

New Institutionalism, Group Threat, and Diversity in Law Enforcement

In 2014, when Mike Brown was killed by a police officer in Ferguson, Missouri, people rightly called attention to the fact that the Ferguson police department was a majority white department in a majority black city. The image of a white police officer killing a young black man played a prominent role in the growth of the Black Lives Matter and other police reform movements. Part of the conversation within these movements turned to the question of diversity within police departments: does diversity in law enforcement result in less racially biased policing practice? Racial diversity within police departments may be an important end to itself -- descriptive representation within government institutions can have demonstrably beneficial effects on community members, and increased employment for individuals from minority communities is likewise a worthwhile policy goal.¹ However, this diversity should not be taken as a stand-in for reforming police practices and policies. In contemporary American policing, diverse police departments do not have better (less racially disparate) policy outcomes.

Contemporary American policing practices and policies are informed by and result in dramatic racial bias, often at the cost of public safety.² This is as true for diverse police departments. The assumption that diversity would reduce racial bias assumes that individual police officers are primarily responsible for policing outcomes. This assumption correctly acknowledges the role of individual officer discretion in encounters with civilians, but does not take into account either the ideological diversity within minority communities (such as differences of 'tough on crime' attitudes) or the institutional structure of how policing policy is

¹ For more on this, see Dovi's discussion of Anne Phillips' summary of the benefits of descriptive representation: it creates role models, is more likely to protect overlooked interests, creates a revitalized democracy, and promotes justice. (Dovi, 730)

² For more on this, see Howell's finding that NYPD practice has criminogenic consequences. The Department of Justice report on Ferguson specifically found that FPD practices were not directed towards public safety.

made and implemented within police departments (which limits rank-and-file officers' ability to impact policy). In this paper, I will explore these factors to understand why diversity in law enforcement does not result in less racially biased policing outcomes, examining the Ferguson and New York City police departments. Both departments have racially biased police policies and practices, but the former has a majority white officer population while the latter has a very diverse officer population.

The Problem

There are different ways to establish the racial bias of police practices. In some cases there is a clear racial discrepancy in arrests compared to criminal activity -- such as drug use, where even though whites and African Americans use drugs in equal amounts, African Americans are much more likely to be arrested for drug offenses (Urbina, 2013). Because I focus on Ferguson and New York City, I do not need to independently establish the racial bias of these police departments. Both have been found by state actors to engage in racially biased police practices. The Department of Justice report on Ferguson found that "Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes. Ferguson's own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities" (Department of Justice 2015: 2). In *Floyd v. City of New York* (2013), the U.S. Southern District Court for New York found that the NYPD's stop and frisk policy -- an emblem of the NYPD's broken windows policing -- violated the 4th and 14th Amendments. While the ruling was specific to stop-and-frisk, the court ordered a series of remedies targeting NYPD administration more broadly. In *Floyd*, the Court considered evidence from social scientists who found that New York's broken windows policing is "disproportionately concentrated in the

City's poorest neighborhoods with the highest concentrations of minority citizens, even after controlling for rates of crime and physical disorder in those places" – meaning that this policing practice is not reacting to crime rates, but instead is disproportionately targeted at minority individuals, particularly black and Hispanic young men (Fagan and Davies 2000: 262). My analysis of the FPD and NYPD will assume racially biased police practices on the strength of these findings.

In both Ferguson and New York City, department policy relies on "productivity" goals, or quotas, pushing police officers to issue a certain number of tickets/make a certain number of stops and arrests each month. Both departments deploy resources to neighborhoods based on race rather than reported criminal activity. This means that in both cities a stop initiated by a police officer is more likely to occur between an officer and a person of color.

My argument is that diversifying police forces is insufficient because police policy is established by a *dynamic* relationship between the institution and the officers. All reform proposals must keep this dynamic in mind in order to be effective. The interaction between the institutional structure of police departments and individual police officers, as well as individual police officers and broader social contexts, are complex. Institutionally, law enforcement departments are hierarchical administrative agencies, and subject only to indirect public political control through the election of executive officers who appoint department chiefs. Thus, the institutional structure of law enforcement departments and the ways in which policy and priorities are set occurs in a top-down manner, politically isolated from public influence. This makes it difficult for individual officers to influence department policy. However, individual officers within law enforcement *do* have an impact on the culture of police departments and the

outcomes of police encounters.³ In particular, individual officers have a great deal of discretion in the actual outcome of encounters with civilians. Yet individual officers also live within a society that influences their perspective on civilians.⁴ White and minority officers likely experience different social contexts from each other; however, they both also likely experience different social contexts from the civilians they encounter. Those differences matter in how officers use their discretion to carry out the department policy that they have no direct control over. The institutional structure, individual perspective, and social contexts are all interrelated in establishing policing practice and culture. It is the interplay between these factors that results in a policing culture that is profoundly racially biased and difficult to change. Diversity alone will not resolve these issues.

