

## POLICING AND PROCEDURAL JUSTICE: SHAPING CITIZENS' IDENTITIES TO INCREASE DEMOCRATIC PARTICIPATION

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**ABSTRACT**—Like the education system, the criminal justice system offers both formal, overt curricula—found in the Bill of Rights, and informal or “hidden” curricula—embodied in how people are treated in interactions with legal authorities in courtrooms and on the streets. The overt policing curriculum identifies police officers as “peace officers” tasked with public safety and concern for individual rights, but the hidden curriculum, fraught with racially targeted stop and frisks and unconstitutional exercises of force, teaches many that they are members of a special, dangerous, and undesirable class. The social psychology of how people understand the fairness of legal authorities—procedural justice—is one way to understand these practices and their effects, and to improve relationships between law enforcement and the public. Procedural justice posits that people are likely to comply with the law, cooperate with authorities, and engage with them when they are treated fairly, which the public tends to interpret through how they are treated as opposed to focusing on the outcomes of authorities’ decisions. Research suggests that the way police treat citizens impacts how people think of themselves, especially how they think of themselves as citizens. Positive changes in procedural justice may encourage more democratic participation in government.

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INTRODUCTION

I am tasked with addressing the debureaucratization of the police. In the context of this Symposium on democracy and criminal law, that appears to mean, at some high level, opposing experts and favoring citizen engagement.<sup>1</sup> I am largely sympathetic to that commitment, but I think I am more of a fan of bureaucracy than the organizers of this Symposium may be. I believe citizen engagement is a legitimizing force for government and governance. But, I think engagement should be structured and rationalized toward a particular end.<sup>2</sup>

I. (IN)FORMALLY EDUCATING WE THE PEOPLE: POLICE AND THE CRIMINAL JUSTICE SYSTEM

To begin, consider a recent essay I co-wrote with a historian, Benjamin Justice, entitled *How the Criminal Justice System Educates Citizens*.<sup>3</sup> In that essay, Dr. Justice and I explained that the modern democratic state interacts with citizens in at least two primary ways: public school systems and criminal justice systems. A central point of our essay is that, while as a polity we have acknowledged that public school systems train youths to be good citizens—people who effectively participate in the varied spheres of our society, from political and ideological to social and

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<sup>1</sup> See, e.g., Tracey L. Meares & Dan M. Kahan, *The Wages of Antiquated Procedural Thinking: A Critique of Chicago v. Morales*, 1998 U. CHI. LEGAL F. 197, 208–09 (discussing the importance of considering stakeholder views when interpreting constitutional limitations on police action).

<sup>2</sup> For example, I do not favor incorporating citizen decisionmaking into all aspects of criminal adjudication, such as bail hearings, guilty pleas, and sentencing decisions. See, e.g., LAURA I APPLEMAN, *DEFENDING THE JURY: CRIME, COMMUNITY, AND THE CONSTITUTION* (2015); Laura I Appleman, *Local Democracy, Community Adjudication, and Criminal Justice*, 111 NW. U. L. REV. 1413 (2017).

<sup>3</sup> See Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 159 (2014).

economic—we do not similarly understand criminal justice systems to serve this same function. Criminal justice systems, however, powerfully and pervasively provide both people who are processed by the system and those who are not with a formal education in what it means to be a citizen; so for state authorities, scholars, and the public generally to fail to understand and appreciate that role is a missed opportunity. It is also true that deeper understanding of the existence and scope of this educational process is important for understanding the goals of criminal justice operations, as well as its much-needed reform.

Our argument draws upon two bodies of theory. “Curriculum theory”<sup>4</sup> is the first. The word “curriculum” comes from the Latin “race course.”<sup>5</sup> Just as a race course presents a runner with a structured plan for progress sometimes strewn with obstacles, curricula present students with structured experiences and tasks that they must pass through or complete to claim that they have completed their formal education. Formality and structure are usually conceived as key components of curricula. Every law student is familiar with a curriculum, as she has seen a class syllabus, the official articulation of what will be taught in a course over a semester. Formal curricula also include textbooks or even official rubrics often chosen by an official body.<sup>6</sup> Justice and I argue, in a similar way, that the criminal justice system offers a formal curriculum.<sup>7</sup> To see it, we point to lessons found in one part of the “syllabus” of criminal justice: the Bill of Rights in the U.S. Constitution. The Supreme Court has drawn on the Fourth, Fifth, and Sixth Amendments to create a set of “codes” for criminal procedure,<sup>8</sup> and we might point to these Amendments as “lessons” that convey concern for

