

**[PUBLIC PHILOSOPHY <
HTTPS://BLOG.APAONLINE.ORG/CATEGORY/PUBLIC-
PHILOSOPHY/?AMP>](https://blog.apaonline.org/category/public-philosophy/?amp)**

Policing and Criminal Oppression

 By Amelia Wirts

[June 28, 2021 <](https://blog.apaonline.org/2021/06/28/policing-and-criminal-oppression/?amp)



<https://blog.apaonline.org/2021/06/28/policing-and-criminal-oppression/?amp>

[No Comments <](https://blog.apaonline.org/2021/06/28/policing-and-criminal-oppression/?amp#respond)



<https://blog.apaonline.org/2021/06/28/policing-and-criminal-oppression/?amp#respond>



One of the unfortunate realities of working on philosophy of crime and punishment in the United States is that there are always new instances of police brutality, reports of abuse in prisons, and alarming executions that demand urgent and active responses, but doing philosophy feels ill-suited to respond to urgent circumstances or to mobilize people against manifest injustice. For example, on the day that I gave this paper at the Pacific APA, the trial of Derek Chauvin for George Floyd's murder was underway. In that case, it was evident that no one needs a theory of criminal law or punishment to know that Chauvin's actions were callous, and that Floyd could not have deserved such a death in the streets. No contemporary philosopher of criminal law or punishment would defend this murder, but neither would one need a philosopher to explain why the murder is indefensible. Though we rarely can respond with urgency, philosophers can use the tools we have to clarify important concepts that we use to interpret the world and to justify moral demands.

One example of philosophers doing just this in response to an urgent injustice is George Yancy and Janine Jones's edited volume *[Pursuing Trayvon Martin < https://rowman.com/ISBN/9780739178836/Pursuing-Trayvon-Martin-Historical-Contexts-and-Contemporary-Manifestations-of-Racial-Dynamics>](https://rowman.com/ISBN/9780739178836/Pursuing-Trayvon-Martin-Historical-Contexts-and-Contemporary-Manifestations-of-Racial-Dynamics)*. But, for the most part, contemporary philosophers of criminal law and punishment do not address the kinds of real-world problems posed by police killings of unarmed Black people, and the fact

that these theories typically focus on justifying criminal law and punishments in idealized just societies is likely the reason. Notably, Tommie Shelby's chapter "Punishment" in *Dark Ghettos* engages with mainstream philosophy of punishment applied in non-ideal contexts, but Shelby's background is primarily in philosophy of race and social political philosophy, not philosophy of criminal law. Similarly, Erin Kelly's book *The Limits of Blame* wrestles with questions of punishment and law enforcement in the United States, but again her background in social and political philosophy, rather than philosophy of punishment, is evident in her treatment of the injustices of American criminal law. Shelby and Kelly's theorizing on criminal law and punishment in unjust societies like ours offers helpful arguments about the illegitimacy of using criminal law in the United States to make moral evaluations of law-breakers. But I hope to go further.

A non-ideal theory approach to criminal law must begin with the realities of policing and criminal law in the United States, especially the manifest injustices of murders like those of George Floyd. Making a start on this non-ideal theory project, I argue here that policing in the United States is *inherently oppressive*.

There are at least three ways that one could understand the relationship between the institution of policing and the killings of people like Floyd, Breonna Taylor, Philando Castile, Michael Brown, and all the others before and since. First, the Bad Apples view holds that there are a few morally corrupt

