

THE JURISDICTION-STRIPPING CONSENT DECREE: A PRACTICAL TOOL TOWARDS POLICE ABOLITION

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A person is killed by law enforcement. There's outrage. Hurt communities cry for reform. Things change on the margin. People move on. And the story repeats.

Every year, hundreds of individuals die at the hands of police officers despite repeated attempts at reform. This senseless cycle has caused many to question the efficacy of reform in favor of a more revolutionary proposal—police abolition.

Police abolition is a worthy and necessary ambition, but one that needs practical steps to achieve it. To that end, this Note excavates the history of failed attempts at police reform and finds a nugget of hope among the wreckage—The Jurisdiction-Stripping Consent Decree.

The Jurisdiction Stripping Consent Decree reimagines police litigation through the lens of abolitionism by using existing tools at the disposal of the Department of Justice to force police departments to reduce their domain of power in society through court-enforced consent decrees.

By engaging in radical civil rights litigation through non-reformist reforms of police departments' most invidious abuses, the Jurisdiction-Stripping Consent Decree can put America on a viable path towards police abolition.

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INTRODUCTION

“How do we end police brutality?” It’s a common refrain in the history of America, yet it still seems unanswerable after centuries of attempts at police reform.¹ Even as the names and tragic deaths of those like Rodney King,² Trayvon Martin,³ and George Floyd⁴ have become recognizable by people all around the world, deaths at the hands of police officers still occur with oppressive regularity.⁵ Killings of Black men are just one example of police misconduct; abuses of power by law enforcement permeate every aspect of modern-day policing, manifesting

¹ See *infra* Section I.B.

² See generally Ronald N. Jacobs, *Civil Society and Crisis: Culture, Discourse, and the Rodney King Beating*, 101 AM. J. SOCIO. 1238, 1239–40 (1996) (explaining the impact of the video of Rodney King’s killing); Lance Morrow, *Rough Justice*, TIME, Apr. 1, 1991, at 16–17 (describing the public reaction to the killing of Rodney King); Richard Lacayo, *Law and Disorder*, TIME, Apr. 1, 1991, at 18–21 (critiquing police nationwide for being ill-equipped to fight crime and describing police abuses in numerous American cities).

³ See generally Deepti Hajela, *Trayvon Martin, 10 Years Later: Teen’s Death Changes Nation*, ASSOCIATED PRESS (Feb. 24, 2022), <https://apnews.com/article/trayvon-martin-death-10-years-later-c68f12130b2992d9c1ba31ec1a398cdd> [<https://perma.cc/JEV3-K3FF>]; Greg Botelho, *What Happened the Night Trayvon Martin Died*, CNN (May 23, 2012), <https://www.cnn.com/2012/05/18/justice/florida-teen-shooting-details/index.html> [<https://perma.cc/4M2Z-E6G9>]; President Barack Obama, Remarks by the President on Trayvon Martin (July 19, 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/07/19/remarks-PRESIDENT-TRAYVON-MARTIN> [<https://perma.cc/GEN9-N8DV>] (“Trayvon . . . could have been my son. . . . [He] could have been me 35 years ago. . . . [I]t’s important to recognize that the African American community is looking at this issue through a set of experiences and a history that doesn’t go away.”).

⁴ See *How George Floyd Died, and What Happened Next*, N.Y. TIMES (July 29, 2022), <https://www.nytimes.com/article/george-floyd.html> [<https://perma.cc/C328-A44A>].

⁵ See *supra* notes 2–4; *infra* notes 29–37.

as deadly responses to mental health crises,⁶ sexual assaults of people in custody,⁷ and violent policing of school children.⁸ Despite the cultural salience of these issues and public interest in reform,⁹ these abuses continue to occur at a systemic level.¹⁰

⁶ See generally Minyvonne Burke, *Policing Mental Health: Recent Deaths Highlight Concerns over Officer Response*, NBC NEWS (May 16, 2021), <https://www.nbcnews.com/news/us-news/policing-mental-health-recent-deaths-highlight-concerns-over-officer-response-n1266935> [<https://perma.cc/WTL2-S3QK>]; Alexis D. Campbell, *Failure on the Front Line: How the Americans with Disabilities Act Should Be Interpreted to Better Protect Persons in Mental Health Crisis from Fatal Shootings*, 51 COLUM. HUM. RTS. L. REV. 313, 324–25 (2019) (examining empirics that show individuals experiencing mental illness face disproportionate police violence).

⁷ See generally Elliott C. McLaughlin, *Police Officers in the US Were Charged with More than 400 Rapes over a 9-Year Period*, CNN (Oct. 19, 2018), <https://www.cnn.com/2018/10/19/us/police-sexual-assaults-maryland-scope/index.html> [<https://perma.cc/NKS3-MQVM>]; Lincoln Anthony Blades, *Police and Sexual Assault: When Officers Are Perpetrators*, TEEN VOGUE (Nov. 22, 2017), <https://www.teenvogue.com/story/sexual-assault-police-officers> [<https://perma.cc/D7D6-2H2M>].

⁸ See, e.g., ON THESE GROUNDS (Gravitas Ventures 2021) (showcasing the story of a young Black student who was brutalized by a police officer in response to a school disciplinary call); CNN, *Outrage After South Carolina Officer Arrests Student*, YOUTUBE (Oct. 27, 2015), <https://www.youtube.com/watch?v=1aVZAWXNm34> [<https://perma.cc/8VSW-ZJV6>] (reporting on the assault that prompted this documentary); Nicole Tuchinda, *Ending School Brutality*, 28 WM. & MARY J. RACE, GENDER & SOC. JUST. 617 (2022); Colette Billings, *Remediating Police Brutality in America's Public Schools Through Private Structural Reform Under 42 U.S.C. § 1983*, 23 TEX. J.C.L. & C.R. 55, 56 (2017). See generally Rebecca Klein, *The Other Side of School Safety: Students Are Getting Tasered and Beaten by Police*, HUFFPOST (Sept. 8, 2018), https://www.huffpost.com/entry/school-safety-students-police-abuse_n_5b746a4ce4b0df9b093b8d6a [<https://perma.cc/X8DA-DZFF>].

⁹ See Gary Langer, *6 in 10 Favor Doing More to Hold Police Accountable: POLL*, ABC NEWS (Apr. 23, 2021), <https://abcnews.go.com/Politics/10-favor-hold-police-accountable-poll/story?id=77218405> [<https://perma.cc/D37H-GB9C>]. *But cf.* Alex Samuels, *How Views on Black Lives Matter Have Changed—And Why That Makes Police Reform So Hard*, FIVETHIRTYEIGHT (Apr. 13, 2021), <https://fivethirtyeight.com/features/how-views-on-black-lives-matter-have-changed-and-why-that-makes-police-reform-so-hard> [<https://perma.cc/T794-MTS6>] (explaining how a decline in popular support for the Black Lives Matter movement is an obstacle to police reform).

¹⁰ E.g., JULIE CICCOLINI & IDA SAWYER, HUM. RTS. WATCH, “KETTILING” PROTESTERS IN THE BRONX: SYSTEMIC POLICE BRUTALITY AND ITS COSTS IN THE UNITED STATES 4 (2020), <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states#> [<https://perma.cc/3F7G-DPZJ>] (observing how the police response to a protest in the Bronx, New York, was part of a “intentional, planned” effort by the NYPD to engage in abusive police practices like “kettling”).

For some, the answer to ending police brutality and its effects on marginalized groups¹¹ is abolition.¹² The abolition of violent societal

¹¹ One example of this is the negative effects of policing on Black communities. See generally CHRIS HAYES, *A COLONY IN A NATION* (2017) (describing the rise of crime in the late twentieth century and how policing in Black communities increased in violent ways); Melissa N. McLeod, Daliah Heller, Meredith G. Manze & Sandra E. Echeverria, *Police Interactions and the Mental Health of Black Americans: A Systematic Review*, 7 J. RACIAL & ETHNIC HEALTH DISPARITIES 10 (2020) (examining multiple studies that show the negative mental health effects on Black Americans due to police interactions); Devan Byrd, Note, *Challenging Excessive Force: Why Police Officers Disproportionately Exercise Excessive Force Towards Blacks and Why This Systemic Problem Must End*, 8 ALA. C.R. & C.L. REV. 93, 111–14 (2017) (discussing how school resource officers punish Black students for normal adolescent behaviors). Policing has discriminatory effects on Latinx, Asian, and Native communities as well. See generally Julissa Arce, *It's Long Past Time We Recognized All the Latinos Killed at the Hands of Police*, TIME (July 21, 2020), <https://time.com/5869568/latinos-police-violence> [<https://perma.cc/K6EX-P9MD>] (describing the history of police violence in Latinx communities); Jason Wu, *More Policing Is Not the Solution to Anti-Asian Violence*, TRUTHOUT (Feb. 18, 2021), <https://truthout.org/articles/more-policing-is-not-the-solution-to-anti-asian-violence> [<https://perma.cc/7D3G-U7R2>] (describing multiple instances of Asian-Americans killed by police); Barbara Perry, *Nobody Trusts Them! Under- and Over-Policing Native American Communities*, 14 CRITICAL CRIMINOLOGY 411 (2006) (interviewing Native Americans about their experiences with violence and how police enable racial violence). The police also abuse their power over poor individuals. See Justin M. Feldman, Sofia Gruskin, Brent A. Coull & Nancy Krieger, *Police-Related Deaths and Neighborhood Economic and Racial/Ethnic Polarization, United States, 2015-2016*, 109 AM. J. PUB. HEALTH 458, 460–61 (2019) (describing the disparities in deaths caused by police in poor communities). Likewise, the police discriminate against people with disabilities. See, e.g., Alexandra N. Vredenburg, Keyrollos Ibrahim, Priya Bhat-Patel & Jessica Kramer, *A Systems Approach to Addressing the Intersection of Mental Health Disability, Homelessness, and the Criminal Justice System*, 65 PROC. HUM. FACTORS AND ERGONOMICS SOC'Y ANN. MEETING 1415 (2021) (describing the interlocking systems of police violence, mental disability, and homelessness). The police abuse their power over queer individuals as well. See Carrie L. Buist, *LGBTQ Rights in the Fields of Criminal Law and Law Enforcement*, 54 U. RICH. L. REV. 877, 884–92 (briefly exploring the history and present of the LGBTQ community's interactions with police); Carolyn Calhoun, Note, *"Bullseye On Their Back": Police Profiling and Abuse of Trans and Non-Binary Individuals and Solutions Beyond the Department of Justice Guidelines*, 8 ALA. C.R. & C.L.L. REV. 127, 138–40 (2017) (discussing ways to deal with the epidemic of violence against trans people and police's involvement in that violence).

¹² See Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [<https://perma.cc/QFB3-WBH5>] (explaining why “[abolitionists] want to make [police] obsolete”); Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. 120, 120, 124 (2021) (examining the phrase “defund the police” in the wake of the summer of 2020 and seeking to have the public “see the demand to defund the police as socially constructed”); John Kamaal Sunjata, *On Police Abolition: Decolonization Is the Only Way*, HAMPTON INST. (June 8, 2021), <https://www.hamptonthink.org/read/on-police-abolition-decolonization-is-the-only-way> [<https://perma.cc/MNJ8-NGVL>] (arguing that many problems plaguing the American criminal legal system are due to policing, which “constructs, (re)produces, and institutes white supremacy and anti-Blackness through racial capitalism”); V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453, 1527–33 (2019) (pointing out flaws in public-health approaches to police violence reduction and asserting that grassroots approaches could

structures is familiar in America,¹³ and abolitionist theory can be an invaluable tool by which to critique our modern state.¹⁴ Police abolition, however, has been rejected by most policymakers.¹⁵ On the other hand, incremental attempts at reform have failed to solve the problem.¹⁶ In order to end police brutality we must develop realistic tools to achieve police abolition.

This Note proposes we investigate historical efforts of police reform to create the future of police abolition through an emerging tool which this Note identifies and calls “the Jurisdiction-Stripping Consent Decree.”

The Violent Crime Control and Law Enforcement Act of 1994 gave the Department of Justice (DOJ) authority to investigate police misconduct and ask for equitable relief, usually ending in the form of consent decrees.¹⁷ A consent decree is a type of court-ordered settlement that resolves an issue without requiring an admission of guilt.¹⁸ Consent decrees have been used in various legal disciplines from school

benefit from institutional support in efforts to achieve abolition); Alexis Okeowo, *How to Defund the Police*, NEW YORKER (June 26, 2020), <https://www.newyorker.com/news/news-desk/how-the-police-could-be-defunded> [<https://perma.cc/T3NP-K8Q2>] (advocating for a public health approach to police abolition).

