



Policing in the U.S.: What You Should Know

An Interview with Monica Bell, Associate Professor of Law at Yale Law School

By Ebony Upshaw and Gina Cesar (*Gateway Regional Council*)

Policing in the U.S. has a complicated history, and despite an early 20th century “police professionalism” movement which set the precedent for modern-day forces, there is still a large mistrust of the system, which can be seen in recent protests and social media campaigns. Here we discuss some of the problems with modern-day and historical police forces, the true meaning and implications of calls to defund or abolish the police, and gestapo tactics and how to protect yourself in these situations.

E: Can you talk a little about your research fields?

Yeah, I mean so a lot of my research, it really starts with black communities and all the different areas of law that perpetuate racial injustice directed towards black communities. That's why there are so many different topics. Racial injustice isn't in one category of law. We've been talking a lot about policing right now, but policing is just one piece of a much broader puzzle. Policing is related to our inability to have meaningful economic opportunity for people, and it is also related to education (something I actually don't write about very much). Something that I do write about in addition to policing is segregation and housing inequality. If you don't start from which category you want to focus on, but instead start from the sorts of problems you want to address, then the research kind of flows out of that. At least that's the way it works for me.

E: So, we've all heard about the recent “secret policing” that's going on in Portland and also other cities, what are your thoughts on that?

Can I clarify something? So, specifically when you say secret police, there's lots of different

ways policing is secret, so I just want to make sure I understand what you're specifically asking about.

E: Basically, the people who are pulling up in unmarked vans, that are showing up to protests and they're not identifying themselves or anything and just grabbing protestors and charging them [with criminal charges].

Yeah, there's a lot of different things to think about that. One is: I wish people were less surprised by that. Deception is core to how police do their work on a daily basis. For example, police have worked undercover for quite some time. Undercover policing is a core aspect of what police do. Police ride through, especially communities of color, in unmarked vehicles all the time and snatch up people—this is not new. Also, if we even think more historically, the FBI ran this program called **COINTELPRO** in the late 20th century. **COINTELPRO** was precisely a way in which the FBI infiltrated social justice and racial justice groups. So, you would think agents were a member of the Panthers with you, but instead they were plants from the FBI who were reporting information about you to the FBI. Secret policing is the American way.

Nothing about that is illegal by the way. There might be some specific tactics that are being used now that are illegal, but generally speaking, deceptive surveillance and infiltration are legal policing tactics.

To put more context on it, there are more than 18,000 police departments in the United States, all under various sorts of local control. When American policing was in its earlier days, it was often thought of as corrupt and incompetent. Thus, other arms of the government didn't really trust the police. Then, in the early 20th century, there started this long movement of something we call police professionalization. Police could ride around in cars instead of being on foot. Police wore uniforms, received training, and developed a professional identity. There were many different aspects of this. What's important is that, alongside that professionalization, courts began to trust police testimony and expertise more. So, when police claimed they needed to use certain tactics, including lying, to fight crime, courts started deferring to them. That's one reason that many police tactics that sound immoral to the average person, such as **testilying**, are perfectly fine according to the law. It's a totally accepted constitutional practice for police to lie to suspects in order to get them to reveal information.

So, many secret policing tactics are thought of as legal because police claim they are necessary in order to protect public safety. Courts are loathe to stand in the way of police if they claim that their actions are necessary for fighting crime. So, that's one kind of big structural issue.

E: Interesting, that is such a good point because I was reading this article in the

New Yorker, and they were talking about how basically this "secret policing" by Homeland Security isn't illegal, they're doing what they're supposed to do and I don't think many people know that. Even the head of Homeland Security was explaining that this is what they were brought about to do.

G: Yeah, and do you think that can change any time? Like, do people within law enforcement or within law see that it's a problem and have any intention to fix that?

I'm trying to be positive, but no, not really. These tactics are basically baked into the very idea of policing in America today. Of course, there is always room for some hope, but I don't think the hope is for one day reaching a point where police are no longer secretive. Instead, the hope is in finding ways to make the police less central [in] people's day-to-day lives. Much routine police dishonesty happens within local police departments, happens with communities of color, happens every day, and part of how people get caught up in the system is that there are many police patrolling. Also, people call the police because we don't really have alternative resources for people. If something happens, people ask themselves, "Okay, well, who am I going to call?" The only institution people know to call is the police.

So, we might not be able to change doctrine around police dishonesty and secrecy anytime soon. But if we build alternatives to the quick policing response, then I think we might be able to make the police less central, so we kind of have to worry less about their practices in general.

One other point: I was a little too negative in the beginning. There are people who are focusing on the *transparency* of police. Now,

transparency wouldn't do anything about what we're seeing in Portland or like dishonest interrogations or anything like that, but there are efforts to make the police more transparent with what their policies are, what they spend money on, and some of how they operate. I think those police transparency movements can have some value, even if they won't solve the whole issue.

G: Gotcha.

E: So, what do you think about the calls for abolishing or defunding the police?

I'm on record as supporting defund. I've signed letters and written pieces about this. But I should say a little bit more about why that is.

So, going back to how we started the conversation—I'm really concerned about communities of color at large. I've spent a lot of time with people who call the police and who wish the police would do their jobs better. If I were to ask them should we abolish the police, they would say no. They would worry, "Wow, we're just really going to be out here with no help." And I get that. But that concern is not a sign that we don't have enough policing. If you look over the past 30 years, especially in Black urban communities, there has been more and more policing. The question then becomes, what about everything else other than police that's supposed to make a community safe?