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<sup>4</sup> As Justice and I summarize in our paper, *see* Justice & Meares, *supra* note 3, and as I explain below, *see infra* notes 7–15 and accompanying text, curriculum theorists developed a sophisticated understanding of all of the ways students learn in school, pointing out that “[t]he belief that schooling can be defined as the sum of its official course offerings is a naive one.” Henry A. Giroux & Anthony N. Penna, *Social Education in the Classroom: The Dynamics of the Hidden Curriculum*, 7 THEORY & RES. SOC. EDUC. 21, 21 (1979).

<sup>5</sup> *Curriculum*, MERRIAM-WEBSTER (2017), <https://www.merriam-webster.com/dictionary/curriculum> [<https://perma.cc/5MMF-Z46X>].

<sup>6</sup> For a fascinating exploration of the influence the Texas State Board of Education has on textbooks, see, for example, *The Revisionaries* (PBS television broadcast Jan. 28, 2013), <http://www.pbs.org/independentlens/films/revisionaries/> [<https://perma.cc/NPJ6-783G>]. *See also* Zoë Schlanger, *Company Apologizes for Texas Textbook Calling Slaves ‘Workers’: ‘We Made a Mistake,’* NEWSWEEK (Oct. 5, 2015), <http://www.newsweek.com/company-behind-texas-textbook-calling-slaves-workers-apologizes-we-made-380168> [<https://perma.cc/V8JS-N9BV>] (describing controversy in which Texas textbook described enslaved people forcibly brought to the U.S. “workers” on a page in the book described as “patterns of immigration”).

<sup>7</sup> *See* Justice & Meares, *supra* note 3, at 161.

<sup>8</sup> *See* Henry J. Friendly, *The Bill of Rights as a Code of Criminal Procedure*, 53 CALIF. L. REV. 929 (1965).

rights and protections of individual autonomy, privacy, and bodily integrity against the unconstrained discretion of legal authorities. That is, we might conclude that, by enshrining the protection of the interests just listed into constitutional guarantees against state overreach, the Court provides foundational lessons about our value as individual citizens.<sup>9</sup>

But the formal and overt curriculum is only one part of the story. Beginning in the late 1960s, scholars began to study and deconstruct exactly what children were learning in schools besides what was claimed to be taught in textbooks. For example, sociologist Philip Jackson explored and explained how successful students learned to relate to power in the day-to-day operation of the schools they inhabited.<sup>10</sup> They learned behaviors that emphasized hierarchy, order, dependency, and submission—all characteristics arguably inconsistent with building a healthy democratic character, which would instead encourage students to question authority rather than to follow rules automatically. For example, many scholars have noted that it is difficult to expect students to internalize democratic values from formal civics curricula when the institutional context of schools embodies an informal, experiential curriculum that is fundamentally inconsistent with the official lessons and subject matter.<sup>11</sup>

Jean Anyon's classic, *Social Class and the Hidden Curriculum of Work*, illustrates these ideas.<sup>12</sup> The article begins by noting the growing recognition in the literature that students from different social backgrounds were rewarded for classroom behaviors corresponding to traits necessary for future work for which they were being groomed.<sup>13</sup> The article provides empirical support for this hypothesis by describing five different fifth grade math classrooms, each of which used the same mathematics textbook, i.e., identical formal curricula. Interestingly, though, Anyon demonstrated that in each classroom—working class, middle class, professional class, and elite executive class—teachers utilized different teaching methods, ranging from rote learning of mathematical procedures, to emphasizing obtaining correct answers, to developing skills of artistic and scientific expression, to development of intellectual powers. Anyon claimed that each pedagogical approach corresponded to the various roles each group of children would be expected to play in the class-divided world of work in their future.<sup>14</sup> She

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<sup>9</sup> See Justice & Meares, *supra* note 3, at 172 (explaining the text of the Constitution as offering a formal curriculum of criminal justice).

