



– Essays on Race and Guns in America –

Disarming the Police: Blue Lives, Black Lives and Guns

Margareth Etienne*

The theory of interest convergence, articulated first by Professor Derrick Bell in a Harvard Law Review article, states that “the interests of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”¹ Using the landmark school desegregation case of *Brown v. Board of Education*² as an example, Bell argued that the country’s shift away from segregation in schools was occasioned more by America’s need to demonstrate its moral superiority to communist nations during the Cold War and the impetus to help industrialize the south,³ than by sudden appreciation for the immorality of segregation.⁴ Interest convergence theory applies to many forms of racial inequity and injustice beyond school desegregation. Modern day adherents of Bell’s theory continue to find ulterior motives among all efforts toward social and legal advancements for African-Americans.⁵

It’s possible to view interest convergence as a highly cynical description of the political process when it comes to racial equality. But one might also view it as a pragmatic tool to help effect social change, or at least to identify the underlying conditions that make change possible. If the interests of African Americans on a particular issue converge with White majoritarian interests, then that alignment can be harnessed to produce a mutually beneficial result.

It is with this latter view that we might approach the disheartening and steady scourge of police violence against civilians in the United States, and the disproportionate impact it has on Black and Latino communities. One response to law enforcement’s use of excessive force has been the refrain that “Black Lives Matter,” often accompanied by a rallying cry to defund or abolish the police. Police advocates and supporters have responded with a slogan of their own, somewhat of a non-sequitur, that “Blue Lives Matter.” In this essay, I argue there is a point of convergence between the interests of those who want to reduce excessive force incidents—most notably shootings—against (disproportionately Black male) civilians and the interests of police officers who claim to shoot in protection of their lives. That point of convergence is disarmament, and it begins with the police.

* Carl L. Vacketta Professor of Law, University of Illinois College of Law at Urbana-Champaign (metienne@law.illinois.edu). I am grateful to fellow participants of the *Race and Guns in America* roundtable for their comments and suggestions, and to the Duke Center for Firearms Law for hosting a terrific symposium of which this paper was one small part.

¹ Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

² *Brown v. Board of Ed. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 (U.S. 1954).

³ *Id.* at 524-25.

⁴ *Id.*

⁵ Alexis Hoag, *Derrick Bell’s Interest Convergence and the Permanence of Racism: A Reflection on Resistance*, HARVARD LAW REVIEW BLOG (Aug. 24, 2020), blog.harvardlawreview.org/derrick-bells-interest-convergence-and-the-permanence-of-racism-a-reflection-on-resistance/.



– Essays on Race and Guns in America –

Among the recent outcries to defund,⁶ and in some circles, to abolish⁷ the police in the United States, one argument that has not been made seriously is that of disarming the police. This may sound like a far-fetched thought experiment but hear me out. This Essay proceeds in three parts. I argue first that there is ample precedent for police disarmament as many countries around the world have fully or partially disarmed their law enforcement officers. Second, I show that concerns for officer safety have been greatly exaggerated. And that, in any event, disarmed police forces sufferer few fatalities than do American police officers. And third, I consider some positive direct and collateral consequences of disarming the police.

Nineteen Jurisdictions Have Disarmed Police Forces

American police forces would not be alone in disarmament. Eighteen nations and one U.S. territory (the U.S. Virgin Islands) maintain police forces who do not carry firearms in the ordinary course of their duties.⁸ The countries include Botswana, Fiji, Iceland, Ireland, Malawi, Marshall Islands, New Zealand, Norway, Samoa, and the United Kingdom, among others.⁹ Among these, I aptly focus on the United Kingdom, as it is the system of government and socio-cultural norms most similar to that of the United States.

In the United Kingdom (including England, Wales, Scotland but not Northern Ireland) only a small group of highly trained officers carry firearms. Among the 135,301 full-time officers in England and Wales, 6,543 (4.8%) were armed as of March 2021.¹⁰ In Scotland, 3.04% of officers are authorized to carry firearms. The percentage is only much higher in Ireland but remains only at approximately 20% of officer qualified to use firearms.¹¹

Nor are these police officers clamoring for guns. One study revealed that 82% of Police Federation¹² members surveyed said that they did not want officers to be routinely armed, even though nearly half also said then they had faced life threatening situations within the last three years. Remarkably, these officers felt safer without guns. New Zealand officers also have reason

⁶ DEFUND THE POLICE, <https://defundthepolice.org/> (last visited Dec. 21, 2021).

