

THE UNFULFILLED PROMISE OF THE DETROIT BOARD OF POLICE COMMISSIONERS

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I. INTRODUCTION

Between fifteen and twenty-six million Americans took to the streets following the murder of George Floyd, joining protests in every state and at least 1,360 counties.¹ *The New York Times* called it “the largest movement in U.S. history,” and a Stanford professor proclaimed that “these protests are achieving what very few do: setting in motion a period of significant, sustained, and widespread social change.”² Such optimism was ephemeral; white voters’ support for the Black Lives Matter movement, which supposedly distinguished these protests from their antecedents, dropped just one month after Floyd’s death.³ President Joe

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1. Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES, July 3, 2020, at A1.

2. *Id.*

3. Angela Onwuachi-Willig, *The Trauma of Awakening to Racism: Did the Tragic Killing of George Floyd Result in Cultural Trauma for Whites?*, 58 HOUS. L. REV. 817, 843 (2021).

Biden failed to deliver a police reform bill by the protests' one-year anniversary, breaking a campaign promise.⁴ *The Washington Post* commemorated the same anniversary with an article headlined, “‘Not enough has happened’: Protesters reflect on what has changed—and what hasn’t.”⁵ *The Los Angeles Times* was more cutting: “Promises fall short, but police killings keep pace.”⁶

Minnesota Attorney General Keith Ellison successfully prosecuted the police officer who killed Floyd, but even Ellison wondered whether the protests were a true “inflection point” that would finally free America from its “cycle of inaction”⁷ regarding police misconduct:

At various junctures in past decades . . . leaders of government and civil society have stopped to examine the cycle and make recommendations for ending it. Then what has happened? Politicians, prosecutors, and law-enforcement leaders have failed to act. As a result, understandable tensions and resentments have continued to build, tragic incidents of police use of force have continued to occur, people have continued to rise up in anger and

4. Michael D. Shear & Nicholas Fandos, *Biden Promises Police Bill To Floyd Family Members*, N.Y. TIMES, May 26, 2021, at A18. The president’s rhetoric has since shifted toward proving that the Democratic Party is more “pro-cop” than the Republican Party (“You can’t be pro-insurrection and pro-cop”), and 2022 saw him unveil the \$37 billion “Safer America Plan” to hire 100,000 new police officers, seemingly to one-up the demand to hire “tens of thousands of police officers” from his rival, former President Donald Trump. *Editorial: Biden Should Know. Adding 100,000 More Cops Is the Wrong Approach*, L.A. TIMES (Aug. 1, 2022), <https://www.latimes.com/opinion/story/2022-08-01/biden-police-expansion-mistake> [<https://perma.cc/24RC-B5V6>].

5. Rachel Hatzipanagos et al., *‘Not enough has happened’: Protesters Reflect on What Has Changed — and What Hasn’t*, WASH. POST (June 17, 2021), <https://www.washingtonpost.com/nation/interactive/2021/george-floyd-protests-blm-impact/> [<https://perma.cc/WY7W-BRBF>].

6. Erika D. Smith, *George Floyd: One Year Later; Promises fall short, but police killings keep pace*, L.A. TIMES, May 26, 2021, at B1.

7. The phrase is an allusion to the words of sociologist Dr. Kenneth Clark. Called to testify before the Kerner Commission about the causes of urban unrest, Clark countered that Black Americans had responded to police abuse with outbursts of violence for decades, while politicians commissioned reports and failed to enact change. Reading a report on the 1919 Chicago riots, Clark said, was just like “reading the report of the investigating committee on the Harlem riot of ‘35, the report of the investigating committee on the Harlem riot of ‘43, the report of the McCone Commission on the Watts riot [of 1965].” Politicians’ failure to act, Clark said, doomed them to repeat the same tragic patterns of abuse and violence. “[I]t is a kind of Alice in Wonderland—with the same moving picture re-shown over and over again, the same analysis, the same recommendations, and the same inaction.” Keith Ellison, *The Death of George Floyd, the Trial of Derek Chauvin, and Deadly-Force Encounters with Police: Have We Finally Reached an Inflection Point? Or Will the Cycle of Inaction Continue?*, 50 GEO. L.J. ANN. REV. CRIM. PROC. i, iv (2021).

hope, leaders have continued to form commissions to examine the problem and make recommendations—then no one has taken meaningful action and the cycle of inaction has continued.⁸

Ellison’s words may resonate with disillusioned protestors, but they oversimplify the turbulent history of American law enforcement. At numerous junctures, community leaders and governmental officials *have* worked together to enact police reform.⁹ Not all of it has been substantive, and not all of it has been positive, but it would do a disservice to our past and future to pretend that these reforms never occurred instead of studying what ultimately passed into law, what worked, what failed, and, most importantly, *why*.

This Note discusses one of the most significant police reforms ever enacted at the local level, the Detroit Board of Police Commissioners (BPC). A reaction to the violence of 1967, the BPC was envisioned as the most powerful civilian police commission ever created.¹⁰ To that end, voters enshrined the BPC’s powers in the 1974 Detroit City Charter as part of the same election that saw Coleman Young win the mayorship on a platform of police reform.¹¹ When Young left office twenty years later, his successor, Dennis Archer, inherited the deadliest police force in the nation.¹² As bad publicity grew and demands for accountability became impossible to ignore, Archer bypassed the BPC entirely and petitioned the Department of Justice (DOJ) to intervene.¹³ It would take eleven years of federally-supervised reforms before a judge found that the City’s police and prisons complied with the Constitution. A 2012 Charter Revision meant to improve the BPC seemed to make it even less effective, and in 2021, the *Detroit Free Press* editorial board declared that the BPC is “failing Detroiters.”¹⁴

8. *Id.* at v.

9. *Id.*

10. Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1043 (2016).

11. David Cooper, *Victory Only a Beginning for Young*, DET. FREE PRESS, Nov. 8, 1973, at A6.

12. David Ashenfelter & Joe Swickard, *Detroit Cops Are Deadliest in U.S., Shooting Figures Need Context, Officials Say*, DET. FREE PRESS, May 15, 2000, at 1A.

13. George Hunter & Christine Ferretti, *Federal Oversight Forced Reforms on Detroit’s Often Violent Police Department*, DET. NEWS (June 9, 2020), <https://www.detroitnews.com/story/news/local/detroit-city/2020/06/09/detroit-police-violence-prompted-federal-oversight-reforms/5320917002/> [<https://perma.cc/W2DC-3KZV>].

14. *Board of Police Commissioners is Failing Detroiters*, DET. FREE PRESS, Oct. 11, 2021, at A2. [hereinafter *Failing Detroiters*].

Part II of this Note gives a history of the BPC, starting with the events leading to its creation and then the two primary focuses of its early years: affirmative action and investigative oversight, followed by the body's gradual decline in importance throughout the Young administration, resulting in the largely irrelevant BPC of today. Part III of this Note then asks *why* this happened, finding answers in court decisions, economic and political incentives, governmental structures, and even deliberate sabotage. Part IV suggests two policy reforms.

This Note aims to be frank and uncompromising about the shortcomings of the BPC but also unambiguously sympathetic to its goals of preventing violence and bringing democratic rule to law enforcement. The BPC founders did not pay mere lip-service to protestors or reconcile themselves to a cycle of inaction. They fought for control of the city government and, once in power, pursued substantive reforms for at least a decade. Their story has as many heroes as it has villains, and although their battlefields were courtrooms and community meetings, Detroiters were killed and saved because of their actions.

If the BPC is a failure, it's a failure in the Beckett sense: "Ever tried. Ever failed. Try again. Fail again. Fail better."¹⁵ As Ellison points out, not all leaders have "ever tried," but, in 1973, Detroiters did, making the most of a once-in-a-lifetime opportunity by creating what should have been the most powerful civilian police commission in the country.¹⁶ Such an opportunity may never come again, but if it does, we must learn from our

15. Samuel Beckett's coinage is now a cliché, "enmeshed within the contexts of business manuals, scientific and educational discourse, and artistic exceptionalism." Oliver Wallis, *The Allure of "Fail Better": Uses of Beckett's Modernist Cliché*, 49 *COLL. LIT.* 26, 27 (2022). However, placing the cliché in the context of political struggle against militarism returns Beckett's words to the laboratory of their own creation. Although Beckett's popularity coincided with two schools of literary interpretation—New Criticism and Existentialism—which considered literary texts as either self-contained artistic monoliths or generalized statements of the human condition, scholars like Marjorie Perloff have since shown how Beckett's work functions as a testament to the immense trauma of political struggle, principally World War II, in which Beckett served as a courier and code-breaker for the French Resistance. *See*, WITTGENSTEIN'S LADDER: POETIC LANGUAGE AND THE STRANGENESS OF THE ORDINARY (1996). Beckett later said he volunteered for war because "[y]ou simply couldn't stand by with your arms folded," a sentiment which may still be shared by activists today. RONAN MACDONALD, *THE CAMBRIDGE INTRODUCTION TO SAMUEL BECKETT* 14 (2006). Sadly, just a few years after he saw friends murdered by the Vichy and Nazi regimes, Beckett witnessed the country he fought to free begin its own fascistic war in Algeria. Erika Mihálycsa, *Beckett's Political Imagination*, 57 *JAMES JOYCE Q.* 209, 213 (2019). Beckett funded Jérôme Lindon's *Les Éditions de Minuit*, which printed evidence of tortures and executions without trial, "exposing the alarming continuities between the methods of interrogation used by the Gestapo and by French officials in Algeria." *Id.* Ever tried. Ever failed. No matter. Try again. Fail again.

16. Ellison, *supra* note 7.

forebearers' example, prepare ourselves for their enemies, and avoid their errors of judgment while also modeling their extraordinary achievements. Perhaps we are destined to fail again, but it will take vision, wisdom, and courage to fail better.

II. BACKGROUND

A. Early Patterns of Racialized Police Violence

In 1833, the Wayne County Sheriff arrested two Black Detroiters, Thornton and Ruthy Blackburn, who were identified as escaped slaves from Kentucky.¹⁷ Members of the Black community protested outside the jail, then helped the couple flee to Canada.¹⁸ In response, white Detroiters took up arms and arrested any Black resident suspected of aiding the Blackburns.¹⁹ The mayor supplied them with food and ammunition from government stock, making these bands Detroit's first municipal police organization.²⁰ The mayor's support quickly backfired, as white patrols began roaming the streets, burning Black homes and assaulting the people inside.²¹ Two weeks later, Secretary of War Lewis Cass sent federal troops to suppress the riot.²² The Blackburn episode established a pattern of racial tension and fervid police response that uniquely defines Detroit, "the nation's only city where the federal military has been deployed on the streets four times to prevent whites and blacks from killing each other."²³

The Detroit Police Department (DPD) officially formed in 1865, consisting of forty uniformed police officers, who made 3,056 arrests that first year and corralled 1,700 stray geese.²⁴ Almost immediately, the all-white police force exacerbated racial tension; in 1866, officers raided a

17. HERB BOYD, *BLACK DETROIT: A PEOPLE'S HISTORY OF SELF-DETERMINATION* 29 (2017).

18. Edward J. Littlejohn, *Law and Police Misconduct*, 58 U. DET. J. URB. L. 178, 180 (1981).

19. *Id.*

20. *Id.* at 179.

21. *Id.*

22. Foreshadowing his successors' rhetoric, Mayor Marshall Chapin blamed the chaos on the Black population "and particularly the repeated attempts to fire the town." BOYD, *supra* note 17, at 31.

23. This history anticipates Archer's request for the federal government to intervene and curtail his own police department's use of excessive force. Reynolds Farley, *Detroit Fifty Years After the Kerner Report: What Has Changed, What Has Not, and Why?*, 4 RSF: RUSSELL SAGE FOUND. J. SOC. SCI. 206, 206 (2017).

24. See *Detroit Police Department*, DETROIT HIST. SOC'Y, <https://detroithistorical.org/learn/encyclopedia-of-detroit/detroit-police-department> [https://perma.cc/2EJG-W36C] (last accessed Apr. 4, 2022).

Black dancehall, killing one civilian.²⁵ Public outcry followed, and the superintendent ordered his officers not to carry arms.²⁶ Just one year into its official existence, and the DPD was already reckoning with its use of excessive force against Black Detroiters.²⁷

In 1900, when Henry Ford began organizing his eponymous company, 285,000 people lived in Detroit; by 1925, there were 1.25 million.²⁸ A 1918 Charter reflected the needs of this sudden metropolis and took advantage of the new powers Michigan's Home Rule City Act of 1909 afforded municipal governments.²⁹ The mayor firmly controlled this version of the police force and appointed its commissioner, who he could also remove without cause.³⁰

The 1918 Charter proved remarkably long-lasting and was amended over 200 times over the next fifty years.³¹ It also withstood several crises, including the Great Depression and its accompanying labor violence.³² The white population plateaued in the 1930s, but Detroit continued attracting Black residents, who applied to a stagnant number of manufacturing jobs.³³ In 1943, the city experienced its most violent race riot yet, killing thirty-four.³⁴ Half were Black victims of police violence.³⁵ Meanwhile, not a single white person was killed by police.³⁶ NAACP Chief Counsel Thurgood Marshall pursued legal action against the officers, whom he squarely blamed for the violence:

The trouble reached riot proportions because the police of Detroit once again enforced the law under an unequal hand. They used 'persuasion' rather than firm action with white rioters, while

25. Littlejohn, *supra* note 18, at 179.

26. *Id.*

27. More than a century later, the BPC took a similar measure to avoid harm, ordering officers not to carry guns in certain situations to prevent white-on-Black violence. *See* discussion *infra* Part II.F.

28. KEVIN BOYLE, ARC OF JUSTICE 14 (2004). For a depiction of one immigrant's experience of Detroit during this boom town era, see *id.* at 102–14.

29. George E. Ward, *Detroit Charter Revision—A Brief History*, CITIZENS RSCH. COUNCIL OF MICH. (July 1993), <https://crcmich.org/PUBLICAT/1990s/1993/rpt31002.pdf> [<https://perma.cc/L8ZN-K9GA>]; The Home Rule City Act, MICH. COMP. LAWS §§ 117.1–117.38 (2022).

30. CITY OF DETROIT CHARTER (1918).

31. Ward, *supra* note 29.

32. *See* B.J. WIDICK, DETROIT: CITY OF RACE AND CLASS VIOLENCE (1972).

33. Littlejohn, *supra* note 18, at 188 (“[d]uring the 1930s, the white population in Detroit increased by 1.7 percent, the Black population by 24.0 percent.”).

34. *Id.* at 191.

35. *Id.*

36. *Id.*

against Negroes they used the ultimate in force: night sticks, revolvers, riot guns, sub-machine guns, and deer guns.³⁷

An Army general was called in to quell the riots, and even he agreed with Marshall that the DPD “treated Negroes terribly up here.”³⁸ City and state officials, however, blamed Black leaders, who, in the words of Mayor Edward Jeffries, insisted “that their people do not and will not trust policemen and the police department.”³⁹ As for the police, Jeffries called them “splendid and at times magnificent.”⁴⁰

Without white support, Black Detroiters were too outnumbered to affect change within the DPD, and violence erupted once again in 1967.⁴¹ One-hundred-and-one years earlier, the DPD killed its first Black civilian while raiding a Black bar; now the police raided a Black “blind pig” but were met with violent resistance, and the situation rippled throughout the city.⁴² Forty-three people died, 7,200 were arrested, and 683 structures were destroyed.⁴³ But 1967 was different from earlier eruptions of violence in one crucial way: even white politicians agreed that the DPD needed to change.⁴⁴ Some of the most important reforms, such as affirmative action and social spending programs, appeared impossible under the City’s “horse-and-buggy-era charter.”⁴⁵ Voters elected a City Charter Commission in 1970, which included a Public Safety Subcommittee devoted to alleviating the problem of police misconduct.⁴⁶

37. *Id.* at 192.

38. *Id.*

39. *Id.*

40. *Id.*

41. “In the two decades following the riot of 1943, evidence indicates that police attitudes toward blacks, not unlike those of the community generally, remained unchanged. Within the department itself, segregation was openly practiced in the 1940s, 1950s, and 1960s.” *Id.* at 193.

42. *Id.* at 201.

43. *Id.*

44. For instance, President Johnson convened the Kerner Commission “with smoke still hanging over Detroit” and tasked it with proposing reforms that would prevent such urban violence from happening yet again. Rick Lossenberg, *Understanding the Controversy: The Kerner Commission, The Harvest of American Racism, and the Dynamics of Incorporating Social Science with Public Policy*, 34 J. POL’Y HIST. 116, 123 (2022).