The Limits of Diversity as Descriptive Representations

Why then, do political reformers call for diverse police forces? Appeals to diversify law enforcement are responses to the racial inequality of policing: specifically, the history of white police officers quashing black political protest, and the witnessing of white police officers' brutality against black individuals. For example, the brutal Rodney King beating in L.A. in 1991 sparked a federal investigation. This investigation resulted in the 1991 Christopher Commission Report, which recommended a wide-sweeping overhaul of the LAPD record keeping and accountability mechanisms. Included in the report was a recommendation to diversify the department. In 2002, the department began focusing on these diversity initiatives, so that in 2016 the demographics of the LAPD match the demographics of the city of L.A. as a whole.⁵ Yet rates

³ This is typically where the focus of police reform rests: on professionalizing/training police officers, rather than changing institutional structure. For more, see Sam Walker's History of Police Reform

⁴ For example, officers may identify themselves specifically as distinct from civilians because they (the officers) consider themselves more aware of threats to public safety, good judges of guilt or innocence, more knowledgeable about criminal acts, etc.

⁵ <http://www.latimes.com/visuals/graphics/la-me-g-lapd-race-20150319-htlstory.html>

of civilian trust in the LAPD are still very stratified by race, with whites almost twice as likely as blacks to think the LAPD do a good job.⁶ Whether or not the LAPD still systemically engages in racially biased policing is unknown, although only half of all residents think that the LAPD treat people of all races fairly.⁷ The diversity initiatives were a response to the dramatic and violent nature of the recorded beating, and to the history of racial tension between white state actors and black civilians. They were not responses to the institutional structure or policy-making apparatuses within the department. This kind of diversity rests on descriptive representation alone, without looking at broader contexts in attempting to create policy solutions.

The general consensus in the literature regarding law enforcement diversity is that “there is not a strong correlation, let alone a causal relationship, between an officer’s race and how officers treat members of the public” (Weitzer 2015). Other studies have found that “there’s no conclusive evidence to show that white and black police officers treat suspects differently — if anything, some of the studies show that black officers can be can be harder on black criminal suspects” (DePillis 2014). In one empirical study on officer race and arrest outcomes, the authors found that “White officers were more likely to arrest suspects than Black officers, but Black suspects were more likely to be arrested when the decision maker was a Black officer” (Brown and Frank 2006: 97). But these studies do not attempt to explain *why* having more diverse police officers does not have the expected impact of reducing racial bias within policing.

Dynamic Representation and Accountability

‘Descriptive representation’ refers to diversity in government offices. Suzanne Dovi’s exploration of the merits and limitations of descriptive representation offer a potential

⁶ <http://www.cnn.com/2017/04/28/us/lapd-change-since-la-riots/index.html>

⁷ <http://beta.latimes.com/local/lanow/la-me-ln-lapd-biased-policing-20161115-story.html>

explanation for the failure of diversity to decrease racism in policing. Her argument is that descriptive representatives should “have strong *mutual relationships* with *dispossessed subgroups*” (Dovi 2002: 735).

Her first argument is that descriptive representation alone is insufficient because it ignores the diversity within groups. “Members of historically disadvantaged groups have diverse interests and beliefs and [thus] a politics of presence by itself is insufficient for revitalizing democratic institutions” (Dovi 2002: 735). Simple representation does not guarantee that the representative will or can represent all interests of that group. In fact, as Dovi is quick to point out, minority groups have multiple degrees of difference within them, some of which carry different political import than others depending on context. (Dovi 2002: 732). There are differences of political ideology and priorities within marginalized groups; there are also different identities within groups that carry political relevance. Class status, gender presentation, and mental health issues are just a few intra-group differences that may be politically relevant in civilian encounters with police officers. Diversity within historically marginalized groups can reflect a ‘secondary marginalization,’ a power imbalance where some individuals have greater access to traditional political resources than others. This may be a reflection of gender or class inequalities, for example. This secondary marginalization is particularly relevant for understanding the limits of diversity within law enforcement.

In New York City, black and Hispanic police officers may have more access to class privilege than their peers; the application process requires some college credits as well as passing a civil service exam. Given the correlation between education and class status, this may create a self-selected class bias in applicants to the NYPD. Additionally, the NYPD disqualifies individuals who “have been convicted of... any offense that shows disrespect for the law or a

tendency toward violence” as well as anyone who has been “terminated from their job for poor behavior or not adjusting to discipline” (NYPD Recruit 2017). This creates another self-selection bias; those who enter the police force from minority communities are less likely to have had negative experience with police officers in the form of arrests or tickets, and therefore may be less critical of police department culture and policing outcomes. They also may be less likely to have had punitive experiences with managers/bosses, etc., and thus may also be more inclined to ‘follow orders’ (LaFrance 2010).