<sup>10</sup> See generally PHILIP W. JACKSON, *LIFE IN CLASSROOMS* (1968).

<sup>11</sup> See PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (1970); AMY GUTMANN, *DEMOCRATIC EDUCATION* (rev. ed. 1999); MEIRA LEVINSON, *NO CITIZEN LEFT BEHIND* (2012).

<sup>12</sup> Jean Anyon, *Social Class and the Hidden Curriculum of Work*, 162 J. EDUC. 67 (1980).

<sup>13</sup> *Id.* at 67.

<sup>14</sup> *Id.* at 73–86.

called these teaching methods “hidden curricul[a],” as they were not explicitly set out in the texts that each classroom used.<sup>15</sup>

For our purposes here, the takeaway of Anyon’s thesis is the structure of potential divergences and conflicts between formal curricula and hidden curricula. All sorts of school experiences, including the choice of mascots and other school symbols,<sup>16</sup> who sits next to whom in the cafeteria,<sup>17</sup> the expectation that children line up to go outside to recess and stand in sex segregated lines when they march outdoors, who is suspended or expelled and who is not,<sup>18</sup> or even—perhaps especially—whether boys and girls are encouraged equally to speak up in class,<sup>19</sup> can comprise a “hidden curriculum,” separate, distinct, and often contradictory to the overt curriculum taught alongside it. A quick glance at the current prevailing policy talk around the aims of schools, which emphasizes “the basics” to the exclusion of civics and arts, reveals little to no acknowledgement of the pervasive influence of the hidden curriculum.<sup>20</sup>

Justice and I argue that the criminal justice system, both in courtrooms and on the streets, provides a hidden curriculum conveying how people are treated in interactions with law enforcement.<sup>21</sup> Consider, for example, policing. Our overt policing curriculum depicts police officers as “peace officers” concerned with promoting public safety, intrinsically committed to the rule of law and constitutional restraints on force. Yet, for many of us, the hidden curriculum of policing conveys entirely different lessons when clearly identified segments of the population are marked by hundreds of thousands of unconstitutional stops and frisks (which is what happened in

<sup>15</sup> *Id.* at 68.

<sup>16</sup> See Corbett Smith, *What’s in a Name?: A School’s Mascot is a Point of Pride and Tradition*, DALL. MORNING NEWS (2014), <http://res.dallasnews.com/interactives/mascots> [https://perma.cc/58SR-L8AF]; *History of Progress*, CHANGE THE MASCOT, <http://www.changethemascot.org/history-of-progress/> [https://perma.cc/2DNZ-ZA3U].

<sup>17</sup> See BEVERLY DANIEL TATUM, “WHY ARE ALL THE BLACK KIDS SITTING TOGETHER IN THE CAFETERIA?” (2003).

<sup>18</sup> See Pamela Fenning & Jennifer Rose, *Overrepresentation of African American Students in Exclusionary Discipline: The Role of School Policy*, 42 URB. EDUC. 536 (2007); Russell J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 URB. REV. 317 (2002).

<sup>19</sup> Professor Lani Guinier and her colleagues provide a very compelling account for use of the Socratic Method in law schools as an antidote to gender bias in professors’ decision to call on students who volunteer. LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (1997).

<sup>20</sup> Sam Dillon, *Schools Cut Back Subjects to Push Reading and Math*, N.Y. TIMES (Mar. 26, 2006), <http://www.nytimes.com/2006/03/26/education/26child.html> [https://perma.cc/NN24-5JT2].

<sup>21</sup> Justice & Meares, *supra* note 3. Our piece explores the formal and hidden curricula of criminal juries, sentencing, and policing.

New York City)<sup>22</sup> or unconstitutional uses of force (as the U.S. Department of Justice recently found was the case in Chicago).<sup>23</sup> Too often this hidden curriculum of policing sends certain members of the polity signals that they are marked as an undesirable and dangerous class of people different from everyone else—“anticitizen[s].”<sup>24</sup> The notion of the anticitizen is a lesson for everyone in the community, not simply those who are marked by practices inconsistent with the overt curriculum. It is especially striking then, when people experience the negative hidden curriculum when police say they are just doing their jobs—fighting crime on behalf of impoverished and disproportionately minority communities.