45. Ward, *supra* note 29.

46. Edward J. Littlejohn, *The Civilian Police Commission: A Deterrent of Police Misconduct*, 59 U. DET. J. URB. L. 5, 31 (1981).

B. John Nichols: Naked in the Jungle of Politics

The Commission expected a new Charter proposal in time for the 1972 presidential election. By then, DPD misconduct was no longer epitomized by the events of 1967, such as the Algiers Motel Incident,⁴⁷ but by Stop the Robberies, Enjoy Safe Streets (STRESS).⁴⁸ This DPD program attempted to prevent crime through close surveillance and “decoying,” in which disguised officers walked around high-crime neighborhoods, impersonating drunks or the homeless, who were supposed to be easy targets for thieves.⁴⁹ The idea was that, once “criminals” attempted to rob the decoys, other police would swoop in to arrest them; in reality, police frequently shot and killed these suspects instead.⁵⁰ “By the end of its first year and a half, STRESS had caused more civilian deaths than the entire department had over the preceding decade (excluding deaths related to the 1967 riot). All except one of the victims were [B]lack.”⁵¹ At the same time, STRESS officers and decoys was almost exclusively white.⁵²

Mayor Roman Gribbs and Police Commissioner John Nichols were also white, as was most of their police force.⁵³ Nichols maintained that STRESS was designed to protect all crime victims, including Black victims, and pointed to the program’s initial support from Black establishment forces such as the Detroit Urban League.⁵⁴ However, that support vanished once it became clear that, in practice, STRESS was never intended to benefit Black Detroiters.⁵⁵ “With STRESS, the criminal must fear the potential victim,” Nichols once explained. The problem was that all of STRESS’ undercover officers were white and incapable of

47. See *Uprising (1967), Murder at Algiers Motel*, DETROIT UNDER FIRE, UNIV. MICH. POL & SOC. JUST HIST. LAB, <https://policing.umhistorylabs.lsa.umich.edu/s/detroitunderfire/page/algiers-motel> [<https://perma.cc/8HGR-ZDW7>] (last accessed Apr. 4, 2023).

48. See Matt Lassiter, *Fatal 1971 Shooting Galvanizes Detroit Against STRESS*, DET. FREE PRESS, Sept. 5, 2021, at A7.

49. Littlejohn, *supra* note 18, at 209.

50. *Id.*

51. *Id.* at 209.

52. *STRESS Era (1971-1973), The Creation of STRESS*, DETROIT UNDER FIRE, UNIV. MICH. POLICING & SOC. JUST HIST. LAB, <https://policing.umhistorylabs.lsa.umich.edu/s/detroitunderfire/page/creation-of-stress> [<https://perma.cc/SA2N-48TR>] (last accessed Apr. 4, 2023).

53. *Commissioner Nichols and Mayor Gribbs*, DETROIT UNDER FIRE, UNIV. MICH. POLICING & SOC. JUST HIST. LAB, <https://policing.umhistorylabs.lsa.umich.edu/s/detroitunderfire/item/116> [<https://perma.cc/27VE-YY7H>] (last accessed Apr. 4, 2023). For thorough discussion of the DPD’s racial makeup, see *Baker v. Detroit*, 483 F. Supp. 930, 963 (E.D. Mich. 1979).

54. *Id.*

55. *Id.*

impersonating Black victims.⁵⁶ Any criminal actually deterred by STRESS knew they could just target Black Detroiters without risk.⁵⁷ Furthermore, the “high-crime” neighborhoods were primarily commercial districts such as Cass Corridor, which garnered reputations as “racial boundaries” for their lack of Black patrons.⁵⁸ The real goal of STRESS appeared to be keeping white suburbanites safe while they shopped.

Activists protested STRESS as early as September 1971, just months after the secret unit was revealed to the public, calling it “an instrument of *racial terror* rather than a crime-control operation, designed by the DPD and the city government to repress the Black community and maintain white power.”⁵⁹ One STRESS architect, Commander James Bannon, practically admitted as much, stating that “what is at stake here is whether we can effectively police the black community.”⁶⁰

As criticism of STRESS grew, the Charter Commission presented its first structural solution to police misconduct by reorganizing the DPD.⁶¹ At first blush, the changes seemed unlikely to offend police brass; the proposal kept a single leader in charge, who would still be a mayoral appointee, as would be the deputy commissioner.⁶² The biggest change was a separate “Professional Standards Department” outside of the DPD, which would investigate citizen complaints against police.⁶³ Findings of misconduct would lead to disciplinary hearings, the results of which would be final.⁶⁴ Promotions would also run through the Standards Department, subject to the same civil service procedures which other city employees experienced.⁶⁵

Nichols lambasted these proposed changes in a May 1972 letter to the Charter Revision Commission.⁶⁶ Requiring mayoral approval for assistant commissioners was “a travesty upon government and the people!”⁶⁷ Even worse was the choice to make the deputy commissioner a mayoral

56. Lassiter, *supra* note 48.

57. *Id.*

58. *Id.*

59. *Id.* (emphasis added).

60. *STRESS Era*, *supra* note 52.

61. Citizens Research Council of Michigan, 858 DIGEST OF THE PROPOSED CHARTER FOR THE CITY OF DETROIT: COUNCIL COMMENTS, (Oct. 11, 1972), <https://crcmich.org/wp-content/uploads/cc0858.pdf> [<https://perma.cc/J3MC-2X2J>].

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Letter from John F. Nichols, Comm’r, Detroit Police Dep’t, to Detroit Charter Revision Comm’n (May 1972) (Burton Historical Collection, Detroit Pub. Library, Box 4 of the Charter Revision Comm’n Archive material).

67. *Id.* at 3.

appointee, just like the commissioner himself; for some reason, having two appointees at the department's head instead of one meant that neither would be able to battle corruption, making the proposal "a blueprint for banditry; a Bill of Rights for racketeering; a Magna Charta [sic.] of Chicanery!!"⁶⁸ Compared to these small bumps in mayoral power, the proposal for a civilian review board warranted only brief rejection; the Department of Professional Standards, Nichols wrote, "divested of the sugar coating of semantics, is plainly and simply a CIVILIAN REVIEW BOARD."⁶⁹ Apparently, the harm of a "civilian review board" was self-evident.

Nichols's rhetoric may be hard to take at face-value, but he closed the letter by credibly describing how the proposal would diminish the "office, if it may be dignified by that name, of Police Commissioner."⁷⁰ This Commissioner would still be charged with the administration of the DPD, but by ceding promotions and discipline to a separate department, he would be deprived of an executive's most basic management tools, the carrot and the stick. "He then stands (unarmed, naked, in a jungle of politics) without any means at his disposal to ensure the honesty, the integrity, and the capability of the force to function."⁷¹

This description of an honest police commissioner left "unarmed, naked, in a jungle of politics" is ironic considering the shrewd political instincts Nichols showed when maneuvering around the Charter's proposed threat to DPD power. He recruited well-heeled allies to join his "No" campaign, including the Greater Detroit Chamber of Commerce, which represented regional business interests.⁷² Come election day, the Charter proposal was narrowly defeated, 193,511 to 183,096, with voters divided along "liberal-conservative" lines.⁷³

Yet Nichols had reason to fear that this was only a Pyrric victory. The Charter Commission had \$165,000 of its \$485,000 budget left and another

68. *Id.* Nichols suggested that a corrupt mayor might appoint cronies under the commissioner, who would somehow stymie a corruption investigation into the mayor himself. Structurally, the allegations made little sense; the commissioner's power was independent of his subordinates; if he wanted to pursue an investigation into the mayor, the deputy commissioner couldn't stop him.

69. *Id.*

70. *Id.* at 5.

71. *Id.*

72. *Id.*

73. The Charter commissioner was likely using "liberal-conservative" as a euphemism for Black and white voters. After all, the statement is self-evident otherwise: those who oppose changes to the City Charter were *by definition* conservative. Furthermore, the razor-thin margins reflect the racially polarized mayoral elections immediately preceding and following. Clark Hallas, *Detroit Charter Appears Beaten by a Thin Margin*, DET. NEWS, Nov. 8, 1972, at 2C. For vote totals, see Littlejohn, *supra* note 46, at 34, n. 208.

year to craft a new proposal, which would find itself on the 1973 municipal ballot.⁷⁴ 1972 had been a good year to oppose reform, with “law and order” President Richard M. Nixon winning the largest electoral college victory in modern history, yet the Charter was only defeated by 10,000 votes.⁷⁵ A realistic operator had to recognize that 1973 would not be as auspicious for conservatives, especially with thousands of conservative-leaning white voters fleeing to the suburbs each year.⁷⁶

Rather than re-wage a war he thought he’d already won, Nichols changed tactics entirely, submitting his own proposal to the Charter writers: a five-member “Board of Police Commissioners.”⁷⁷ Here lies the central irony of the story: the same man birthed both STRESS and the BPC. One group embodied the use of state violence to perpetuate “racial terror”; the other symbolized Detroiters’ best hope for curtailing excessive force, as unlikely a pair of siblings as the city has ever known.⁷⁸

C. Election Day 1973

Nichols sold the Commission as a “policy-making body,” meaning it would be more powerful than structures like Philadelphia’s Advisory Board,⁷⁹ which could only make recommendations to police brass and therefore lacked the “powerful tools with which to deal with police misconduct” which Nichols now promised.⁸⁰ The proposal more closely resembled the similarly-named Los Angeles Board of Police Commissioners (LABPC), which also had five members.⁸¹ The LABPC had real responsibilities, including appointing the police chief and determining his salary, issuing licenses to certain businesses, and supervising, controlling, and regulating the operations of the department.⁸²

74. Hallas, *supra* note 73.

75. J. F. terHorst, *Nixon’s Goal Is to Turn Landslide into New Era of Peace, Prosperity*, DET. NEWS, Nov. 8, 1972, at 1A.

76. According to one estimate, Detroit lost white residents at the rate of more than 50,000 Detroiters *per year*, more than enough to be electorally determinative for races won by margins of less than 10,000. Timothy J. Kenny, *Detroit in the 1970’s a Preview of the Coming American Racial Crisis* (May 1977) (Master’s Thesis, Loyola University Chicago) (on file with author).

77. Nichols’s authorship of the BPC was first reported by Edward J. Littlejohn, *supra* note 46, at 34.

78. Lassiter, *supra* note 48.

79. See Eric C. Schneider et al., *Dirty Work: Police and Community Relations and the Limits of Liberalism in Postwar Philadelphia*, 46 J. URB. HIST. 961, 964 (2017).

80. Littlejohn, *supra* note 46, at 34.

81. LOS ANGELES, CAL., CITY CHARTER §§ 70(b), 77, 78.

82. LOS ANGELES, CAL., CITY CHARTER §§ 79, 83.

In practice, however, LABPC power was predominately “illusory.”⁸³ As nominal head of the department, it should have had access to all grievance and crime data, but officers made “as little information as possible available” to the LABPC and complied with its requests “only after much delay and resistance.”⁸⁴ Crucially, the LABPC had no say in disciplining officers, so such behavior went unchallenged.⁸⁵ The LABPC also had veto power of the department’s budget, but even that was never used effectively to enact policies or challenge the Chief.⁸⁶

Given his previously expressed hostility to civilian police commissions, Nichols may have intended his 1972 BPC proposal to reproduce the LABPC’s flaws rather than address them. For instance, his BPC required the police chief’s cooperation to conduct investigations, and it was the chief, not the board, who could punish the officers investigated.⁸⁷ Some language only sounded impressive: the BPC had a “policy *making* function,” whereas the Chief could only “propose” rules, but on second look, the BPC lacked any means to enforce its rules.⁸⁸ The proposal also tasked the BPC with numerous other chores, many only tangentially related to the DPD: it could take, purchase, or bequest real and personal property; sell and convey or lease land; review and ratify contracts, and report to the City Council on all sales and purchases.⁸⁹ Despite all these mundane responsibilities, commissioners would only work part-time, just like in Los Angeles, where commissioners’ limited work hours served as an important structural impediment to reform.⁹⁰

The Charter Revision Committee pushed back on these demands, removing some of the BPC’s least essential tasks (e.g., to review and ratify contracts).⁹¹ At the same time, the Committee expanded the BPC’s more critical functions. This BPC wouldn’t just “investigate” complaints; it was “in charge of investigations,” with the power to appoint a chief investigator and other fact finders, subpoena witnesses and evidence, and take testimony.⁹² Crucially, the BPC would be the “final authority in imposing or reviewing discipline of employees,” so the results of its

83. Littlejohn, *supra* note 18, at 183.

84. *Id.* at 191.

85. *Id.*

86. *Id.* at 192.

87. John Nichols, Detroit Police Dep’t, Position Paper on Charter Revision Comm’n Proposal for the Police I (May 1972) (Burton Historical Collection, Detroit Pub. Library, Box 4 of the Charter Revision Comm’n Archive material).

88. *Id.*

89. *Id.*

90. *Id.*; Max Felker-Kantor, *Liberal Law-and-Order: The Politics of Police Reform in Los Angeles*, 46 J. URB. HIST. 1026, 1029 (2017).

91. CITY OF DETROIT CHARTER § 7-1108 (1974).

92. CITY OF DETROIT CHARTER § 7-1103 (1974).

investigations mattered.⁹³ Furthermore, this disciplinary power would prevent the blatant disrespect LAPD officers showed their Board, and the promise of promotions might even incentivize cooperation. Finally, the BPC would prevent misconduct proactively by establishing department rules and policies.⁹⁴

Reformers felt like they'd made the best of Nichols' ill will and those who "anticipated a weak charter...undoubtedly found disconcerting the broad powers" given to the BPC.⁹⁵ If so, Nichols never betrayed a concern and publicly supported the new Charter throughout 1973, especially the BPC, which he called "the proper way" to get "responsive and responsible civilian input."⁹⁶

Nichols spent much of 1973 talking to journalists, especially after resigning from the DPD in September to run for mayor full-time.⁹⁷ Former law enforcement officers won mayoral elections in Philadelphia, Minneapolis and Los Angeles, and Nichols hoped to ride this wave of anti-crime reaction.⁹⁸ His main rival was Coleman A. Young, who was "tall, dapper, gray-haired and polished—almost a dandy."⁹⁹ The "skillful, old-fashioned politician" served as the Democratic floor leader of the State Senate and hoped to be the city's first Black mayor.¹⁰⁰ Still, Young was no one's idea of an establishment pol; "a radical in his youth," he was "a battler, who as a young man on the assembly line did not hesitate to smash a threatening auto company goon in the head with a steel bar."¹⁰¹ During the primaries, Young vowed to both disband STRESS and fire Nichols, giving the election an unmistakably personal character.¹⁰² Young accused Nichols of controlling the city by "blackjack rule."¹⁰³ He also promised dramatic improvements to the DPD's hiring of Black officers, saying "It's not enough to double the number of Blacks in the department when they

93. *Id.*

94. *Id.*

95. Littlejohn, *supra* note 46, at 36.

96. Unsurprisingly, Nichols was more critical of the portions of the Charter proposal he didn't personally suggest. He had "no hangups with the police section," but confessed to "severe hangups about the office of ombudsman." *Nichols vs. Young: The Issues, The Jobs, The Economy*, DET. FREE PRESS, Oct. 7, 1973, at 4D.