The second part of Dovi’s argument is that even more pluralized representation will not be sufficient; this is in part because political priorities change. Therefore, descriptive representatives must be held accountable through strong mutual relationships. “Constituents should not look for representatives with their same identity; rather, they should look for traces of accountability and authorization. Representation should be understood as a dynamic process that moves between moments of authorization and moments of accountability” (Dovi 2002: 731). In other words, the caveat with descriptive representation -- or in our case, diversifying police departments -- is that it must include robust accountability mechanisms in order to ensure that the representation is also democratic, that it can reflect the diverse and changing interests of members within the represented group. When Dovi says that descriptive representatives must have *mutual relationships* she is referring to the need for these robust accountability mechanisms. This creates a specific obstacle with police departments, notorious for successfully resisting external accountability measures.

One example of this resistance to external accountability is the story of diversifying the NYPD. In Becoming New York’s Finest, Andrew Darien finds that, amidst growing protests against racial inequality, the NYPD used diversity as a political tool to stave off structural reform

efforts. For example, after two massive incidents of civil unrest against racist local policies in 1935 and 1943, the NYPD “hired black citizens in response to rioting and civil rights protest, but used ‘color blindness’ and ‘professionalism’ to ensure that these hires eschewed racial advocacy” (Darien 2013: 16). Additionally, after New York City’s first civilian review board was abolished in a referendum after a political campaign on the part of the NYPD, the department immediately began hiring more black and Hispanic officers. “Putting more African-Americans and Puerto Ricans on the beat proved more politically feasible than civilian review” (Darien 2013: 16). The NYPD used diversity as a way of avoiding making changes to police practice to reduce its racially disparate impact -- pluralizing representatives in the department explicitly in order to avoid developing strong mutual relationships and accountability mechanisms.

New Institutionalism, Linked Fate, and Group Threat

Dovi’s analysis reflects the influence of new institutionalism’s analytic framework. New institutionalism treats institutions as political actors in their own right, engaged in dynamic relationships with other political actors such as activists, elected representatives, etc. “The state is not only affected by society but also affects it. Political democracy depends not only on economic and social conditions but also on the design of political institutions” (March and Olsen 1983: 738). Police departments are administrative agencies empowered to carry out the executive function of enforcing criminal law. The institutional structure of an executive administrative agency has political implications in itself. As noted above, law enforcement institutions are removed from traditional mechanisms of accountability such as elections, and avoid other accountability mechanisms such as civilian review boards. That does not mean there is no method of holding police accountable to the public; just that reform proposals must look at the structure of the administrative agency/institution, understanding a law enforcement department

as an institutional political actor, in order to develop robust and effective reform mechanisms. Understanding political society – and political issues such as police reform – requires understanding the autonomy and interdependence of institutions. We must at the same time recognize that the current state of policing has developed into what it is because of *institutions'* actions, in the interest of expanding their own power, and in pursuing particular policy outcomes to legitimize that power (Hinton 2015).⁸

Institutions have a significant impact on policy implementation, and do not come under sufficient public scrutiny for adequate evaluation of the success or failure of their policy outcomes (Feeley and Simon 1992: 456). Yet this autonomy does not mean that institutions act in a vacuum. As political actors they react to and interact with forces around them. “The new institutionalism... argues that preferences and meanings develop in politics, as in the rest of life, through a combination of education, indoctrination, and experience. They are neither stable nor exogenous” (March and Olsen 1983: 739). Therefore, while law enforcement departments can and do act as autonomous political actors, at the same time they react to cultural and social forces -- and individuals -- from within and without the institution. Therefore, political reformers must take into account the limitations of descriptive representation, the need for robust accountability mechanisms, and the structure of police institutions when crafting reform strategies.

Understanding the power of institutions in shaping political reality, we must also account for the power of individuals as employees to shape institutions. Street level bureaucrats (which is what many police officers are) can influence the culture of agencies and agency decision-making

⁸ “These [Great Society programs] and other measures blended the opportunity, development, and training programs of the War on Poverty with the surveillance, patrol, and detention of programs of Johnson’s newly declared ‘War on Crime.’ This entanglement of Great Society policies allowed law enforcement officials to use methods of surveillance that overlapped with social programs -- for instance, anti-delinquency measures framed as equal opportunity initiatives -- to effectively suffuse crime-control strategies into the everyday lives of Americans in segregated and impoverished communities.” (Hinton, 101)

by how they use their discretion to interpret and implement institutional policies. Much of this discretion is based on the individual bureaucrat's perception of a civilian individual's moral worthiness (Maynard-Moody and Musheno 2003).