¹³ See U.S. CONST. amend. XIII (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”). *But see* 13TH (Kandoo Films 2016) (an Ava DuVernay documentary describing the ways in which the “except as a punishment for a crime” clause of the Thirteenth Amendment is a loophole that has allowed for slavery to functionally exist in the United States penal system).

¹⁴ See generally Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 830–60 (2021) (examining how thinking about police reform through a power lens can be a path towards reparation and “contestatory democracy”).

¹⁵ See, e.g., John Verhovek & Molly Nagle, *Joe Biden Rejects Calls to Defund Police, Faces Challenge as Reform Push Grows*, ABC NEWS (June 8, 2020), <https://abcnews.go.com/Politics/joe-biden-rejects-calls-defund-police-faces-challenge/story?id=71135325> [<https://perma.cc/VD6T-YG3F>]; Igor Derysh, *Did We Defund the Police? No, but “Big Changes Are Happening” Even After Protests Die Down*, SALON (Dec. 25, 2020), <https://www.salon.com/2020/12/25/did-we-defund-the-police-no-but-big-changes-are-happening-even-after-protests-die-down> [<https://perma.cc/W4WY-JET6>] (describing how cities failed to defund their police departments, let alone abolish them).

¹⁶ See *infra* Part I in which I define reformist reforms and discuss why reformist reforms have failed to solve the problem of police brutality.

¹⁷ 34 U.S.C. § 12601; see *infra* note 97.

¹⁸ See *infra* Sections I.C. & III.A.

desegregation¹⁹ to disability law²⁰ and environmental law.²¹ Under the Violent Crime Control and Law Enforcement Act, the DOJ can initiate consent decrees to institute any (legal) binding change to police departments as long as all parties agree.²² While the use of the consent decree has waned in recent years,²³ the vast discretion that consent decrees give to the DOJ to implement changes and place constraints on police departments make it a valuable tool for modern police reform and the beginning stages of police abolition.

Consent decrees have been critiqued by abolitionists and community activists as merely reformist tools that do not always serve the needs of communities²⁴ and which provide cover for police departments by implementing ineffective change.²⁵ Conservative critics say consent decrees remove police departments from democratic accountability.²⁶

¹⁹ See, e.g., Kathleen Snyder Schoene, *Voluntarily Unlocking the Schoolhouse Door: The Use of Class Action Consent Decrees in School Desegregation*, 59 WASH. U. L.Q. 1305, 1306–07 (1982) (discussing the use of class action consent decrees to desegregate).

²⁰ While there is a lack of scholarship detailing the use of consent decrees in the disability law context, particularly surrounding Americans with Disabilities Act (“ADA”) claims, the ADA website records past consent decrees. See, e.g., Consent Decree, Nat’l Fed’n of the Blind v. HRB Digit., LLC, No. 1:13-cv-10799-GAO (D. Mass. Mar. 25, 2015), <https://archive.ada.gov/hrb-cd.htm> [<https://perma.cc/7X5S-F3AA>]; see also Greg Brooker, *No Complaint Needed: DOJ’s Enforcement of the Americans with Disabilities Act*, PUB. LAW., Summer 2016, at 3 (describing the use of consent decrees to enforce the ADA).

²¹ See, e.g., Tracy Hester, *Consent Decrees as Emergent Environmental Law*, 85 MO. L. REV. 687, 687 (2020) (“The bulk of major environmental disputes at the federal level are resolved through consent decrees lodged under judicial supervision, and key federal environmental statutes and policies directly require settling parties to use consent decrees to resolve their claims.”).

²² See *infra* notes 97, 106, and 107.

²³ See Ed Pilkington, *Trump’s Scrapping of Obama-Era Reforms Hinders Police Reform*, GUARDIAN (June 7, 2020), <https://www.theguardian.com/us-news/2020/jun/07/police-consent-decrees-trump-administration-oversight> [<https://perma.cc/7MCD-MCGM>] (discussing the disuse of consent decrees during the Trump Administration).

²⁴ See Ayesha Ball Hardaway, *Creating Space for Community Representation in Police Reform Litigation*, 109 GEO. L.J. 523, 567–78 (2021) (explaining how the fact that police consent decrees are initiated by the DOJ and not community organizations can lead to a disagreement around priorities, and encouraging the use of civil procedure law to allow for more intervention by community organizations into police reform litigation).

²⁵ See Paige Fry, Madeline Buckley & Annie Sweeney, *Latest Consent-Decree Report Hits Chicago Police Leadership in Key Areas: Community Policing and Building Community Trust*, CHI. TRIB. (Apr. 17, 2022), <https://www.chicagotribune.com/news/breaking/ct-cpd-independent-monitor-report-5-consent-decree-20220417-eedyh5mctnblmkfxw7swv7pi4-story.html> [<https://perma.cc/DZ8H-9CEK>] (interviewing Michelle Garcia, Deputy Legal Director of the ACLU of Illinois: “If there was a will to have honest communication, you would have policies that actually reflect what people want. You would have that buy-in You wouldn’t have a silly policy like the positive community interactions.”).

²⁶ See, e.g., Memorandum from the U.S. Att’y Gen. on Principles and Procs. for Civ. Consent Decrees and Settlement Agreements with State and Loc. Governmental Entities to the Heads of Civ. Litigating Components, U.S. Att’y’s (Nov. 7, 2018), <https://www.justice.gov/opa/press-release/file/1109621/download> [<https://perma.cc/5M44-9DXF>] (“This supervision

Outside of the various critiques, there has been a lack of academic discussion around reshaping and revitalizing consent decrees.²⁷ However, the critiques and current literature ignore the possibility of a new kind of consent decree: the Jurisdiction-Stripping Consent Decree.

The Jurisdiction-Stripping Consent Decree is a police consent decree that primarily demands the removal of a police department's ability to act in a certain area of public safety—whether that be school disciplinary calls, mental health crises, traffic enforcement, or some other domain. This Note argues that the use of this emerging form of consent decree can respond to abolitionists' critiques by centering communities and abolitionist goals.

Drawing on an extensive range of primary sources, Part I of this Note will juxtapose “reformist” reforms and non-reformist reforms,²⁸ explore the history of police brutality and efforts at police reform, and discuss the rise and fall of consent decrees and critiques of their use. Part II reviews twenty-four DOJ-initiated consent decrees available to the public and divides them into two categories: the Reform Consent Decree and the Jurisdiction-Stripping Consent Decree. Reform Consent Decrees focus on reformist reforms while Jurisdiction-Stripping Consent Decrees advance non-reformist reforms by engaging in stripping jurisdiction from law enforcement. Part III explores the doctrine of consent decrees, responds to legal objections to the Jurisdiction-Stripping Consent Decree, and guides practitioners towards litigating the most effective Jurisdiction-Stripping Consent Decrees. The Note will conclude by suggesting how civil rights lawyers and abolitionists alike can rely on the Jurisdiction-Stripping Consent Decree to reduce the harms created by police departments and pave a path to a future without police.

[by consent decrees] can deprive the elected representatives of the people of the affected jurisdiction of control of their government.”).

²⁷ *But see, e.g.*, Noah Kupferberg, Note, *Transparency: A New Role for Police Consent Decrees*, 42 COLUM. J.L. & SOC. PROBS. 129, 144, 159–61 (2008) (finding that consent decrees in Los Angeles, New Jersey, and New York had no effect on racial disparities in policing, but that they provided valuable transparency); Zachary A. Powell, Michele Bisaccia Meitl & John L. Worrall, *Police Consent Decrees and Section 1983 Civil Rights Litigation*, 16 CRIMINOLOGY & PUB. POL'Y 575 (2017) (looking at twenty-three police consent decrees to see if they have a correlation with decreased civil rights filings in that jurisdiction).

²⁸ *See infra* note 43 and accompanying text.

I

A SHORT HISTORY OF AMERICAN POLICING, POLICE BRUTALITY,
& POLICE REFORM

George Floyd,²⁹ Patrick Lyoya,³⁰ Breonna Taylor,³¹ Adam Toledo,³² Tyre Nichols.³³ So many lives lost at the hands of police officers, over 1,000 in 2022 alone.³⁴ While police killings tend to make the headlines, they are just one, relatively rare type of harm that police officers commit: police officers constantly shoot at moving vehicles,³⁵ lie on the stand,³⁶ and engage in various other types of misconduct.³⁷ Death and violence are—and always have been—at the core of American policing.³⁸ Section I.A will introduce the concepts of reformism and abolitionism

²⁹ See *supra* note 4.

³⁰ See Damien Henderson, *Family of Patrick Lyoya, Black Man Killed by a Police Officer in Grand Rapids, Speaks Out*, USA TODAY (Apr. 15, 2022), <https://www.usatoday.com/videos/news/nation/2022/04/15/ben-crump-and-family-patrick-lyoya-speak-out-after-police-killing/7331308001> [<https://perma.cc/U43M-UV5Y>].

³¹ See Richard A. Oppel Jr., Derrick Bryson Taylor & Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Mar. 9, 2023), <https://www.nytimes.com/article/breonna-taylor-police.html> [<https://perma.cc/4YZF-C58W>] (describing the death of Breonna Taylor, a Black female medical worker who was shot and killed as Louisville police officers executed a “botched” no-knock warrant).

³² See *Police Watchdog Agency Completes Investigation of Fatal Shooting of 13-Year-Old Adam Toledo*, CBS NEWS CHI. (Apr. 14, 2022), <https://www.cbsnews.com/chicago/news/adam-toledo-fatal-police-shooting-copa-civilian-office-of-police-accountability-investigation-completed> [<https://perma.cc/L6AC-RHJH>] (describing the completion of the Chicago Civilian Office of Police Accountability investigation into the death of Adam Toledo, a thirteen-year-old boy who was shot and killed by police after a chase).

³³ See Kiara Alfonseca, Nakylah Carter & Ivan Pereira, *Tyre Nichols: A Timeline of the Investigation into His Death*, ABC NEWS (Mar. 7, 2023), <https://abcnews.go.com/US/tyre-nichols-timeline-investigation-death/story?id=96695791> [<https://perma.cc/TAU4-TH9B>] (describing the investigation into Tyre Nichols’s killing).

³⁴ See 2022 Police Violence Report, Mapping Police Violence, <https://policeviolencereport.org> [<https://perma.cc/JKZ4-CAQ8>] (presenting a comprehensive data compilation of every police killing in 2022).

³⁵ See, e.g., David A. Graham, *Why Do Police Keep Shooting into Moving Cars?*, ATLANTIC (May 21, 2021), <https://www.theatlantic.com/ideas/archive/2021/05/andrew-brown-police-shootings-moving-vehicles/618938> [<https://perma.cc/RT7C-A2DT>] (describing the prevalence of deaths from police shooting at moving vehicles and how many police departments and institutions recommend banning the practice).

³⁶ See Samuel Dunkle, “*The Air Was Blue with Perjury*”: *Police Lies and the Case for Abolition*, 96 N.Y.U. L. REV. 2048, 2051 (2021) (describing the epidemic of police officers lying during testimony in order to advance the prosecution’s case against defendants and advocating for police abolition).

³⁷ See, e.g., Amanda D’Souza, Ronald Weitzer & Rod K. Brunson, *Federal Investigations of Police Misconduct: A Multi-City Comparison*, 71 CRIME, L. & SOC. CHANGE 461, 463 (2019) (examining different types of police misconduct in Baltimore, Chicago, Ferguson, and New Orleans).

³⁸ See *infra* note 45 (including sources which show the history of law enforcement in the United States started with the violence of slavery and colonialism).

and how their distinction defines effective and ineffective police reforms. Section I.B will chronologically categorize, discuss, and criticize historical efforts at police reform. Section I.C will discuss the history and present use of consent decrees to address police misconduct.

A. Reformism vs. Abolitionism

Despite the long history of police reform, police abuses still occur with oppressive regularity.³⁹ Many thinkers believe this is because we have focused on reforms rather than a more imaginative change: police abolition.⁴⁰ To understand the history of police reform and the critiques of it, especially surrounding the newly prominent discussion of abolition, it is necessary to define and contrast some common but oft-confusing terminology: “reformist reforms,” “non-reformist reforms,” “reformism,” and “abolitionism.”

Abolitionism refers to the general moral or political philosophy that posits the correct way to solve certain societal ills is the complete destruction of the harm-causing institution, instead of continual and protracted efforts of reform.⁴¹ This contrasts with reformism, which is the general moral or political philosophical belief that societal ills

³⁹ See *supra* notes 2–4, 29–37.