One of the reasons I support "defund" is because the starting point is not, "We need safety, so let's have more police." The starting question is, "How can we make communities safe?" More policing is not the obvious answer to that question. In fact, we've already had 30 years of doing that. Of course, there are certain ways in which this style of policing has changed

the nature of safety in some places. For example, I think if you two had been growing up in the 1980s and 1990s in Atlanta, you probably would've felt less safe than you maybe are able to now. But policing is not the only way or the best way to produce that feeling of safety. There have been real harms to using police. For example, mass incarceration is a true harm to black communities. Constant policing produces violence that includes being killed or being shot or being beaten. Also, there are other types of violence: questioning people when they have no reason to, being constantly present, and giving the impression that the police are the government. All of that is a violence to Black communities.

So, I support defund because what defund is essentially saying is, "Let's examine our budgets. Let's examine the budget and see, is there a community organization that could be using this money to build safety in other ways? Is there a certain type of social service or social workers that can better use pieces of this budget line item? Could this funding go to the welfare state? There are all kinds of aspects of local government that need more funding to better support marginalized communities. But who has consistent funding, whose budget is never cut? Until recently, that has been the police.

So, onto abolition. I think it's important to understand what abolition means. I think some people hear the word abolition and are like "Whoa, you... we're not doing that." But if you read about abolition, if you study its contents, and if you're involved in the movement, abolition starts to make a lot of sense. From an abolitionist perspective, the goal is to live in a world without prisons and police. That's the goal: That doesn't mean we're doing getting rid of all of these institutions right now. But there are all kinds of reforms that could make police less central, so that eventually they move us

toward not needing police. Questions one might ask are, do you add more funding to the police or not? How much are we investing in finding alternatives? Are we trying to build up ways that social workers can respond to mental health problems? Are we funding community organizations through violence interruption so we don't have to call the police any time a tiff happens? All of those things are actually abolitionist versions of reform. I support those. I support that vision of a world even if I am not confident that we're getting there in my lifetime.

E: Right, I love that, and it's so disheartening to me when you try to explain those points and as soon as people hear "defunding the police", it's like you said, they get really scared. My friends understand that when I say defund the police, I don't mean completely get rid of the police and then that's it. You have to change the systems too that cause people to commit crimes as well. Crime is a response to social conditions. Gina, do you have anything to add?

G: When federal police are within these communities, because that's what has been happening in Portland and certain cities, do the federal officers have the same rights or power over the residents as state police? How can you be sure that when they're stopping you or pulling you over or taking you in, that this is actually constitutional?

Yeah, so the question is jurisdiction, whether the federal officers have the same jurisdiction as local officers. Federal officers tend to be deployed for different reasons, so it's really local officers who do routine traffic stops and it would be the federal secret police that would ride around and grab people and stand guard at protests and things like that. Essentially, federal agents do have jurisdiction in these places and it's usually kind of a cooperative negotiated situation, so it's not supposed to be that federal

agents can go to a place without being invited. Often, these local officials are inviting federal agents in. That's actually a live constitutional question, orienting around federalism and whether President Trump is really permitted to send in federal agents when the locality doesn't want them. There's this notion in constitutional law called **police power**, which states and localities have. Police power includes taking care of the health, safety and welfare of the population. The federal government does not have general police power. That's a basic federalism principle.

President Trump is violating this principle. Critically, President Trump doesn't seem to care about conservative constitutional perspectives on the law, including federalism. Conservatives tend to be quite concerned with federalism, including state and local sovereignty. But President Trump doesn't seem concerned with any of that, which is why many conservative legal commentators have criticized his use of the presidency. Trump seems to be more concerned with his own power, not the separation of powers or federalism.

E: If you were to get snatched into a van, what could you possibly do in that moment, or when you get to the police precinct?

Honestly, the wise thing to do would just be to cooperate. As I was explaining before, it's not per se unconstitutional; it could be illegal to be snatched, because police have to have probable cause and that extends to federal agents too. There are Fourth Amendment limits on the power of the police to seize people. I will say, in practice, a lot of Fourth Amendment protections are weakened in the context of emergency—this is one thing that's pretty important. There's a sense that when there's an emergency, a lot of rights concerns waver a bit in terms of their power to stand in the way of governmental intervention.

So, basically, if I were snatched, I would try to cooperate. I would document everything that was happening, and then I would talk to a lawyer afterwards to see if there were some particular rights violations that could be the basis of a suit.

We should also keep in mind the U.S. Department of Justice. It has the power to investigate police departments for patterns or practices of violating peoples' constitutional

rights. The Obama Administration actually did a lot of these investigations—not a lot if you're thinking about 18,000 departments—but a whole lot compared to anyone else.

If people are gathering their experiences and gathering their stories and building an evidence base, that could be the basis of lawsuits later. But honestly, if I were snatched, my primary goal would be survival.

About Monica Bell

Monica Bell is an associate professor of law and sociology at Yale Law School. Her research focuses broadly on racial inequality in America, and her work has been published in the *Yale Law Journal*, *American Journal of Sociology*, *NYU Law Review*, *Harvard Civil Rights-Civil Liberties Law Review*, *Los Angeles Review of Books*, *Washington Post*, and other outlets. A native of Anderson, South Carolina, she holds degrees from Furman University, University College Dublin (Ireland), Yale Law School, and Harvard University.