cops like Chauvin, and we simply need to be better at keeping them out of the police forces. I will not engage this view. I call the second the Bundle of Bad Practices view (Bundle view, for short). On the Bundle view, there are a number of discreet practices that are deeply unjust and even pervasive in American criminal law institutions, but the basic foundations of criminal law and its institutions are essential. This view is compatible with the views of some contemporary philosophers of criminal law (Douglas Husak's [response < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3656248#:~:text=A%20growing%20trend%20in%20philosophical,loosely%20call%20criminal%20law%20skepticism.&text=No%20case%20for%20criminal%20law,afford%20to%20dispense%20with%20them.>](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3656248#:~:text=A%20growing%20trend%20in%20philosophical,loosely%20call%20criminal%20law%20skepticism.&text=No%20case%20for%20criminal%20law,afford%20to%20dispense%20with%20them.>) to what he calls 'criminal law skepticism' fits here I think). While this view seems facially reasonable, it is wrong. Instead, I argue for the third view, which I call the Oppressive System view. On this view, the murder of George Floyd and other instances of police brutality are best understood as the most manifestly unjust examples of an oppressive criminal legal system in the United States. If I am right, then these injustices are endemic to the institutions of criminal law in the United States. Moreover, seemingly neutral or just outcomes, practices, and events that make up much of the criminal law system do not justify support of these institutions. Instead, these ostensibly benign activities help sort people into a hierarchy of privileged and oppressed groups, which is paradigmatic of oppressive systems.

The Bundle of Bad Practices View

The Bundle view places the source of the injustices of police brutality in specific practices that are separable from the institution of policing itself. On this view, justice requires ending select practices like racial profiling, the use of chokeholds, or the criminalization of drugs. Different proponents of the Bundle view may have more strong critiques of existing practices and demand more and deeper changes, like demanding ‘civilian’ oversight of police departments or de-escalation training. On the Bundle view, these discrete practices are in principle and *in fact* separable from the existing institution of policing in the United States. Thus, on this view, one would not call for a total overhaul or abolition of police and policing as a practice.

One reason to support this view is that there are admittedly lots of police interactions, perhaps even the vast majority, that do not produce any obvious, tangible injustice. On the Bundle view, these interactions are not only unproblematic, but also beneficial. For example, recently I was walking into my building at the mostly empty University of Washington campus. A campus police officer entered the locked building ahead of me, and I sped up and followed him in to avoid digging for my key card. After much hesitation, he turned to ask me if I was allowed in the building. I stated that I am faculty. He started down the hall again and reluctantly returned to ask for my ID. “Thanks, just trying to do my job,” he said, apologetically.

As a white woman, most of my interactions with law enforcement go this way. Officers are respectful, assume I am non-threatening, and don't stop me pretextually. On the Bundle view, this is how policing *ought to be for everyone*, not just professional white women. Moreover, on this view, the officer was in fact keeping me and the university safe. Thus, the goal of police reform is to rid policing of unjust policies and practices so that even when police interact with actually dangerous people, they can apprehend them in a reasonable, safe, and humane way. If we get rid of these bad practices, police can do the work of keeping all of us safe.

Oppressive Systems View

In contrast, on my view, the institution of policing as a whole is oppressive: it perpetuates group-based injustices that unfairly allocate social power, security, and moral standing. In policing, and in related institutions that make up the criminal law system, the oppressed group is what I call 'criminalized people.' People are 'criminalized' when they are treated as though they are the kind of person who has or is likely to break criminal laws. Police, courts, judges, prosecutors, and so on have particular power to criminalize, but everyday folks can criminalize others as well (think [Amy Cooper < https://www.npr.org/2021/02/16/968372253/white-woman-who-called-police-on-black-man-bird-watching-has-charges-dismissed >](https://www.npr.org/2021/02/16/968372253/white-woman-who-called-police-on-black-man-bird-watching-has-charges-dismissed) here). Most people who are incarcerated also are 'criminalized people,' and those who

are incarcerated for violent crimes that they did in fact commit are also often ‘criminalized people.’

To be a member of the group of criminalized people, it is neither necessary nor sufficient to have committed a crime. For example, a person counts as a ‘criminalized person’ if a police officer stops and frisks them because they are young and Black in a certain neighborhood, regardless of whether or not they have committed a crime. Conversely, many people break criminal laws regularly and are not treated as criminals. For example, if a white faculty member is widely known for his cannabis use in a state where cannabis is still criminalized, it is unlikely he will be treated as a ‘criminal’ by colleagues, let alone frisked or incarcerated. Membership in the group ‘criminalized people’ does not depend on having committed a crime. It depends on whether you are viewed, especially by police, as the kind of person who commits crimes.