⁴⁰ For a beginner’s quick dive into what people are writing on abolition, the Marshall Project has developed a database to track articles and pieces on police abolition, and there are dozens of articles written about the subject since early 2020. See *Police Abolition*, MARSHALL PROJECT, <https://www.themarshallproject.org/records/3382-police-abolition> [<https://perma.cc/672X-958V>].

⁴¹ This is my own definition of abolitionism that comes from my reading of historical sources, but there are many other practical examples of what abolition means outside of the policing context. In the Western movement for the abolition of slavery, Montesquieu advocated for the end of slavery as a necessary principle of society. M. DE SECONDAT, BARON DE MONTESQUIEU, *THE SPIRIT OF LAWS* (Thomas Nugent trans., George Bell & Sons, 1902) (1748). Sojourner Truth advocated for the equal treatment of Black women to white women including the end of slavery. Sojourner Truth, *Ain’t I a Woman*, Address Before the Women’s Rights Convention (1851), in 6 *ANTI-SLAVERY BUGLE* 160 (June 21, 1851). There is also the movement for the abolition of prisons including individuals like Thomas Matheisen, who called for the abolition of Scandinavian prisons in the wake of the Attica Prison uprising, THOMAS MATHIESEN, *THE POLITICS OF ABOLITION* (1974), and Angela Davis, who has long examined the creation of the prison industrial complex and called for the abolition of prisons, ANGELA DAVIS, *ARE PRISONS OBSOLETE?* (2003). For longer and more thoughtful discussions of abolitionist principles, abolition movements, and abolitionism more broadly, see scholars like Amna Akbar, who describes the reasoning behind police abolition as bound up in its history of anti-Black racism, classism, and abolitionist ethics, Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 *N.Y.U. L. REV.* 405, 460–73 (2018), and Dorothy Roberts, who describes their three main points of abolitionist philosophy, Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 *HARV. L. REV.* 1, 7–8 (2019).

should be solved through continual and occasionally protracted efforts of improvement rather than through abolition or revolution.⁴²

The similar definitions of abolitionism and reformism logically lead to an important question: How does one know if they are engaging in abolitionism or reformism? The easy answer is, of course, “well, are you destroying the institution making the harm?” But that cannot be the last-order question. Abolition is not always immediate; efforts are frequently gradual. As a result, scholars and activists have distinguished between “reformist reforms,” changes suggested through a reformist philosophy, and “non-reformist reforms,” changes proposed by an abolitionist mindset. These terms were coined by André Gorz, a French-Austrian philosopher:

A reformist reform is one which subordinates its objectives to the criteria of rationality and practicability of a given system and policy. . . . On the other hand, a [non-]reformist reform is one which is conceived not in terms of what is possible within the framework of a given system and administration, but in view of what should be made possible in terms of human needs and demands.⁴³

To understand why all different categories of police reform over the course of American history have been ineffective, they should be analyzed through the reformist versus non-reformist distinction. Calls for the abolition of police are prompted by the failure of these prior reformist reforms. If the police cannot be reformed (at least in reformist ways),⁴⁴ then we must completely reimagine public safety. Non-reformist changes aimed toward police abolition might then be the key.

Abolitionists focus on the history of law enforcement’s protection of the wealth of capitalism over the protection of the dignified lives of marginalized individuals.⁴⁵ Abolition, for us, is an opportunity to break

⁴² See ANDRÉ GORZ, *STRATEGY FOR LABOR: A RADICAL PROPOSAL* 6–7 (Martin A. Nicolaus & Victoria Ortiz trans., 1968) (describing reformism as attempts of change that act within and reinforce the capitalist system); *Reformist*, OXFORD ENGLISH DICTIONARY (2d ed. 2023) (defining reformist and its derivative, reformism, as “advocating gradual reform rather than abolition or revolution”).

⁴³ See GORZ, *supra* note 42, at 7.

⁴⁴ See Michael Brenes, *Police Reform Doesn’t Work*, BOSTON REV. (Apr. 26, 2021), <https://bostonreview.net/articles/police-reform-doesnt-work> [<https://perma.cc/8H7Q-VKVT>] (explaining why police reform will never rid the country of police abuses).

⁴⁵ From the late 1600s to early 1700s in America, white communities were policed with informal investigatory bodies that provided information on crimes, patrolled neighborhoods, and rounded up criminals. See generally LARRY K. GAINES & VICTOR E. KAPPELER, *POLICING IN AMERICA* 67–69 (7th ed. 2011). But Black and Native American communities were commonly policed through slave patrols and American Indian constables that monitored Black and Native American communities in order to protect the usefulness of enslaved peoples and

that chain of violence and create new institutions that are formed to vindicate human enrichment instead of degradation.⁴⁶ This is similar to what W.E.B. DuBois originally coined “abolition democracy:” an integrated society, built not on violence and slavery, but rather on freedom and power for all.⁴⁷ Police abolition falls within this long history of abo-

Native serfs in American capitalism. *Id.*; see Alyosha Goldstein, *On the Reproduction of Race, Capitalism, and Settler Colonialism*, UCLA LUSKIN: INSTITUTE ON INEQUALITY AND DEMOCRACY: RACE & CAPITALISM: GLOBAL TERRITORIES, TRANSNATIONAL HISTORIES SYMPOSIUM 42, 45 (2017) (describing the intertwined history of settler colonialism and capitalism and how they still play out today); *1619 Project*, N.Y. TIMES MAG. (2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/1619-america-slavery.html> [<https://perma.cc/EY2P-DG2D>] (exploring the history of America through the lens of Black oppression). Native serfdom refers to the indentured servitude and enslavement of Native Americans by European colonizers. For more about the reality and horrors of Native serfdom, see Herbert B. Adams, *Tithingmen*, 1 PROCEEDINGS OF THE AMER. ANTIQUARIAN SOC. 398–409 (1880) (describing the conditions of Native serfdom and the policing of Native serfs through Indian constables). I as an author understand the existing conversations in Native communities around whether to use the terms Native American, American Indian, or Indigenous as a blanket term to refer to individuals from multiple American tribes. I have decided to use the word Native American after speaking with members of the Native community whom I know, and I feel inadequate to reclaim the term “American Indian” given that I am not a member of the community. There are ongoing discussions within the Native community about which terms people prefer, and reasonable opinions differ. See *Native American vs. Indian*, INDIAN COUNTRY TODAY (Sept. 13, 2018), <https://indiancountrytoday.com/archive/native-american-vs-indian> [<https://perma.cc/RZ6U-CW4V>] (talking to five Native Americans from different tribes and regions about how they prefer to self-identify; some are comfortable with Native American, American Indian, neither, or both).

⁴⁶ See, e.g., Joshua Briand, *Understanding the Role of Police Towards Abolitionism: On Black Death As an American Necessity, Abolition, Non-Violence, and Whiteness*, HAMPTON INST. (June 6, 2020), <https://www.hamptonthink.org/read/understanding-the-role-of-police-towards-abolitionism-on-black-death-as-an-american-necessity-abolition-non-violence-and-whiteness> [<https://perma.cc/Y55Z-AAR4>] (explaining how policing perpetuates “structural oppression and power”); Derecka Purnell, *How I Became a Police Abolitionist*, ATLANTIC (July 20, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540> [<https://perma.cc/DCB5-ZSK4>] (describing the author’s experience with police violence in her youth, and how that led to her becoming an abolitionist); Sean Illing, *The “Abolish the Police” Movement, Explained by 7 Scholars and Activists*, VOX (June 12, 2020), <https://www.vox.com/policy-and-politics/2020/6/12/21283813/george-floyd-blm-abolish-the-police-8cantwait-minneapolis> [<https://perma.cc/6745-7LUQ>] (talking to experts on policing and abolition about why abolition needs to be discussed and explored); Meghan G. McDowell & Luis A. Fernandez, *‘Disband, Disempower, and Disarm’: Amplifying the Theory and Practice of Police Abolition*, 26 CRITICAL CRIMINOLOGY 373 (2018) (describing an abolitionist ethic where the abolishment of police departments leads to the downfall of the “racial capitalist order”).

⁴⁷ See W.E.B. DuBois, *BLACK RECONSTRUCTION: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860-1880*, at 182 (1935) (“[T]wo theories of the future of America clashed and blended just after the Civil War: the one was abolition-democracy based on freedom, intelligence and power for all men; the other was industry for private profit directed by an autocracy determined at any price to amass wealth and power.”).

litionist thought.⁴⁸ Police abolition could help us eliminate other structures of harm in our society⁴⁹ and help us rethink our relationship with power and hierarchy.⁵⁰ Police abolition in its more imaginative form helps us critique society and create better futures for all. So how do we get there? First, we must delve into the past.

B. *Trying to Reform the Broken*

Efforts to reform police have a history almost as long as formal police departments themselves. Over the last two centuries, reforms have been driven by concerns with police efficiency, crime waves, abuses of law enforcement, and abolitionist principles.⁵¹ A multitude of different actors—police chiefs, legislators, presidents, courts, local communities, and abolitionist activists—have attempted reform.⁵² Despite decades and decades of work to change police departments, no reform effort has led to an end of the constant discriminatory police brutality that we continue to suffer today—partially because not all reforms efforts were geared towards curbing police misconduct.⁵³

This Section will, in turn, explore the first kind of American police reform which focused on internal pressures, describe a second wave of reform efforts that originated with the federal government through presidential commissions and Supreme Court decisions, and finally discuss modern attempts of reform that tend to be catalyzed by community activism and, in particular, the Movement for Black Lives.

As this Section proceeds, it is helpful to think of every set of reforms with the reformist and non-reformist distinctions in mind. The

⁴⁸ See V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453, 1532–42 (2019) (describing the connections between abolition democracy by DuBois and the philosophies of Angela Davis, the Black Panthers, the Movement for Black Lives, and police abolitionists today).

⁴⁹ See generally *id.* (describing how cycles of violence in society can be repaired in an abolitionist future); MARIAME KABA, *WE DO THIS 'TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* (2021) (describing the possibilities of abolition to help heal society, how we must live our lives with abolitionist praxis, and how to bring about abolition); Brendan McQuade, *The Prose of Pacification: Critical Theory, Police Power, and Abolition Socialism*, 47 SOC. JUST. 55, 55–58 (2020) (describing how abolition might help the socialist movement); Christina M. Schnalzer, *The Importance of Abolition of the Carceral State for Native Survivors*, 10 AM. INDIAN L.J. 1 (2022) (considering how carceral and police abolition can help Native sexual assault survivors overcome their trauma).

⁵⁰ See Simonson, *supra* note 14 (explaining that abolition can shift policymaking power to communities that are most subjugated by police).

⁵¹ See *infra* notes 57–90 (tracking the history of modern American police reforms and the impetus of each).

⁵² See *id.*

⁵³ See *infra* note 63 and accompanying text (explaining how some of the first reforms to police departments were around personnel changes and diversity initiatives).

first internal police reforms were obviously reformist—they propped up the authority of police departments by professionalizing them.⁵⁴ The second set of federal-based reforms tried to uncover deep structural problems of crime and policing through presidential commissions and recommended some non-reformist reforms, but few were implemented.⁵⁵ The Supreme Court has enforced some reforms, but they were watered down over the years through subsequent decisions that rendered procedural rights ineffective and stifled any non-reformist potential.⁵⁶ Lastly, many community-based reforms, such as further training of officers and the use of body cameras, reinforce the legitimacy of the institution of policing and thus are reformist reforms.⁵⁷ This Section will describe the different reforms and their tendencies in more detail.

1. *Reform from Within*

The first twentieth-century reforms to policing in America were mainly internal to specific departments and individual officers.⁵⁸ These reforms were mostly top-down—a certain police chief or executive would spearhead particular changes under their jurisdiction as they saw fit.⁵⁹ This was done in accordance with the broader themes of the Progressive Era in the United States from the late nineteenth to the early twentieth century, namely a focus on professionalizing different trades and institutions.⁶⁰ In theory, by professionalizing police departments and reducing abuses, the departments could escape from control by political parties and become independent bodies of authority in

⁵⁴ See *supra* note 45.

⁵⁵ See *supra* Section I.A; *infra* notes 56–87 and accompanying text.

⁵⁶ See, e.g., William T. Pizzi, *The Failure of the Criminal Procedure Revolution*, 51 U. PAC. L. REV. 823, 825, 839–41 (2020) (discussing how despite the changes to the criminal legal system that the Supreme Court effectuated through its 1970s cases that increased the procedural rights of criminal defendants and persons in general, it failed to concretely transform our criminal legal system when it comes to overall outcomes of the people who interact with the system).

⁵⁷ See *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE (May 14, 2020), <https://criticalresistance.org/resources/reformist-reforms-vs-abolitionist-steps-in-policing> [<https://perma.cc/9VTK-K8AD>] (containing a chart that explains what makes a reform reformist and which kinds of common reforms are reformist).

