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How the Black Lives Matter Movement Can Improve the Justice System

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How a movement can improve justice system

By Paul Robinson

To the extent that the Black Lives Matter movement is seen as focusing on one tragic death or another at the hands of police, it seems to miss the larger problem of rampant black victimization generally. That problem will not be solved by better training and supervision of police.

But if the movement is seen as focusing not on the victims but rather on the reputational effect of police misconduct and a system's perceived tolerance of it, then it can help highlight an important truth: the "criminogenic effect" of tolerating police misconduct.

The Black Lives Matter movement has actively protested the deaths of blacks at the hands of law enforcement, as with Michael Brown in Ferguson, Mo., and Eric Garner in New York City in 2014. Yet from one perspective, one may wonder about that focus:

In the same year as those police-related deaths, more than 6,000 black men and women were unjustifiably killed by civilians.

An unjustified killing by police may be worse than an unjustified killing by a civilian, but it can't be 6,000 times worse. All black lives matter.

The victimization rate of blacks is staggering. American blacks are killed at 12 times the rate of people in other developed countries. In some cities, it is worse. East St. Louis and Camden commonly have murder rates of 92 and 86 per hundred thousand people, respective-

ly. As a point of comparison, the overall U.S. rate is 5, and the two most dangerous countries in the world, Honduras and Venezuela, have rates of 90 and 54, respectively.

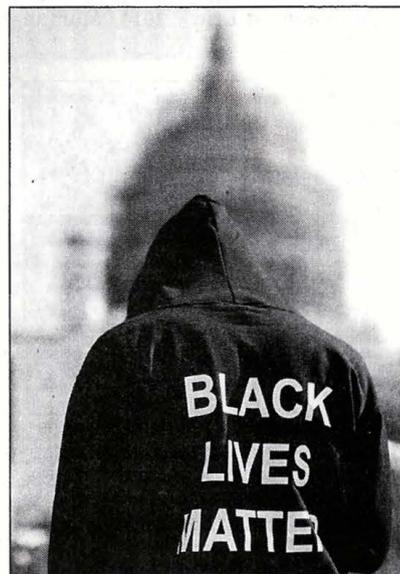
Perhaps what's most abhorrent about the current situation is the fact that black victimization rates are dramatically higher than those of whites. The black murder rate is eight times that of whites. Blacks are victims of violent crimes at six times the rate of whites.

Focusing on several unjustified killings by police when there are 6,000 unjustified killings by citizens seems like worrying about your porch furniture when the tornado is about to take your house.

But if we see the Black Lives Matter movement as focusing on police misconduct and the system's perceived tolerance of it, it really does have something important to say. Even just a few cases can establish in people's minds the system's inner motivations. And it is that reputation that people will assume is at work in all the cases that are not in the newspaper.

We know from empirical studies and a lot of anecdotal evidence that a criminal justice system that has earned moral credibility with the community will be more likely to gain members' deference, compliance, and acquiescence. A system without credibility will provoke resistance and subversion.

Thus, police must understand that every citizen encounter has an incremental effect on the system's reputation and thereby its effectiveness. Professionalism



Neal Blair of Augusta, Ga., during an October rally to mark the 20th anniversary of the Million Man March in Washington.

EVAN VUCCI / Associated Press

and fairness in an encounter will improve it, while police disrespect and arbitrariness will subvert it. A reputation for police professionalism translates into effective crime control.

Just as important, the system's reaction to police misconduct also helps, or hurts, its moral credibility. A system that is seen as actively obscuring police mis-

conduct, as in Chicago, undermines its reputation, reducing its effectiveness.

The damaging effects of apparent tolerance of police misconduct are only amplified when they come on top of a host of other suspicions about a system's justness, as with the imposition of significant mandatory minimum sentences for low-level drug offenses even though empirical studies confirm that such sentences conflict with people's intuitions of justice (among both black and white citizens).

Ultimately, the tragic deaths of young black men at the hands of police are certainly occasions for sadness, but the added importance of the cases is in their reputational effects on the system's justness.

Perversely, the criminogenic effect of the system's loss of credibility will fall disproportionately on the black community because its members are disproportionately the victims of crime. Because black lives matter, the goal of the movement shouldn't be to protest because people are angry or even to gain recognition of their plight or compensation. Instead, the movement should fight to bring reforms that will dramatically improve the criminal justice system's reputation.

Only a criminal justice system that earns a better reputation will make black lives better.

Paul Robinson is the Colin S. Diver professor of law at the University of Pennsylvania and, with Sarah Robinson, the author most recently of "Pirates, Prisoners, and Lepers: Lessons from Life Outside the Law" (Potomac Books, 2015).

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