It is clear that race is one reason for being sorted into the ‘criminalized’ group. Because of anti-Black racism in the United States, Black people are regularly stereotyped as criminals, and discourse around criminality is often just a dog whistle for anti-Black racism. But policing is not just one type of racial oppression or a tool of anti-Black violence. It is both of those things, but it also oppresses other social groups, and it is also made up of a distinct set of institutions that create a hierarchy of social power that makes it distinctively ‘criminal’ oppression.

The first reason that criminal oppression is not reducible to anti-Black oppression is that other social groups also engender treatment as ‘criminal’ depending on race, gender, class, disability status, immigration status, ethnicity, gender identity, and so on. The reason that I was not treated as a criminal is not only that I am white, but also that I am cis, middle class, a woman, and not obviously disabled. I suspect that the interaction would have gone differently if I had unwashed hair and clothes or displayed certain kinds of disabilities. There is a criminal oppression and criminal privilege range, where middle class cis white women are almost always privileged *qua* criminal. Other groups, such as young, black people living in highly policed and under resourced neighborhoods will almost always be oppressed *qua* criminal. Depending on one’s membership in various social groups and the contexts one finds oneself in, the same person may even find themselves on different points on that spectrum as they age, move to different neighborhoods, shop in certain stores, or wear different clothes. Thus, criminal oppression, like other oppressions, interacts with other group memberships to create what Kristie Dotson calls “ranges of jeopardization,” in her chapter [“Making Sense: The Multistability of Oppression and the Importance of Intersectionality.”](https://www.taylorfrancis.com/chapters/edit/10.4324/9781315654270-11/making-sense-multistability-oppression-importance-intersectionality) <
<https://www.taylorfrancis.com/chapters/edit/10.4324/9781315654270-11/making-sense-multistability-oppression-importance-intersectionality>> (49)

The second reason that criminal oppression is not reducible to anti-Black oppression is that *criminal* oppression highlights the role of criminal law institutions as causes of manifest injustices such as police brutality and racial profiling as well as more mundane police interactions that seem insignificant on their own. If we look behind the manifest injustices like Floyd's murder, we see that there are lots of smaller, less manifestly unjust practices of policing that, when they are all added up, place huge burdens on 'criminalized people.'

Here is one example from Seattle, where it is against the law for anyone to ride a bike without a helmet, regardless of age: One can rent bikes around the city through a number of app services, but renting is not cheap, and bikes do not come with helmets. Yuppy families and tech employees bike helmet-free throughout the city. But, [a survey of citations < https://crosscut.com/news/2020/12/nearly-half-seattles-helmet-citations-go-homeless-people>](https://crosscut.com/news/2020/12/nearly-half-seattles-helmet-citations-go-homeless-people) given out for not wearing a helmet since 2017, shows that 43% were given to homeless people. With processing fees, this citation costs \$81. On its own, giving out these citations to homeless people seems unfair, but not catastrophic. Step back, however, and this practice is more sinister. Seattle police have been criticized for their harassment of the homeless, including [for tearing down so-called tent cities < https://www.thenation.com/article/society/seattle-homeless-sweeps-coronavirus/>](https://www.thenation.com/article/society/seattle-homeless-sweeps-coronavirus/) at the beginning of the pandemic after acknowledging how uprooting these communities would contribute to the spread of COVID-19.

Additionally, inability to pay for a citation often results in the issuance of arrest warrants, which create criminal records, which in turn bar people from access to homeless shelters and can make getting other public assistance difficult.

This example illustrates that for people who are criminalized, interactions with police that seem insignificant when viewed alone are huge burdens because they line up with other criminal consequences, so that at every turn one is faced with another obstacle. This is what [Marilyn Frye < https://www.indiebound.org/book/9780895940995>](https://www.indiebound.org/book/9780895940995)'s famous birdcage metaphor for oppression so aptly captures, no pun intended. (4-5) If you are looking at one wire of a birdcage, you might wonder why the bird doesn't just fly around it. But when you step back, you see that there are many wires. And they are not randomly placed — they are structured to keep the bird from flying away.