⁵⁸ See Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS U. PUB. L. REV. 57, 65 (2012) (mentioning individual police chiefs who advocated for reforms in their departments).

⁵⁹ *Id.* (citing Craig D. Uchida, *The Development of the American Police: An Historical Overview*, in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 18–21 (Geoffrey P. Alpert & Roger G. Dunham eds., 4th ed. 2001)).

⁶⁰ See generally LEWIS L. GOULD, *AMERICA IN THE PROGRESSIVE ERA, 1890-1914* (2001) (describing the ambition of social reformers in the Progressive Era in the United States as well as the downfall of reform efforts starting with the first World War).

their communities.⁶¹ While these kinds of department-specific reforms did meaningfully change things like personnel policies and internal practices,⁶² their limited focus on individual police departments did not allow for critiques of the entire system of policing. This focus on justifying police departments rather than existentially challenging policing as a whole constrained the effectiveness of these first reforms.

For example, many police chiefs presumed increasing diversity would increase trust in the police as a profession and help departments deal with different communities.⁶³ One such diversity effort was the introduction of women into police forces.⁶⁴ While changes like these are great in the name of diversity and might have led to an improvement in community policing for departments like the LAPD,⁶⁵ adding more police officers and increasing the range of police services does nothing to change the ways in which police officers have used their discretion to precipitate abuse and violence.⁶⁶

2. ‘Watch Out! It’s the Feds!’

More multi-faceted police reform efforts came from outside police departments with federal reforms imposed by the executive and judicial branches. The federal government intervened in local police departments in particularized moments of high crime and political pressure for reform, like Teetotalism,⁶⁷ crackdowns on smuggling around

⁶¹ See Craig D. Uchida, *The Development of the American Police: An Historical Overview*, in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 11, 20–23 (Geoffrey P. Alpert & Roger G. Dunham eds., 7th ed. 2015) (explaining that increased professionalism reduced political parties’ influence over police departments and expanded the authority of police chiefs).

⁶² See Walker, *supra* note 58, at 65, and OLSEN, *infra* note 63, at 40 for examples of successful changes.

⁶³ See MARILYN OLSEN, STATE TROOPER: AMERICA’S STATE TROOPERS AND HIGHWAY PATROLMEN 40 (2001) (describing how in the late 1800s and early 1900s police departments hired Black officers to police and use physical force against Black communities).

⁶⁴ See *id.* Women were not given much power, however; they could not even conduct arrests. To overcome this limitation, women officers would use social services to deal with people accused with crimes instead of arrests and prosecutions. The first woman called a “police officer” took on her role in 1893, but a more notable example is Georgia Robinson, the first Black female police officer for the Los Angeles Police Department (LAPD), who was appointed in 1916. Her duty was to refer young Black women to social services in an attempt to provide alternatives to prosecution for Black communities. *Id.*

⁶⁵ See *id.*

⁶⁶ See *supra* notes 2–11.

⁶⁷ Teetotalism refers to “the principle or practice of complete abstinence from alcoholic drinks.” *Teetotalism*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/teetotalism> [<https://perma.cc/HV8Y-PKP2>]. For a short history of the broader alcohol temperance movement in the United States, see Holland Webb, *Temperance Movements and Prohibition*, 74 INT’L SOC. SCI. R. 61 (1999).

Prohibition,⁶⁸ and the public riots and violence around the Civil Rights Movement.⁶⁹ However, federal institutions appeared not to see police reform as a means to reduce the abuses civilians faced, but rather as a way to protect the institution from critiques by strengthening them through procedural change.

With President Hoover's Wickersham Commission and President Johnson's Commission on Law Enforcement and Administration—created to give recommendations on overhauling police departments across the country—reducing the injuries that police caused to civilians was secondary. The “Report on Lawlessness in Law Enforcement,”⁷⁰ one significant report of the fourteen released by the Wickersham Commission, emphasized and critiqued many kinds of police abuses including the use of the “third degree”: the use of physical and psychological violence during police interrogations to obtain confessions or admissions of guilt.⁷¹ The report recommended reforms like universal public defense, eliminating racial discrimination in jury lists, and clarifying the law on admissibility of evidence—all in hopes to reduce police misconduct.⁷² However, part of the impetus of the report was to seek out ways for police departments to deal with the crime wave that ensued from Prohibition rather than reducing police abuses for their own sake.⁷³

President Lyndon B. Johnson's Commission on Law Enforcement and Administration of Justice's singular report is an extensive rebuke of not just policing but also of the societal structures that cause crime

⁶⁸ See Nora V. Demleitner, *Organized Crime and Prohibition: What Difference Does Legalization Make?*, 15 WHITTIER L. REV. 613, 621–27 (1994) (explaining the origins of the prohibition movement in the United States and the rise of organized crime due to alcohol prohibition as well as the tension between local law enforcement agencies that wanted more leniency on violations of prohibition and a federal government which tried to impose a much more onerous enforcement regime).

⁶⁹ See generally MICHAEL W. FLAMM, *LAW AND ORDER: STREET CRIME, CIVIL UNREST, AND THE CRISIS OF LIBERALISM IN THE 1960s* (2005) (exploring the moments and causes of social unrest during the 1960s including the anger around the Civil Rights Movement).

⁷⁰ NAT'L COMM'N ON L. OBSERVANCE & ENF'T, *REPORT ON LAWLESSNESS IN LAW ENFORCEMENT* (1931); see also Greg Bradsher, *The National Commission on Law Observance and Enforcement's Report on Lawlessness in Law Enforcement*, NAT'L ARCHIVES: TEXT MESSAGE (May 4, 2021), https://text-message.blogs.archives.gov/2021/05/04/the-national-commission-on-law-observance-and-enforcements-report-on-lawlessness-in-law-enforcement/#_ftn14 [<https://perma.cc/4KCE-8EWN>] (expounding on the details of the report).

⁷¹ See Bradsher, *supra* note 70.

⁷² See *id.*

⁷³ See *id.* (talking about how the impetus of the commission and report was to investigate the crime wave after Prohibition and the unearthing of systemic issues in policing was a side effect); see also U.S. CONST. amend. XVIII, § 1 (“After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.”).

in the first place. This was President Johnson's intention: to solve the social ills and crime wave of the 1960s by searching for revolutionary fixes.⁷⁴ The report recommends college degrees for police officers, universal basic income, housing reform, pre-K funding, universal parole, and more.⁷⁵ But again, the goal here was not necessarily to correct police departments specifically, but rather to add onto President Johnson's goals of creating a new American society through his "Great Society" reform framework.⁷⁶

These commissions were prescient about identifying structural issues that affected police departments across the country, but many of their most radical proposals were not implemented. President Hoover did not sign a bill establishing universal public defense,⁷⁷ and President Johnson did not establish a universal parole system.⁷⁸ The Supreme Court did issue opinions that fixed some of the problems that the commissions brought to light, but they did little to transform those institutions in the way that the commissions or the history of police abuses demanded.⁷⁹

In the 1960s, the Court started to interpret the guarantees in the Bill of Rights to be much friendlier to defendants through cases like *Mapp v. Ohio*⁸⁰ and *Miranda v. Arizona*,⁸¹ which both attempted to limit

⁷⁴ See Cheryl Corley, *President Johnson's Crime Commission Report, 50 Years Later*, NPR (Oct. 6, 2017), <https://www.npr.org/2017/10/06/542487124/president-johnson-s-crime-commission-report-50-years-later> [<https://perma.cc/5KXS-GQ4F>] (explaining President Johnson's impetus for the report, its effectuated suggestions, and its legacy).

⁷⁵ PRESIDENT'S COMM'N ON L. ENF'T & ADMIN. OF JUST., *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 293–301 (1967).

⁷⁶ See *id.* The Commission was part of a series of working groups started by the President to revitalize America and create his "Great Society." See President Lyndon Baines Johnson, Remarks at the University of Michigan (May 22, 1964) (transcript available at the University of Virginia's Miller Center), <https://millercenter.org/the-presidency/presidential-speeches/may-22-1964-remarks-university-michigan> [<https://perma.cc/27CN-EXCP>] ("I intend to establish working groups to prepare a series of White House conferences and meetings—on the cities, on natural beauty, on the quality of education, and on other emerging challenges. And from these meetings . . . we will begin to set our course toward the Great Society.").

⁷⁷ Instead the Supreme Court established this, at least for indigent adult criminal cases, in *Gideon v. Wainwright*, 372 U.S. 335, 342–45 (1963).

⁷⁸ After the Johnson Era, the Supreme Court has still noted that a prisoner's opportunity for parole is not a constitutional right. See *Morrissey v. Brewer*, 408 U.S. 471, 493 (1972) (Douglas, J., dissenting in part) (citing *Ughbanks v. Armstrong*, 208 U.S. 481 (1908) for the proposition that parole is merely a privilege).

⁷⁹ See Michael Vitiello, *Introducing the Warren Court's Criminal Procedure Revolution: A 50-Year Retrospective*, 51 U. PAC. L. REV. 621 (2020) (describing the Warren Court's purported "criminal procedure revolution" and its downfalls of effectuating long-lasting change to the way criminal procedure worked from arrests to appeals).

⁸⁰ 367 U.S. 643, 657–60 (1961) (holding that evidence obtained by unconstitutional searches is inadmissible).

⁸¹ 384 U.S. 436, 498–99 (1966) (holding that people must be told of certain constitutional rights when they are arrested).

police abuses by curtailing abuses in police interrogations. These reforms, unlike those proposed by Presidents Hoover and Johnson, were not intended to lessen crime or fix larger societal ills, but rather were aimed at reducing the abuse of state power by constraining the policing and prosecutorial powers of the government.⁸² These Warren Court opinions deviated sharply from earlier Courts which avoided policing state criminal proceedings in any way.⁸³ *Mapp*, *Miranda*, and other decisions, more than any prior reforms, centered on racial and socioeconomic equality in policing.⁸⁴ Alas, the Warren Court's efforts were ultimately subverted by the Burger Court, which rolled back many of the protections afforded to criminal defendants.⁸⁵

3. Local Transparency

In more recent decades, local communities have made efforts to shape their police departments, with limited effect. In the 1970s, many communities (starting with Berkeley, California) established civilian review boards that could independently investigate police misconduct.⁸⁶ However, due to the difficulty of establishing an effective civilian review board system, most boards had no real power to change police behavior.⁸⁷ The shift away from top-down reforms from the federal government to more community-based reforms has been the modern method for change.⁸⁸

Partially due to the growing presence of videos of police killing Black people, many individuals came to know the depressing reality

⁸² See Vitiello, *supra* note 79, at 622–25 (describing the background behind the “criminal procedure revolution” of the Warren Court).

⁸³ See *id.* at 621–22.

⁸⁴ Regarding *Miranda*'s focus, see *id.* at 624–25 (“Not only did the Court hope to protect against overreaching conduct by the police, but it also hoped to advance equality.”).

⁸⁵ See *id.* at 628–31, 629 n.83 (describing multiple precedents being rolled back like how *Miranda* was limited by the Burger Court in *Lego v. Twomey*, 404 U.S. 477, 489 (1972), which held that a state only had to survive a preponderance of the evidence standard to show that a defendant waived their *Miranda* rights).

⁸⁶ Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1041 (2016).

⁸⁷ See *id.* at 1037 (“[T]he vast majority [of civilian review boards] serve only in an advisory role or are not even equipped to independently investigate complaints . . .”).

⁸⁸ As a sidenote, there is an interesting correlation between the rise and fall of top-down reforms and the rise and fall of the War on Drugs. See Heather Schoenfeld, *The War on Drugs, the Politics of Crime, and Mass Incarceration in the United States*, 15 J. GENDER, RACE & JUST. 315, 320–26 (2012) (exploring the rise in incarceration rates from 1980 to 2009 due to the increase in drug incarceration rates stemming from changes in sentencing and policing around the War on Drugs); Hannah L.F. Cooper, *War on Drugs Policing and Police Brutality*, 50 SUBSTANCE USE & MISUSE 1188 (2015) (describing the rise of police abuses due to the War on Drugs and its particular negative effects on Black communities).

of police brutality and started organizing.⁸⁹ One such organization, the Movement for Black Lives, has been one of the main proponents for police reform in the modern era.⁹⁰ The response of the Movement for Black Lives has included some more structural policy reforms similar to the Wickersham and Johnson commissions of the past.⁹¹ However, other various organizations have focused on specific policies relating to use-of-force practices, bias training, data collection, and police funding.⁹² These reformist tools have been somewhat ineffective as police departments have implemented the policy reforms recommended and misconduct and inequity still persist.⁹³ Even more abolitionist achievements, like a reduction in police funding after the death of George Floyd, have varied by municipality, and the effects of even the largest reductions are inconclusive so far.⁹⁴

⁸⁹ See Nathalie Baptiste, *Origins of a Movement*, NATION (Feb. 9, 2017) (reviewing WESLEY LOWERY, *THEY CAN'T KILL US ALL* (2016)), <https://www.thenation.com/article/archive/origins-of-a-movement> [<https://perma.cc/T6B5-EWG9>] (discussing how the origins of the Black Lives Matter movement finds itself in both the hope of Barack Obama's election and the despair prompted by high-profile videos of Black deaths by police officers); Sara Sidner & Mallory Simon, *The Rise of Black Lives Matter: Trying to Break the Cycle of Violence and Silence*, CNN (Dec. 28, 2015), <https://www.cnn.com/2015/12/28/us/black-lives-matter-evolution/index.html> [<https://perma.cc/X539-35X4>] (quoting one of the Black Lives Matter co-founders, Patrisse Maria Cullors-Brignac: "Because of social media we reach people in the smallest corners of America. We are plucking at a cord that has not been plucked forever, . . . [t]here is a network and a hashtag to gather around. It is powerful to be in alignment with our own people.").