An article recently published in the University of Chicago Legal Forum makes this point poignantly. Professor Craig Futterman led a project designed to collect the details of routine encounters between Chicago police and black high school students. The Mandel Legal Aid Clinic at the University of Chicago Law School and the Invisible Institute engaged African American teens on the South Side of Chicago in conversations about police using a multimedia method for capturing interactions.<sup>25</sup> This project has produced a rich and often heartbreaking account of disjuncture between the overt and hidden curricula. One young man put it this way: “They’re over you and you’re under them. Therefore, you don’t matter.”<sup>26</sup>

## II. HOW PROCEDURAL JUSTICE CAN IMPROVE CITIZENS’ PERCEPTION OF THE POLICE

I noted at the outset of this Essay that Justice and I relied upon two bodies of theory to make our argument. The last Part explained our use of curriculum theory. This Part explains the theory upon which we relied to

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<sup>22</sup> See Tracey L. Meares, *Programming Errors: Understanding the Constitutionality of Stop-and-Frisk as a Program, Not an Incident*, 82 U. CHI. L. REV. 159 (2015) (discussing the several hundreds of thousands of stops and frisks of New York residents, primarily young men of color as a program not anticipated by the constitutional doctrine, *Terry v. Ohio*, that sanctioned such police practice).

<sup>23</sup> See Julie Bosman & Mitch Smith, *Chicago Police Routinely Trampled on Civil Rights, Justice Dept. Says*, N.Y. TIMES (Jan. 13, 2017), <https://www.nytimes.com/2017/01/13/us/chicago-police-justice-department-report.html> [<https://perma.cc/Z2BQ-W36S>].

<sup>24</sup> Justice & Meares, *supra* note 3, at 172. When referring to the term citizen, we do not mean simply the legal definition of the term, but rather we are referring to a more general concept of a citizen as a member of a polity. In this way, we are able to argue that the hidden curriculum can create the citizen’s mirror image—the anticitizen.

<sup>25</sup> See Craig B. Futterman, Chaclyn Hunt & Jamie Kalven, *Youth/Police Encounters on Chicago’s South Side: Acknowledging the Realities Policing the Police*, 2016 U. CHI. LEGAL F. 125, 129–32.

<sup>26</sup> *Id.* at 139.

interpret the lessons potentially taught in the overt and hidden curriculum of criminal justice—the social psychology of procedural justice.<sup>27</sup>

The centerpiece of that theory is that people are motivated to comply with the law, cooperate with authorities, and engage with them when they are treated fairly.<sup>28</sup> Decades of research support the conclusion that, when people are making evaluations about the authorities they encounter, fair treatment matters much more than favorable outcomes or the effectiveness of authorities at combatting crime.<sup>29</sup>

In determining whether people believe they have been treated fairly, four factors appear to matter.<sup>30</sup> First, we know that the public wants to be listened to when policies are being created, as well as to have an opportunity to state their case when dealing with individual police officers. Further, we know that people want explanations for decisions by legal authorities that allow them to determine whether authorities are acting without bias and consistent with policies derived from understandable and shared objectives. Second, the public needs to have information that will allow them to make an assessment about whether they feel that the law is applied consistently and appropriately across people and situations. This means people look for transparency and factuality in decisionmaking. Third, in addition to assessing the quality of a legal authority's decisionmaking, people also are attentive to how they are treated. With respect to this valence, people look for authorities to acknowledge their needs and concerns. People also are attentive to the extent to which authorities exhibit concern for the community or make efforts to act on behalf of the community. Fourth, people desire to be treated with respect and concern for rights. It is no secret that many people believe that the police treat members of the public, especially people of color, illegally or with disrespect. We can summarize these ideas colloquially in this way: in

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<sup>27</sup> See, e.g., Tracey Meares, *The Legitimacy of Police Among Young African-American Men*, 92 MARQ. L. REV. 651 (2009) (explaining the relevance of procedural justice to understanding how people evaluate the fairness of legal authorities such as police); Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—And Why It Matters*, 54 WM. & MARY L. REV. 1865 (2013) (same).