⁷ Ben Kessler, *Calls to reform, defund, dismantle and abolish the police, explained.*, NBC NEWS (Jun. 8, 2020), <https://www.nbcnews.com/news/us-news/calls-reform-defund-dismantle-abolish-police-explained-n1227676>.

⁸ Philip Alpers and Michael Picard, *Guns in the United States: Routine Arming of Police*, GUNPOLICY.ORG (Sep. 24, 2021), https://www.gunpolicy.org/firearms/compare/194/police_use_of_firearms/ (add countries from left column, then click “compare” hyperlink to generate table).

⁹ *Id.*; see also Jon Kelly, *Why British police don't have guns*, BBC NEWS MAGAZINE (Sep. 19, 2012), <https://www.bbc.com/news/magazine-19641398> [<https://perma.cc/A24H-AMNF>].

¹⁰ GOV.UK, *Police use of firearms statistics, England and Wales: April 2020 to March 2021 second edition* (Jul. 22, 2021), <https://www.gov.uk/government/statistics/police-use-of-firearms-statistics-england-and-wales-april-2020-to-march-2021/police-use-of-firearms-statistics-england-and-wales-april-2020-to-march-2021>.

¹¹ Rick Noack, *5 countries where most police officers do not carry firearms – and it works well*, WASH. POST (Jul. 8, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2015/02/18/5-countries-where-police-officers-do-not-carry-firearms-and-it-works-well/>.

¹² Kelly, *supra* note 9.



– Essays on Race and Guns in America –

to feel safer. One professor calculated that it was safer for police not to carry weapons.¹³ This is true despite New Zealand’s relatively higher level of citizen gun ownership as compared to other countries—though not compared to the United States ownership figures. Iceland’s gun ownership rate rivals the United States, with approximately one-third of the citizens owning guns while police officers do not.¹⁴

Officers may ultimately be safer when they were not armed—but so is the public. Consider the number of fatal police shootings in England and Wales in 2018 to 2019: only three.¹⁵ In Norway, there were only two deaths in the more than ten years spanning from 2002 to 2014.¹⁶ On the other hand, the United States has approximately 1000 (approximately, because the U.S. does not keep reliable records on this¹⁷) fatal officer shootings per year. Even accounting for differences in population, police officers in the United States carry out more than 50 times the number of fatal shootings as British officers. When Icelandic police shot a man in 2013, it was said to be the first time police had fatally shot a person in the country’s history.¹⁸ These differences are worthy of attention.

How do other countries—some highly industrialized, some ethnically diverse with large urban centers, some with high levels of gun ownership, some with similar common law criminal law principles—have such different approaches to armed policing? American police officers approach every encounter with the public on the assumption that that they are in a war zone and every individual—man, woman or child—is armed until proven otherwise. This approach has serious ramifications for policing and for public and officer safety.

Are American Police Officers Generally in Great Danger?

Contrary to civilians, police are not fatally shot in high numbers

The primary objection to police disarmament is likely to be that officers need their guns for safety and that any proposal to disarm them fails to take officer safety seriously. As noted above, jurisdictions in which police officers do not generally carry guns actually involve fewer officer fatalities, even in populations with high rates of gun ownership. But more importantly, it is important that we begin to dismantle the myth that police officers are in constant and immediate danger. Policing is an incredibly stressful and difficult job that demands patience, integrity and professionalism. They deserve our gratitude. However, most officers are not typically harmed by

¹³ Noack, *supra* note 11.

¹⁴ *Id.*

¹⁵ *Number of fatal shootings by police in England and Wales from 2004/05 to 2018/19*, STATISTA (Jun. 8, 2021), <https://www.statista.com/statistics/319246/police-fatal-shootings-england-wales/>.

¹⁶ Adam Taylor, *Norway gave its cops guns. After 1 year, it’s taking them away. What did it learn?*, WASH. POST (Feb 5, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/02/05/norway-gave-its-cops-guns-after-1-year-its-taking-them-away-what-did-it-learn/>.

¹⁷ Tom McCarthy, *The uncounted: why the US can’t keep track of people killed by police*, THE GUARDIAN (Mar. 18, 2015), <https://www.theguardian.com/us-news/2015/mar/18/police-killings-government-data-count> [https://perma.cc/9MA6-LY86].