⁹⁰ See Aleem Maqbool, *Black Lives Matter: From Social Media Post to Global Movement*, BBC (July 10, 2020), <https://www.bbc.com/news/world-us-canada-53273381> [<https://perma.cc/ZB4M-TVXW>] (describing the history, organization, and prominence of the Black Lives Matter movement). For more about the current Movement for Black Lives and the despairingly common phenomenon of Black deaths at the hands of police, see *supra* Introduction.

⁹¹ See *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms> [<https://perma.cc/Q9HD-MU3C>] (explaining what the Movement for Black Lives thinks must change to fix and repair the harms of systemic racism).

⁹² See, e.g., *Our Work*, CAMPAIGN ZERO, <https://campaignzero.org/solutions#solutionsoverview> [<https://perma.cc/9MY3-ZR2E>] (showing five different policy solutions to change policing); German Lopez, *How to Reform American Police, According to Experts*, VOX (June 1, 2020), <https://www.vox.com/2020/6/1/21277013/police-reform-policies-systemic-racism-george-floyd> [<https://perma.cc/UMW9-XZFK>] (describing eight different kinds of police reform informed by statistical studies and expert interviews); George Floyd Justice in Policing Act of 2021, H.R. 1280, 117th Cong. (2021) (ending qualified immunity, creating a national police misconduct registry, and limiting police militarization among other things—the bill has only passed the House).

⁹³ See, e.g., Olivia Murray, *Why 8 Won't Work: The Failings of the 8 Can't Wait Campaign and the Obstacle Police Reform Efforts Pose to Police Abolition*, HARV. C.R.-C.L. L. REV. AMICUS BLOG (June 17, 2020), <https://harvardcrcl.org/why-8-wont-work> [<https://perma.cc/TMU3-7KBC>] ("While Chicago almost fully adheres to the 8 Can't Wait policies, Chicago police still kill Black people at 274 times the rate of white people.").

⁹⁴ See Igor Derysh, *Did We Defund the Police? No, But "Big Changes Are Happening" Even After Protests Die Down*, SALON (Dec. 25, 2020), <https://www.salon.com/2020/12/25/>

C. *The Rise of Consent Decrees*

One potential tool for curbing police abuses that we have yet to discuss are consent decrees. After the beating of Rodney King and subsequent unrest around the country,⁹⁵ the United States Congress, wanting to find some way to respond, looked to reforming police departments.⁹⁶ This led to the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (“the Act”). Section 14141 of the Act grants the DOJ the authority to “investigate and force systemic changes on local police” deemed to exhibit a pattern or practice of police misconduct.⁹⁷ One of the first investigations that the DOJ conducted under this new authority was of the New Orleans Police Department in 1996—though this investigation did not lead to a consent decree.⁹⁸ However, Pittsburgh was the first city to actually go forward with the reforms that the DOJ asked for.⁹⁹ Over the last twenty-five years, the DOJ has conducted sixty-seven civil rights investigations, twenty-six of which led to binding agreements akin to consent decrees.¹⁰⁰ Twenty-six consent decrees is a sizeable number,¹⁰¹ but is relatively small compared to the over 12,000 police departments in the country that almost certainly have some practice of misconduct.¹⁰²

did-we-defund-the-police-no-but-big-changes-are-happening-even-after-protests-die-down [https://perma.cc/78VM-5ZAK] (exploring the changes in police budgets after the George Floyd protests); *supra* note 34 (showing that police are still killing people at alarming rates after these funding changes).

⁹⁵ See *supra* note 2.

⁹⁶ See Geoffrey P. Alpert, Kyle McLean & Scott Wolfe, *Consent Decrees: An Approach to Police Accountability and Reform*, 20 POLICE Q. 239, 243 (2017) (“The beating of Rodney King by members of the LAPD, and the manner in which the incident was managed, led to the statute allowing [consent decrees] . . .”).

⁹⁷ See Kimbriell Kelly, Sarah Childress & Steven Rich, *Forced Reforms, Mixed Results*, WASH. POST (Nov. 13, 2015), <https://www.washingtonpost.com/sf/investigative/2015/11/13/forced-reforms-mixed-results> [https://perma.cc/U7NN-7RL5]; see 34 U.S.C. § 12601 (setting out a cause of action and course for relief which can correct abusive practices).

⁹⁸ See Pierre Thomas, *U.S. Launches Investigation of New Orleans Police Force*, WASH. POST (July 13, 1996), <https://www.washingtonpost.com/archive/politics/1996/07/13/us-launches-investigation-of-new-orleans-police-force/ec998a1a-e0d0-4f8f-a135-f30b51177688> [https://perma.cc/6NSC-ZKCK] (reporting on the DOJ investigation of the New Orleans Police Department following the adoption of the 1994 crime bill).

⁹⁹ See Kelly, Childress & Rich, *supra* note 97 (noting that the DOJ got involved after the “ACLU filed a class-action lawsuit based on complaints from 66 people that ranged from physical abuse to police rudeness”).

¹⁰⁰ “Akin to consent decrees” because some of the agreements are technically classified as settlements or memoranda of understanding that work functionally similar to consent decrees. See *id.*

¹⁰¹ Only twenty-four of which are reviewed by this Note as those are the only ones accessible online.

¹⁰² See, e.g., John Kelly & Mark Nichols, *We Found 85,000 Cops Who’ve Been Investigated for Misconduct. Now You Can Read Their Records*, USA TODAY (June 11, 2020), <https://www.>

Definitionally, a consent decree is a “judicial decree that sanctions a voluntary agreement between parties in dispute.”¹⁰³ Consent decrees, like other kinds of agreements or settlements, must be agreed upon by both parties (the DOJ and the police department’s municipality). Typically, police departments agree to a consent decree because implementing reforms makes more sense than fighting a lawsuit against the DOJ and potentially losing.¹⁰⁴ Outside of the Act, other parties like non-profit organizations can file suit against police departments and obtain binding agreements that can include injunctive relief. However, thanks to the Act, the DOJ does not have to jump the same procedural hurdles—including class certification, standing, and municipal liability doctrine—which private plaintiffs face in making and enforcing judgments.¹⁰⁵

The DOJ’s consent decrees always start with an investigation into civil rights abuses in a certain jurisdiction, which is followed by the filing of a complaint outlining those abuses in federal court.¹⁰⁶ The DOJ and the other parties to the litigation will then negotiate the terms of the consent decree, which are usually filed a few months after the complaint is filed.¹⁰⁷ The consent decree includes a list of different kinds of reforms that proscribe or prescribe certain changes that the municipality must implement.¹⁰⁸ The court must approve the consent decree and appoint

usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002 [https://perma.cc/NC4X-AETT] (describing USA Today’s database of over 85,000 law enforcement officers who have been investigated for misconduct); *Local Police*, BUREAU OF JUST. STATS., <https://www.bjs.gov/index.cfm?tid=71&ty=tp> [https://perma.cc/AMG8-H5QR] (“More than 12,000 local police departments were operating in the United States during 2016.”).

¹⁰³ *Consent Decree*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/consent%20decree> [https://perma.cc/E3NU-6SQF].

¹⁰⁴ See, e.g., Martin Kaste, *Police Consent Decrees Are Coming Back—But They Might Not Make Sense Anymore*, NPR (June 22, 2021), <https://www.npr.org/2021/06/22/1009182213/police-consent-decrees-are-coming-back-but-they-might-not-make-sense-anymore> [https://perma.cc/37HS-VBRK] (describing the pressure that the DOJ puts on police departments: “[The DOJ] presented the city with the usual ultimatum — accept a consent decree or we’ll sue you,” which could lead to costly lawsuits against the resource-abundant DOJ).

¹⁰⁵ For a much more detailed explanation of the kinds of hurdles that private organizations face when suing police departments for pattern and practice violations, see Sunita Patel, *Jumping Hurdles to Sue the Police*, 104 MINN. L. REV. 2257, 2269–88 (2020). For perhaps the best example of private organizations suing a police department and achieving wide-ranging injunctive relief, see *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013), a case in New York City that led to a settlement that, most famously, ended the practice of “stop and frisk.”

¹⁰⁶ These observations come from my personal research into consent decrees in the National Clearing House Database, where I looked at the dockets of the cases of the consent decrees. See *infra* notes 125, 132–33 for the links to the dockets of many of the consent decrees.

¹⁰⁷ See *supra* note 106.

¹⁰⁸ See *infra* Part II for examples of what consent decrees can contain.

monitors to ensure municipalities reach certain benchmarks on decree terms such as conduct violations, police shootings, and community complaints.¹⁰⁹ The monitor's tenure and frequency of reports depends on the terms set by the court in a particular case.¹¹⁰

Under the Trump Administration, no new consent decrees were entered into as a matter of policy.¹¹¹ However, the Biden Administration has reversed course.¹¹²

Like many reforms already mentioned, consent decrees have had mixed success in leading to long-term reforms. A study from *Frontline* and *The Washington Post* found that in departments subject to consent decrees setting benchmarks for the use of force, five out of ten departments increased their use of force after the agreements (and in the other five it declined or held constant).¹¹³ A 2017 study found a 23%–29% decrease in 42 U.S.C. § 1983¹¹⁴ filings during DOJ oversight with a gradual return to pre-oversight levels after monitoring ends.¹¹⁵ Lastly, a 2020 study found that DOJ investigations decrease police killings by 27%, and consent decrees with court appointed monitors can decrease police killings by up to 29%.¹¹⁶ Consent decrees may also be costly for municipalities. For example, a consent decree for the Puerto Rico Police Department is expected to take ten years and cost \$200 million.¹¹⁷

Given the costs and waning benefits of consent decrees, are they a useful tool? Can they be used to further abolition? Many abolitionists do not encourage the use of consent decrees due to their expense and ineffectiveness.¹¹⁸ Consent decrees also must be approved by courts, a

¹⁰⁹ See Kelly, Childress & Rich, *supra* note 97.

¹¹⁰ See, e.g., Consent Decree at 103–18, *United States v. City of Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. 2016), <https://clearinghouse.net/doc/82040> [<https://perma.cc/Z4VC-LYF9>] (describing the terms of the Ferguson Consent Decree monitor).

¹¹¹ See *supra* note 23.

¹¹² Memorandum from the U.S. Att'y Gen. on Civil Settlement Agreements and Consent Decrees with State and Local Governmental Officials 2 (Apr. 16, 2021), https://www.justice.gov/d9/2022-12/ag_memorandum_-_civil_settlement_agreements_and_consent_decrees_with_state_and_local_governmental_entities.pdf [<https://perma.cc/5TDC-AM44>] (rescinding the 2018 consent decree memorandum from the Trump Administration).

¹¹³ See Kelly, Childress & Rich, *supra* note 97.

¹¹⁴ A statute that is used to sue municipalities and individual government officials for constitutional violations. A decrease in these filings suggests a decrease in police abuses and a multitude of monetary savings for municipalities.

¹¹⁵ See Zachary A. Powell, Michele Bisaccia Meitl & John L. Worrall, *Police Consent Decrees and Section 1983 Civil Rights Litigation*, 16 CRIMINOLOGY & PUB. POL'Y 575, 594 (2017).

¹¹⁶ Li Sian Goh, *Going Local: Do Consent Decrees and Other Forms of Federal Intervention in Municipal Police Departments Reduce Police Killings?*, 37 JUST. Q. 900, 921 (2020).

¹¹⁷ Kelly, Childress & Rich, *supra* note 97.