As an example, one study on the effect of administrative culture on Unemployment Insurance (UI) dispositions found that individual street-level bureaucrats have influence over the outcome of UI claims. Operating with a large degree of individual discretion as well as highly regulated standards and rules, "citizen-agents" assess the needs and worthiness of individual clients in determining eligibility and do not rely exclusively on the rules and hierarchies of the organization" (Wenger 2014: 254). The author posits that "when the bureaucrat and the client share an attribute (such as race) the bureaucrat may be more willing to stretch the rules to overcome past discriminatory factors" (Wenger 2014: 255). Much of the conclusion in this examination is based on Maynard-Moody and Musheno's seminal study on police officer discretion. That work found that citizen-agent discretion is exercised by judgments about individuals' worthiness, a judgement that bureaucrats may determine by comparing the individual to themselves. In both of these conclusions, the assumption is that the bureaucrat will exercise positive discretion when and if they identify with the individual with whom they are interacting.

Maynard-Moody and Musheno's analysis fails to take into account the complexity of descriptive representation that Dovi outlines. However, it does demonstrate the importance of individual attitudes of bureaucrats in the creation of both department culture and policy outcomes. "The bureaucrats working in public agencies are often the first, and sometimes the only, contact that the public has with the bureaucracy. Because this contact is most often with street-level bureaucrats who exercise discretion, their attitudes, values, and predispositions are

important factors in determining whether clients are provided aid or are further disadvantaged” (Wenger 2014: 255). Again -- while this seems to support an argument that diversity will have an impact on policing outcomes, in fact it opens up a more complex conversation: the individual attitudes of black police officers.

Dawson’s ‘linked fate’ theory explains that, for African-Americans, it is the association of individual with group interest that drives political participation in party politics; and that ultimately racial interests are more determinative of African-American *partisan* political choices than economic interests. He notes that race is more important for determining group political behavior and party identity of African-American participation at least in part due to the limitations of the American political system: “the truncation of the American political spectrum and the subsequent limited choices in candidates available to African Americans may mask intragroup differences among African Americans while accentuating interracial differences” (Dawson 1994: 154).

“African-Americans’ perceptions of the interests of the racial group explain to what degree and under what circumstances the economic divisions within the African-American community will become politically salient” (Dawson 1994: 46). It is here that diversity of opinions about law enforcement may offer a space to express different political goals/priorities within the African American community. Indeed, it is within the criminal justice policy arena that we witness strong political disagreement within Black communities. One example of this is the support of the Black middle-class community for New York State’s racially discriminatory Rockefeller Drug Laws (Fortner 2015). Passed in 1973 by a Republican state administration, these drug laws made crack-cocaine sentencing disparities a statutory requirement. While Dawson’s analysis could apply to this example (that Black middle-class voters were voting on

racial interests, articulating the need for reduced crime in Black communities), it would also suggest the forefronting of class interests as determinative of racial interests: what is good for the Black middle class is good for the Black lower class. Dawson's linked fate analysis seems to not explain the behavior of black police officers. However, this analysis may in fact explain the discrepancy between expectation and reality: administrative discretion allows for the expression of greater diversity of political opinion within Black communities than can be expressed electorally, and that opinion may be shaped by different class experiences and interests.

This analysis suggests that black police officers do not identify with black civilians. There may be several reasons for this: for example, class differences of those who can meet department qualifications; different expressions of 'linked fate' interests – i.e., black individuals may become police officers in order to 'clean up their streets,' believing that arrests are necessary to protect black communities. While New Institutionalism helps us understand why changes to police policy are so difficult to achieve, Dawson helps us explain intra-groups differences that may clarify the behavior of minority police officers.

Historically, there is a strong "*dynamic relationship between social control and minority presence*" -- in other words, policing policies react to changes in the size of the black population; and in particular to the size of the section of the black population that poses a political or economic threat to white individuals (Myers 1990: 382). White voters' perception of 'group threat' influences their electoral behavior (Abrajano and Hajnal 2014). In New York City, the only elected office involved in the police department institution is an elected executive officer who appoints the police chief. In Ferguson, the elected city council appoints a City Manager who appoints a police chief. This hierarchical structure means that there is no role for pluralistic electoral behavior within the department – that is, there is no representation of different or

opposing political values. Constituents vote into office a candidate who is likely responsive to white voter concerns of black threat. This, in combination with the analysis that black officers are less likely to identify with black civilians because of intra-group differences, explains why simple diversity does not have an effect on limiting the racial bias of police practices.

Ferguson

Ferguson, MO is where the notorious killing of Michael Brown took place, sparking a nationwide call for police reform. After Michael Brown's death and a number of protests, the Department of Justice issued an investigation into the Ferguson Police Department (FPD). This report reached the following conclusion:

Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community. Further, Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes. Ferguson's own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities.⁹

Ferguson's city government includes an executive officer called the City Manager. The City Manager is appointed (for an indefinite term, and subject to removal) by an elected City Council. The City Manager acts as a chief administrator and executive, and directly supervises all city officers including the police department. The City Manager appoints the Police Chief. In 2015, the FPD was comprised of 54 officers, only 4 of whom were black (Department of Justice 2015: 2).