<sup>28</sup> See TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006); Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCHOL., PUB. POL'Y & L. 78 (2014); see also Tom R. Tyler, *From Harm Reduction to Community Engagement: Redefining the Goals of the American Policing in the 21st Century*, 111 NW. U. L. REV. 1537, 1543 (2017) [hereinafter Tyler, *From Harm Reduction*].

<sup>29</sup> See Tyler, *From Harm Reduction*, *supra* note 28.

<sup>30</sup> See Steven L. Blader & Tom R. Tyler, *A Four-Component Model of Procedural Justice: Defining the Meaning of a "Fair" Process*, 29 PERSONALITY & SOC. PSYCHOL. BULL. 747 (2003); Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 YALE L.J. F. 525 (2014), <http://www.yalelawjournal.org/forum/justice-sotomayor-and-the-jurisprudence-of-procedural-justice> [<https://perma.cc/UKX6-8LFY>] (summarizing research).

their interactions with legal authorities, people want to believe that the authority with whom they are dealing believes “that they count.”<sup>31</sup> And, people make this judgment based on how they are treated, as they cannot usually read minds. This is why the statement of the Chicago youth recounted above is so very important.<sup>32</sup>

### III. PROCEDURALLY JUST POLICING CAN INCREASE CITIZENS’ DEMOCRATIC PARTICIPATION

We have made great headway in bringing these ideas to policing. For example, I had the honor of serving on President Obama’s Task Force on 21st Century Policing.<sup>33</sup> The eleven members of the task force<sup>34</sup>—police chiefs, sheriffs, civil rights activists, union representatives, and Bryan Stevenson,<sup>35</sup> who is in a class of his own—made recommendations to build trust and legitimacy of policing, the foundational pillar on which all of our other recommendations rested.<sup>36</sup> The idea that policing as an enterprise should be organized around these ideas rather than a narrow vision of crime reduction backed up with aggressive policing might be considered a form of debureaucratization.<sup>37</sup> Perhaps not surprisingly, policing agencies find procedural justice an attractive approach to improving relationships between officers and members of the public, given that the approach can be tied to their own effectiveness.<sup>38</sup> It is important, however, to take a critical

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<sup>31</sup> Tracey L. Meares, Keynote Address, *Policing in the 21st Century: The Importance of Public Security*, 2016 U. CHI. LEGAL F. 1, 6 (emphasis removed).

<sup>32</sup> Futterman et al., *supra* note 25.

<sup>33</sup> See PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015), [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce\\_FinalReport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf) [<https://perma.cc/6K67-3XZ3>].

<sup>34</sup> The bios of the eleven members can be found here: MEMBER BIOGRAPHIES, THE PRESIDENT’S TASKFORCE ON 21ST CENTURY POLICING (2015), <https://cops.usdoj.gov/pdf/taskforce/TaskForceBio.pdf> [<https://perma.cc/9V2P-K9VK>].

<sup>35</sup> Bryan Stevenson is the founder of the Equal Justice Initiative and a clinical professor of law at NYU School of Law. He is a modern-day Thurgood Marshall, MacArthur Genius Award winner, author of the book *Just Mercy*, and an amazing human being. See Tim Adams, *Bryan Stevenson: ‘America’s Mandela,’* GUARDIAN (Feb. 1, 2015), <https://www.theguardian.com/us-news/2015/feb/01/bryan-stevenson-americas-mandela> [<https://perma.cc/8ATG-FYL8>].

<sup>36</sup> The Final Report of the President’s Task Force on 21st Century Policing is divided into six pillars: Building Trust & Legitimacy; Policy & Oversight; Technology & Social Media; Community Policing & Crime Reduction; Training & Education; and Officer Wellness & Safety. PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 33.

<sup>37</sup> Tyler, *From Harm Reduction*, *supra* note 28, at 1546–48.