¹¹⁸ See Kaste, *supra* note 104 (quoting Lisa Dugaard, the director of the Public Defender Association, on a Seattle consent decree: "It was pointless. It was worse than pointless. It suggested that processes like this are a façade and a fraud.").

potential limiting factor for their use as a tool of abolition.¹¹⁹ However, many of the problems with modern consent decrees are a result of the ways in which they have traditionally been used. If consent decrees are just means to implement ineffective bias trainings¹²⁰ and policy reforms,¹²¹ they will never live up to their potential. Part II of this Note conducts its own survey of what reforms consent decrees have undertaken and argues that abolitionist ends can be achieved by reimagining their use.

II CATEGORIZING CONSENT DECREES

The abolitionist critiques of consent decrees make sense—they do historically seem to have limited effectiveness. But what if we can reimagine what a consent decree can do? What if consent decrees could be effective, long-lasting, and a gateway to abolition? This Part newly identifies two categories of decrees: The Reform Consent Decree in Section II.A, and the Jurisdiction-Stripping Consent Decree in Section II.B. The abolitionist critiques generally only apply to the Reform Consent Decrees which have emphasized reformist changes like better disciplinary measures, revised use of force policies, and new community policing departments. These reforms do not advance abolition but instead can reinforce police departments' place in our society.¹²² However, I propose that there is another category of consent decrees that can exist: The Jurisdiction-Stripping Consent Decree. The Jurisdiction-Stripping Consent Decree has arguably only been used once, but it has awesome potential as an abolitionist tool by limiting the spheres of society in which police departments can operate. Through categorizing

¹¹⁹ See generally Emma Kaufman, *The New Legal Liberalism*, 86 U. CHI. L. REV. 187, 188 (2019) (reviewing JUSTIN DRIVER, *THE SCHOOLHOUSE GATE: PUBLIC EDUCATION, THE SUPREME COURT, AND THE BATTLE FOR THE AMERICAN MIND* (2018)) (mentioning that Driver's book tries to give hope back to the promise of liberal federal courts that protect minoritarian rights); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (Benjamin I. Page ed., 2d ed. 2008) (questioning whether or not courts can create social reform); Michael J. Klarman, *What's So Great About Constitutionalism?*, 93 NW. U. L. REV. 145, 160–63 (1998) (describing the Supreme Court's history of *not* generally acting as a "countermajoritarian savior").

¹²⁰ See Patrick S. Forscher, Calvin K. Lai, Jordan R. Axt, Charles R. Ebersole, Michelle Herman, Patricia G. Devine & Brian A. Nosek, *A Meta-Analysis of Procedures to Change Implicit Measures*, 117 J. PERSONALITY & SOC. PSYCH. 522, 526, 545 (2019) (examining 492 studies of implicit bias interventions and finding while some bias trainings change implicit measures, this does not necessarily translate to behavioral change).

¹²¹ See Brenes, *supra* note 44.

¹²² See Murray, *supra* note 93 (explaining why advocating for moderate reforms can lead to complacency and harm the abolitionist movement).

consent decrees in this way, I hope to differentiate between those types of consent decrees that use existing ineffective methods of reform and those which could be a successful tool of abolition.¹²³

A. *The Reform Consent Decree*

Most consent decrees have tended to bear reformist reforms. They tweak existing policies, create new programs and initiatives that are influenced by the public conversation for reform, and then tie monitoring of these changes to things like a reduction in use-of-force or abuse statistics.

For examples of changes in existing policies, think of Ferguson, Missouri. After the death of Michael Brown,¹²⁴ the Ferguson Police Department entered into an agreement with the DOJ to reform almost every aspect of its policing methods in a 133-page consent decree.¹²⁵ The decree implemented some new policies around community policing, like a Neighborhood Policing Steering Committee,¹²⁶ but most of the recommendations dealt with the reform of existing policies and procedures, such as changing the municipal code to establish clearly defined penalties for violations of the code,¹²⁷ redeveloping of its training program to be consistent with the other changes the consent decree recommended,¹²⁸ revising policies relating to responding to domestic violence and sexual assault,¹²⁹ and reforming its policies around school resource officers.¹³⁰

Reform Consent Decrees can also establish new departments and initiatives that will bring police more in line with public sentiment or reduce police abuses. The 2015 consent decree with Los Angeles, for example, required the implementation of a housing nondiscrimination policy to ensure the LAPD did not participate in any discriminatory acts that violated the Fair Housing Act.¹³¹ This involved making sure that the LAPD did not share confidential or inappropriate information

¹²³ It is important to note that all consent decrees have retained some aspect of reform. Those which have any jurisdiction-stripping component appear in Section II.B.

¹²⁴ See *The Killing of an Unarmed Teen: What We Know About Brown's Death*, NBC NEWS (Aug. 13, 2014), <https://www.nbcnews.com/storyline/michael-brown-shooting/killing-unarmed-teen-what-we-know-about-browns-death-n178696> [<https://perma.cc/2PVN-GPQ4>] (describing the death of Michael Brown at the hands of police officer Darren Wilson).

¹²⁵ See Consent Decree, *United States v. City of Ferguson*, No. 4:16-cv-00180-CDP (E.D. Mo. 2016), <https://clearinghouse.net/doc/82040> [<https://perma.cc/Z4VC-LYF9>].

¹²⁶ *Id.* at 6.

¹²⁷ *Id.* at 9.

¹²⁸ *Id.* at 11.

¹²⁹ *Id.* at 17.

¹³⁰ *Id.* at 48.

¹³¹ Fair Housing Act, 42 U.S.C. § 3601 (preventing discrimination in housing).

with housing authorities or participate in arbitrary investigations of citizens with housing vouchers.¹³²

Many of these consent decrees have near-identical provisions in them that the DOJ has implemented across multiple jurisdictions. In an effort to contribute to the scholarship on police consent decrees and show how much these decrees constituted reformist policies, the graph in the Appendix lists the twenty-four consent decrees that have been surveyed and categorized by this Note.¹³³ The graph lists five of the most

¹³² Settlement Agreement at 77, *United States v. County of Los Angeles*, No. 2:15-cv-03174 (C.D. Cal. Apr. 28, 2015), <https://clearinghouse.net/doc/84914> [<https://perma.cc/6FNG-EMM2>].

¹³³ The text of the consent decrees can be found on the National Clearinghouse Database. See, e.g., Settlement Agreement, *United States v. City of Albuquerque*, No. 1:14-cv-01025 (D.N.M. Nov. 14, 2014), <https://clearinghouse.net/doc/74843> [<https://perma.cc/G3WH-YUB8>]; Settlement Agreement, *United States v. Alamance County*, No. 1:12-cv-01349 (M.D.N.C. Aug. 17, 2016), <https://clearinghouse.net/doc/84312> [<https://perma.cc/K6CS-XW8C>]; Consent Decree, *United States v. Police Department of Baltimore*, No. 1:17-cv-00099 (D. Md. Jan. 12, 2017), <https://clearinghouse.net/doc/89919> [<https://perma.cc/TT3C-5V3X>]; Settlement Agreement, *United States v. City of Cleveland*, No. 1:15-cv-01046 (N.D. Ohio May 26, 2015), <https://clearinghouse.net/doc/81228> [<https://perma.cc/V43U-JZUX>]; Judgment and Decree Granting Injunctive Relief, *United States v. Town of Colorado City*, No. 3:12-cv-08123-HRH (D. Ariz. Apr. 18, 2017), <https://clearinghouse.net/doc/100484> [<https://perma.cc/4FTF-YD39>]; Consent Judgment, *United States v. City of Detroit*, No. 03-72258 (E.D. Mich. June 12, 2003), <https://clearinghouse.net/doc/5219> [<https://perma.cc/A9SX-PYY5>]; Settlement Agreement, *United States v. Town of East Haven*, No. 3:12-cv-01652-AWT (D. Conn. Nov. 20, 2012), <https://clearinghouse.net/doc/89367> [<https://perma.cc/U78J-TXN4>]; Consent Decree, *United States v. City of Ferguson*, No. 4:16-cv-00180 (E.D. Mo. Feb. 10, 2016), <https://clearinghouse.net/case/14081> [<https://perma.cc/3PZ4-PVR3>]; Confidential Combined Settlement Document, *United States v. City of Los Angeles*, No. 2:00-cv-11769 (C.D. Cal. Sept. 8, 2000), <https://clearinghouse.net/doc/5189> [<https://perma.cc/H9NT-ZE3S>]; Settlement Agreement, *United States v. County of Los Angeles*, No. 2:15-cv-03174 (C.D. Cal. Apr. 28, 2015), <https://clearinghouse.net/doc/84914> [<https://perma.cc/G7K5-H8YP>]; Settlement Agreement, *United States v. Maricopa County*, No. 2:12-cv-00981 (D. Ariz. July 17, 2015), <https://clearinghouse.net/doc/77988> [<https://perma.cc/8GWQ-ALDH>]; Settlement Agreement, *United States v. City of Meridian*, No. 3:13-cv-00978 (S.D. Miss. Sept. 18, 2015), <https://clearinghouse.net/doc/89537> [<https://perma.cc/YG7D-KDZB>]; Joint Application for Entry of Consent Decree, *United States v. New Jersey*, No. 3:99-cv-05970 (D.N.J. Dec. 30, 1999), <https://clearinghouse.net/doc/5366> [<https://perma.cc/J9QZ-L5NE>]; Consent Decree, *United States v. City of New Orleans*, No. 2:12-cv-01924 (E.D. La. July 24, 2012), <https://clearinghouse.net/doc/43209> [<https://perma.cc/RN9J-FAC8>]; Consent Decree at 51, *United States v. City of Newark*, No. 2:16-cv-01731 (D.N.J. May 5, 2016), <https://clearinghouse.net/doc/81950> [<https://perma.cc/EUK4-6UL7>]; Consent Decree, *United States v. City of Pittsburgh*, No. 2:97-cv-00354 (W.D. Pa. Feb. 26, 1997), <https://clearinghouse.net/doc/5314> [<https://perma.cc/5DHZ-GC2S>]; Settlement Agreement, *United States v. City of Portland*, No. 3:12-cv-02265 (D. Or. Dec. 17, 2012), <https://clearinghouse.net/doc/64083> [<https://perma.cc/LL2F-4LDM>]; Consent Decree, *United States v. Prince George's County*, No. 8:04-cv-00185 (D. Md. Jan. 22, 2004), <https://clearinghouse.net/doc/11191> [<https://perma.cc/ABG5-NHTF>]; Agreement for the Sustainable Reform of the Puerto Rico Police Department, *United States v. Puerto Rico*, No. 3:12-cv-02039 (D.P.R. Dec. 21, 2012), <https://clearinghouse.net/doc/46581> [<https://perma.cc/6E7Z-TSJ4>]; RIVERSIDE POLICE DEPARTMENT, STRATEGIC PLAN 2004–2009, at 12 (2004), <https://clearinghouse.net/doc/11159> [<https://perma.cc/5P5X-A4TU>]; Settlement Agreement,

common reforms that are found among all of the decrees: Early Warning Systems,¹³⁴ Community Policing,¹³⁵ Crisis Intervention Teams,¹³⁶ Specialized Unit Reforms,¹³⁷ and Procedural Reforms.¹³⁸ The reforms that specific consent decrees contained are marked with an “X”:

These reforms are exemplary not only of the kinds of policies we see from these Reform Consent Decrees, but also of how they are reformist reforms more than anything else. All five categories of reforms either work to increase funding and resources for police, accept the notion that police increase safety, or increase the scale of policing.¹³⁹ When consent decrees contain these factors, they are working to normalize and prop up existing police practices instead of critiquing the existence and authority of law enforcement.

B. *The Jurisdiction-Stripping Consent Decree*

The contents of Reform Consent Decrees are not surprising. They change policies and create new initiatives to reduce the harm that police officers can create. These decrees operate in similar ways to the various

United States v. City of Seattle, No. 2:12-cv-01282 (W.D. Wash. July 27, 2012), <https://clearinghouse.net/doc/43337> [<https://perma.cc/YW3H-4Y97>]; Consent Decree, United States v. City of Steubenville, No. 97-cv-00966 (S.D. Ohio Sept. 3, 1997), <https://clearinghouse.net/doc/5300> [<https://perma.cc/5F9Q-2U9H>]; Consent Decree at 9, United States v. Virgin Islands, No. 3:08-cv-00158 (D.V.I. Mar. 24, 2009), <https://clearinghouse.net/doc/43347> [<https://perma.cc/FL4W-7RQX>]; Settlement Agreement, United States v. City of Warren, No. 4:12-cv-00086 (N.D. Ohio Jan. 26, 2012), <https://clearinghouse.net/doc/43366> [<https://perma.cc/C74X-SGYD>].