So, by looking at policing as an oppressive institution, smaller everyday interactions between police and criminalized people add up. For some, ever-present police cars and harassing questions make walking down their street risky and anxiety-inducing. Others are easily caught in cycles of arrest for minor crimes or failures to pay frivolous fines, triggering more police attention. And this is why selling loose cigarettes escalated to a chokehold for Eric Garner, who said as police approached him, "Every time you see me, you want to mess with me." ([transcript < https://edition.cnn.com/2014/12/04/us/garner-last-words>](https://edition.cnn.com/2014/12/04/us/garner-last-words))

). Philando Castile, 32, [had been pulled over 49 times for minor traffic violations < https://www.nytimes.com/2016/07/17/us/before-philando-castiles-fatal-encounter-a-costly-trail-of-minor-traffic-stops.html >](https://www.nytimes.com/2016/07/17/us/before-philando-castiles-fatal-encounter-a-costly-trail-of-minor-traffic-stops.html) before the last traffic stop quickly escalated into the officer shooting Castile point blank. Behind cases like Castile, Garner, and Floyd, there are endless cases of mundane police harassment, abuse, and pettiness.

To wrap up this comparison between these two ways of viewing instances of police brutality, I want to return to the example of my interaction with the police officer. On the Bundle view, this was a good story, but on the Oppression account, I was benefitting from an imbalance of social power. Not only did this interaction lack injustice for me, but also I got something out of it. The officer worked to make me feel safe, assuring me that he would prevent anyone who “wasn’t allowed” from being in my space.

One might argue that this is in fact the whole point: we should reform the system until police treat everyone how they treated me. But this is not really possible within the current paradigm. Inherent in the way that I was treated was the idea that there is someone for me to be protected from, some bad folks out there. Policing only exists in response to a threat, [real or perceived < https://fivethirtyeight.com/features/many-americans-are-convinced-crime-is-rising-in-the-u-s-theyre-wrong/ >](https://fivethirtyeight.com/features/many-americans-are-convinced-crime-is-rising-in-the-u-s-theyre-wrong/). Many white middle class folks will fight any reform that restricts police’s ability to act strongly and quickly

in response to perceived threats because police treat them like neighbors, make them feel safe from bogeymen, and help them avoid uncomfortable interactions with homeless folks. My treatment from the officer was dependent on the fact that he determined I was a person to be kept safe, not a safety threat.

What Should We Do to Address Policing Injustices?

The Oppressive System view illuminates the relationships between manifestly unjust practices, less overtly unjust treatment of criminalized people, and the power that comes with ostensibly just police encounters like mine. The Bundle view does not. But another reason to discredit the Bundle view is that it has not yielded many successes in alleviating the manifest injustices, let alone mundane indignities I described above. Some of the recommendations of this view have been tried. How have these reforms gone?

New York City had banned the use of the chokehold by police (unless the officer's life is in danger) **in 1993** < <https://nyassembly.gov/Press/files/20200608a.php>>, long before that chokehold was used to kill Eric Gardner.

For all the attention no-knock warrants received around Breanna Taylor's killing, **officers did not have a no-knock warrant** < <https://www.nytimes.com/article/breonna-taylor-police.html>>. Whether officers knocked is really beside the point. Typical search warrants require that officers

“knock and announce,” a rule established under the 4th Amendment. But that rule is notoriously vague about how much time is required between the announcement and the entrance. For example, in 2003 in *United States v. Banks* <<https://www.oyez.org/cases/2003/02-473>>, the Supreme Court held that in carrying out a search warrant for drugs, the amount of time officers are required to wait before kicking in doors is the amount of time that it would take to destroy drugs: 15-20 seconds. Banning no-knock warrants would have zero effect on the raid that caused Taylor’s death.

In theory, a legislature could insist that warrants be executed in a way that makes the knock-and-announce rule more meaningful, like requiring several knocks and a few minutes before barging in. But, if we did that, we would actually undermine the purpose of warrants. The whole purpose of the 15-20 seconds was to prevent accused criminals from destroying evidence. Obtaining evidence is the express purpose of a search warrant. So, to meaningfully change the practice that led to Breonna Taylor’s death (and too many traumatizing events that do not end in death), we would have to undermine the entire purpose of the search warrant.