97. William K. Stevens, *Detroit Rivals Avoid Race Issue*, N. Y. TIMES, Nov. 4, 1973, at 84.

98. William K. Stevens, *Political Power of Blacks Held Decisive in Detroit*, N.Y. TIMES, Nov. 8, 1973, at 52.

99. Stevens, *supra* note 97.

100. *Id.*

101. *Id.*

102. Nadine Brown, *Nichols, Young Square Off*, MICH. CHRONICLE, Oct. 13, 1973, at A3.

103. Remer Tyson, *Balloting Split On Race Lines*, DET. FREE PRESS, Nov. 7, 1973, at 1A.

still represent less than fifteen percent of a department in a city that's fifty percent Black."¹⁰⁴

For his part, Nichols never ran from STRESS during the election, reminding viewers of his first debate that "I backed STRESS as police commissioner, and I'll back the concept as mayor. Extraordinary methods have to be used to fight extraordinary crime."¹⁰⁵ The literal troops of the police union, the Detroit Police Officers Association (DPOA), who served as a quasi-official campaign organization for Mayor Gribbs in 1969, fortified Nichols's campaign.¹⁰⁶

In the end, Nichols' relentless defense of STRESS galvanized the white electorate, garnering ninety-one percent of their support, an even greater percentage than Gribbs received in 1969.¹⁰⁷ However, a racially-polarized electorate is a double-edged sword: Young won ninety-two percent of the Black vote.¹⁰⁸ With Detroit now majority-Black, that was just enough to give Young a narrow victory, 231,789 votes to 217,479.¹⁰⁹ The new Charter with the BPC won as well, and the twin victories for reform gave Young more power than his marginal mandate suggested, with "a firmer handle on the levers of government than any mayor has had since...1918."¹¹⁰

D. Implementing Affirmative Action

The new Charter took effect on July 1, 1974, but Young was impatient to deliver on his campaign promises.¹¹¹ Within his first 100 days, he abolished STRESS and opened fifty-five "mini-stations," meant to better integrate police officers into the communities they served.¹¹² He also issued an executive order compelling the DPD to reach an even number of Black and white officers within four years, although he didn't have the

104. *Id.*

105. *Id.*

106. Dennis A. Deslippe, "Do Whites Have Rights?": *White Detroit Policemen and Reverse Discrimination Protests in the 1970s*, 91 J. AM. HIST. 932, 941 (2004), PROQUEST.

107. *Id.*

108. *Id.*

109. William K. Stevens, *Detroit Elects Black Mayor*, N.Y. TIMES, Nov. 7, 1973, at 1, PROQUEST 119667427.

110. David Cooper, *Victory Only a Beginning for Young*, DET. FREE PRESS, Nov. 8, 1973, at A6.

111. Edward Boyer, *Detroit's New City Charter Goes into Operation Today*, DET. FREE PRESS, July 1, 1974, at 3A.

112. Coleman Young, *Outline of 100-Day Speech*, Box 107, Folder 12, Coleman A. Young Papers, Part II, Walter P. Reuther Library, Archives of Labor and Urban Affairs, Wayne State University.

power to actually implement the plan.¹¹³ Rather, the new Charter placed DPD policy and hiring practices squarely at the feet of the BPC.¹¹⁴

Because Young needed the BPC to realize his policy goals, he chose his nominees carefully, selecting five prominent Detroiters with distinct identities and professional accomplishments: a reverend, a United Auto Workers vice president, a community activist, a lawyer, and a professor.¹¹⁵ They ranged in ages from twenty-five to fifty-nine.¹¹⁶ Three were Black and two were white.¹¹⁷ Four were men; only one was a woman.¹¹⁸

Young convened the first meeting of the BPC on July 22, 1974 and announced a plan to equalize promotions for Black and white officers.¹¹⁹ He tasked his white chief, Philip G. Tannian, who had replaced Nichols under Gribbs, with presenting an affirmative action plan that might be palatable to the rank and file.¹²⁰ The job proved impossible: white officers derided Tannian as Young's puppet and called him names such as "half-wit" and "Elmer Fudd."¹²¹ Officers were equally disdainful of the mayor and picketed downtown with slogans like "Real Affirmative Action: Fire the Mayor."¹²²

That summer, the Supreme Court decided *Milliken v. Bradley*; a 5-4 majority struck down a Detroit desegregation plan that bused children from majority-Black school districts into predominately white suburbs.¹²³ The decision narrowed the future of Detroit and its children, and Young gave up on busing as an instrument of racial equity.¹²⁴ That put more

113. *Demanding Reform (1978-81), Affirmative Action, Reform and Resistance, CRACKDOWN*, UNIV. MICH. POLICING & SOC. JUST. HIST. LAB, <https://policing.umhistorylab.slsa.umich.edu/s/crackdowndetroit/page/layoffs> [https://perma.cc/VW2T-MY3B] (last accessed Apr. 4, 2023).

114. CITY OF DETROIT CHARTER § 7-1108 (1974).

115. Dave Anderson, *Police Commission Selected*, DET. FREE PRESS, June 23, 1973 at A3.

116. *Id.*

117. *Id.*

118. *Id.*

119. Littlejohn, *supra* note 46, at 37. While Detroit's population was majority Black, only 17.2 percent of the police force was. When it came to DPD leadership, the problem had arguably worsened since 1967. At that time, the DPD had 339 white sergeants; by 1974, that number was 1,124, a veritable explosion at a time when the entire police force only grew moderately, from 3,757 to 4,006 officers. Meanwhile, the number of Black sergeants only grew from nine to sixty-one, meaning that for every Black officer who made sergeant since 1967, fifteen white officers did. *Baker v. Detroit*, 483 F. Supp. 930, 963 (E.D. Mich. 1979).

120. Fred Girard, *Police Chief Tannian Teeters on Top*, DET. FREE PRESS, May 27, 1975, at 1A.

121. Deslippe, *supra* note 106, at 932.

122. *Id.* at 948.

123. *Milliken v. Bradley*, 418 U.S. 717 (1974).

124. Deslippe, *supra* note 106, at 941.

pressure on him to implement his affirmative action plan within the DPD: “We’re not going to turn this city around, and have a united city, until we deal with the Police Department.”¹²⁵

Despite the mayor’s new powers, Young still struggled to “deal” with the DPD. First, the union sued to enjoin the affirmative action plan from going into effect, as did multiple white officers, whose claims were eventually certified as a class action.¹²⁶ The resulting litigation drained years of BPC energy, and its members testified and presented evidence in the case, *Baker v. Detroit*.¹²⁷ Judge Damon J. Keith quoted BPC findings liberally in his seventy-six page opinion, temporarily validating their efforts.¹²⁸ Even then, the struggle was far from over. When Ronald Reagan took the White House, his DOJ prioritized attacking affirmative action plans across the United States.¹²⁹ The administration ignored BPC requests to just let Detroit alone, dragging the City back into court to re-litigate the issue.¹³⁰ “We spent my first five years in this commission dealing with affirmative action,” said former Commissioner Susan Mills-Peek.¹³¹ “We feel this is a betrayal, a betrayal by some folks who do not understand what this city has been through.”¹³² The DPD finally equalized promotions among Black and white officers in 1987, but litigation carried on over damages until the parties settled in 1995, *twenty years* after the lawsuit began.¹³³

E. The Fight for Power

The BPC’s first meeting also saw the introduction of a new unit within the DPD to handle civilian complaints, the Professional Standards Section.¹³⁴ It should be noted that, prior to 1961, the DPD had no systematic process for citizens to complain about police officers.¹³⁵ One veteran recalled the old system:

125. *Id.* at 942.

126. *Baker v Detroit*, 483 F. Supp 930, 938 (1979).

127. *Id.*

128. *Id.* at 963–65.

129. Robert Pear, *Administration Is Hoping to Force Court to Confront Racial Quotas*, N.Y. TIMES, Dec. 5, 1983, at B13.

130. *Justice Dept. Accused of Betrayal*, MICH. CHRON., May 21, 1983, at 1.

131. *Id.*

132. *Id.*

133. The presiding judge derided “the excessive length of this epic litigation.” *Detroit Police Officers Ass’n v. Young*, 920 F. Supp. 755, 762 (E.D. Mich. 1995).

134. Littlejohn, *supra* note 46, at 39.

135. *Id.* at 25.

If a citizen had a complaint, they would come to the police station and make the complaint and the sergeant would take the information and turn it over to the lieutenant or the inspector in charge and there would be a very cursory investigation and it would always come out where the officer was justified in whatever he did. It was always a whitewash situation.¹³⁶

Despite efforts at self-reform throughout the 1960s, by 1974, most complaints were still investigated by the offending officer's own unit.¹³⁷

The new process began with citizens filing complaints, in person, by mail, or by telephone.¹³⁸ A supervisor completed a numbered complaint form, which was forwarded to Professional Standards, who investigated.¹³⁹ Standards investigators should have been either civilian BPC staff or officers serving under a chief investigator appointed by the BPC.¹⁴⁰ The problem was that, as of this first meeting, BPC had no staff or procedural guidelines for hiring one, so it was simply incapable of investigating complaints.¹⁴¹

Making matters worse, the BPC received 3,475 total complaints in 1975, a "phenomenal increase" of more than 200 percent over *the entire nine-year period prior*, likely due to the publicity afforded the BPC at its founding and reflecting Detroiters' hope for the new system.¹⁴² In a concession to reality, the BPC let police brass run the complaints unit with the promise that the BPC would take over the following year.¹⁴³ Still, the DPD only allotted twenty-one officers to Standards, and the department was scarcely better equipped to process the sudden barrage of complaints than the BPC on its own.¹⁴⁴ As a result, the Professional Standards Section investigated only 195 cases; at least 2,218 were simply sent back to the precinct unit, just as they'd always been, disappointing the thousands who

136. *Id.*

137. In 1961, the DPD created the Community Relations Bureau, which became the Citizen Complaint Bureau in 1965, to investigate the most "serious" complaints. In practice, that typically meant the complaint wasn't made by an individual but an organization, such as the Michigan Civil Rights Commission, capable of pressuring the DPD to reach an impartial conclusion. *Id.*

138. *Id.* at 40.

139. *Id.*

140. CITY OF DETROIT CHARTER § 7-1108-9 (1974).

141. "Without the capacity to conduct its own investigations or to supervise those by the police, as well as a lack of experience with complaint systems and an understanding of the specific reforms needed, the BPC was dependent upon the chief and his staff." Littlejohn, *supra* note 46, at 37, 41.

142. *Id.* at 37, 42.

143. *Id.*

144. *Id.* at 44.

had rushed to take advantage of this new mechanism for police accountability.¹⁴⁵

Throughout 1975, Commissioners did their best to supervise the investigations, but despite being DPD's nominal "head," they had no practical place in the chain of command and therefore had to rely on the willing cooperation of the chief for useful and timely information.¹⁴⁶ The DPD held onto the 1975 data through June of the following year, preventing the BPC from meeting even the most modest definition of supervision.¹⁴⁷ Troublingly, the DPD's delay appeared deliberate, with reports ready months earlier but withheld for potentially embarrassing content.¹⁴⁸ Despite these flaws, the Standards Section was a marked improvement over what came before, when few complaints even received dispositive conclusions.¹⁴⁹

Later in 1976, the BPC issued a report urging the DPD to automatically forward its complaints, as the Charter required.¹⁵⁰ Commissioners also wanted more staff to finally conduct their own investigations, again as the Charter promised.¹⁵¹ To deny these requests, the DPD advanced a novel legal argument, that "the BPC as a policy-making body has no operational authority."¹⁵² The DPD said that complaint investigations involved operations, which meant they were beyond the purview of the BPC, regardless of acknowledged BPC policy.¹⁵³ Although the contention was directly contrary to the Charter,

145. Complete information was never made available about the more than 1,000 complaints received from the Mayor's, Ombudsman, and Chief Investigator's Office. *Id.*

146. *Id.* at 41.

147. *Id.*

148. *Id.* at 42.

149. Outsiders can roughly gauge how seriously a department takes officer discipline by how many investigations result in non-dispositive findings of "Insufficient Evidence." Ideally, the tag means that investigators failed to identify disinterested witnesses or other evidence, but that happens more often when an administration neglects to support complaint investigations. Furthermore, as the only non-dispositive conclusion, "Insufficient Evidence" can be used to cover up serious allegations that, once substantiated, would have serious consequences for the officers involved, an especially tempting outcome when the peers of the officer under investigation conduct the investigation at the precinct level. In 1973, sixty-four percent of all investigations were resolved with "Insufficient Evidence" conclusions, which carried no consequences for accused officers and no justice for citizens who may have been harmed. By 1975, that number was only twenty percent. The decrease was even more remarkable since the PSS remained officer-controlled, and civilians were still prohibited from direct involvement in the investigations. Accordingly, BCP's first year illustrates that the *mere possibility* of civilian control promotes reform, even when civilians still have no direct involvement in complaint procedures. *Id.* at 41-43.

150. *Id.* at 44-45.

151. *Id.*

152. *Id.* at 45.

153. *Id.*

which required the BPC to conduct investigations, this dispute would not be resolved until December 4, 1978, when Mayor Young issued Executive Order 10, which clarified the respective responsibilities of the BPC and the police chief.¹⁵⁴ However, this spurious policy/operations distinction would reappear throughout the BPC's history, eventually from the mouths of commissioners themselves, who used it to justify their own failures of oversight.¹⁵⁵

In 1977, more than three years after voters approved the new Charter, commissioners still could not conduct their own complaint investigations.¹⁵⁶ Finally, the BPC gave up on willing DPD compliance and sent two of its own investigators to interrogate a police officer on March 10, 1977, regarding a citizen complaint.¹⁵⁷ The officer, alongside his DPOA steward, refused to answer questions, stating that cooperation would be contrary to the union's collective bargaining agreement.¹⁵⁸

Unfortunately for the BPC, the officer had a point: the Public Employment Relations Act (PERA) recognized police unions and allowed public employees to bargain over "wages, hours, and other terms and conditions of employment."¹⁵⁹ In 1976, the Michigan Supreme Court held that employee discipline was correctly characterized among the "conditions of employment," making it a mandatory subject of collective bargaining agreements.¹⁶⁰ It did not matter what the public agreed to in a Charter because PERA was state law, and there was "apparent legislative intent that the PERA be the governing law for public employee labor relations."¹⁶¹ "A civilian review board for discipline of police officers is a permissible charter provision," but "a public employer's collective bargaining obligation prevails over a conflicting permissible charter provision."¹⁶²

The decision rendered Charter language irrelevant when it came to officer discipline, and the question of whether the BPC had authority to conduct investigations could only be resolved by the next labor contract.¹⁶³ Because the parties could not reach a compromise, the question was

154. EXEC. OFF., CITY OF DETROIT, EXEC. ORD. NO. 10, IMPLEMENTATION OF CHARTER RESPONSIBILITIES OF CHIEF OF POLICE AND BOARD OF POLICE COMMISSIONERS (1978) (outlining the responsibilities of BPC and police chief).

155. See remarks of William Hart and Sharon McPhail, *infra* Part II.F.

156. See Littlejohn, *supra* note 46, at 46.

157. *Id.*

158. *Id.*

159. MICH. COMP. LAWS ANN. §§ 423.201–17 (2021).

160. Pontiac Police Officers Ass'n v. Pontiac, 397 Mich. 674 (1976).

161. *Id.* at 682.

162. *Id.* (quoting Detroit Police Officers Ass'n v. Detroit, 391 Mich. 44 (1974)).

163. Littlejohn, *supra* note 46, at 51.

presented to an arbitration panel, which, after months of vigorous debate, referred the question back to the BPC, which ruled in favor of its own power.¹⁶⁴ On November 14, 1979, the DPD finally acknowledged that “[t]he Investigative staff of the Board of Police Commissioners shall have the right to interrogate and investigate.”¹⁶⁵ By that point, the first commissioners were completing their staggered five-year terms, never having exercised their Charter powers to fully investigate a complaint then act as final disciplinary authority.¹⁶⁶

F. Throttled Reforms and Stagnation

Although the BPC struggled as an investigatory body, it showed promise by steering the DPD away from the racial violence that had defined the department since its founding. On May 9, 1975, several hundred police officers gathered outside the federal building to protest a recent court order, which prohibited the DPD from laying off its Black or female officers, pushing the full weight of a recent cutback onto white male officers alone.¹⁶⁷ White officers drank beer while they picketed on the sidewalk and heckled journalists and passersby.¹⁶⁸ Officers grew rowdy, and then attacked a lone Black officer.¹⁶⁹ The Black officer drew his pistol in self-defense, and several white officers drew their own weapons in response.¹⁷⁰ The officers did not fire any shots, but twelve of the officers were charged with crimes in connection to the incident.¹⁷¹ The BPC’s ability to discipline the officers was still uncertain, but no one questioned its policy response, which was to forbid officers from carrying weapons while participating in rallies.¹⁷²

The BPC issued several such reasonable reforms during this period. For example, the BPC ordered police not to use unsafe local police precinct lockups in response to a lawsuit.¹⁷³ Additionally, it prioritized responding to attempted rape before auto theft or indecent exposure for the

164. *Id.* at 53.

165. Memorandum of Understanding between the City of Detroit and the Detroit Police Officers’ Ass’n, Members’ Rights-Investigative Procedure and Work Areas (Nov. 14, 1979).