¹³⁴ Early Warning Systems (or Early Intervention, or Early Identification, or Risk Management Systems) are internal algorithms that help determine which police officers are more likely to repeat police abuses by obtaining more information regarding police misconduct around domestic violence, racial bias, charges of resisting arrest and more. *E.g.*, Consent Decree, United States v. City of Pittsburgh, *supra* note 133, at 6–9.

¹³⁵ Community Policing refers to a broad range of policies that include greater interaction between police departments and community members and more oversight from community members. *E.g.*, Consent Decree, United States v. City of Ferguson, *supra* note 133, at 4–9.

¹³⁶ Crisis Intervention Teams are police officers trained to deal with situations surrounding mental health issues. For example, in Seattle, the Crisis Intervention team was updated to better deal with use of force issues regarding individuals in a mental health crisis. *E.g.*, Settlement Agreement, United States v. City of Seattle, *supra* note 133, at 37.

¹³⁷ Albuquerque’s decree required the department’s specialized units (like SWAT, Canine, and Bomb Squad) to be separately trained, and it equipped the entities that deal with similar problems in more effective manners. *E.g.*, Settlement Agreement, United States v. City of Albuquerque, *supra* note 133, at 38.

¹³⁸ Procedural Reforms refer to changes around police practices relating to the methods in which they perform their duties. For example, the Steubenville consent decree required giving arrestees their *Miranda* warnings as soon as a suspect is taken into custody—even though it is not constitutionally required. *E.g.*, Consent Decree, United States v. City of Steubenville, *supra* note 133, at 12; *see supra* notes 81–85 and accompanying text (discussing *Miranda* rights).

¹³⁹ *See supra* note 57, which lists these factors as those that make a reform reformist.

eras of reform efforts already discussed.¹⁴⁰ However, the Jurisdiction-Stripping Consent Decree is different. The terms in these decrees are non-reformist and fit the parameters laid out by abolitionists, opening the door for the use of consent decrees as a tool for police abolition.

There is only one example of the Jurisdiction-Stripping Consent Decree among the twenty-four available consent decrees, the one example on the graph that does not have any of the common reformist reforms that consent decrees contain. That decree is the one from Meridian, Mississippi. In Meridian, the Justice Department began an investigation because the Meridian Public School District (“the District”) was working with the Meridian Police Department (“the Department”) to continue the school-to-prison pipeline¹⁴¹ by arresting children for misconduct at school.¹⁴² The Department automatically arrested children—particularly Black children and children with disabilities¹⁴³—whenever the District called, without any regard for the heightened probable cause standards required to arrest children.¹⁴⁴ The DOJ decided to take extreme and unusual measures to protect the students in Meridian.

In the Meridian consent decree, the Department is significantly limited in how it responds to requests from the District to arrest students. First, it limits arrests to those which have probable cause, are criminal, create an immediate threat, occur in the officer’s presence, or have a judicial warrant for the arrest.¹⁴⁵ Second, it requires the Department to avoid executing a warrant at a school.¹⁴⁶ Thirdly, and most importantly, it prohibits the Department from responding to “school-based arrests for behavior that is appropriately addressed as a school discipline issue.”¹⁴⁷ While this behavior is not defined¹⁴⁸ and seems open to interpretation, it is a major limitation of what jurisdiction the Department

¹⁴⁰ See *supra* Section I.B.

¹⁴¹ See Christopher A. Mallett, *The School-to-Prison Pipeline: A Critical Review of the Punitive Paradigm Shift*, 33 CHILD & ADOLESCENT SOC. WORK J. 15 (2016) (explaining and exploring the development of the school-to-prison pipeline).

¹⁴² Press Release, U.S. Dep’t of Just., Justice Department Releases Investigative Findings Showing Constitutional Rights of Children in Mississippi Being Violated (Aug. 10, 2012), <https://www.justice.gov/opa/pr/justice-department-releases-investigative-findings-showing-constitutional-rights-children> [<https://perma.cc/99S6-JBW2>].

¹⁴³ Complaint at 9, *United States v. City of Meridian*, No. 4:12-cv-00168 (S.D. Miss. Oct. 24, 2012), <https://clearinghouse.net/doc/74305> [<https://perma.cc/YF3P-M8LM>]; Findings Letter, *United States v. City of Meridian*, No. 4:12-cv-00168 (Aug. 10, 2012), <https://clearinghouse.net/doc/74201> [<https://perma.cc/J85L-KZD2>].

¹⁴⁴ *Id.* at 4.

¹⁴⁵ Settlement Agreement at 4, *United States v. City of Meridian*, No. 3:13-cv-00978 (S.D. Miss. Sept. 18, 2015), <https://clearinghouse.net/doc/89537> [<https://perma.cc/W6NA-BZ2U>].

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ There is a list of incidents that should be included: “public order offenses including disorderly conduct, disruption of schools or public assembly, trespass, loitering, profanity,

has over when, where, and who it can arrest. The two compliance reports—memos from monitors and jurisdictions about their progress implementing the changes in the decree—for the consent decree show the Department only conducted one arrest on District property in the 2015 to 2016 period,¹⁴⁹ and many other calls were handed over to the District’s safety department instead of the Department itself.¹⁵⁰ The compliance with the consent decree means less arrests for students, less disruption of class time, and less harm to students and their families. By limiting the jurisdiction of the Department in this way, the consent decree was able to achieve the same societal benefits that the broader abolition movement advocates for: less harm.¹⁵¹

Nonetheless, even in Meridian there have been setbacks. To deal with the vacuum of enforcement, the Meridian School District established its own on-campus police department to handle behavioral issues, potentially recrystallizing the harms that the Meridian Police Department created in the first place.¹⁵² Because of potential work-arounds like this, any effective Jurisdiction-Stripping Consent Decree must include clauses preventing municipalities replacing the jurisdiction of police departments with other carceral or violent agencies.¹⁵³

The Meridian consent decree gives us the blueprint, and lawyers in civil rights circles are already thinking about expanding its use.¹⁵⁴ If we can find a way to promote more Jurisdiction-Stripping Consent Decrees, then we can further the path to police abolition. The consent decree might be a fast tool to get police out of schools, out of traffic stops, out of mental health crises, and so much more. The question then becomes: Does the legal doctrine behind the consent decree allow for

dress code violations, and fighting that does not involve serious physical injury or a weapon.”
Id.

¹⁴⁹ CHIEF RODNEY MONROE, INTERIM COMPLIANCE REPORT 11 (2016), <https://clearinghouse.net/doc/89543> [<https://perma.cc/65QY-TCRF>].

¹⁵⁰ CHIEF RODNEY MONROE, COMPLIANCE REPORT 11 (2017), <https://clearinghouse.net/doc/95050> [<https://perma.cc/ZGV9-SPRY>].

¹⁵¹ See Tasasha Henderson, *Young People Are Leading the Growing Movement for Police-Free Schools*, TRUTHOUT (Aug. 7, 2020), <https://truthout.org/articles/young-people-are-leading-the-growing-movement-for-police-free-schools> [<https://perma.cc/V2JX-GPXN>] (mentioning how getting police out of schools reduces harms to Black and Latinx youth, as well as paving the path to abolition).

¹⁵² See Whitney Downard, *Meridian Police Department Consent Decree in ‘School-to-Prison Pipeline’ Nearly Complete, Auditor Says*, MERIDIAN STAR (Oct. 26, 2017), https://www.meridianstar.com/news/local_news/meridian-police-department-consent-decree-in-school-to-prison-pipeline-nearly-complete-auditor-says/article_00b56614-6656-54e4-a6ba-02a512c5956f.html [<https://perma.cc/J3VG-QKNX>].

¹⁵³ See *infra* note 174 and accompanying text.

¹⁵⁴ This comes from my own private conversations with attorneys and legal directors at multiple civil rights organizations with a history of suing police departments.

the Jurisdiction-Stripping Consent Decree to be utilized in these expansive ways?

III

THE JURISDICTION-STRIPPING CONSENT DECREE IN PRACTICE

A. *The Doctrine & Legal Objections*

While the potential of the Jurisdiction-Stripping Consent Decrees might seem radical, the issuance of these consent decrees is supported by the present doctrine. The Supreme Court's current precedent on the use and constraints of consent decrees is laid out in *Local No. 93, International Association of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*.¹⁵⁵ The Court identifies four requirements of consent decrees, in addition to mutual consent of both parties.

First, the dispute that underlies the consent decree must be one that the court has subject-matter jurisdiction over.¹⁵⁶

Second, the decree must “come within the general scope of the case made by the pleadings.”¹⁵⁷ This means that the remedies prayed for cannot go further than the legal issues laid out in the pleading documents.¹⁵⁸

Third, the decree “must further the objectives of the law upon which the complaint was based.”¹⁵⁹ This means that the remedies prayed for cannot be opposite to the goals of the laws (generally the Constitution and 42 U.S.C. § 1983) of which the police departments are alleged to be in violation.¹⁶⁰

Lastly, the decree cannot require anything illegal.¹⁶¹

Any reimagining of consent decrees must be able to fit into these doctrinal restraints—luckily, the Jurisdiction-Stripping Consent Decree can easily be constrained to fit these requirements.

¹⁵⁵ See *Firefighters v. City of Cleveland*, 478 U.S. 501 (1986) (outlining the interaction of Title VII and consent decrees); see also Michael T. Morley, *Consent of the Governed or Consent of the Government? The Problems with Consent Decrees in Government-Defendant Cases*, 16 U. PA. J. CONST. L. 637, 648 (2014) (discussing further the legal precedent setting limits on what consent decrees can achieve).

¹⁵⁶ See *Firefighters*, 478 U.S. at 525.

¹⁵⁷ *Id.*

¹⁵⁸ See *id.* (citing *Pacific R.R. v. Ketchum*, 101 U.S. 289, 297 (1879) (“[T]he court, when applied to, will ordinarily give effect to [the parties’] agreement, if it comes within the general scope of the case made by the pleadings . . .”).

¹⁵⁹ *Id.*

¹⁶⁰ This does not mean that the remedies must strictly follow the contours of the underlying statute. For an example of this when the underlying statute was Title VII, see *Firefighters*, 478 U.S. at 525 (citing *EEOC v. Safeway Stores, Inc.*, 611 F.2d 795, 799 (10th Cir. 1979)); *Safeway Stores*, 611 F.2d at 799 (“[T]o argue that the terms of a consent decree may not vary from the statutory limits of Title VII is to misconceive the nature of consent decrees . . .”).

¹⁶¹ *Firefighters*, 478 U.S. at 526.

As a prerequisite, a successful Jurisdiction-Stripping Consent Decree would obtain the mutual consent of both parties—the DOJ and the police department or municipality being sued—otherwise the consent decrees would never come about. Some jurisdictions may be hesitant agreeing to accept such a transformative consent decree,¹⁶² but the DOJ’s extensive and lengthy investigations usually present departments with no choice but to consent.¹⁶³ Jurisdiction-Stripping Consent Decrees also satisfy the *City of Cleveland* factors.

First, the laws in which the consent decree complaints are generally sued under include the Constitution (the Due Process and Equal Protection clauses, and parts of the Bill of Rights) and the Ku Klux Klan Act of 1871.¹⁶⁴ Because such complaints raise questions of federal law, every federal court would have subject-matter jurisdiction.¹⁶⁵

Second, if the pleadings for the dispute identify that the harm in question is caused by the pernicious involvement of the police in a certain subject area (school discipline, mental health crises, etc.), then the use of a Jurisdiction-Stripping Consent Decree as a remedy would be within the scope of the case.

Third, while critics may argue that specific conditions of Jurisdiction-Stripping Consent Decrees which reduce the presence of police in society would not further the objectives of the Constitution or the Ku Klux Klan Act,¹⁶⁶ a compelling argument can be made that the abuses that police departments have caused¹⁶⁷ for centuries prevent vindication of the rights granted by the Constitution and protected by federal law. Reducing those harms by removing police officers from areas with repetitive and malignant abuse is in line with the Ku Klux Klan Act, the Constitution, and the functioning of a peaceful society.¹⁶⁸

¹⁶² The Meridian Police Department tried to work around the effects of their consent decree by establishing a separate school police force. *See supra* note 152 and accompanying text.

¹⁶³ *See supra* note 106 and accompanying text.

¹⁶⁴ 42 U.S.C. § 1983 (granting a private right of action to sue officers of the state for violations of the law and the Constitution); *see also supra* Part II (stating that the complaints and consent decrees in those cases almost always sue underneath the Constitution and § 1983 as well as other applicable laws); 17 Stat. 13, 42 Cong. Ch. 22 (1871).

