

Addressing Legal Estrangement

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Monica C. Bell, [Police Reform and the Dismantling of Legal Estrangement](#), 126 **Yale L.J.** 2054 (2017).

The topic of police reform has received a great deal of attention in academic and policy circles in recent years. One of the most influential frames for the police reform conversation has been procedural justice. Procedural justice, closely associated with the work of Tom Tyler, has replaced a number of other theories of police reform that have fallen, at least temporarily, into the dustbin of history. The procedural justice reform frame focuses on increasing police legitimacy and restoring community trust in the police to improve legal compliance. To achieve that goal, police officers are encouraged to respect human dignity and equality by treating all people with respect, by listening as people express their concerns and feelings in the course of their interactions with police, and by policing in a neutral, nondiscriminatory way. This procedural justice approach stood at the center of the May 2015 [Final Report of the White House Task Force on 21st Century Policing](#) and police departments across the country have adopted procedural justice approaches and practices over the past few years.

Enter [Monica Bell](#). Drawing on narrative data that she, along with a research team, collected in Baltimore, Maryland, in the wake of the police killing of Freddie Gray, Bell explains what is missing from the procedural justice frame. She argues that procedural justice centers concerns about compliance with the law, and consequently, focuses on increasing legitimacy in individual interactions to improve compliance. Or, as she puts it “in the version of legitimacy theory that policymakers have adopted most completely, trust between police and communities is understood as a problem of illegitimacy: the key concern is the degree to which people will choose to obey the law and its enforcers.” (P. 2072.) The intellectual origin of this model is Weberian analysis of the subjective process of legitimation, achieved through procedure and consent. The core analytical question at issue in this model is how to legitimate law enforcement in the eyes of the individual, thereby achieving greater compliance with the law. Procedural justice is the answer to this question.

While she does not discard the importance of improving procedural justice in individual interactions, Bell argues that this is flatly insufficient. Importantly, she notes that many members of communities who distrust police are actually complying with the law and have respect for the law and for many (perhaps even most) individual police officers. Yet they still feel alienated from the police and unprotected by them. Bell offers detailed accounts of a number of in-depth interviews from her study to illustrate the point. Her interview participants are young African American residents of Baltimore. Some have a criminal record, many do not. Some have had direct negative encounters with law enforcement, but many have had only positive or no personal interactions. Yet all of them have witnessed or heard about negative police-civilian interactions in their communities, all of them are distrustful of the police and none of them feel that they are or will be protected by the police. Bell’s in-depth presentation of the words of her respondents helps to bring new voices into the police reform discussion. And their words reveal that widespread community distrust is not always a problem of legitimacy as often understood because noncompliance is not really what is at issue here. Individuals are striving to comply with the law and cede authority to law enforcement. But they do not trust law enforcement, nor do they feel that they are the beneficiaries of law enforcement.

Instead of focusing on the causes of and solutions for police illegitimacy in hopes of generating

compliance, Bell therefore proposes focusing on the causes of and solutions for community “legal estrangement.” The theoretical origin of “legal estrangement” is not Weber’s focus on process—and consent-based legitimacy, but Emile Durkheim’s notion that, as Bell puts it, “the purpose of the criminal justice system is to restore those who break the law, with the ultimate goal of increasing social cohesion by reinforcing moral and legal norms.” (P. 2083.) Rather than focusing on the individual, this analysis focuses on communities or collectivities, with attention to cultural perceptions and views. The core analytical question is how to solve the problems of anomie or collective alienation and to generate social inclusion. Procedural and structural inclusion is Bell’s answer to that question.

Bell’s point is not that procedural injustice does not matter. Obviously it does, and procedural injustice is one root cause of legal estrangement. But Bell posits that vicarious marginalization and structural exclusion operate with procedural injustice to produce legal estrangement. (P. 2100.) And she suggests that poor, marginalized communities of color, particularly African American communities, are unlikely to change their views of law enforcement, nor will they have material reason to do so, in the absence of efforts to address all of these things.

In her discussion of vicarious marginalization, Bell notes the ways that cumulative, collective experiences of substantive injustice and procedural injustice exert a social power independent of the noncompliance that might be generated by an individual, procedurally unjust encounter. Fixing the procedures of individual encounters will not be enough to reshape collective wisdoms. Reform efforts have to take seriously and seek to address the collective memories of police injustice because those memories are an important element in the identity construction of communities. (P. 2106.)

Bell also unpacks structural exclusion, naming the ways that “policies that are facially race- and class-neutral distribute policing resources so that African Americans and residents of disadvantaged neighborhoods tend to receive lower-quality policing than whites and residents of other neighborhoods.” (P. 2114.) As Bell notes, it is important to understand not just who is losing out under the current system, but also who is benefiting. Why do more affluent communities get the most experienced police officers? Why are police response times so much worse in poor neighborhoods? Bell’s analysis invites the reader to think creatively about how entrenched residential segregation, housing (and eviction) policies, local zoning, the size and political control of police forces and other legal choices work together to create a system where some communities are structurally excluded from access to good policing.

Unsurprisingly, Bell does not have a silver bullet solution for the complex bundle of issues that she lays bare. Indeed, Bell counsels against silver bullet solutions. At the same time, she rightly cautions that this does not mean that we should default to hand-wringing. She outlines a series of tools that could be used to tackle legal estrangement. She urges wise use of the federal government’s power under Section 14141 of the Violent Crime Control and Law Enforcement Act of 1994, the reexamination of compensation schemes for police officers, and the reorganization of smaller police departments (Bell favors consolidation). She also calls for “raising the stakes” of Fourth Amendment jurisprudence, by which she seems to mean that judges should take greater account of the true social context in which their decisions most commonly operate and should calibrate rights and remedies appropriately. She notes that state courts have led and can continue to lead the way here. She recommends “democratizing the police,” calling for “more deliberative participation in policing than most proposals demand.” Just calling for more democratic governance of the police will not do the trick if poor and marginalized communities are not participating in the democratic process, so these communities must be engaged. Democratic accountability also requires transparently accessible data about policing, since democratic decisions shouldn’t be made in the dark. Bell also suggests that truth and reconciliation efforts can be part of this democratic process. Finally, she urges “shrinking the footprint of armed bureaucrats,” that is, getting the police out of social service provision and other general governance functions that are outside of the ambit of policing.

Bell is quite forthright in acknowledging the difficulties as well as the weaknesses and insufficiencies of these remedies, both individually and collectively. Indeed, the first three suggestions and the last one do not necessarily move us very far beyond the place where the procedural justice reform efforts have already pointed. Well we know, too, that reform-oriented changes in Fourth Amendment jurisprudence can generate unanticipated negative consequences. And the goal of democratizing the police will require more fleshing out, more concrete suggestions for implementation and a whole lot of community mobilization. But Bell offers all of her suggestions as a helpful starting point for a broader and deeper conversation about police reform. It seems like a discussion worth having.

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