166. CITY OF DETROIT CHARTER § 7-1102 (1974).

167. *Commission Order Disarms Demonstrating Police*, DET. FREE PRESS, June 5, 1976, at 2-A.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. Thomas C. Fox, *Inmate Housing Plan Settled*, DET. FREE PRESS, Feb. 7, 1976, at 3A.

first time.¹⁷⁴ It also manifested managerial competence and stood up to the chief when he attempted to put a former Detroit Pistons coach on the DPD payroll during a budget crisis.¹⁷⁵

William Hart took over as police chief in 1976.¹⁷⁶ The BPC gradually lost its will to fight Hart and Young, as illustrated by the first major police abuse scandal under BPC supervision: the so-called “cattle prod” cases.¹⁷⁷ On February 3, 1980, officers viciously beat a prisoner named Fred Warren with a blackjack, which ruptured his spleen.¹⁷⁸ Warren cried for medical attention, which never came, but an officer attempted to revive him by electrifying his body with a cattle prod.¹⁷⁹ It did not work; Warren died in his cell.¹⁸⁰ Subsequent revelations showed that Second Precinct officers regularly used the cattle prod to torture detainees.¹⁸¹

Attendees of a public meeting held on February 21, 1980, demanded that the BPC halt the “inhuman treatment of prisoners” and conduct a thorough investigation.¹⁸² Despite this demand, subsequent news coverage showed the commissioners were stuck outside, looking in. “Hart Fires Five in Prod Case,” read one headline, and although it depicted a BPC meeting, its principal actor was Hart: “Hart told a packed meeting of the Board of Police Commissioners, held Thursday night at the precinct station at 2801 Vernor, that he took ‘stern disciplinary measures’ against the five, but would not give details.”¹⁸³ Commissioners seemed neither satisfied nor troubled by the chief’s treatment of them, and Chairman Walter Douglas said that residents “were owed a better explanation” from the DPD.¹⁸⁴ “‘But,’ he shrugged, ‘the mayor wants a news conference in the morning. He’ll have a news conference in the morning.’”¹⁸⁵

On March 7, 1980, Hart announced to the media that the officers would be criminally charged within ten days but refused to talk about the

174. *Police to Shift Priorities*, DET. FREE PRESS, Sept. 17, 1976, at 6C.

175. Jack Kresnak, *Tannian Nominees Are Rejected by Police Commission*, DET. FREE PRESS, Mar. 8, 1975, at 3A.

176. *Tannian Fired; Hart is Chief*, DET. FREE PRESS, Sept. 29, 1976, at 1A.

177. *Demanding Reform (1978-81), Police Violence, Case Studies*, CRACKDOWN, UNIV. MICH. POLICING & SOC. JUST. HIST. LAB, <https://policing.umhistorylabs.lsa.umich.edu/crackdowndetroit/page/in-focus-robert-carson-maxine-thomas> [<https://perma.cc/EVW4-SXUN>] (last visited Nov. 22, 2021).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. Jack Kresnak, *Citizens Ask Probe of Police*, DET. FREE PRESS, Feb. 22, 1980, at 1A.

183. Jack Kresnak & Brian Flanigan, *Hart Fires Five in Prod Case*, DET. FREE PRESS, Mar. 21, 1980, at 1A.

184. *Id.*

185. *Id.*

charges in front of the BPC, calling it “improper” to discuss witness statements and other evidence with the officials who were supposed to be in charge of the investigation.¹⁸⁶ Unlike the BPC, the Wayne County Prosecutor’s Office worked with the DPD on the “cattle prod” case and ultimately filed the charges.¹⁸⁷

Commissioners questioned some of the charged officers in a special hearing in April, 1980, but the three suspended officers instigated the hearing, not the BPC or concerned Detroiters.¹⁸⁸ The officers’ union lawyers read an earlier statement of Hart’s, in which the chief appeared to say that the suspensions were a penalty for misconduct.¹⁸⁹ The problem was that the officers’ labor contract required DPD brass to exhaust all administrative remedies before implementing any penalties, which had not been done at the time of Hart’s statements.¹⁹⁰ The city of Detroit argued that Hart misspoke.¹⁹¹ The BPC found that Hart acted improperly and reinstated the officers’ pay, which was not the outcome demanded at that public meeting in February.¹⁹²

When voters created the BPC in 1973, how many knew that this body would intervene to *protect* the jobs of officers accused of torturing and killing Detroiters? Even commissioners grew disenchanted.¹⁹³ For example, one founder described the BPC’s job as nothing more than talking to a friendly mayor, who held all the power as the “final arbiter” of disputes.¹⁹⁴ That said, disputes between the mayor and the BPC were unlikely given the commissioners’ “closeness of perspective, of views” with the mayor.¹⁹⁵ “[C]ronies is a little too strong a word,” he said.¹⁹⁶

Chief Hart described the BPC as a simple redundancy and adhered to the already invalidated policy/operational binary: “[t]his is a semi-military operation and the chain of command is clear. And the board is not in that chain. They have nothing to do with the police operation. The only thing

186. Jack Kresnak & Brian Flanigan, *Some Police Face Cattle Prod Charge*, DET. FREE PRESS, Mar. 7, 1980, at 1A.

187. *Id.*

188. *At Fired Officers’ Hearing Hart ‘Misspoke Himself,’* MICH. CHRON., Apr. 19, 1980, at 1.

189. *Id.*

190. *Id.*

191. *Id.*

192. Patricia Montemurri & Jack Kresnak, *Six Years After Its Inception, Review Board Fulfills Mandate*, DET. FREE PRESS, Aug. 31, 1980, at 3A.

193. *See id.*

194. *Id.*

195. *Id.*

196. *Id.*

they do is formulate policy with myself, with the approval of the mayor.”¹⁹⁷

The BPC continued to debate controversial topics throughout the 1980s, most notably surveillance cameras¹⁹⁸ and mandatory drug testing of police officers,¹⁹⁹ policies that were more appropriate for the pro-establishment, anti-crime mood of Reagan’s America.²⁰⁰ One headline read “Detroiters pulling together to attack crime problem.”²⁰¹ The story that followed noted approvingly that arrests for “lesser drug-related crimes, including loitering,” had ballooned from 1,407 in 1986 to 2,500 the very next year.²⁰²

In 1993, an ailing Young declined to seek re-election and chose Sharon McPhail as his would-be successor.²⁰³ A former Wayne County Prosecutor, McPhail boasted of increasing the number of drug-related warrants by 400 percent in just one year.²⁰⁴ McPhail had also been a commissioner in the 1980s, but the subsequent election showed that the once celebrated organization was now a political liability.²⁰⁵ Critics contended that “the commission, during [McPhail’s] tenure, failed to exercise strong control over a department troubled by corruption and brutality against citizens.”²⁰⁶ In her defense, McPhail explained that the BPC was effectively powerless: “If you read the City Charter, you will see that nobody on the police commission has any opportunity to investigate, audit or do anything else with respect to the day-to-day operations of the police department.”²⁰⁷ Literally speaking, McPhail was simply wrong; the Charter gave the BPC the power to “receive and resolve...any complaint

197. *Id.*

198. Zachare Ball, *Anti-Crime Cameras OK'd for Downtown Area*, DET. FREE PRESS, May 7, 1988, at 3A.

199. Jocelyne Zablitz & Margaret Trimer, *Judge Blocks Drug Testing of Police Officers*, DET. FREE PRESS, June 4, 1988, at 3A.

200. See Sawyer Like, Note, *Burning in the Melting Pot: American Policing and the Internal Colonization of African Americans*, 22 RUTGERS RACE & L. REV. 333, 361 (2021) (during Reagan’s presidency, “the country was shifting from a period of relative liberalism to one that emphasized personal freedom, respect for authority, and personal responsibility... Additionally, new theories of policing emerged during this time that prioritized aggressive crime-fighting and escalated the drug war.”).

201. *Detroiters Pulling Together to Attack Crime Problem*, MICH. CHRON., Mar. 26, 1988, at 5A.

202. *Id.* See also Ashenfelter & Swickard, *supra* note 12, at 1A (describing consequences resulting from this national attitude).

203. Roger Chesley, *McPhail Faces Huge Challenges*, DET. FREE PRESS, Jan. 20, 1993, at 1B.

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

concerning the operation of the police department,” and its investigative powers included the ability to subpoena witnesses and require document production.²⁰⁸ McPhail’s comments instead reflected the day-to-day reality of BPC impotence, two decades after its creation.

The *Detroit Free Press* considered McPhail’s BPC tenure disqualifying and endorsed her opponent, Dennis Archer.²⁰⁹ Archer won in November,²¹⁰ and his choice for police chief, Isaiah McKinnon, vowed to make a “clean break” from the “top-heavy, patronage-plagued” DPD of Chief Hart, who had been convicted of embezzlement the previous year.²¹¹ Those promises proved empty. Mere months into the administration, reporters attacked McKinnon for failing to notify the BPC, and by extension the public, about a string of residential break-ins.²¹² New scandals followed with crushing regularity.²¹³ Instead of reforming the “patronage-plagued” force, Chief McKinnon himself was accused of cronyism.²¹⁴ The BPC still approved these promotions; they were “the chief’s prerogative,” one anonymous commissioner said, encapsulating the BPC’s laissez-faire approach to oversight.²¹⁵ In 1997, a DPD whistleblower said she was pressured to lie about confessions in a homicide investigation, an accusation that cut to the heart of the DPD’s legitimacy.²¹⁶ Chief McKinnon did not allow the BPC to conduct public hearings; instead, he put a panel of police executives in charge.²¹⁷ In 1998, the *Detroit News* reported that the perennially cash-strapped city of Detroit

208. CITY OF DETROIT CHARTER § 7-1103 (1974).

209. “We find utterly inadequate her explanation of why she did not show more independence and backbone as a member and chair of the Detroit Board of Police Commissioners. The department needed commissioners during her tenure who would stand up for what was right, not just for whatever the mayor wanted.” Editorial, *Mayor of Detroit*, DET. FREE PRESS, Oct. 17, 1993, at 2F.

210. Joel Thurtell, *Archer’s Win Sets New Court for City*, DET. FREE PRESS, Nov. 3, 1993, at 1A.

211. Vivian S. Toy, *McKinnon: It’s a Whole New Ball Game*, DET. NEWS, Dec. 10, 1993, at 1A.

212. *Crime: Inform the Public*, DET. NEWS, June 9, 1994, at 10A.

213. See Toy, *supra* note 211.

214. For instance, Hilton Napoleon, brother of Executive Deputy and future Police Chief Benny Napoleon, was promoted to lieutenant, despite there being more than 200 sergeants ranked higher on the candidate list. Anna Rodriguez, spouse of Deputy Police Chief Rudy Thomas, was promoted to sergeant over 570 higher ranked officers. John Bellow, “Cronyism” in *Cop Promotions?*, DET. NEWS, Oct. 8, 1995, at 1A.

215. *Id.* at 8A.

216. *Policing the Police*, DET. NEWS, March 11, 1997, at 8A.

217. *Id.*

paid \$107 million dollars to settle police misconduct lawsuits over the past decade.²¹⁸

This bad press crescendoed when the *Detroit Free Press* reported that DPD killed more civilians than any other police force in the country.²¹⁹ Leaders' first instinct was to point fingers: Wayne County Prosecutor John O'Hair blamed Detroiters themselves and the "very violent element in our city."²²⁰ Police Chief Benny Napoleon testified that arbitration rules hamstrung him from further disciplining officers.²²¹ The City Council blamed the ineffective BPC.²²² In response, Commissioner Edgar Vann Jr. blamed the BPC's lack of pay and limited hours.²²³

The City Council itself had no oversight powers over the DPD; that was supposed to be the BPC's job.²¹⁸ With their hands effectively tied, the Council told Mayor Archer to ask the federal government for help.²²⁴ To some, Archer's almost total lack of interest in the BPC signaled its ultimate failure: "If they had been a strong commission, none of this would have happened," said original Commissioner Edward J. Littlejohn.²²⁵ Similarly, criminal justice scholar Samuel Walker said that "[i]f the commission had been doing its job, there would be no need for a Justice Department investigation."²²⁶

218. In 1990, the city paid \$16 million in taxpayer dollars, enough that, in the year that "the Rodney King beating by Los Angeles police was televised for all the world to see, Detroit led the nation in lawsuits and payouts." Bill Johnson, *Lawsuit Payments May Reflect on Police Chief, Commissioners*, DET. NEWS, March 13, 1998, at 10A.

219. See Ashenfelter & Swickard, *supra* note 12.

220. *Id.*

221. James G. Hill, *Contract Faulted for Detroit Police Woes Chief, Says Hands Tied Over Discipline Issues*, DET. FREE PRESS, Nov. 9, 2000, at B3. Chief Napoleon had a point. For instance, in 1995, a rookie officer, who wasn't even on duty at the time, shot and killed an unarmed teenager for tampering with a car. After an autopsy revealed the boy was shot in the back, the officer was fired by the DPD, only to have his job reinstated via an unreviewable arbitration decision. See also *Laws, Rules Keep cops from Removal. Charges Can't Be Brought if Suspected Felon Is Shot*, DET. FREE PRESS, May 17, 2000, at A9. Given the BPC's long fight to discipline officers, Councilwoman Sheila Cockrel's statement, that this was the first she heard about contract issues affecting the DPD's ability to get rid of bad actors, sounds neither convincing nor comforting. See Hill, *supra*.

222. Corey Dade, *City Council Blames Oversight Climate, Allows Killings, Members Say*, DET. FREE PRESS, May 16, 2000, at A7.

223. David Ashenfelter & Joe Swickard, *Watchdogs Decline to Watch Cops Panel has Shied from Big Issues Like Brutality*, DET. FREE PRESS Dec. 30, 2000, at A1, PROQUEST 436312977.

²¹⁸ See *infra* Part III.D.

224. Bill McGraw, *Cop Problems Can Be Cancer to Campaigns, Archer to Reveal Today if He Wants to Remain Mayor*, DET. FREE PRESS, Apr. 17, 2001, at B1.

225. Ashenfelter & Swickard, *supra* note 223.

226. *Id.*

The DOJ investigation resulted in two separate § 14141 “pattern or practice” lawsuits, so called because they utilize a 1994 statute giving the federal government standing to file suit when alleging “a pattern or practice of conduct by law enforcement officers or by officials . . . that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”²²⁷ These lawsuits typically result in settlements, rather than trials, ideally in the form of a court-supervised consent decree.²²⁸ An independent monitor then audits police practices, submitting quarterly reports until the department is found to be in compliance with the terms of the settlement.²²⁹

In 2003, the city of Detroit agreed to a consent decree with various quarterly goals to be met on the way to constitutional compliance.²³⁰ It took eleven years of missed goalposts until Judge Avern Cohn finally found the DPD in compliance with the U.S. Constitution in 2014.²³¹

III. ANALYSIS

For many years, the BPC was considered a success. In 1979, for instance, Frank Angelo, the one-time managing editor of *Detroit Free Press*,²³² wrote that he had overcome his initial suspicion of the BPC in a column entitled, “Five-headed police board: it works.”²³³ Criminal justice experts even used the BPC as a model for similar proposals in other cities.²³⁴ Section A investigates this apparent early success, highlighting

227. 42 U.S.C. § 14141 (2022).

228. The other option is called a “Memorandum of Agreement,” which are private contracts between the local and federal governments, with no judicial oversight following. *Id.* at 920. Only once has a local government refused to negotiate; in 2015, the Alamance County Sheriff’s Office took the DOJ to trial and got the case dismissed, albeit with a judicial admonishment over the epithets and slurs allegedly used by the defendants. Ivana Dukanovic, *Reforming High-Stakes Police Departments: How Federal Civil Rights Will Rebuild Constitutional Policing in America*, 43 HASTINGS CON. L. Q. 911, 923 (2016).

229. *Id.* at 920.

230. Consent Judgment: Use of Force and Arrest and Witness Detention, United States v. City of Detroit (E.D. Mich. June 12, 2003) No. 2:03-CV-72258.

231. Stipulated Transition Agreement, United States v. City of Detroit (E.D. Mich. Aug 25, 2014) No. 03-CV-72258.

232. *Frank Angelo Papers: 1941-1995, Biography*, UNIV. OF MICH. BENTLEY HIST. LIBR., <https://quod.lib.umich.edu/b/bhlead/umich-bhl-85652?byte=179925740;cginame=findaid-idx;focusrgn=bioghist;id=navbarbrowselink;subview=standard;view=reslist> [https://perma.cc/T538-33CQ] (last accessed Apr. 4, 2023).