¹⁶⁵ *See* 28 U.S.C. § 1331 (describing federal courts’ grant of subject-matter jurisdiction for cases and controversies with a federal claim or issue).

¹⁶⁶ Jeff Sessions, United States Attorney General, Remarks to the Chicago Crime Commission (Oct. 19, 2018) (transcript available from the United States Department of Justice), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-chicago-crime-commission> [<https://perma.cc/7XXT-7WVT>] (discussing a multitude of problems that a proposed consent decree in Chicago can bring including that “[e]nacting the [Chicago] consent decree would be anti-democratic in nature”).

¹⁶⁷ *See supra* Introduction.

¹⁶⁸ Just look at the consistent harms mentioned in this note and how nearly three decades of reformist consent decrees have not led to major reductions in abuses—to protect constitutional and statutory rights, something more must be needed.

Fourth, if the decree is written within the bounds of the authority of the courts and municipalities, then the Jurisdiction-Stripping Consent Decree would not advocate for anything illegal.¹⁶⁹

B. *A Practitioner's Guide & Practical Objections*

Maybe surprisingly, the Jurisdiction-Stripping Consent Decree should not have any issues falling in line with the current sparse doctrinal constraints to consent decrees. However, deciding if a Jurisdiction-Stripping Consent Decree is the best remedy for a particular issue or department and then writing that decree in a non-reformist, community-centered way, requires answering a series of questions. Does the affected community support the decree? Does the decree actually strip the police department of jurisdiction? What are the best ways to prevent abrogation of the decree? And are abolitionists involved in every conversation around the decree?

First, a practitioner must ask if a Jurisdiction-Stripping Consent Decree has the support of the community it purports to help. To build sustainable and justifiable decrees, communities need to be the reason behind their creation. Complete community support is not an abolitionist necessity,¹⁷⁰ but salient critiques of older civil rights movements disapprove of “top-down” approaches of advocacy—in which organizations impose their reform ideas without first seeking community input.¹⁷¹ Because consent decrees have years-long effects and because police departments’ primary role is to “protect and serve” their communities, those communities should have a say in how they are cared for. Additionally, communities themselves will likely be the best resource for identifying police abuses and possible effective solutions. Any research into litigation memos or community organizing that is undertaken should begin with conversations with community members that guide what things an abolitionist should be looking for in drafting the Jurisdiction-Stripping Consent Decree. What if communities oppose abolition? Well, it would be a far stretch to say that any single

¹⁶⁹ This assumes that plaintiffs would not write unnecessary things in a complaint that would be blatantly illegal, which presumably is a fair assumption to make about the DOJ or any other litigant thinking carefully about their litigation.

¹⁷⁰ *But see* Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1834 (2020) (“Abolitionists are committed to building community capacity to respond to crises and interpersonal harm.”).

¹⁷¹ This is the concept behind movement lawyering. *See, e.g.*, Tifanei Ressler-Moyer, Pilar Gonzalez Morales & Jaqueline Aranda Osorno, *Movement Lawyering During a Crisis: How the Legal System Exploits the Labor of Activists and Undermines Movements*, 24 CUNY L. REV. 91 (2021) (describing harmful legal practices of social justice movements, and how movement lawyering can solve them).

Jurisdiction-Stripping Consent Decree would abolish police departments wholesale, but rather work piece by piece to reduce the domains in which law enforcement officials operate. So, focus on the areas that specific communities see as the direst for them (maybe police in schools for one community or stop-and-frisk for another). Hold community meetings; do some coalition-building—in other words, convince people. Everyone in a community will never completely agree, but if you believe in both abolition and community-based activism, then it is your job to achieve both ends to the most practicable extent.

Second, in each municipality practitioners should ask if the Jurisdiction-Stripping Consent Decree actually eliminates the police department's authority to operate in a certain sphere—in other words, will it actually strip jurisdiction, or does the decree fall into the reformist pitfalls identified above?¹⁷² A true and effective Jurisdiction-Stripping Consent Decree will need to ensure that it is non-reformist at its creation by reducing the jurisdiction of police departments, and thus, their potential for abuse.¹⁷³ Measures like removing police departments from traffic stops, mental health crises, and schools restrict police departments' jurisdiction and are thus, non-reformist Consent Decree measures.

Third, practitioners must ask what the best way is to prevent roll-backs of the decree. Proponents of the Jurisdiction-Stripping Consent Decrees must take steps to ensure that the decrees do not lead to more policing or have long-term unintended effects after the decree's enforcement period ends. Municipalities and elected officials who worry about backlash from abolition-based policies might not be receptive to the Jurisdiction-Stripping Consent Decree, and their potential attempts to water down the decrees must be tempered. The main disappointment of the Meridian consent decree is that a separate school disciplinary police force was created, which risked repeating the harms that the police department precipitated in the school district.¹⁷⁴ This could have been prevented by including language barring such abrogation. Whatever language will be needed depends on the specific measures in the decree, but there should be a thoughtful discussion of how to indefinitely bolster the jurisdiction-stripping components of the decree. Municipalities may work to prevent this kind of language from being adopted and enforced, but this is why thorough litigation strategies are needed before the effectuation of the decree while effective monitors are needed after. The best way to maximize the pressure the DOJ or other advocates can bring to

¹⁷² See *supra* Part II.

¹⁷³ See *supra* notes 90–93 and accompanying text.

¹⁷⁴ See *supra* note 152 and accompanying text.

these municipalities is to use pre-complaint investigations (those that find significant patterns of illegal or unconstitutional behavior by the law enforcement) and write them into complaints. Then after the decree is in place, court-appointed monitors must be supervised to ensure that the provisions of the decree are actually carried out, including any anti-rollback provisions. The specific language of the decree should be meticulously set forth to indefinitely bolster its jurisdiction-stripping components. For an example of language for a non-reformist Consent Decree that restricts police departments from engaging in traffic stops, see below:

- (i) Officers shall not conduct any stops, arrests, or any other actions made in an effort to enforce the laws and regulations contained in [INSERT TRAFFIC ENFORCEMENT SECTIONS OF THE RELEVANT JURISDICTION'S CODE] or any other laws and regulations concerning traffic enforcement.
- (ii) Neither the department, nor the municipality, nor any party to this agreement may grant the powers to enforce the laws and regulations contained in [INSERT CODE CITATION] to any other institution, agency, department, or organization.
 - i Unless:
 1. The institution, agency, department, or organization is never given the ability to give violations, issue tickets, conduct arrests, or participate in any act that leads to negative pecuniary or carceral outcomes to individuals found, perceived, or suspected to be in violation of the laws and regulations contained in [INSERT CODE CITATION] or any other laws and regulations related to traffic enforcement; AND
 2. All parties to this agreement agree to this grant of power in writing; AND
 3. Relevant community partners as designated by all parties to this agreement also agree to this grant of power in writing.

Fourth, practitioners should ask if abolitionists are involved in every conversation around the decree. Personal and communal accountability will be a backstop to ensure meaningful change is not reformist and ineffective. The broad guidelines of this Note are not intended as a play-by-play handbook for practitioners writing and implementing consent decrees. Rather, good Jurisdiction-Stripping Consent Decrees will result from conversations with and learning from abolitionist networks of friends and colleagues. Practitioners and abolitionists from all kinds of institutions should consider the Jurisdiction-Stripping Consent

Decree—whether you are an attorney at the DOJ or an associate counsel at LDF. The institutions that you work for might have their own concerns and pushbacks about dedicating resources toward the Jurisdiction-Stripping Consent Decree, but it is your task to convince them that this tool is worth pursuing. There might be further concerns as to whether a prosecutorial governmental organization like the DOJ could ever pursue an abolitionist consent decree. But remember that the Meridian consent decree was brought by the DOJ! If they could think so radically back then, they can be encouraged and prodded to think radically now by activists, abolitionists, and lawyers inside the agency that can make the Jurisdiction-Stripping Consent Decree a priority and hold the DOJ accountable to pursuing such a decree in non-reformist ways. Outside of the DOJ, there is even more hope—I have already had conversations with organizations such as LatinoJustice, the NAACP, the NAACP Legal Defense Fund, and others who are intrigued by the possibility of a new way to imagine policing litigation. Those organizations should pursue jurisdiction stripping remedies in their litigation and advocate for the DOJ to pursue Jurisdiction-Stripping Consent Decrees.

I am calling on civil rights attorneys in firms and non-profit organizations to demand jurisdiction-stripping remedies in any police litigation they bring, I am asking for attorneys at the DOJ to be abolitionist in their thinking and push for as many Jurisdiction-Stripping Consent Decrees as possible, and I am asking for advocates and activists to hold both the DOJ and civil rights attorneys accountable.

CONCLUSION:

A USEFUL TOOL FOR ABOLITIONISTS & CIVIL RIGHTS LAWYERS

Abolitionists should look here for a proactive step to abolition. There has been a long fight to find ways we can build public support and institutional structures for abolition, and this is one potential step that has not been recognized. With abolitionists and marginalized communities leading the charge about what the complaints and consent decrees should look like, the potential for harm reduction and meaningful change is real and worthy of testing.

Civil rights lawyers should look to Jurisdiction-Stripping Consent Decrees for a way to create innovative litigation and meaningful change. There are discussions within the civil rights and civil liberties circles about how to find new and creative ways to fight for our clients and communities with ineffective political branches and a hostile Supreme Court. While the Jurisdiction-Stripping Consent Decree is not a sure bet, it is a new tool that can lead to change. With the help of movement lawyers and local community partners, we can work to

expose the abuses of police departments across the country and get the DOJ on our side as we have done twenty-six times before. We can find a way to make courts grant and enforce these decrees.

Everyone else concerned about the harms of police but worried about the correct way to change them, should also look here. The biggest struggle to abolition might be getting policed members of the community on board. That is my biggest challenge to calling myself an abolitionist—if the members most affected do not agree with me, how can I be so sure that it's the right solution?

I have had conversations with my middle-aged Black parents who have seen first-hand police officers bloodily beating individuals like my grandmother and desire a different reality, a different conception of what safety means in our communities. But my mother is a former probation and parole officer, and both my parents see police as a tool to prevent interpersonal violence in our communities. They want more police officers, not fewer. I know that for them, and for so many people in our communities like them, things like abolition can seem radical, scary, and harmful. And I know that getting them on board will be extremely difficult. And as much as I respect and want to value their ideas and critiques of abolition, I also know that the history of reformist reforms have never been enough. More police has never been enough. We need radical change; we need something new to stop the centuries-old problem of Black people, people with disabilities, poor people, and everyone being killed, harmed, and broken by police abuse. Abolition has the potential to get us there.

I believe that change is possible. I believe that reconciliation is possible. I believe that creating more loving and caring communities is possible. We need to talk to people and convince them. So, here's what I say to abolitionist lawyers: write good complaints and decrees. Make sure that courts and the political branches do not stymie us. And make sure that the marginalized communities that are most harmed are onboard and excited. These are difficult things to do. But change always is. And that does not make the fight any less worth it.

APPENDIX

| | Type of Reform | | | | |
|-----------------------------------|-----------------------------|---------------------------|---------------------------------|--------------------------------|---------------------------|
| | <i>Early Warning System</i> | <i>Community Policing</i> | <i>Crisis Intervention Team</i> | <i>Specialized Unit Reform</i> | <i>Procedural Reforms</i> |
| <i>Albuquerque, NM</i> | | | X | X | |
| <i>Alamance, NC</i> | | | | | X |
| <i>Baltimore, MD</i> | X | X | X | | |
| <i>Cleveland, OH</i> | | X | X | | |
| <i>Colorado City, AZ</i> | | | | | X |
| <i>Detroit, MI</i> | X | | | | X |
| <i>East Haven, CT</i> | X | | | | |
| <i>Ferguson, MO</i> | | X | X | X | |
| <i>Los Angeles, CA (2000)</i> | X | | | | |
| <i>Los Angeles, CA (2015)</i> | X | X | | | |
| <i>Maricopa County, AZ</i> | | X | | | |
| <i>Meridian, MS</i> | | | | | |
| <i>New Jersey</i> | X | | | | |
| <i>New Orleans, LA</i> | X | X | X | X | |
| <i>Newark, NJ</i> | X | X | | | |
| <i>Pittsburgh, PA</i> | X | X | | | |
| <i>Portland, OR</i> | X | X | | X | |
| <i>Prince George's County, MD</i> | | | | X | |
| <i>Puerto Rico</i> | X | X | X | | |
| <i>Riverside, CA</i> | | X | | X | |
| <i>Seattle, WA</i> | | | X | | |
| <i>Steubenville, OH</i> | | | | | X |
| <i>Virgin Islands</i> | X | | | | |
| <i>Warren, OH</i> | X | X | | | |

Municipality