The DOJ report found that many police encounters with civilians end up in issuing

⁹Department of Justice 2015: 2

violations or citations for minor offenses. These offenses are typically filed as municipal offenses, which are resolved by the Municipal Court. The Municipal Court operates as part of the Police Department. The Municipal Judge is nominated by the City Manager and approved by the City Council. The current Judge has been serving for 10 years and is white. While the Municipal Judge presides, the Court Clerk -- who is employed by the police chief -- has greater management control and very broad authority over the Municipal Court.

Applying new institutionalism's analysis, the FPD as an institution is characterized by a lack of independence as an agency, by its unitary nature, and the multiple structural ways of removing the influence of public accountability. Specifically, the report found that the FPD failed to provide adequate supervision over street-level officers; failed to collect reliable data on pedestrian stops; and generally had systemic institutional deficiencies in oversight (Department of Justice 2015: 15). These institutional policies are the result of political priorities: "the FPD's lack of systems to detect and hold officers responsible for misconduct reflects the department's focus on revenue generation at the expense of lawful policing" (Department of Justice 2015: 15). Additionally, institutions have a specific power over the cultural dynamic of departments, and in a department that is *not* racially diverse, individual officers are simply not going to identify with or find worthy black civilians. "Enough officers—at all ranks—have internalized this message that a culture of reflexive enforcement action, unconcerned with whether the police action actually promotes public safety, and unconcerned with the impact the decision has on individual lives or community trust as a whole, has taken hold within FPD" (Department of Justice 2015: 12).

These administrative policy choices are made intentionally; they are not accidents. The structure of the institution and the administrative policies of the institution reflect an intentional

decision to target black civilians.¹⁰ If we also apply the ‘group threat’ analysis, we see that as the black population in Ferguson grew, so did both the total amount of police interaction with civilians and the racial disparity of those interactions.¹¹ The report notes that “while Ferguson’s total population has stayed relatively constant in recent decades, Ferguson’s racial demographics have changed dramatically during that time.” In 1990, Ferguson was 74% white, 25% black. In 2000, the black population became a majority at 52% of the population. In 2010, 67% of Ferguson’s population was black, while the white population decreased to 29% (Department of Justice 2015: 6). In addition, in 2015, 7.3% of the white population and 29.7% of the black population lived below the federal poverty line. Targeting a disproportionately impoverished population in order to generate city revenue is an institutional choice responding to the social threat white people in Ferguson experience (Department of Justice 2015: 42).

The racism of the FPD has become notorious after the Michael Brown killing, and the DOJ report reaches the explicit conclusion that indeed FPD policy was created with explicit discriminatory intent (Department of Justice 2015: 4). It is my argument that the new institutionalism and group threat analysis explain why FPD practices are so motivated by racial animus, and will also explain why the NYPD continues to practice racially biased policing even with a more diverse police force.

New York City

In *Floyd v. City of New York*, the US District Court for the Southern District of New York found that the NYPD’s stop-and-frisk policy violated the Constitution’s 4th Amendment

¹⁰ “Ferguson’s own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities.” (DOJ 2015, p 2)

¹¹ In 2009, the FPD conducted 24,000 traffic cases and 28000 non-traffic cases. That year, the Court had 16,178 new cases filed, 8,772 of which were successfully resolved. In 2014, the FPD conducted 53,000 traffic cases, 28,000 non-traffic cases. That year, the court had 24,256 new cases filed, and 10,975 resolved. Department of Justice, 9.

prohibition against unreasonable searches, and the 14th Amendment's Equal Protection clause by being systematically conducted in a racially discriminatory manner. One of the most damning statistics mentioned in the case is that in 2011, *over 100%* of young black and Hispanic men (ages 14-24) were stopped by the NYPD (Parascondola 2012). Again: in 2011, there were 168,000 recorded incidents of young black men being subjected to stop-and frisk, and only 158,406 young black men who lived in the City.

The NYPD continues to use and defend broken-windows policing even after the court's ruling that stop-and-frisk be curtailed. Reports from advocacy organizations such as the Police Reform Organizing Project document the continuation of this policy even as it has changed; for example, while stop-and-frisk has gone down in the past several years, there has been a correlated increase in tickets and summonses -- an increase that continues to reflect dramatic racial bias. In 2015, 90% of tickets and summonses issued were issued to black or Hispanic individuals; charges included things like possession of marijuana (Police Reform Organizing Project 2015). The racial bias of the NYPD's practice is notorious: as the maps at the end of this paper demonstrate, racial bias is endemic throughout the department. Police resources remain targeted in neighborhoods of color and on minor quality-of-life offenses like turnstile jumping, targeting as a matter of policy low-income Black and Hispanic individuals. And yet the NYPD is one of the most diverse police forces in the country, with its last incoming class comprising a majority minority group, and its overall rank and file demographics coming close to reflecting the diversity of New York City as a whole (O'Connor 2016).