¹⁸ Noack, *supra* note 11.



– Essays on Race and Guns in America –

civilians on the job.¹⁹ According to the data collected by the Federal Bureau of Investigations in the Uniform Crime Reports for the decade spanning from 2011 to 2020, a total of 503 police officers were feloniously killed in the line of duty.²⁰ That’s an average of approximately 50 officers killed each year.²¹ These deaths are certainly tragic but to understand the scope of the problem, it is worth noting that the statistics for 2020 encompass 9,895 agencies and cover 505,212 officers.²² It is probable that the guns police carry have some deterrent effect and help account for the low police deaths, but it’s unclear how much of that deterrence is achieved by the high resolution rates and aggravated sentences for crimes against police officers.

In contrast, data regarding civilian deaths at the hand of police tell a different story. For the years 2015-2021—a considerably shorter subset of the decade described above—police officers shot and killed 6,810 people.²³ While the number of fatalities ranged from 1021 to 865 depending on the year, on average, 972.86 people were fatally shot by police per year. This figure does not account for death by other means, shootings that do not result in death or other forms of assault or excessive use of force. In other words, the number of civilians that police fatally shoot each year is nearly 20 times more than the number of officers killed feloniously by all means each year.

Firearms Pose Great Danger to Blue Lives

While the danger to officer lives is not nearly as high as many suppose—and certainly not as high as the danger to civilian lives in a police-civilian encounter—the reality is that guns play an outsized role in all of these deaths.

The greatest danger to police lives at the hand of civilians are firearms and the rise in gun ownership. Of the 503 officers killed in the last 10 years, 458 were killed with firearms. And 17 of those officers were killed with the officer’s own firearm. The biggest danger to civilian lives is the excessive use of force using firearms in large part because of officer exaggerated—but perhaps genuinely held—assumptions regarding the dangerousness of civilians.

¹⁹ Policing doesn’t make the top twenty list of most dangerous jobs according to the U.S. Bureau of Labor Statistics; it comes in at 25 after construction workers, pilots, drivers, farmers, landscapers, and the like. *See Table 5. Fatal work injury rates per 100,000 full-time equivalent workers by selected occupations, 2019-20*, U.S. BUREAU OF LAB. STAT., (Dec. 16, 2021), <https://www.bls.gov/news.release/cfoi.t05.htm>.

²⁰ FBI, *2020 Uniform Crime Report: Law Enforcement Officers Feloniously Killed*, <https://crime-data-explorer.app.cloud.gov/pages/downloads> (under “Law Enforcement Officers Killed and Assaulted Annual Reports,” select “Officers Feloniously Killed” from the leftmost dropdown menu, then select the year “2020” from the next dropdown menu, then click the “download” hyperlink to download the report).

²¹ Officers are assaulted in much larger numbers than they are killed, . *See id.* In 2019 for example, 17,188 officers sustained injuries from assaults. These assaults were typically with hands, fists or feet, but 3.8% were assaulted with firearms. Of that 3.8 %, 5.6% sustained injuries from firearms. *Id.*

²² FBI, *2020 Uniform Crime Report: Law Enforcement Officers Assaulted*, <https://crime-data-explorer.app.cloud.gov/pages/downloads> (under “Law Enforcement Officers Killed and Assaulted Annual Reports,” select “Officers Assaulted” from the leftmost dropdown menu, then select the year “2020” from the next dropdown menu, then click the “download” hyperlink to download the report).

²³ *Police Fatal Force Database*, WASH. POST (Dec., 16, 2021), <https://washingtonpost.com/graphics/investigations/police-shootings-database/>.



– Essays on Race and Guns in America –

These are dangerous assumptions. But they grow truer every day. According to the best gun sale data collected by the FBI using firearm background checks statistics, gun sales were up by 26% in 2021,²⁴ over the already 40% increase in gun sales from the previous year. This is a not a pandemic-inspired trend. Indeed, gun sale figures have risen in most years since 1999, the first full year that the FBI has tracked these figures. There are not only more gun sales, but there are also more gun owners. Approximately 20% of these sales were made by new gun owners,²⁵ with presumably less training and experience.

The police officer’s fear of civilians with guns is not unfounded. In 2020, 42% of American households possessed at least one firearm.²⁶ Gun control laws are one answer. Some studies²⁷ have shown that gun control laws correlate with lower rates of homicide by police officers, who fear that civilians may be carrying a weapon. While it doesn’t prove causation, the correlation between the rate of gun ownership and the rate of police shootings suggests that police feel safer—and thus we would all be safer—with fewer guns per capita.