233. Frank Angelo, Editorial, *Five-Headed Police Board: It Works*, DET. FREE PRESS, Aug. 31, 1979, at 11A.

234. See JEROME H. SKOLNICK & DAVID H. BAYLEY, *THE NEW BLUE LINE: POLICE INNOVATIONS IN SIX AMERICAN CITIES* (1986); see also Richard J. Terrill, *Police Accountability in Philadelphia: Retrospects and Prospects*, 7 AM. J. POLICE 79, 83 (1988) (singling out Detroit’s model as deserving particular attention and commendation).

research Commissioner Littlejohn published in 1984, which purports to show the BPC's positive effect on police-community relations. Utilizing contemporary research and forty years of hindsight, this Section investigates what Littlejohn's data really reflects. Section B underlines the national character of the problem of police misconduct and asks to what extent local politicians could ever affect change. Sections C and D then focus on two weaknesses of our current approach as applied to the BPC: the nullifying power Michigan courts afford union contracts over local law and municipal governments' generally undemocratic character.

A. Revisiting "Deadly Force" and Qualifying Success

The BPC's most thoughtful booster was Edward J. Littlejohn, the academic and commissioner whose 1981 article "The Civilian Police Commission: A Deterrent of Police Misconduct" provides an invaluable resource on the BPC's early days.²³⁵ Time soured Littlejohn on the BPC's potential, but his 1984 article "Deadly Force and its Effects on Police-Community Relations" still evangelized the model, with research that purported to show the BPC's effectiveness with scientific accuracy.²³⁶ First, he touted the Detroit Community Survey, which he "conceptualized on the assumption that if police move to reduce the incidence of hostility between themselves and citizens (e.g., reduce police shootings) and to improve police community relations (e.g., hire minority group officers), there should be a corresponding, empirically verifiable, improvement in citizens' perceptions of the police."²³⁷ Such a relationship makes theoretical sense—if police help people more and harm them less, people will like police more—but the results beggar belief.²³⁸ Only 45.8 percent of respondents claimed they had ever heard of or read about an instance when the police had abused anyone, an inexplicably small number considering that STRESS and DPD's use of force were the most important political issue in Young's mayoral run.²³⁹ On the other hand, 59.2 percent of the respondents knew of incidents involving police lending a helping hand.²⁴⁰ An equal amount, 59.2 percent of respondents, said that police

235. See Edward J. Littlejohn, *The Civilian Police Commission: A Deterrent of Police Misconduct*, 59 UNIV. DET. J. URB. L. 5 (1981).

236. See Edward J. Littlejohn et al., *Deadly Force and Its Effects on Police-Community Relations*, 27 How. L.J. 1131 (1984).

237. *Id.* at 1150.

238. See *id.* at 1155.

239. *Id.* A credible explanation of these findings might be that respondents were below voting age ten years earlier or had not yet lived in the city, except that the "mean age of the respondents was 46.4 years; the average length of residency in Detroit was 31.9 years." *Id.*

240. *Id.*

brutality had at one time been a problem, but the vast majority, 82.4 percent of respondents, said that the problem was solved.²⁴¹ In other words, four out of every five Detroiters understood that police brutality was a thing of the past,²⁴² at a time when DPD officers were on trial for inhumane treatment of detainees, including beating a man to death, in the “cattle prod” cases.²⁴³

Rather than interrogate these counter-intuitive results, Littlejohn attempted to justify Detroiters’ newfound faith in the DPD by looking at the number of fatal shootings over an eleven-year period.²⁴⁴ He marked the years 1970–1974, which led to the creation of the BPC, as Period I, with the subsequent six years, 1975–1980, marked as Period II.²⁴⁵ During Period I, the police killed 149 Detroiters, at an average rate of thirty persons per year; during Period II, the police killed 109 individuals, at an average rate of nineteen persons per year.²⁴⁶ At the extremes, DPD killings peaked in 1971, the first year of STRESS, with thirty-nine deaths; in 1980, the last year of the study, the number of killings fell to eleven.²⁴⁷ It is worth pausing to consider this as the human accomplishment that it is: twenty-eight fewer deaths in 1980 than in 1971.²⁴⁸ Twenty-eight lives saved.²⁴⁹

To explain this sharp fall, however, it must be noted that the population of Detroit itself fell twenty percent during the 1970s; to an

241. Littlejohn opens the essay with the story of Theodric Johnson, a thirty-year-old Black man from Detroit suspected of shoplifting meat from a Roseville grocery store. Police determined that Johnson fled the scene in a stolen car, and officers from Roseville, St. Clair Shores, Sterling Heights, Madison Heights, Hazel Park, Ferndale, Warren and Detroit all joined the vehicular chase for this suspected shoplifter. Although Johnson was unarmed and posed no threat to the officers, police shoot him in the back of the head as he fled the car on foot, a legally justified homicide since Johnson was a “classic fleeing felon.” *Id.* at 1144–45. Somehow, this tragic story serves as the “backdrop to examine” multiple encouraging statistics about the DPD. *Id.* at 1149.

242. *Id.* at 1157.

243. Littlejohn conducted the survey in the late spring and early summer of 1982. *Id.* at 1152. That fall, Richard Walczak went on trial for using a cattle prod to assault Richard Stiff, who’d been arrested for “disorderly conduct” in 1979. Robert Ankeny, *Cop’s Trial Opens in Cow Prod Case*, DET. NEWS, Oct. 5, 1982, at 4-B. Prosecutors brought charges against Walczak after another officer, John Pawlak, was convicted of manslaughter in the death of Edgar D. Smith. *Id.* Courts and the BPC litigated aspects of the case throughout 1981. As punishment, the precinct’s commanding officers Lt. Harrell Stone and Sgt. Donald Marlow were suspended without pay for twenty and thirty days respectively. Jim Tittsworth, *2 Officers to Lose Pay in Prod Case*, DET. NEWS, March 11, 1981, at 4-B. Jim Tittsworth, *Police Panel upholds two suspensions*, DET. NEWS, Dec. 25, 1981, at 12-B.

244. Littlejohn et al., *supra* note 236, at 1165.

245. *Id.* at 1166–67.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

appreciable extent, the DPD had fewer Detroiters to protect or kill.²⁵⁰ Still, a three-fold reduction in killings requires further analysis. Littlejohn began “Deadly Force” by noting Detroit’s three major police reforms during the 1970s: abolishing STRESS, creating the BPC, and instituting affirmative action in hiring and promotions. While the salutary effect of removing a “murder squad” is self-evident, it does not explain why the deaths continued to drop after Young disbanded STRESS in 1974.²⁵¹ That leaves two of Littlejohn’s explanations: either the effect of the BPC or affirmative action.²⁵² Of course, the BPC pursued affirmative action as one of its first goals, but it also pushed numerous other policy reforms during the 1970s. However, Littlejohn’s research also showed that BPC changes, which limited the circumstances in which DPD officers employed lethal force, had no practical effect.²⁵³

While Detroit’s reduction in deaths was remarkable, it was also typical of police departments in the 1970s. For example, a study of deaths nationwide due to “legal intervention” among 15-34 year old males, the most common victims of police violence, found that such deaths peaked around 1970, and fell rapidly the following decade.²⁵⁴ Deaths plateaued in the 1980s before rising, only moderately among all males but sharply for Black men, who were frequent targets of an increasingly literal War on Drugs; the numbers then fell again in the 1990s.²⁵⁵ In other words, the decrease in killings that Littlejohn observed was merely a local expression of a national trend, and the vast majority of cities benefited without implementing *any* civilian oversight of their police before 1990.²⁵⁶

250. *Detroit, Michigan Population History 1840-2021*, BIGGEST U.S. CITIES (Jan 18, 2023), <https://www.biggestuscities.com/city/detroit-michigan> [<https://perma.cc/R7Y7L-A5RK>] (listing the population of Detroit in 1980 as 1,203,339, a twenty percent decrease from 1,511,482 in 1970). See generally DEPT. OF COMMERCE, BUREAU OF CENSUS 1937–1980.

251. See Lassiter, *supra* note 48.

252. Littlejohn et al., *supra* note 236.

253. There were significantly fewer fatal shootings in the second half of the 1970s, but the reasons given by officers for those deaths remained largely unchanged. That is, in Period I, only sixty percent of the fatal shootings involved victims who were armed, typically with a gun; in Period II, sixty-four percent did, which is statistically inconsequential. *Id.* at 1167–1168 To Littlejohn, this meant that policy changes limiting the circumstances in which officers could use deadly force did not explain the reduction in killings. *Id.*

254. Nancy Krieger et al., *Trends in US Deaths Due to Legal Intervention Among Black and White Men, Age 15–34 Years, by County Income Level: 1960–2010*, 3 HAR. PUB. HEALTH REV. 1 (Jan. 2015).

255. *Id.*

256. While the exact prevalence of civilian oversight boards is unknown, a study of major departments found that 79 percent reported some form of civilian oversight board,

Like the DPD, police departments across the country grew racially diverse in the 1970s, a direct result of the Civil Rights Act of 1964,²⁵⁷ which prohibited both intentional and unintentional discrimination in employment.²⁵⁸ Between 1970 and 2000, the percentage of Black officers at the country's 300 largest police departments tripled, from six to eighteen percent.²⁵⁹ There is reason to believe this diversification is connected to the drop in killings since evidence suggests that affirmative action plans can reduce the use of lethal force by police.²⁶⁰ One study found that, when dispatched to Black neighborhoods, like those that make up most of Detroit, white officers use force sixty percent more often than Black officers and use their guns twice as often.²⁶¹ If more Black officers meant fewer instances of force, and there were more Black officers in Detroit and across the country, it is reasonable to believe that non-discriminatory hiring precipitated the dramatic drop in fatal police shootings. However, affirmative action fails to explain why killings stopped falling in 1980 while the DPD continued to diversify.

Read today, "Deadly Force and its Effects on Police-Community Relations" is a snapshot of the moment progress turned to complacency.²⁶² In 1980, only eleven police killings was a remarkable accomplishment. The problem was that in 2000, the DPD was still averaging ten fatal killings a year, despite shedding another fifth of its population.²⁶³ Meanwhile, in other parts of the country, killings continued to dive.²⁶⁴ In the early 1980s, the DPD was a model for positive police-civilian relations, which prominent reformers sought to emulate.²⁶⁵ By 2000, Detroit led the nation's large cities in fatal police shootings, with fatality rates one-and-one-half times greater than Los Angeles' and two-and-one-half-times

the majority of which were founded between 1990 and 2010. DARREL W. STEPHENS ET AL., OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, CIVILIAN OVERSIGHT OF THE POLICE IN MAJOR CITIES 3 (2018).

257. See David Alan Sklansky, *Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209 (2006).

258. Civil Rights Act of 1964, 42 U.S.C. § 2000e.

259. See Sklansky, *supra* note 257, at 1213. Note that, in 2000, 12.3 percent of Americans identified as Black. *Census 2000 Shows America's Diversity*, U.S. DEP'T OF COM., CENSUS BUREAU (Mar. 12, 2001), https://www.census.gov/newsroom/releases/archives/census_2000/cb01cn61.html [<https://perma.cc/PR8E-HZZL>].

260. See Anna Harvey and Taylor Mattia, *Reducing Racial Disparities in Crime Victimization* (J. Urb. Econ., Working Paper, 2019).

261. Mark Hoekstra and Carly Will Sloan, *Does Race Matter for Police Use of Force? Evidence from 911 Calls* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26774, 2020).

262. See Littlejohn et al., *supra* note 236.

263. Ashenfelter & Swickard, *supra* note 223.

264. See Krieger, *supra* note 254.

265. See SKOLNICK & BAYLEY, *supra* note 234; see also Terrill, *supra* note 234, at 83.

greater than New York's, two cities which had their own reputations for egregious police misconduct.²⁶⁶

Although Littlejohn was the BPC's foremost expert, the group's presence throughout the article remains vaporous, evoked as an example of reform but without any pivotal policy accomplishments save the affirmative action plan, which did not require the BPC to be implemented. The community survey also revealed an amnesiac public, willfully forgetful of the DPD's long history of abusive practices and racial violence, a public that now closed its eyes when evidence of egregious misconduct continued to surface. Such a public no longer demanded reform, nor did Mayor Young, who became another pillar of the Detroit establishment, standing alongside the business and police interests he once pilloried.²⁶⁷

B. Local Law Can Not Salve National Wounds

President Lyndon B. Johnson oversaw three bills of paramount importance to this story. First came the Civil Rights Acts of 1964, which desegregated places of employment including police departments.²⁶⁸ This single legislative act may have done more to lower police murder rates than any of the thoughtfully devised police oversight bodies in Los Angeles, Philadelphia, or Detroit.²⁶⁹ The following year, Watts burned, and Congress fired the opening shot in the War on Crime, the Law Enforcement Assistance Act of 1965,²⁷⁰ which gave local police federal funding for the first time in U.S. history.²⁷¹ The earlier War on Poverty gave Americans food, medicine, housing, and educational benefits, whereas the War on Crime centered on crime control, surveillance, and incarceration.²⁷² Detroit burned in 1967; the next year, President Johnson signed his final piece of germane legislation, the Omnibus Crime Control and Safety Act of 1968,²⁷³ “financially incentivizing and at times specifically requiring state and local authorities to increase surveillance and patrols in already-targeted black urban neighborhoods.”²⁷⁴

266. *Id.*

267. See generally Marion E. Orr & Gerry Stoker, *Urban Regimes and Leadership in Detroit*, 30 URB. AFF Q., 48, 60 (1994).

268. Civil Rights Act of 1964, 42 U.S.C. § 2000e.

269. See discussion *supra* Part III.B.2.

270. Law Enforcement Assistance Act of 1965, 80 Stat. 1506 (2023).

271. Elizabeth Hinton, “A War Within Our Own Boundaries”: Lyndon Johnson’s Great Society and the Rise of the Carceral State, 102 J. AM. HIS. 100, 103 (2015).

272. See generally *id.*

273. Omnibus Crime Control and Safety Act of 1968, 34 U.S.C. § 10101 (2023).

274. Hinton, *supra* note 271, at 109.

In 1965, the federal government spent just \$22 million per year on crime-control; by 1980, that number was \$7 billion.²⁷⁵ Those numbers directly affected the policy solutions that were available to Detroit's ruling class.²⁷⁶ Omnibus money first fell into Mayor Gribbs and Commissioner Nichols's coffers, who used it to fund STRESS.²⁷⁷ When Mayor Young abolished STRESS, he could not just use that money on new development projects.²⁷⁸ It had to stay in the department where it was used to open police mini-stations and hire more officers, increasing DPD power at a time when the rest of City's government was forced to shrink.²⁷⁹

Detroit was also affected by decisions made in Lansing. For example, in 1971, state legislators passed a modern Controlled Substances Act.²⁸⁰ In 1978, the legislature added mandatory sentences of life without parole for delivery of 650 grams or more of cocaine or heroin, the "harshest" mandatory-minimum in the nation.²⁸¹ Unsurprisingly, the prison population skyrocketed, from 4,089 persons in 1975 to 48,371 persons in 2001.²⁸² Legislators also put these new prisoners to work, amending the Correctional Industries Act to make it easier to buy and sell goods produced by prison labor.²⁸³ Michigan prisoners produced cigars, boilers, engines, copper wiring, shoes, tombstones, and laundry products and operated "a textile mill that could compete with operations south of the Mason-Dixon line."²⁸⁴ Free Detroiters meanwhile struggled to survive, seemingly Lansing's last priority. "Detroiters lost jobs not just because companies moved their work and consumers moved their purchasing dollars into Michigan's prisons, but also because the State was investing more money in building prisons than in building or incentivizing factories in the free world that would, in turn, employ free world workers."²⁸⁵

275. *Id.* at 111.

276. *See id.*

277. *Id.*

278. *Id.*

279. Coleman Young, *Outline of 100-Day Speech*, Box 107, Folder 12, Coleman A. Young Papers, Part II, Walter P. Reuther Library, Archives of Labor and Urban Affairs, Wayne State University.

280. MICH. COMP. LAWS § 333.7401 (2017).

281. Justin Brooks, *The Politics of Prison*, 77 MICH. B.J. 154, 155 (1999).

282. *Prison Expansion in Michigan: A Brief History*, SAFE & JUST MICH. (Mar. 5, 2013), https://www.safeandjustmi.org/wp-content/uploads/2013/03/Prison_expansion_in_Michigan_A_brief_history.pdf [<https://perma.cc/ST35-BB5C>].

