁵³ Perhaps, even more interestingly, the fact of having police-specific human rights laws and policies turned out not to be a clear indicator that policing would be any more compliant on the ground than for those states and agencies that did not have them. In U.S. terms, although Los Angeles and Chicago scored highly on a paper human rights compliance exercise, this belied what was happening on the ground. The key utility of Flores’ research might be in demonstrating that human rights compliance on paper can paper over far less laudable realities.

Of course, one response might be to embed human rights more fully in state legislation and police policies in order to improve police training and enhance civilian oversight. That this might ultimately end up as further expensive window-dressing is borne out by previous findings of Goldstein and other commentators⁵⁴ who see the role of formal legal rules, regulations, and policies as trumped in practice by organizational culture, subculture, and an officer’s own “working rules” in any given context.⁵⁵ Den Boer⁵⁶ has found that even in the twenty first century, with a strong regional human rights court on their doorstep, the EU has been very slow to absorb human rights as a key underpinning factor to police modalities. Even if it did, would the world look so very different? When we look more broadly, does any police agency shine as a beacon of hope anywhere in the world? Clearly some might do a better job than others on any number of statistical indices. Some organizations are clearly less likely to resort to lethal force than others or more likely to properly investigate after the fact—but can we point to anywhere in the world where public policing provides safety and

⁵¹ Flores, *supra* note 47, at 11–12.

⁵² Claudia Flores et al., *Global Impunity: How Police Laws & Policies in the World’s Wealthiest Countries Fail International Human Rights Standards*, 49 GA. J. INT’L & COMP. L. 243 (2021) (nondiscrimination, interestingly, was not assessed in this exercise).

⁵³ *Id.*

⁵⁴ See, e.g. Hillyard *supra* note 22.

⁵⁵ Herman Goldstein, *Improving Policing: A Problem-Orientated Approach in POLICING: KEY READINGS* 392, 396 (Tim Newburn ed., 2005).

⁵⁶ Monica den Boer, *Towards an Accountability Regime for an Emerging European Policing Governance*, 12 POLICING & SOC’Y 281, 281–83 (2002); Monica den Boer, *Towards a Governance Model of Police Cooperation in Europe*, in INTERNATIONAL POLICE COOPERATION: EMERGING ISSUES, THEORY AND PRACTICE 42–61 (Frederic Lemieux ed., Routledge 2010); see also THE FUTURE OF POLICE AND JUDICIAL COOPERATION IN THE EUROPEAN UNION (Cyrille Fijnaut & Jannemieke Ouwerkerk eds., Brill 2010).

delivers on human rights to the extent that it might be expected to, given what it costs?

It is clear from a wealth of literature that bolstering formal human rights provision in relation to the governance of policing agencies, while at one level attractive, will not deliver the cultural change required for status quo law enforcement. Instead, the danger remains that while the language of human rights might be more fully appropriated by legislatures and law enforcement agencies, the poor, marginalized, and vulnerable in society will remain unsafe. Even if every police station in the world was papered with policing specific human rights documents or the actionable recommendations of many inquiries into controversial deaths, it is difficult to see that it would catalyze change beyond the merely cosmetic. America has had its fair share of such reports and recommendations, but despite evidence of changes implemented at different levels to make law enforcement less authoritarian and more accountable,⁵⁷ the first decades of the twenty first century have seen no substantive changes at the ground level of policing.

When we drill beyond the policies and practices of police agencies around the world, there is something not entirely unfamiliar in the ethnic profiling, prejudice, stereotyping, and othering that has been exposed in stark terms in the United States by Flores' research and initiatives such as Black Lives Matter. What is happening in the United States is not new; discriminatory practice and excessive use of force has existed globally for millennia, suggesting something fundamentally wrong with societal iterations of criminal justice as traditionally understood. This is not the fault of law enforcement agencies per se, who are just the latest version of the privileging of force over compassion across the world and through time.

James Gilligan has pointed out that the public and private violence perpetrated by the U.S. criminal justice system has resulted in it being the most violent country in the "developed" world.⁵⁸ The United States has both the greatest number of people employed in the criminal justice system and the highest prison population.⁵⁹ Levels of violence and sexual abuse within the prison system are a more hidden but no less egregious violation of basic human rights which disproportionately affect the vulnerable and marginalized in American society along highly racialized lines.⁶⁰

⁵⁷ See generally, PREVENTING IDEOLOGICAL VIOLENCE: COMMUNITIES, POLICE AND CASE STUDIES OF "SUCCESS" (Daniel Silk, Basia Spalek & Mary O'Rawe eds., 2013).

⁵⁸ James Gilligan, VIOLENCE: REFLECTIONS ON OUR DEADLIEST EPIDEMIC (1999).

⁵⁹ *Trends in U.S. Corrections*, SENT'G PROJECT (May 2021), <https://www.sentencingproject.org/publications/trends-in-u-s-corrections/>.