The NYPD is an administrative agency under the purview of the Mayor's office. The elected Mayor appoints a Commissioner who is in charge of the entire department, which itself is comprised of both specialized bureaus and geographic precincts. In 1993, the Civilian Complaint

Review Board (CCRB) was formed in order to investigate individual officer misconduct. It has no policy making and no prosecutorial power. Since 2014, the Mayor also appoints an Inspector General, who has no subpoena or policy power, but can review department policies and issue reports. The NYPD is institutionally isolated from other political actors, in particular voters, and fights to maintain that independence.

NYPD policing consists of a wide variety of institutional priorities and administrative policies, much of which depend on a particular bureau or precinct. However, there are some department-wide policies that do much to shape the racial bias of police practice. One of these is “Operation Impact.” This program was designed to train rookie police officers by sending them to ‘hot spot’ crime areas. This training program is part of what creates such a strong culture of “us vs them,” encouraging rookie officers to take aggressive approaches in situations that, in one incident, led to the fatal shooting of Akai Gurley¹² by Peter Liang (Wang 2016). While then-Commissioner Bratton indicated his plans to reform Operation Impact training by pairing rookie officers with veterans, the policy changes have not yet been implemented (Weiss 2016).

A related policy of the NYPD is “Operation Clean Halls,” a program that began in 1991. This program -- also called the Trespass Affidavit Program -- allows the NYPD officers to establish continuous ‘vertical patrols’ in stairways and hallways of NYCHA buildings as well as privately owned buildings with permission of the landlord. Operation Clean Halls is meant to address drug sales in these buildings; however, it has turned into a mill of churning out stops, tickets, and arrests, and is concentrated in minority neighborhoods. According to one report, “Police officers conduct floor-by-floor sweeps of these buildings and can, and often do, stop and

¹²The racial politics of an Asian-American officer shooting a Black man -- and then successfully being prosecuted for manslaughter, a rarity in police brutality cases -- are currently beyond the scope of this paper but worth exploring in the future.

frisk or arrest tenants and their guests for trespassing. As a result, even innocent tasks such as throwing out the garbage or walking through apartment building hallways or stairwells without identification can lead to arrest on charges of trespassing. Friends and visitors of apartment dwellers are also in danger of being arrested for trespass” (Police Reform Organizing Project 2013). This program was subject to a recent lawsuit charging that “the program is part of a citywide practice of suspicionless police stops and arrests that primarily impact communities of color” and which ended in a settlement earlier this year (NYCLU 2017). As with Operation Impact, while the Department has issued official statements that it will implement changes in the program, as of yet none have been enacted.

Perhaps the two single most important institutional driving forces behind NYPD practice are the quota system and Compstat. Compstat is a statistical system that analyzes crime data; precincts are evaluated on the basis of how many and what kinds of crimes are reported, and how many are solved. This leads to incentives to over-report certain numbers (police activity) and under-report other numbers (serious crimes). “In the NYPD, Compstat is where upper management pressures line workers.... Essentially, the unwritten message of Compstat is that if the numbers of crime are going up, say ‘good-bye’ to your career” (Eterno 2012: 25). The method of tracking information -- and the competition to ‘turn out’ numbers that it engenders between precincts -- works in conjunction with the quota system.

The quota system is widely acknowledged (it is explicitly mentioned in the Floyd decision as a driving force of the unconstitutional stop and frisk program); even as it is officially denied. It is a violation of New York State labor law, and in 2006 an arbitrator found that the NYPD had in fact instituted a quota system in violation of this law (Fahim 2006). Yet ten years later this system is still in full effect, resulting in in hundreds of thousands of tickets,

summons, and arrests conducted every year by the NYPD.¹³ In another recently settled lawsuit, the New York City government agreed to pay \$75 million for individuals given hundreds of thousands of bogus summonses, a product of the quota system (Tempey 2017).

Perhaps the most unsettling reality of the quota system is the length to which the NYPD leadership will go to avoid acknowledging it. In 2010, reporter Graham Rayman published a series of articles based on undercover tapes officer Adrian Schoolcraft had recorded. Those tapes revealed a strongly enforced quota system with an explicit racial bias. After Rayman's report was released, the NYPD arrested Schoolcraft and placed him in a psychiatric unit for six days against his will (This American Life 2010). The notorious "Blue Wall of Silence" culture prevents many individual officers from speaking out against the quota system (Goldstein 2012). Adrian Schoolcraft's story reflects the costs of crossing that wall.