Another proposed policy to address police brutality is the use of body cameras. But, [a recent meta-analysis of several studies](https://journals.sagepub.com/doi/full/10.1177/1477370816643734) <<https://journals.sagepub.com/doi/full/10.1177/1477370816643734>> suggests that body cameras do not have a discernable effect on police use of force or civilian complaints

about officers. That may seem counter-intuitive until you understand that [police departments own the body camera footage < https://apnews.com/article/wv-state-wire-iowa-city-nd-state-wire-iowa-us-news-67f22d5857f14413a4a9b34642c49ae3>](https://apnews.com/article/wv-state-wire-iowa-city-nd-state-wire-iowa-us-news-67f22d5857f14413a4a9b34642c49ae3) . It is next to impossible to get footage even with FOIA requests. In theory, again, this problem could be addressed by passing a statutory requirement for releasing footage in some circumstances. In practice, assuming the legislation avoided real concerns about the privacy of the community, this would require addressing a much more deeply engrained part of police culture, beyond the bounds of policy: the blue wall of silence. Departments guard this footage fiercely because they guard their officers fiercely. Body cameras will not do much to change police behavior without first changing police culture, which is beyond the scope of the Bundle view.

Finally, lawyer and activist Derecka Purnell wrote about the ironic reality that the George Floyd Act, passed by the U.S. House of Representatives this March, has nothing in the bill that would have prevented George Floyd's murder. It bans the use of chokeholds and racial profiling, neither of which were involved in Floyd's case. (And banning such activities does not seem to stop police from using them.) Mostly, the Act would give millions in grants to police departments for funding their own investigations into themselves on police brutality. When we do attempt to reform the bad practices that the Bundle view focuses on, often we end up with solutions that are nothing more than funding for police. This points to

the fact that bad police practices are not easy to address in practice because of how embedded they are in the institution of policing that benefits those who are never going to be treated as criminals.

What does the Oppressive Systems view say about moving forward? It suggests the goal of defunding the police and funding education, housing, healthcare, and other social services that are shown to reduce all kinds of crime (and have the nice side effect of offering education, housing, and healthcare!). To make headway on that goal, some of us must give up the institutions that have made us *feel* safe and comfortable. Safety is a primary good. Following [Vincent Chiao < https://global.oup.com/academic/product/criminal-law-in-the-age-of-the-administrative-state-9780190273941?cc=us&lang=en& >](https://global.oup.com/academic/product/criminal-law-in-the-age-of-the-administrative-state-9780190273941?cc=us&lang=en&), we must pay attention to how we are distributing this primary good: who bears the burdens and who enjoys the benefits of producing safety and the feeling of safety. (61-64) The costs of some people *feeling comfortable and safe* are being born by criminalized people and the communities they live in. Those of us who find ourselves on the privileged end of this oppressive institution need to accept that the cost of our comfort is too high.



Amelia Wirts

Dr. Wirts is an Assistant Professor of Philosophy at University of Washington, Seattle. She specializes in philosophy of law, social and political philosophy, philosophy of race, and feminism. Her current project focuses on building a non-ideal theory approach to philosophy of criminal law in the United States.

https://twitter.com/intent/tweet?url=https%3A%2F%2Fblog.apaonline.org%2F2021%2F06%2F28%2Fpolicing-and-criminal-oppression%2F&via=APA_Blog



By Amelia Wirts

Dr. Wirts is an Assistant Professor of Philosophy at University of Washington, Seattle. She specializes in philosophy of law, social and political philosophy, philosophy of race, and feminism. Her current project focuses on building a non-ideal

theory approach to philosophy of criminal law in the United States.

[View Archive](#) →

← **[A Little Place to Oppose ≤ Insecurity in the World](#)** **<https://blog.apaonline.org/2021/06/25/a-little-place/?amp>**>

→ **[What to Do about ≤ Your Website? Online Options for Philosophy Job- Seekers](#)** **<https://blog.apaonline.org/2021/06/29/what-to-do-about-your-website-online-options-for-philosophy-job-seekers/?amp>**>

© 2022 Blog of the APA < **<https://blog.apaonline.org/?amp>**>

Up ↑

Exit mobile version < **<https://blog.apaonline.org/2021/06/28/policing-and-criminal-oppression/?noamp=mobile>**>