<sup>38</sup> The largest conference of police chiefs—the 2017 annual meeting of the International Association of Chiefs of Police lists more than 40 mentions of “procedural justice” among the featured panels listed in the conference program. See IACP 2017, <http://www.theiacpconference.org/> [<https://perma.cc/B2P7-2YF3>]. Similarly a premier group of law enforcement leaders that include such notables as Bill Bratton, Charlie Beck, Ron Davis, Chuck Ramsey, and Cy Vance list as one of their



next step that highlights the ways in which procedural justice is not just about how people understand their relationship to authority,<sup>39</sup> but also how they understand their relationship to one another. As David Smith pointed out almost a decade ago, the legitimacy of police is necessarily a collective phenomenon “that amounts to something more than the sum of individuals’ beliefs.”<sup>40</sup>

As noted above, policing agencies have begun to pay attention to the relationship between compliance and procedural justice, but less attention has been given to why people care about procedural justice in the first place. Lind and Tyler explain that people care about procedural justice because it provides them with important informational signals that they view as relevant to their identities.<sup>41</sup> People tend to seek a favorable social identity within the groups to which they belong. People also seek a favorable social status for their group vis-à-vis other groups. The dynamic of legitimacy here is relational rather than instrumental. Procedural fairness expresses shared group membership.

As such, procedural justice not only implicates the relationship that individuals have with legal authorities but it also implicates how we, as members of groups, relate to one another in groups. As a theoretical matter, Oxford scholars Ian Loader and Ben Mulcahy have denominated police in the UK “Condensation Symbols”:

[Police are] an interpretive lens through which people make sense of, and give order to, their world, . . . a vehicle that enables individuals and groups to make sense of their past, form judgements on the present, and project various imagined futures. As an institution intimately concerned with the viability of the state . . . policing remains closely tied to the maintenance of ontological security, the production of subjectivities, and the articulation of collective identities.<sup>42</sup>

Loader and Mulcahy look to iconography such as the distinctive “bobby hat” worn by London police officers, photos of which appear ubiquitously on gift shop postcards in London as a symbol of Britain.

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key priorities building trust between communities and law enforcement as a means of ensuring safety. See *Priority Issues*, L. ENFORCEMENT LEADERS, <http://lawenforcementleaders.org/priority-issues/> [<https://perma.cc/G5WH-75V3>]. Importantly, this group has vocally disagreed with and criticized the current administration. See Timothy Williams & Richard A. Oppel, Jr., *Police Chiefs Say Trump’s Law Enforcement Priorities Are Out of Step*, N.Y. TIMES (Feb. 12, 2017), <https://www.nytimes.com/2017/02/12/us/police-chiefs-trump-law-enforcement-priorities.html> [<https://perma.cc/6B8B-5ERT>].

<sup>39</sup> See TOM R. TYLER & YUEN J. HUO, TRUST IN THE LAW (2002); Adams, *supra* note 35.

<sup>40</sup> David J. Smith, *The Foundations of Legitimacy*, in LEGITIMACY AND CRIMINAL JUSTICE: INTERNATIONAL PERSPECTIVES 30, 32 (Tom R. Tyler ed., 2007).

<sup>41</sup> Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, in 25 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 115 (Mark P. Zanna ed., 1992).

<sup>42</sup> IAN LOADER & AOGÁN MULCAHY, POLICING AND THE CONDITION OF ENGLAND 45 (2003).

Loader elsewhere suggests that such symbols become highly identified with the very meaning of citizenship.<sup>43</sup> But, these symbols can mean something very different to people who do not identify with police. The idea of the condensation symbol is that police may play a role in strengthening the ties among people and groups. However, police may also play a role in weakening the ties among groups. We should be very worried about the latter—especially right now.<sup>44</sup>

Ben Bradford, also of Oxford, and his colleagues recently tested these ideas empirically in surveys of Australian residents.<sup>45</sup> This idea is complicated because social identities are subject to many influences, many of which themselves precede one's contact with police or other criminal justice system actors. Bradford and his colleagues draw out social psychological mechanisms by which system contact can impact identity by examining whether it is possible that social identity judgments change as a result of procedurally just experiences with police. They do so further by examining whether identification with a social group that police represent can be shown empirically to mediate the association between procedural justice and legitimacy identified by scholars in prior work.<sup>46</sup> Bradford and his co-authors found that stronger citizenship identity is associated with more positive measures of procedural justice with police in specific encounters.<sup>47</sup> They also found that positive changes in procedural justice were associated with stronger perceptions of police legitimacy, and finally, that the association between procedural justice and legitimacy was mediated by identity.<sup>48</sup>