283. Correctional Industries Act, MICH. COMP. LAWS, § 800.326 (Westlaw through P.A.2023, No. 41).

284. Heather Ann Thompson, *Unmaking the Motor City in the Age of Mass Incarceration*, 15 J. L. Soc'y 41, 55 (2013).

285. *Id.*

In one sense, Detroiters' struggle for control of their own police is an economic story as much as a political one, resulting from deindustrialization starving local government and driving Detroiters out of the city in search of work. Rather than empower normal civilians, federal and state governments poured money into the War on Drugs, the militarization of police, and the carceral state. These policies increased the power of law enforcement relative to the greater community, as did officers' newfound ability to organize while overall union rates plummeted.²⁸⁶

Far from an outlier, Detroit's repeated experiences of police misconduct and throttled attempts at reform have antecedents throughout the nation during this time. Los Angeles offers uncanny parallels to Detroit, starting with its Board of Police Commissioners who inspired the BPC. Los Angeles also elected its first Black mayor in 1973, the same year Detroit first elected Young. Mayor Tom Bradley also campaigned on police reform and "diversifying the police through affirmative action and appointments to the Board of Police Commissioners."²⁸⁷ At the same time that Young appropriated funds for police "mini-stations," which promised to better integrate DPD officers within smaller neighborhoods, the LAPD debuted TEAMS, in which pairs and small groups of officers worked within specific sub-neighborhoods, communicating with residents or enlisting children in the War on Crime.²⁸⁸ Like Young, Bradley remained in office twenty years,²⁸⁹ and the two administrations even ended with similar tragedies, Rodney King in Los Angeles²⁹⁰ and Malice Green in Detroit.²⁹¹

286. Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1339 (2020) (asserting that overall union rates have now hit their lowest numbers since World War II but presenting the robust strength of police unions as a counterexample).

287. *Id.* at 1036.

288. Felker-Kantor, *supra* note 90, at 1037.

289. Neal R. Pierce, *Almost-for-Life Mayors Keep Hanging On*, L.A. TIMES, Mar. 28, 1989, at 7.

290. Felker-Kantor, *supra* note 90, at 1042 (explaining that in 1991, LAPD officers violently beat motorist Rodney King, and video footage of the event made LAPD nationally famous for the use of excessive force, followed by the officers' acquittal and the subsequent days of violence, the nation's first such violence in two decades. Since King's underlying crime was drunk driving, which is not a felony, he was not a "fleeing felon" whose killing could be legally excused); *see generally* Littlejohn et al., *supra* note 236; *cf.* Koon v. United States, 518 U.S. 81 (1996) (holding that King's attempt to flee could be a mitigating factor, reducing an officers' punishment for beating him).

291. On November 5, 1992, white DPD officers Walter Budzyn and Larry Nevers beat a Black man, Malice Green, to death. The officers defended their actions, pointing out that, while Green was unarmed, they suspected that he was hiding cocaine in his fist. *IN*

Any U.S. city attempting major police reform in the late twentieth century would have faced the same economic and political headwinds that stymied Detroit and Los Angeles' efforts during this period. Granted, neither city's police commission was flawlessly structured, but Charter amendments that passed in the wake of the King and Green incidents failed to improve either group's effectiveness.²⁹² Further scandals led to DOJ involvement in both cities; Los Angeles entered its consent decree in 2001, two years before Detroit's, and its decree was lifted in 2013, one year before Detroit's.²⁹³

This result also makes sense. Federal and state policies militarized and empowered local police while austerity enfeebled the urban poor and balkanized government institutions that could have fought for them. The most demonstrably successful solution to police misconduct, open employment, was federal policy.²⁹⁴ Ultimately, the Detroit experience indicates that municipalities are simply not powerful enough to correct the harms that their state and national superiors cause.

C. Charter Nullification

Today's BPC must approach the DPD bled of many of the "powerful tools with which to deal with police misconduct," which it was once promised.²⁹⁵ Lacking real disciplinary power, all the BPC can do is investigate claims by administering oaths, taking depositions, and issuing subpoenas, the same limitations that rendered earlier commissions so ineffective.²⁹⁶ As the opponents of reform pointed out, civilian control failed whenever tried before, for exactly these reasons.²⁹⁷

Detroiters did their best to avoid the traps that befell previous efforts at civilian oversight. From Philadelphia, they learned that a commission would need substantial legal footing, so the BPC was established in the 1974 Charter, which provided extra protection against hostile executives.²⁹⁸ The BPC also needed its own staff, independent of the chain

FOCUS: Malice Green, Affirmative Action, Reform and Resistance, CRACKDOWN, UNIV. MICH. POL. & SOC. JUST. HIST. LAB, <https://policing.umhistorylabs.lsa.umich.edu/s/crackdowndetroit/page/in-focus-malice-green1> [<https://perma.cc/2V3M-BNHM>] (last accessed Apr. 4, 2022).

292. Felker-Kantor, *supra* note 90, at 1042.

293. Sigourney Norman, *Strengthening Section 14141: Using Pattern or Practice Investigations to End Violence Between Police and Communities*, 33 J. C.R. & ECON. DEV. 263, 288 (2020).

294. See *supra* Part III.A.2.

295. Nichols, *supra* note 87.

296. *Id.*

297. Littlejohn, *supra* note 46, at 33.

298. See discussion *supra* Part III.A.1.

of command.²⁹⁹ The Charter granted them a secretary, a chief investigator with her own staff, and whatever other employees deemed necessary.³⁰⁰

The BPC's most controversial power was disciplining and removing officers, an ability that eluded all previous civilian police commissions.³⁰¹ The Charter solution was a chronological back-and-forth between the BPC and the chief. First, the BPC, "in consultation with the chief of police," devised the rules and regulations by which all officers would be judged, as well as the types of offenses which officers could be punished for committing.³⁰² The chief then got first crack at discipline for both minor and major offenses, up to and including discharge.³⁰³ However, the chief's disciplinary power was not absolute. Serious charges could be contested, first at a trial board, whose decision an employee could appeal to the BPC.³⁰⁴ The BPC, then, had "final authority in imposing or reviewing discipline."³⁰⁵ The language was far from perfect, the process potentially obtuse, but it should have secured a role for the BPC at both the beginning and end of the disciplinary process.

These powers, all so impressive on paper, were never specifically withdrawn from the BPC, but none were strong enough to stand up to DPD intransigence. Courts delivered the deadliest blow to the BPC with *Pontiac Police Officers Assn. v. Pontiac*, which subordinated local law to union contracts on the basis that state law authorized public employment unions.³⁰⁶ Any state law superseded a municipal one, even when the local law was the city charter, a municipality's equivalent of a constitution, and the state law was, literally speaking, not a law at all.³⁰⁷

The holding may not be a legal absurdity, but it offends essential American principles like democracy and self-governance, not to mention common sense. Because of *Pontiac*, the language of the Detroit City Charter, an expression of the combined will of over a million citizens, was

299. See discussion *supra* Part III.B.2.

300. CITY OF DETROIT CHARTER § 7-1004 (1974).

301. Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1047 (2016) ("An independent investigation will be meaningful only if its findings then form the basis for deciding whether and to what extent to discipline an officer.").

302. CITY OF DETROIT CHARTER § 7-1107 (1974).

303. *Id.*

304. *Id.*

305. CITY OF DETROIT CHARTER § 7-1103 (1974).

306. *Pontiac Police Officers Ass'n v. Pontiac*, 246 N.W.2d 831 (Mich. 1976); see discussion *supra* Part II.C.

307. In the language of the Court, a "public employer's collective bargaining obligation prevails over a conflicting permissible charter provision." *Pontiac Police Officers Ass'n*, 246 N.W.2d at 835 .

ignored in favor of a labor contract that was negotiated behind backdoors for the benefit of a small minority.

Commissioners breathed a sigh of relief when the 1980 DPOA labor contract recognized the right of the BPC to conduct investigations (again, ignoring the fact that this was a right Detroiters already gave the BPC seven years earlier).³⁰⁸ However, investigations in the 1980s operated on union terms, giving officers the right to appeal a discharge or a six month-long suspension *de novo* to an arbitration board, essentially revoking the BPC's title as "final authority in imposing or reviewing discipline."³⁰⁹ The union also had a significant role in choosing the arbitrator, whose decision was final and binding on all parties.³¹⁰ The BPC's framers' failing was not one of construction but naivety; they believed the Charter actually meant what it said.

Time only further weakened the BPC. Labor contracts must be renegotiated regularly, and the labor attorneys who normally represent the city are not used to fighting for commissioners' investigatory or disciplinary rights.³¹¹ "Persistent monitoring" and "direct participation" of ongoing labor negotiations is required *in perpetuity* to make sure BPC interests are preserved in the only document that matters, not the City Charter but the secretive collective bargaining agreement.³¹² All it took was one team of overworked or uninvolved commissioners with their eyes off the ball for labor negotiations to occur without BPC representatives; today, commissioners are no longer included in the DPD's disciplinary process.³¹³ The BPC framers thought they learned from Philadelphia, where an executive order created a weak Police Advisory Board that could be abolished with the stroke of a pen. Detroiters came together in 1973 to create a permanent institutional power strong enough to check and balance the police. Ultimately, it did not even take executive action to neuter the

308. Littlejohn, *supra* note 46, at 53.

309. *Id.*; see also CITY OF DETROIT CHARTER § 7-1103 (1974).

310. Stephen Rushin, *Police Disciplinary Appeals*, 167 U. PA. L. REV. 545, 583 (2019).

311. See Littlejohn, *supra* note 46, at 55.

312. *Id.* Collective bargaining agreements aren't public information, even when dealing with government employees of undeniable public interest, like the police, and even when they have the effect of reversing a local election, as here. Criticism of the closed-door nature of negotiations increased in 2016, after a hack of a Fraternal Order of Police database revealed that "more than a third" of their undisclosed contracts had clauses allowing or requiring destruction of civilian complaints. George Joseph, *Leaked Police Files Contain Guarantees Disciplinary Records Will be Kept Secret*, GUARDIAN (Feb. 7, 2016, 7:00 AM), <https://www.theguardian.com/us-news/2016/feb/07/leaked-police-files-contain-guarantees-disciplinary-records-will-be-kept-secret> [<https://perma.cc/K5A9-BUKN>]. See generally Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191 (2017).

313. Miriam Marina, *Vague Charter, Bickering Hamper BOPC*, DET. FREE PRESS, Nov. 15, 2021, at A4.

BPC; because of *Pontiac*, unelected officials in closed rooms have veto power over a painstakingly devised democratic institution.³¹⁴

The most effective counter to union contracts as “supreme” state law is state-level action. However, police unions benefit from large political budgets and general popularity on the both the right and left, keeping them mostly immune from legislative reforms.³¹⁵ Furthermore, while over ten million people live in Michigan, only 675,000 reside in Detroit.³¹⁶ Reform from Lansing would require coalition building with rural and suburban interests, who frequently view the city with hostility.³¹⁷ Activist energy may be better directed at the courts, calling on a judicial reappraisal of *Pontiac* now that its anti-democratic effect is undeniable.³¹⁸

D. Mayors for Life

Young and Bradley were not the only big-city mayors with seemingly unshakeable grasps on power for the *entirety* of the 1980s. First elected in 1978, Ed Koch reigned over New York City until the end of the next decade.³¹⁹ In Washington D.C., Marion Barry served four consecutive

314. Detroit’s story makes plain why public sector unions in general have been described as anti-democratic, since collective bargaining “provides one interest group—the union—with an avenue of access to public decision makers that is denied to every other interest.” Martin H. Malin, *The Paradox of Public Sector Labor Law*, 84 IND. L. J. 1369, 1372 (2009).

315. Robert M. Bloom & Nina Labovich, *Challenge Of Deterring Bad Police Behavior: Implementing Reforms That Hold Police Accountable*, 71 CASE W. RES. L. REV. 923, 939–40 (2021); see also Zoe Robinson & Stephen Rushin, *The Law Enforcement Lobby*, 107 MINN. L. REV. 1965 (2023).

316. DEPT. OF COM., BUREAU OF CENSUS, <https://www.census.gov/quickfacts/MI> [<https://perma.cc/ECT5-7LV4>] (last accessed Apr. 4, 2022).

317. Hostile outsiders throttle policy goals but may benefit local politicians; Young’s long-lasting popularity depended on his ability to shift blame (often deservedly) from his own administration to suburban powerbrokers. Orr & Stoker, *supra* note 267, at 60.

318. “When it becomes apparent that the reasoning of an opinion is erroneous, and that less mischief will result from overruling the case rather than following it, it becomes the duty of the court to correct it.” *People v. Graves*, 581 N.W.2d 229, 232 (Mich. 1998) (quoting *Att’y Gen. v. Bd. of Sup’rs of Midland Cnty.*, 144 N.W. 883, 885 (Mich. 1914)). The Michigan Supreme Court, emboldened by such logic, was recently made famous for similarly dramatic reversals of precedent. See Sarah K. Delaney, *Stare Decisis v. The “New Majority”*: *The Michigan Supreme Court’s Practice of Overruling Precedent, 1998–2002*, 66 ALB. L. REV. 871 (2003).

319. Paul Schwartzman, *Ed Koch, Outspoken Former Mayor of New York, Dead at 88*, WASH. POST (Feb. 2, 2013), https://www.washingtonpost.com/local/obituaries/ed-koch-outspoken-former-mayor-of-new-york-dead-at-88/2013/02/01/451d6c18-c9e4-11e1-aea8-34e2e47d1571_story.html [<https://perma.cc/CET9-XXF8>].

terms, from 1978 until 1991, with a fifth term from 1995 until 1999.³²⁰ All weathered serious accusations of corruption, managing to hold power despite their increasing inability to deliver the reforms they once personified. Far from a coincidence, the 1980s glut of “mayor[s] for life,” as Barry was nicknamed, directly resulted from the uncompetitive nature of local politics, the fatal flaw of municipal good government.³²¹

Uncompetitive local elections were a major political issue at the turn of the twentieth century, when reformers promoted non-partisan ballots as a means of combating corruption and installing unbiased administrators in the chambers of power.³²² Today, political scientists believe that non-partisan elections only worsen the problem, lowering voter turnout, protecting incumbents, and failing to encourage substantive debate.³²³ Unfortunately, local activists have precious few ideas to replace this largely discredited reform while corruption and ineffectiveness continue corroding faith in local government.³²⁴

After he first won reelection in 1977, Young became, “for all practical purposes, unchallengeable.”³²⁵ Well into the 1980s, Young was able to reap the benefits of his early delivery on campaign promises—principally abolishing STRESS and instituting an affirmative action plan which, due to the decades-long litigation, earned headlines long after Young was no longer involved.³²⁶ Eventually, voters’ memories of these early successes dimmed, but Young compensated by leveraging his political and administrative power as mayor.³²⁷ Savvy incumbents use their status to drive media narratives and enjoy virtually limitless free media.³²⁸ As chief

320. Bart Barnes, *Marion Barry Dies at 78; 4-term D.C. Mayor Was the Most Powerful Local Politician of His Generation*, WASH. POST (Nov. 23, 2014), https://www.washingtonpost.com/local/obituaries/marion-barry-dies-4-term-dc-mayor-the-most-powerful-local-politician-of-his-generation/2014/11/23/331ad222-c5da-11df-94e1-c5afa35a9e59_story.html [<https://perma.cc/XVJ7-HRF3>].

321. *Id.*

322. Paradoxically, these upper-class progressives sought to “disenfranchise ethnic whites and later racial minorities” in the name of strengthening democracy. David Schleicher, *Why Is There No Partisan Competition in City Council Elections?: The Role of Election Law*, 23 J. L. & POLITICS 419, 465 (2007).

323. *Id.*

324. Since no other ideas have gained popularity, this century-old reform hasn’t entirely left public consciousness. New York most recently voted on the concept in 2003, when it was defeated. *Id.* at n. 159, citing Jonathan P. Hicks & Michael Cooper, *City Votes Down Effort to End Party Primaries*, N.Y. TIMES, Nov. 5, 2003, at A6.