Police training could be one answer to this problem, but that’s unlikely. Arguably, officers could be educated about the fact that most gun owners keep their firearms at home for protection. Although 36% of American adults now own guns, only 18% of gun owners carry their firearms daily. Unfortunately, the efficacy of police training in many areas—from implicit bias to de-escalation to threat perception failure—has been controversial in both progressive and conservative circles. There is little evidence that it would be a solution here, especially when officers perceive their lives to be at risk. A better solution for everyone would be to enact reasonable limitations on the number of firearms with which police officers have to contend.

Where Blue Lives Interests Converge with Black Lives—Gun Control

When police officers assume that more civilians are packing, they are more likely to use force, and thus more likely to use excessive force. Gun control laws—licensing requirements, age limits, mental health restrictions—might alleviate some of the unnecessary sense of dangerousness. Of course, some argue that the opposite is true—that gun control laws only restrict access of law-abiding civilians but do not deter those who are prepared to violate the law anyway and therefore such laws do not enhance public safety or officer safety.

²⁴ Douglas A. McIntyre, *Gun Sales Reach 19 Million: Here’s Every State Ranked*, 24/7 WALL ST (June 4, 2021), <https://247wallst.com/consumer-products/2021/06/04/gun-sales-reach-19-million-heres-every-state-ranked/> [https://web.archive.org/web/20211110175345/https://247wallst.com/consumer-products/2021/09/04/gun-sales-top-27-million-every-state-ranked/].

²⁵ Edward Helmore, *US gun sales spiked during pandemic and continue to rise*, THE GUARDIAN (May 31, 2021), <https://www.theguardian.com/us-news/2021/may/31/us-gun-sales-rise-pandemic> [https://perma.cc/WSB4-2YXN].

²⁶ *Gun Ownership in the U.S. 1972-2020*, STATISTA (Nov. 24, 2020), <https://www.statista.com/statistics/249740/percentage-of-households-in-the-united-states-owning-a-firearm/> [https://perma.cc/4F52-ATR4].

²⁷ Aaron J. Kivisto et al, *Firearm Legislation and Fatal Police Shootings in the United States*, 107 AM. J. OF PUB. HEALTH, 1068 (June 7, 2017), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.303770> [https://perma.cc/C3BU-T2L6].



– Essays on Race and Guns in America –

However, the problem with an overflow of guns is that even well-intentioned officers cannot always differentiate between law abiding citizens who have legal firearms and criminals who do not. This is especially true when race enters the picture. Both Black and White officers are more likely to assume that a Black person is carrying a gun, and that a Black person carrying a gun is a criminal than they are to assume this of a White person. This is known as a “threat perception bias”²⁸ and is based in part on stereotypes that equate Blacks with criminality and dangerousness. Despite their enormous and very public failures, police officers are actually better at this than the average untrained civilian. But they are not nearly good enough.

Police shootings continue to rise, and they impact all lives. Statistics²⁹ show that although African-Americans were killed by police in 2020 at far higher rates than other groups, more Whites were fatally shot by cops (457) than African-Americans (241) and Latinos (169) combined. The race and ethnicity of 154 victims that year were classified as “other” or “unknown,” but all these lives matter. Even when police shootings are deemed justifiable—which occurs far too often in the eyes of the public—the trauma of taking a life will impact officers greatly. Studies³⁰ of war veterans reveal that although the fear of dying is often traumatic, bearing “responsibility for ending the life of another human is a significant source of trauma” as well. In other words, killing is bad for police officers too. Black and Blue Lives interests converge when fewer civilians are armed *and fewer police are armed*.

Disarmament should ideally be part of a larger gun control policy. Although some other countries manage to have unarmed police officers while also having high rates of civilian gun ownership, that would be politically difficult in the United States. Police officers might feel more willing to give up their firearms if civilians gun ownership were more reasonably regulated. Moreover, gun control laws will be needed to discourage any increased vigilantism. Individuals like Kyle Rittenhouse, Michael Zimmerman, and Greg and Travis McMichael all viewed themselves as replacing absent or ineffectual law enforcement when they killed their victims. One concern is that more civilians will resort to self-help by taking the law into their own hands if police officers are not carrying firearms.