⁶⁰ See, e.g. Miles D. Harper & Darrell J. Steffensmeier, *Race and Prison Violence*, 34 CRIMINOLOGY 323, 342 (1996)(finding black inmates in the U.S. have significantly higher levels of prison violence); COMMITTEE ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION, THE GROWTH OF INCARCERATION IN THE UNITED STATES 2 (Jeremy Travis et al. eds., 2014).

This is relevant because law enforcement does not take place in a vacuum. The whole criminal justice and legal system, more broadly, is implicated in how the police do their jobs.⁶¹ It is not a question of organizational reform but of systemic transformation and a fuller embracing and exploration of the concept of human safety and security. At its core, law enforcement is, like law, a social construct, a secondary reality,⁶² a means of giving effect to laws which themselves serve to perpetuate distorted power relations and shore up vested interests in our money-fueled, competition-driven societies. Law enforcement translates human experience into 'legal' terms, requiring a constant attendant echo of the need for eternal vigilance as to who guards the guards.

If Covid-19 has taught us anything, it is the extent of our connectedness as human beings and the contingency and fragility of our taken-for-granted realities. Responses to this latest global pandemic have shown us how easy it is to get things wrong, how conflicting and contradictory science, received wisdom and expert opinion can be, and how action taken (or not taken) to enhance safety and wellbeing, can often have far-reaching opposite effects. The WHO has already indicated an increase in global poverty due to the rapid lockdown of healthy populations. The mental and physical health legacy of insufficiently insightful responses to the pandemic, over and above the virus itself, will last generations. To assume law enforcement holds the answers to policing this pandemic or addressing this legacy would be to start from the wrong place, asking many of the wrong questions, and cementing institutions, which on the basis of experience, are, at best, failed experiments.

II. CONCLUSION

200 years from its inception, public policing has shown itself unfit for the purposes of an evolving humanity. A paradigm of human rights boasts promise for deep structural reform, but attempts to render law enforcement human rights compliant have thus far shown us what is irreformable in the business of policing. When human security is subsumed within government frameworks, it loses a significant degree of its capacity to engage with people to determine their contextualized security needs and allow them both more welfare and agency over their own lives. From a gender or race perspective, when law enforcement deals only in those security "threats" already within the highly distorted consciousness

⁶¹ James Gilligan, *Punishment and Violence: Is the Criminal Law Based on One Huge Mistake?*, 67 SOC. RESEARCH 745 (2000).

⁶² PETER L. BERGER & THOMAS LUCKMANN, *THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE* 157–66 (Penguin Books 1991) (discussing "secondary socialization" as institution-based "sub-worlds" that define certain aspects of society).

of states, it cannot deliver what is required for the wellbeing and flourishing of all societal stakeholders.

A vastly overinflated security and incarceration budget would be better spent on training therapeutically attuned and trauma-sensitive educators, youth workers, social workers, early years specialists, and mental health facilitators on the long-understood basis that an ounce of prevention is worth a pound of cure. Rather than trying to make human rights fit within policing institutions, when it has been clear for decades how such institutions morph to absorb and refashion these in their own image, a different way of doing business must be established. The notion of crime and punishment as an answer to our security and to the reduction of public and private violence is a failed experiment. As Gilligan observes:

[f]or three millennia, our main social hypothesis—that the moral and legal way of thinking about and responding to violence (by calling it evil, forbidding it . . . and punishing it) will prevent violence (or at least bring it under control) has been singularly unsuccessful in reducing the level of violence. Three thousand years should be an adequate length of time to test any hypothesis.⁶³

The capacity of traditional police models, (even if more fully tethered to human rights sensitive normative legal frameworks), to contain and effectively harness the challenges of violence is seriously under question. Symbolic and practical changes in this regard could end up cementing conceptions of state, law, race, gender and ‘other’ that are, of themselves, already inherently problematic. Better to redirect energy and focus to what will better deliver wellbeing.

Police forces are not irreformable, but they are untransferable. We can, of course, affect changes that can render police more human rights compliant, more accountable, more effective, more ‘professional’—but this paper questions whether this is enough to make human beings more fundamentally secure in themselves and in their societies. Perhaps, resources, time, and energy might be better directed towards conceiving of violence (perpetrated by police or otherwise) less as a legal and moral issue and more as a public health pandemic. This could provide the seeds of a new model that is far more therapeutically and psychodynamically aware and much more fit for purpose.⁶⁴ As such, might it be better to channel our collective energies into manifesting reality in these terms rather than continuing to privilege the public police (through Herculean human rights reforms or otherwise) to deliver what we know it cannot? A different vision of security, safety and social harm might finally allow us to evolve systems and connect processes more facilitative for human beings to find their way in the

⁶³ Gilligan, *supra* note 58, at 94.

⁶⁴ *Id.*; see also Zulueta, *supra* note 13 (discussing the application of compassion to the practice of medicine).

world. Potentially, new, less crime-obsessed landscapes of safety, compassion, and caring might prove firmer foundations for a global world order.⁶⁵

⁶⁵ See ELISABETH J. PORTER, PEACEBUILDING: WOMEN IN INTERNATIONAL PERSPECTIVE 101–04 (2007) (discussing the “politics of compassion”); Zulueta, *supra* note 13.