325. Orr & Stoker, *supra* note 267, at 59.

326. *Id.*

327. Schleicher, *supra* note 322, at 423.

328. The media advantages for incumbents in local elections have been best studied in congressional elections. Brian F. Schaffner, *Local News Coverage and the Incumbency*

executives, mayors also direct funds to community and church organizations, whose members may return the favor on election day.³²⁹ Mayors also have easy access to business leaders, who provide substantial campaign donations, even to figures like Young with socialist bona fides.³³⁰ By Young's last election, in 1989, it was a foregone conclusion that no challenger could mobilize the kind of organization needed to unseat him.³³¹ None of this is unique to Young or Bradley or Koch or Berry. The incumbency advantage is how these men spent so much time in office and the reason that political machines "flourish forever, like fine old oaks."³³²

Research shows that across the world, electoral competition prevents corruption.³³³ The same is true locally, as evidenced by the criminal prosecutions that became de rigueur in the second half of Young's reign, culminating in Chief Hart's 1992 embezzlement conviction.³³⁴ Young's adversaries pointed to the misdeeds of his inner circle to demonstrate that Young himself was a thief, but corruption follows incumbency regardless of the moral steadfastness of top leadership.³³⁵ The problem is that officials have few incentives to blow the whistle on members of their own party. "If an official criticizes a co-partisan, the party becomes less popular, and they both will be harmed politically. Further, individual politicians rely on support inside local parties, giving them little incentive to investigate their patrons and co-partisans."³³⁶ By comparison, a politician has much to gain from accusing their rival of misconduct, from the approval of voters to the encouragement of their superiors.

Since inter-party allies are poor checks on one another's conduct, the BPC's composition of mayoral appointees was inherently flawed. BPC

Advantage in the U.S. House, 31 LEGIS. STUD. Q. 491 (2006); Markus Prior, *The Incumbent in the Living Room: The Rise of Television and the Incumbency Advantage in U.S. House Elections*, 68 J. POL. 657 (2006).

329. Orr & Stoker, *supra* note 267, at 60.

330. In Detroit, business figures were "critical of Young in private 'but' believed that it is better to have the mayor 'on board' and were prepared to make various concessions to obtain his acquiescence." *Id.* at 61.

331. *Detroit Mayor Easily Wins Primary but Faces Runoff*, N.Y. TIMES, Sept. 14, 1989, at D22.

332. David Schleicher, *I Would, But I Need the Eggs: Why Neither Exit Nor Voice Substantially Limits Big City Corruption*, 42 LOY. U. CHI. L.J. 277, 288–89 (2011) (quoting WILLIAM L. RIORDON, PLUNKITT OF TAMMANY HALL: A SERIES OF VERY PLAIN TALKS ON VERY PRACTICAL POLITICS 30–31 (BiblioLife 2009) (1905)).

333. Dimitris Batzilis, *Electoral Competition and Corruption: Evidence from Municipality Audits in Greece*, 59 INT. R. L. ECON. 13 (2019).

334. See discussion *supra* § II.E.

335. Bill McGraw, *Coleman Young: The 10 Greatest Myths*, DET. FREE PRESS (May 26, 2018) <https://www.freep.com/story/opinion/2018/05/26/coleman-young-myths/638105002/> [<https://perma.cc/TS8A-KW6R>].

336. Schleicher, *supra* note 332, at 291.

framers knew that the LABPC, which shared an identical structure of five mayoral appointees, “rarely took a stand against the department and often acted as a rubber stamp following the Chief’s directives.”³³⁷ Perhaps these appointees hoped to get more high-level posts in the future, so they knowingly looked away from police misconduct. Others might not have hesitated to report abuses if they ever saw them but simply thought the best of political allies. It’s also possible that some bureaucrats rigorously investigated and reported unlawful conduct, but their reports were ignored or even covered up by high-level officials who had nothing to gain from embarrassing their own administrations. Ultimately, it is a question of incentives and ability, but the BPC framers misunderstood the problem, not as one of structure but of personnel. For instance, Commissioner Littlejohn worried that “power given to a commission to institute change may be of little value if the chief executive appoints persons who support the status quo or who would follow rather than lead a police department.”³³⁸

Even when Detroiters recognized that the BPC wasn’t working as intended, they approached reforms with this same liberal vision and a technocratic faith that the state would regulate itself as soon as the *right* commissioners were in place.³³⁹ Beginning in the 1990s, officials debated electing commissioners, rather than relying on mayoral appointees. The theory was that popular elections would give the BPC political independence, which was badly needed for a group long considered “pawns” and a “rubber stamp for the mayor and the police department.”³⁴⁰ However, original Commissioners Littlejohn and Avern Cohn publicly opposed commissioner elections when first proposed in 1993, saying it would further politicize the BPC and diffuse responsibility for the police.³⁴¹ One commonality—in Philadelphia, Los Angeles, and, initially, in Detroit—was making commissioners mayoral appointees, reflecting police departments’ place within the executive branch, which must therefore be accountable to the mayor.³⁴² Severing the mayor’s relationship with the BPC might frustrate this fundamental aspect of municipal government.

337. Felker-Kantor, *supra* note 90, at 1029.

338. Littlejohn, *supra* note 46, at 36.

339. Felker-Kantor, *supra* note 90, at 1036.

340. Zachare Ball & David Ashenfelter, *Detroit Police Board Faulted*, DET. FREE PRESS, Nov. 21, 1992, at 14A.

341. Avern Cohn and Edward J. Littlejohn, *Charter Mistake*, DET. FREE PRESS, Feb 2, 1993, at 6A.

342. Littlejohn, *supra* note 46, at 16, 35.

The reform was not put into law until the 2012 Charter, which retained four mayoral appointees but added seven elected members.³⁴³ The middle-of-the-road choice means the mayor cannot be fully accountable for BPC action (or inaction), while also reducing each voter’s ability to affect the BPC.³⁴⁴ Just as Littlejohn and Cohn were concerned, the reform diffused BPC power, making it effectively impossible to blame *anyone* for BPC inaction. More practically, enlarging the BPC made meetings less wieldy and more inefficient.³⁴⁵

The 2012 Charter Commentary explains the change by citing “the principle that effective government is best achieved by increased public participation and accountability.”³⁴⁶ This noble sentiment deserves scrutiny. Elections will not increase public participation in government when the elected positions have little power to change city operations, nor can elections hold politicians accountable when there’s a lack of distinct options on the final ballot. Not all elections are equally democratic; at the local level, most voters know little about their candidates, relying on party labels alone, if those labels are even allowed.³⁴⁷ Frequently, the only democratic local races are for mayor, since they “produce the type of electoral froth—news media coverage, campaign spending—that can help voters overcome the informational problems they face.”³⁴⁸ BPC races produce little, if any, “electoral froth.”

More than ten years after the 2012 reform, the BPC works worse than ever, with “endless meetings” marked by “[b]ickering over meaningless items like the verb tense of a memorial resolution.”³⁴⁹ Voters choose retired police officers like frequent Chair Willie Bell, who still said “we” at meetings when discussing the department.³⁵⁰ Such longtime insiders are unlikely to represent the interests of civilians and commonly sympathize with the police officers whose power the BPC is meant to check.³⁵¹ At the time this essay was published, the BPC was under investigation by the Auditor General, the Office of the Inspector General, and the DPD Internal

343. CITY OF DETROIT CHARTER §7-802 (2012).

344. That is, an individual voter unsatisfied with the BPC can replace just one-eleventh of the Board.

345. See Part II.E, *supra*.

346. See 2009-2012 DETROIT CHARTER REVISION COMMISSION, CITY OF DETROIT REVISION COMMISSION 19 (2011) (Commentary to § 7-802).

347. “Knowing someone is a Democrat or Republican may tell you a great deal about her preferences about abortion or health reform but will not tell you much about her preferences about zoning. However, this does not make it less likely that voters rely on party labels in local races.” Schleicher, *supra* note 332, at 287.

348. Schleicher, *supra* note 322, at 468.

349. *Failing Detroiters*, *supra* note 14.

350. *Three Stand Out in Police Board Race*, DET. FREE PRESS, Oct 10, 2021, at A2.

351. *Id.*

Affairs Unit, and two staff members had been suspended over a “possible payroll scam.”³⁵² “It’s very embarrassing,” Commissioner Ricardo Moore said. “[W]e have our own issues taking place; how can we realistically enforce rules with the Department?”³⁵³ A motion to consider disciplinary action for the employees was shot down as “totally inappropriate” by Bell, illustrating some of the difficulties municipal employees face when trying to self-regulate.³⁵⁴

The BPC may do more harm today than good. First, the BPC’s presence in the City Charter removes power from the City Council, an undeniably more legitimate body.³⁵⁵ Second, this oversight board of uncertain powers may just confuse voters. “Local elections suffer from the existence of too little information; adding more complication to the structure of governance without providing any help to voters through improved heuristic devices for choosing candidates is only likely to make local democracy weaker.”³⁵⁶ Third, the BPC may be such a poorly functioning body that “public cynicism about the board’s competence” breeds general cynicism about City government.³⁵⁷ Commissioners didn’t even notice when police stopped reporting sexual assault statistics to avoid discussing a nineteen percent spike.³⁵⁸ Detroit’s continued refusal to honor its own Charter similarly breeds cynicism regarding the integrity of City government. “Nothing can destroy a government more quickly than its

352. “We’re talking about ghost employees. We’re talking about issues with timekeeping. We’re talking about issues with a nexus to human resources.” Andres Gutierrez, “*It’s Very Embarrassing*”: Board of Police Commissioners Staff Members Under Investigation, CBS NEWS DET. (Mar. 28, 2023, 5:11 PM), <https://www.cbsnews.com/detroit/news/its-very-embarrassing-board-of-police-commissioners-staff-members-under-investigation/> [<https://perma.cc/9UAT-5K9Y>]; see also Andrea May Sahouri, *Detroit Board of Police Commissioners Says It’s Under Investigation*, DET. FREE PRESS (Mar. 30, 2023, 5:45 PM), <https://www.freep.com/story/news/local/michigan/detroit/2023/03/30/detroit-board-of-police-commissioners-under-investigation/70063090007/> [<https://perma.cc/3DHB-DC4L>].

353. Gutierrez, *supra* note 352.

354. *Id.*

355. Call this Detroit’s Dillon’s Rule, after the canon of statutory interpretation that calls for strict and narrow construction of local government authority. See LYNN A. BAKER ET AL., LOCAL GOVERNMENT LAW 287 (2015). The Detroit City Charter expressly grants the power to set DPD policy to the Chief and the BPC and not to the Council. CITY OF DETROIT CHARTER § 7-803 (2012). The City’s Law Department therefore understands the Council to be forbidden from passing *any* ordinances concerning the DPD, even though the Council may otherwise pass ordinances which “provide a permanent rule for the conduct of government” and nothing in the Charter expressly excludes the Council from passing police reforms. CITY OF DETROIT CHARTER § 4-114 (2012).

356. Schleicher, *supra* note 322, at 464.

357. *Failing Detroiters*, *supra* note 14.

358. *Id.*

failure to observe its own laws, or worse, its disregard of the charter of its own existence.”³⁵⁹

IV. POLICY RESPONSE

This Note’s primary goal is to provide an account and analysis of an understudied subject, not to provide generalized recommendations for reform. Still, such analysis carries some policy implications. First, this Note finds much evidence to support Samuel Walker’s contention that civilian police commissioners are not a “viable alternative to the standard form of control of police departments by mayors and city councils.”³⁶⁰ Even the mayor struggles to control the DPD, as Mayor Archer’s invocation of the DOJ demonstrated. Necessary actions which local governments cannot take, the federal government can instead. This section will first discuss the mechanism by which the federal government used its power in Detroit and whether other municipalities are likely to benefit from similar litigation before turning to one possible state-level reform.

A. § 14141 Litigation

There is reason to believe that DOJ involvement resulted in positive outcomes for the city. From 1995 to 2000, the five years before Mayor Archer initiated the federal intervention, the DPD killed forty people.³⁶¹ By comparison, in the four-and-a-half-year period after the intervention officially ended, officers killed nine.³⁶² Other statistics are equally encouraging: a fifty-seven percent reduction in “Category 1 use-of-force incidents,” which include shootings, chemical sprays or discharges, and any use of force resulting in broken bones or loss of consciousness, along with a fifty-percent reduction in lawsuits.³⁶³ That said, experience must instruct us to temper our optimism; the BPC itself was seen as a great success in the 1980s.³⁶⁴ Ultimately, institutional progress is measured in both days and decades, and it is judged relatively, not devoid of national context, so that a police department can reduce its use of force, just less

359. *Mapp v. Ohio*, 367 U.S. 643, 659 (1961).

360. Samuel Walker, *Governing the American Police: Wrestling with the Problems of Democracy*, U. CHI. LEGAL F. 615, 638 (2016).

361. George Hunter & Christine Ferretti, *Federal Oversight Forced Reforms on Detroit’s Often Violent Police Department*, DET. NEWS, (June 9, 2020), <https://www.detroitnews.com/story/news/local/detroit-city/2020/06/09/detroit-police-violence-prompted-federal-oversight-reforms/5320917002/> [<https://perma.cc/W2DC-3KZV>].

362. *Id.*

363. *Id.*

364. See discussion *supra* Part III.A.2.

dramatically than other comparable organizations, and find itself the deadliest police force in the country.³⁶⁵ Furthermore, such statistics depend on police self-reporting, and, in all honesty, police lie, which one scholar has argued as justification for their abolition.³⁶⁶

Outside of Detroit, the results of § 14141 lawsuits have been mixed. One study of ten cities with consent decrees found that officers' use of force *increased* in half the cities during and after the agreements, with none of the cities completing reforms by the target date and most millions of dollars overbudget.³⁶⁷ Other research is more promising. A 2009 summary found that "pattern or practice" litigation "appeared to enhance police accountability and reduce the violations of citizens' rights."³⁶⁸ A 2017 review of DOJ intervention in twenty-three targeted jurisdictions resulted in "modest reductions in the risk of civil rights filings."³⁶⁹ However, such private litigation may serve as a poor proxy for constitutional violations.³⁷⁰ At the same time, no proxy may exist that cuts across departments, in part because police will not willingly divulge data about illegal conduct.³⁷¹ A 2020 review focusing only on the lethal use of force found that § 14141 litigation in general did not affect police killings, but jurisdictions under binding consent decrees and court-appointed monitors saw a twenty-nine percent decrease in killings, numbers which are still promising, albeit far short of the comparatively remarkable results achieved in Detroit.³⁷²

While the effectiveness of § 14141 litigation requires further research, even skeptics are reluctant to give up on the statute's promise.³⁷³ Indeed,

365. *Id.*

366. Samuel Dunkle, "The Air Was Blue with Perjury": Police Lies and the Case for Abolition, 96 N.Y.U. L. REV. 2048 (2021).

367. Kimbrielli Kelly et al., *What Happens When Police Are Forced to Reform?*, FRONTLINE (Nov. 13, 2015), <https://www.pbs.org/wgbh/frontline/article/what-happens-when-police-are-forced-to-reform/> [<https://perma.cc/4B4E-8NTR>].

368. Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State "Pattern Or Practice" Statute*, 19 GEO. MASON U. C. R. L. J. 479, 535 (2009).

369. Zachary A. Powell et al., *Police Consent Decrees and Section 1983 Civil Rights Litigation*, 16 CRIM. & PUB. POL'Y 575 (2017).

370. See Rachel Harmon, *Evaluating and Improving Structural Reform in Police Departments*, 16 CRIM. & PUB. POL'Y 617 (2017).

371. *Id.* at 622.

372. Li Sian Goh, *Going Local: Do Consent Decrees and Other Forms of Federal Intervention in Municipal Police Departments Reduce Police Killings?*, 37 JUST. Q. 900 (2020).

373. "Powell et al. (2017) attribute to me the position that Section 14141 is 'ineffectual,' that it 'achieves very little but at an enormous cost in terms of time and expense.' But this mischaracterizes my views, both published and present. The Department of Justice's use

the BPC's failures demonstrate how powerful *federal* intervention can be in comparison; DOJ efforts are not hampered by local corruption or fiscal starvation, and no federal case law allows police unions to simply ignore consent decrees like *Pontiac* allows them to ignore the City Charter.³⁷⁴

Hence, one response to ineffective local oversight is the expansion of § 14141 investigations. There are approximately 17,985 state and local police agencies in the United States, yet the DOJ conducts an average of only *three* formal investigations per year.³⁷⁵ “It is likely that the resources given to the DOJ to investigate § 14141 abuse may *never* be sufficient to target every city apparently engaged in misconduct.”³⁷⁶ This is especially troubling since § 14141 is meant to act as a deterrent, urging bad actors to institute reforms to prevent litigation.³⁷⁷ Federal scrutiny is too statistically unlikely to effectively deter all but the largest and most scandal-prone departments.³⁷⁸ Indeed, it would be misleading not to note how rare Detroit's experience of § 14141 was. Between 2000 and 2013, the DOJ conducted 325 “preliminary inquiries” and only thirty-eight developed into formal investigations.³⁷⁹ Of those thirty-eight investigations, just nineteen resulted in a negotiated settlement, so that the 306 other inquiries ended without formal consequences for the departments.³⁸⁰ Then, of those nineteen settlements, nine saw the appointment of an independent monitor to track and enforce compliance like in Detroit, just nine out of 17,985 departments.³⁸¹

of § 14141 might encourage policing reform in multiple ways.” Harmon, *supra* note 370, at 624.