This research provides very suggestive evidence that what police do impacts how people think of themselves, especially how they think of themselves as citizens.<sup>49</sup> This is important because, to the extent that we want to encourage more participatory forms of government, which is what I

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<sup>43</sup> See Ian Loader, *Policing, Recognition, and Belonging*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 202, 211–12 (2006).

<sup>44</sup> This Essay was written a few weeks after the inauguration of the 45th President of the United States, a man who, shortly after taking office, issued executive orders that many progressive police leaders believed to be counterproductive and inconsistent with ideas and research detailed here. Timothy Williams & Richard A. Oppel Jr., *Police Chiefs Say Trump's Law Enforcement Priorities Are Out of Step*, N.Y. TIMES (Feb. 12, 2017), <https://www.nytimes.com/2017/02/12/us/police-chiefs-trump-law-enforcement-priorities.html> [https://perma.cc/V9ZK-XPYV].

<sup>45</sup> Ben Bradford, Kristina Murphy & Jonathan Jackson, *Officers as Mirrors: Policing, Procedural Justice and the (Re)Production of Social Identity*, 54 BRIT. J. CRIMINOLOGY. 527 (2014).

<sup>46</sup> *Id.* at 533.

<sup>47</sup> *Id.* at 543.

<sup>48</sup> *Id.*

<sup>49</sup> See Ian Loader, *Policing, Recognition, and Belonging*, 605 ANNALS AM. ACAD. POL. & SOC. SCI. 202 (2006).

take to be one of the goals of debureaucratization, one concern is the extent to which it is possible to ensure that all will be able to participate as equal valued members of society. I am not as sanguine as others might be that more participation without serious guidance as to proper values is better than the status quo. If bureaucratic expertise is necessary for such guidance, then I am all for it.

#### CONCLUSION

In 2017, we live in a world in which the implications of the populism that pushed Donald Trump over the edge into being sworn in as the 45th President of the United States might cause some to question the value of democracy “all the way down.” For my part, I can say I find Churchill’s quip to be most apt.<sup>50</sup> My commitments are primarily to ensuring that all people are valued equally and treated with the dignity with which they deserve, and too often, the way that the various criminal justice apparatuses work in this country provide regular examples of exactly how the state does not have these commitments. This is what I understand the movement leaders of Black Lives Matter to be saying. Some critics of the research and policy flowing from the procedural justice movement suggest that the approach is more conciliatory than transgressive,<sup>51</sup> and I can see how one could come to this conclusion given that too many policing agencies that engage in this work commit to watered down versions of procedural justice.<sup>52</sup> But I want to suggest that taking the research seriously has deep implications. A society that treats all citizens equally and in which the hidden and formal curricula are aligned—a society that the research envisions—would be a radical change.<sup>53</sup> Whether or not this ideal is achieved through processes of popular democracy or not, it is an ideal I would like to see for my children and fellow Americans.

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<sup>50</sup> “[D]emocracy is the worst form of Government except all those other forms . . . .” Winston Churchill, Speech to House of Commons (Nov. 11, 1947), in 7 WINSTON S. CHURCHILL: HIS COMPLETE SPEECHES: 1897–1963, at 7566 (Robert Rhodes James ed., 1974).

<sup>51</sup> Symposium participant, Professor Paul Butler, has made such an argument in his most recent book. See PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN 197–98* (2017).

<sup>52</sup> CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* (2014) (describing how some agencies conflate all four procedural justice factors into one: politeness).

<sup>53</sup> See Nat’l Constitution Ctr., *Jeffery Rosen Speaks with Tracey Meares About Legitimacy and Policing*, YOUTUBE (July 8, 2015), <https://www.youtube.com/watch?v=4Nm6LW2D6VM> [<https://perma.cc/JXC4-3MVP>] (discussing the concept of the Third Reconstruction at 11:12).