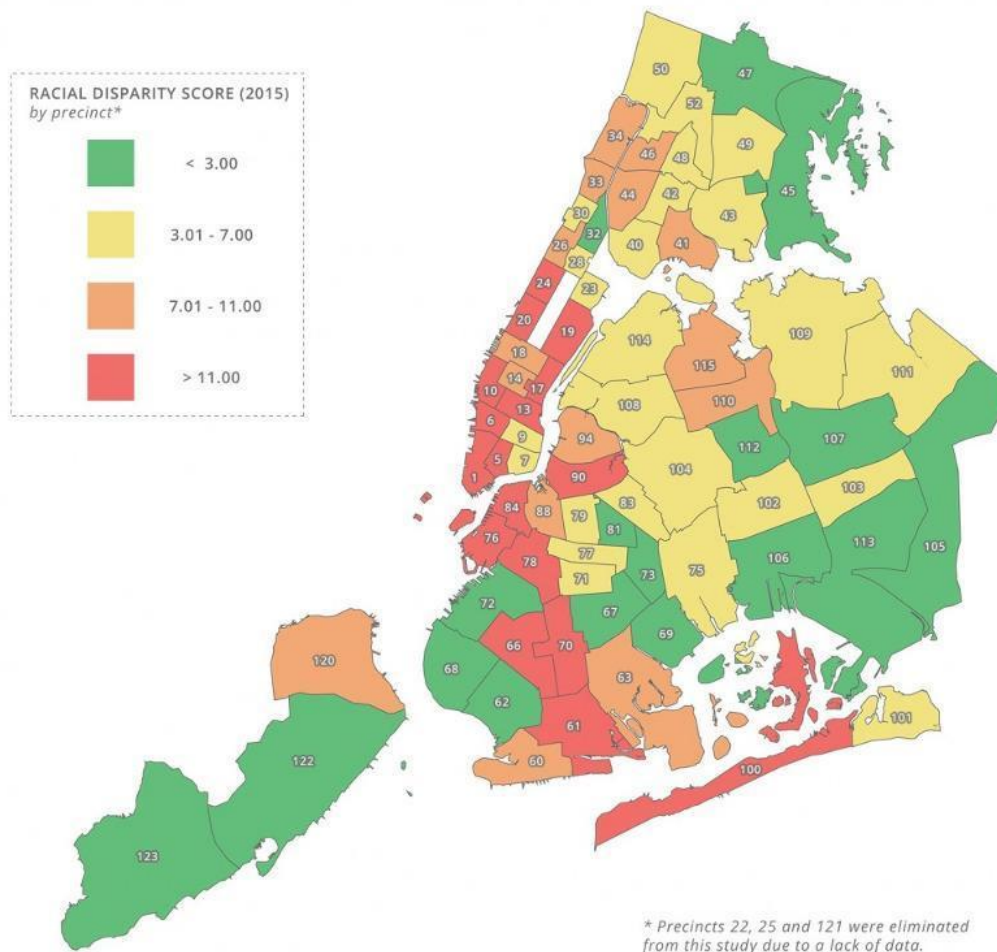
And yet some police officers do speak out against the quota system, and against the racial bias of policing in NYC. There is currently a lawsuit filed by 12 minority officers against the NYPD over the quota system (Sit 2016). The police union -- which rarely publically speaks out against management -- has at various times spoken out against the imposed quota system for creating untenable working conditions for officers (Rayman 2012). This lawsuit, as well as the union's continued statements acknowledging and opposing the use of quotas, indicate that diversity within the police force has the potential to create changes reforming department practice. Yet it also indicates the limits of diversity in changing institutional culture. Without robust accountability mechanisms, and a recognition of the limits of simple diversity because of intra-group differences, significant reform is still a long way off.

¹³ For example, almost a quarter of a million misdemeanor arrests alone are made by the NYPD each year (Police Reform Organizing Project 2015b).

Conclusion

The institutional structure of the NYPD creates rules and procedures that encourage racially biased policing and avoid external accountability mechanisms. Minority officers within the NYPD have a limited effect on these practices in part because of a lack of self-identification with civilians. However, even when minority officers wish to change the practices of the department, they face significant institutional barriers and professional repercussions for doing so.

Diversity is a laudable goal, one that should be pursued for a number of political reasons. However, diversity alone within law enforcement does not have an impact on the racial bias of police practices. This is because of the nature of law enforcement departments as institutions that behave as autonomous political actors in shaping internal culture and external practice. It is also due to the political impact of white racial fear, as well as the diversity within minority communities. Reform proposals must account for the strength, adaptability, and autonomy of law enforcement departments as agencies, and must also account for political differences within minority communities.