Additional Benefits to Disarmament

I have argued above that a disarmed police force is feasible (many other countries do it), that police lives are not in inordinate danger, and that high rates of armament among law enforcement and the

²⁸ Cynthia Lee, *Race, Policing, and Lethal Force: Remediating Shooter Bias with Martial Arts Training*, 79 LAW & CONTEMP. PROBS., no. 3, 145 (2016), <https://scholarship.law.duke.edu/viewcontent.cgi?article=4796&context=lcp> [https://perma.cc/5RNS-9764].

²⁹ *Rates of fatal police shootings U.S. 2015-2021, by ethnicity*, STATISTA (Nov. 1, 2021), <https://www-statista-com.proxy2.library.illinois.edu/statistics/1123070/police-shootings-rate-ethnicity-us/> [https://perma.cc/A2LV-WBM7].

³⁰ Robert T. Muller, *Death Becomes Us: The Psychological Trauma of Killing*, PSYCH. TODAY (Feb. 21, 2014), <https://www.psychologytoday.com/us/blog/talking-about-trauma/201402/death-becomes-us-the-psychological-trauma-killing> [https://perma.cc/25MD-NV2Z].



– Essays on Race and Guns in America –

public is bad for everyone, particularly racial minorities. But there are other benefits to disarming the police. I turn to these now.

First, we should acknowledge that one reason for the calls to defund and abolish the police have much to do with the sense that the regulation of police violence and the excessive use of force has been a failure. Law enforcement agencies do a poor job of regulating police misconduct generally and the criminal justice system is no better. In the United States, police officers are issued firearms and are generally left to self-regulate their use. This is not hyperbole. Officers receive significant training about when and how to unholster, use and discharge their weapons but ultimately the barometer for police use of force is left to their sense of what is objectively reasonable in the moment.

Consider the fact that the Fourth Amendment—largely believed to regulate the use of excessive force—only regulates force when seizures are involved.³¹ And yet, both the Fraternal Order of Police and the International Association of Chiefs of Police reject the notion that police use of force should be regulated by any standard beyond the Fourth Amendment-derived notion that an officer’s own sense of the “objective reasonableness” of their behavior.³² If police cannot effectively self-regulate firearms use, then removing that option from the table may be a good second-best solution.

A second benefit of disarmament is the impact it would have on training. Police forces that are not armed focus much more on de-escalation training, community policing strategies and other forms of combat. This would be a welcome move away from the hyper-masculine militaristic stance that characterizes many American police forces today.³³ Experts agree that police training is critical to the re-imagining of policing. Again, investments in better training would be mutually beneficial to police and the public.

Third, a conversation about disarming the police, even if it seems politically far-fetched to many, can begin us thinking concretely about the benefits of partial disarmament. Most jurisdictions that do not have armed police officers maintain a cadre of armed task forces, marshals or special operatives who carry firearms. Police officers can carry firearms for tasks that are known to be dangerous. Relatedly, there are officers for whom disarmament can be prioritized. While beyond the scope of this Essay, commentators have raised questions about the necessity of armed police in schools and universities, on transit system, in traffic stops to name a few. In other words, disarming the police does not have to be an “all or nothing” proposition to begin reaping some rewards.

American municipal police departments—as opposed to the U.S. Marshalls service, regional sheriffs or state rangers —have not always been armed. It wasn’t until the late 1800s that local and

³¹ Seth W. Stoughton, *The Regulation of Police Violence*, 70 EMORY L.J. 521, 523-25 (2021).

³² *Id.* at 523.

³³ See generally Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies, Terry Stops, and Police Training* (2009), 18:3 COLUM. J. GENDER & L. 671 (2009).



– Essays on Race and Guns in America –

city agencies started issuing firearms broadly to its officers and training officers to use them.³⁴ The advent of technology, from the automobile or the computer or video camera, has changed policing considerably over the years. The industrialized production and accessibility to firearms has been one of those changes. It may be time to examine the drawbacks of that change and consider a modification.

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³⁴ See Scott W. Phillips, *A Historical Examination of Police Firearms*, THE POLICE JOURNAL: THEORY, PRACTICE & PRINCIPLES 122-24 (April 10, 2020); David LaPell, *A Brief History of America's Police Sidearms* in GUNS.COM (June 30, 2011), at <https://www.guns.com/news/2011/06/30/a-quick-history-of-americas-police-sidearms>.