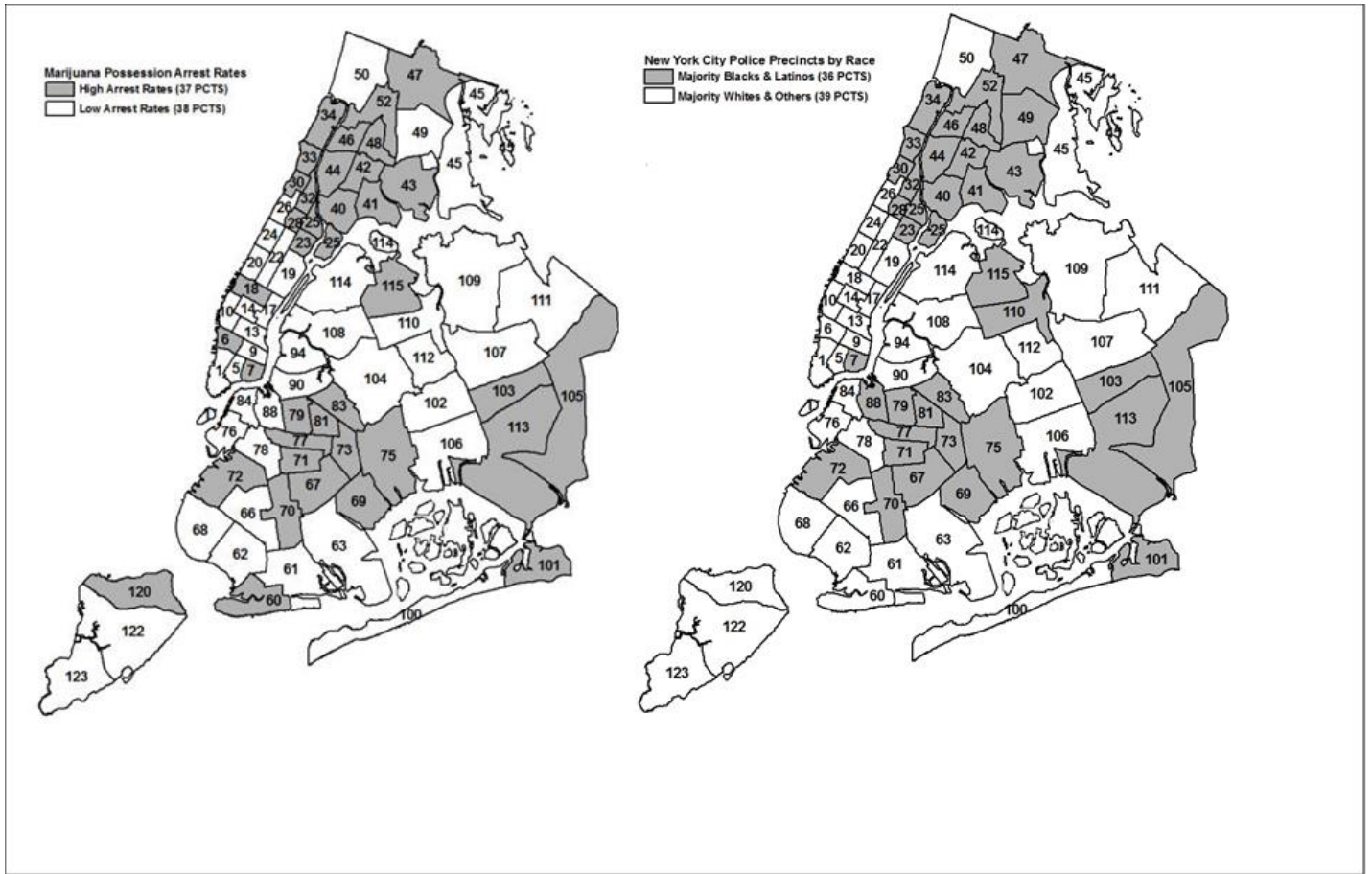


This map reflects an analysis of racially disparate police practices by precinct.

“While prior analyses of the stop-and-frisk program mainly focused on the overall discriminatory practices of the policy, we looked at precinct level data to identify areas with the largest disparities between the racial makeup of the community and the racial makeup of the stop-and-frisk incidents within that community. In other words, holding all else equal, in a precinct where 10% of the community is black, black residents should represent only 10% of the total number of stop-and-frisk incidents occurring in that community. If that number is substantially higher than 10%, then racial profiling may be contributor to this disparity. To compare precincts we created an index called the Racial Disparity Index (RDI) to compare across precincts.”

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These maps reflect the 2013 precinct-level relationship between marijuana arrests and racial demographics. From the Marijuana Arrests Research Project. Available at <http://marijuana-arrests.com/graph6.html>

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