374. The locality ultimately bears the cost of litigation and settlements, not the federal government. However, because these costs are forced on departments, they bypass political scrutiny, for better or worse. Furthermore, they may ultimately result in cost savings for the department, as one Detroit official contended, saying that “the amount of money that we have saved on lawsuits . . . have paid for the cost of implementation of the monitoring two or three times’ over.” Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. R. 1343, 1406 n.24 (2015).

375. Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3230 (2014).

376. *Id.* (emphasis added).

377. *Id.* at 3231.

378. *Id.*

379. A “preliminary inquiry” begins whenever DOJ staff spend two or more hours researching a department. *Id.* at 3225–26.

380. *Id.*

381. *Id.* Perhaps DOJ enforcement is appropriate given the remarkable rarity of constitutional violations at the nation's police departments, but independent scholars who've studied “pattern or practice” litigation believe enforcement rates instead reflect political interference and financial restraints, as the DOJ “finds constitutional violations under most of the rocks that it picks up.” Harmon, *supra* note 370, at 621.

More money is the most straightforward way to step-up enforcement, but the DOJ could make better use of the resources it already has, and modest improvements could be undertaken internally without legislative action. For instance, the DOJ could publish a list of bad actors but promise them “safe harbor” from litigation if they voluntarily cooperate with investigators.³⁸² Simply being more transparent about case selection would make departments aware of “worst practices” to avoid.³⁸³ Another technocratic reform, suggested by the relative effectiveness of consent decrees with federal monitors, would be to prevent the DOJ from agreeing to weaker alternatives like private settlements.³⁸⁴

Yet those who place their faith in the DOJ when it comes to police reform should recall how one commissioner accused it of “betrayal” after the Reagan administration shoved the BPC back into court to relitigate the affirmative action cases they’d already won.³⁸⁵ No matter what they say on Martin Luther King Jr. Day, many politicians and their appointees are ideologically opposed to civil rights.³⁸⁶ Indeed, data shows a decrease in the aggressiveness of § 14141 enforcement between late 2004 and early 2009, which correlates with the second term of the Bush administration when “political actors got more interested in or effective at depressing the program.”³⁸⁷ This problem is only getting worse. President Donald Trump’s DOJ entered into *zero* consent decrees, and Jeff Sessions’ final act as attorney general was to urge “special caution” before entering into consent decrees and to require multiple levels of approval from high-level officials (i.e., political appointees).³⁸⁸

382. Rachel Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN L. REV. 1 (2009).

383. Rushin, *supra* note 375, at 3237.

384. *See* Goh, *supra* note 372, at 8.

385. *See* discussion *supra* Part II.C.

386. Similarly, the Reagan DOJ chose not to utilize the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997, a similar statute to § 14141, allowing the federal government to sue *institutions*, such as correctional or mental health facilities, for engaging in unconstitutional patterns or practices. *See* John Kip Cornwell, *CRIPA: The Failure of Federal Intervention for Mentally Retarded People*, 97 YALE L.J. 845 (1988).

387. Harmon, *supra* note 370, at 622. Specifically, the DOJ went from negotiating eleven settlements and appointing five independent monitors in Bush’s first term to negotiating *zero* enforceable settlements and appointing *zero* monitors in his second. Rushin, *supra* note 375, at 3232. Rushin attributes the decline to internal policies which discouraged cooperation with civil rights groups like the ACLU and NAACP and an informal requirement that investigations terminate with non-binding “technical assistance letters” that “provide a voluntary blueprint that agencies can accept if they so choose.” *Id.* at 3233–34.

388. Memorandum from Jeff Sessions, Attorney General, Department of Justice, *Principles and Procedures for Civil Consent Decrees and Settlement Agreements with*

The obvious solution to a political problem is *politics*, to stop electing public officials opposed to civil rights and to reform a federal election system that favors such candidates. Short of that, Congress could amend the vague language of § 14141, which gives administrations “wide latitude to construct the meaning of compliance.”³⁸⁹ Agencies generally have unreviewable discretion to *not* enforce laws, a presumption which risks agencies becoming “stagnant backwaters of caprice and lawlessness.”³⁹⁰ Congress could narrow that discretion by providing “guidelines for the agency to follow in exercising its enforcement powers” and even mandate enforcement in certain egregious situations.³⁹¹ Alternatively, Congress could pass a new statute and allow private actors or civil rights organizations to file suit, lessening reliance on the whims of the president.³⁹² In addition, states could enact their own version of § 14141, allowing state attorneys general to bring lawsuits against offending police departments.³⁹³ So far, only California has done so, and even in that solidly blue, majority-minority state, attorneys general rarely take advantage of this statutory power.³⁹⁴

B. Confronting Police Unions

A much simpler solution is suggested by looking backward, not at what succeeded in Detroit after 2000 but why earlier reforms failed and *who* caused this failure. Kevin M. Keenan and Samuel Walker conceptualize police accountability in terms of three conflicting interests: those of rank-and-file members represented by unions, those of police

State and Local Governmental Entities (Nov. 7, 2018); Ian Milhouser, *Trump’s Justice Department Has a Powerful Tool to Fight Police Abuse. It Refuses to Use It*, VOX (June 30, 2020, 5:00 AM), <https://www.vox.com/2020/6/30/21281041/trump-justice-department-consent-decrees-jeff-sessions-police-violence-abuse> [<https://perma.cc/4K2R-KJXY>].

389. Rushin, *supra* note 375, at 3239.

390. *Heckler v. Chaney*, 470 U.S. 821, 848 (1985) (Marshall, J., concurring).

391. *Heckler*, 470 U.S. at 833.

392. In fact, Detroit’s own Rep. John Conyers proposed this. Law Enforcement Trust and Integrity Act of 2000, H.R. 3927, 106th Cong. § 502 (2000). For more on this policy, see generally Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384 (2000). For criticism, see Harmon, *supra* note 382, at 57–58.

393. See Walker & Macdonald, *supra* note 368; see also Brianna Hathaway, *A Necessary Expansion of State Power: A “Pattern or Practice” of Failed Accountability*, 44 N.Y.U. REV. L. & SOC. CHANGE 61 (2019).

394. CAL. CIV. CODE § 52.3 (West 2001). Since the statute’s passage in 2001, none of its attorneys general have initiated more than one investigation per administration. See Hathaway, *supra* note 393, at 91–95 (recommending the statute’s wider adoption despite its infrequent use).

managers, and those of the public.³⁹⁵ This framework helps explain reform efforts in Detroit. In 1967, the public erupted in violent outrage over police action. The police reacted with further violence and the formation of STRESS, which fueled still more public outrage. As for police leadership, it mediated between those two poles, and, although DPD chiefs have never been directly elected, history shows them to be responsive to public demands. For instance, Nichols opposed the concept of a “civilian review board” as initially proposed in 1972 before supporting his proposal based on the weaker, internal Los Angeles model the following year. After Nichols left office to run for mayor, his successor, Tannian, was a willing advocate for reform whom Young trusted to sell the entire DPD on his affirmative action plan. While one may question the sincerity of the leadership’s reform efforts, an important takeaway is that the political process incentivized them to support policies that had broad popular support. Nichols wanted to become mayor; Tannian just didn’t want the mayor to fire him. Either way, cooperation was in their material interest, and police leaders across major cities should be able to relate to one of those two motivations.³⁹⁶

The same was not true of police officers generally, who regarded Tannian as a sell-out for his support of affirmative action. Since the DPD remained majority white until 1987, the possibility of losing out on a promotion or being laid off in favor of Black officers materially threatened

395. Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers’ Bills of Rights*, 14 B.U. PUB. INT. L.J. 185 (2005).

396. This is the rare category in which Los Angeles provides a clear and illustrative counterexample. In Detroit, the mayor appoints the police chief, whereas in L.A., choosing a chief was once the police commission’s “main” job. REPORT OF THE INDEPENDENT COMMISSION ON THE LOS ANGELES POLICE DEPARTMENT 186 (1991). A 1937 law change extended city civil service protections to the chief, preventing commissioners from removing him “except for good and sufficient cause” based upon an act or omission occurring within the past year, subject to a hearing before the Board of Civil Service Commissioners. LOS ANGELES, CAL., CITY CHARTER §§ 199, 202(1). Because such hearings never occurred, the LAPD chief was in practice entitled to lifetime tenure, while running one of the largest paramilitary organizations in the world. INDEPENDENT COMMISSION, *supra*. This structure, a product of early Los Angeles’s vicious dialectics of corruption and reform, was already antiquated by 1971, when bureaucrats made the first of four failed attempts to provide for public accountability for its police chief before finally succeeding in the early 1990s, after the Rodney King tape. *Id.*; RAPHAEL J. SONENSHEIN, LOS ANGELES, STRUCTURE OF A CITY GOVERNMENT, THE LEAGUE OF WOMEN VOTERS 73–74 (2006). The most important element to underline—besides the unusualness of Los Angeles’s Charter in this regard—is that granting civil service protections to the chief essentially meant treating him like “lower level police officers,” who are similarly unaccountable to the public. INDEPENDENT COMMISSION, *supra*.

most existing officers.³⁹⁷ The union saw even greater success subverting the BPC's disciplinary and review powers, which now exist only on the Charter's printed page. Ultimately, union leadership and contract negotiators are only responsible to police officers, and officers' material interests will always be threatened by reforms making it easier to discipline and remove them for poor performance.³⁹⁸

Here again, Detroit's experiences are achingly familiar to hundreds of U.S. cities: unions are widely recognized as a principal, perhaps *the* principal, impediment to police reform.³⁹⁹ The view is put forward not only by scholars and historians but activists, litigants, governmental officials, and even other unions.⁴⁰⁰ "People rightly wonder why the union conceives of its obligation as protecting cops who appear to have engaged in clear misconduct rather than protecting the interests of 'good' ones by allowing 'bad' ones to be disciplined, fired, or prosecuted."⁴⁰¹ In other words, the public is coming to understand that its interest is inevitably opposed to that of police unions.

The short history of police unions in the U.S. reveals them to be a problem of our own making. Organizing police was particularly difficult, both because the public depended on them to provide for public safety and because business interests depended on them as strikebreakers.⁴⁰² In 1919, Boston police officers attempted to unionize under the American Federation of Labor, setting in motion a series of disasters that left nine

397. See *Detroit Police Officers Ass'n v. Young*, 989 F.2d 225 (6th Cir. 1993). Even though the racial dynamics within the DPD had long since changed, the union was obligated to continue fighting for their interests because plaintiffs may have been entitled to backpay and other damages.

398. Keenan & Walker, *supra* note 395, at 198 ("[r]ank-and-file police officers, like all employees—public or private—have a basic interest in job security").

399. Samuel Walker, *Institutionalizing Police Accountability Reforms: The Problem of Making Police Reforms Endure*, 32 ST. LOUIS U. PUB. L. REV. 57, 69 (2012).

400. *Black Lives Matter Publishes "Campaign Zero" Plan to Reduce Police Violence*, NPR: ALL THINGS CONSIDERED (Aug. 26, 2015, 5:42 PM), <http://www.npr.org/2015/08/26/434975505/black-lives-matter-publishes-campaign-zero-plan-to-reduce-police-violence> [<https://perma.cc/FY8J-NQT2>]; *Shields v. City of Chicago*, No. 17 C 6689, 2018 WL 1138553, at *3 (N.D. Ill. Mar. 2, 2018); Mario Vasquez, *Univ. of California Academic Workers' Union Calls on AFL-CIO To Terminate Police Union's Membership*, IN THESE TIMES (July 27, 2015), <http://inthesetimes.com/working/entry/18240/afl-cio-police-unions-racism-black-lives-matter> [<https://perma.cc/2MVZ-BTW7>]; Jennifer Gonnerman, *Larry Krasner's Campaign to End Mass Incarceration*, NEW YORKER (Oct. 29, 2018), <https://www.newyorker.com/magazine/2018/10/29/larry-krasners-campaign-to-end-mass-incarceration> [<https://perma.cc/6RQG-HYZ7>]; *Johnson v. City of Chicago*, No. 05 C 6545, 2009 WL 1657547, at *9 (N.D. Ill. June 9, 2009).

401. Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 714 (2014).

402. *Id.* at 735.

civilians dead, resulting in a national backlash against organizing government employees.⁴⁰³ As late as 1963, Michigan courts upheld a municipality's right to ban police from unionizing.⁴⁰⁴ It wasn't until 1965 that the state legislature amended existing labor laws to allow *some* government employees, including police officers, to enter into collective bargaining agreements.⁴⁰⁵ Whereas other states' statutes specifically prohibit unions from bargaining over conditions of employment set separately by city ordinance, Michigan's law allows unions to renegotiate those conditions and overrule local law, including city charters.⁴⁰⁶

It doesn't have to be this way. If state legislators are serious about police brutality, their laws shouldn't empower the principal opponents of reform.⁴⁰⁷ Some scholars caution only moderate changes to police unions, such as "minority union bargaining," requiring police departments to meet with, but not negotiate with, labor representatives other than the certified police union, which would "give the rank-and-file a voice in policing policy without undermining the economic and other terms that management negotiated with the majority union."⁴⁰⁸ However, to return to Keenan and Walker's conceptualization of the public interest in opposition to union interest, the power amassed by police unions is held at the expense of the public.⁴⁰⁹

Much more drastically, Michigan lawmakers could conceivably ban police officers from collective bargaining all together, excepting law enforcement from PERA just like the law already excepts other civil

403. *Id.*

404. Local No. 201, Am. Fed'n of State, Cnty. & Muni. Emp. (AFL-CIO) v. City of Muskegon, 120 N.W.2d 197, 199 (Mich. 1963).

405. For instance, the right was denied to employees in the state classified civil service. Detroit Police Officers Ass'n v. Detroit, 391 Mich. 44, 70 n.2 (1974).

406. *Id.* at n.8.

407. Twenty states have statutory Law Enforcement Officer Bill of Rights, which offer additional protections outside of labor bargaining rights. However, Michigan does not, further simplifying state-level reform. Aziz Z. Huq & Richard H. McAdams, *Litigating the Blue Wall of Silence: How to Challenge the Police Privilege to Delay Investigation*, U. CHI. LEGAL F. 213, 222 n.42 (2016).

408. See Fisk & Richardson, *supra* note 401, at 721.

409. My research has returned no evidence to the contrary of police unions using their power to protect the public at the cost of rank-and-file power, though defenders of police unions, such as Fisk & Richardson, maintain that unions can be "agents of reform," citing examples such as the informal peer review of the "Friday Crab Club" of the Berkeley Police Department in the early 1900s and a Newark police union head who indicated that he approved of some reforms mandated by the DOJ pursuant to a consent decree while also threatening to file a lawsuit over a potential civilian review board. Fisk & Richardson, *supra* note 401, at 759-62.

servants.⁴¹⁰ Legal scholars have understudied such a possibility, although arguments against it are unconvincing.⁴¹¹ Organizing against police unions may put progressives, who otherwise support labor, in an awkward position, but police unions are unique from other unions in numerous ways. At a historical nadir for organized labor, police unions regularly extract sizeable concessions from the state without ostensible reprisal.⁴¹² Most importantly, police officers' ability to use violence against civilians heightens the public's interest in protecting itself from those harms. "Social workers and teachers don't fire bullets into the hearts and heads of unarmed people."⁴¹³ Furthermore, worry that undercutting police unions will harm other unions is ahistorical and distorts power dynamics. Organized labor was at its strongest *before* police officers could unionize; clearly, retail and industrial workers' ability to join a union does not hinge on police being able to do the same.⁴¹⁴ As a logical correlative, business leaders haven't been sitting on the fence, waiting to hear convincing anti-police union arguments before deciding whether to oppose other unions.⁴¹⁵

410. Paul Butler, *The Fraternal Order of Police Must Go*, NATION (Oct. 11, 2017), <https://www.thenation.com/article/archive/the-fraternal-order-of-police-must-go/> [<https://perma.cc/YE35-LAE9>]; Jeff Jacoby, *Don't Reform Police Unions. Abolish Them*, BOS. GLOBE (June 16, 2020, 3:23 PM), <https://www.bostonglobe.com/2020/06/16/opinion/dont-reform-police-unions-abolish-them/> [<https://perma.cc/AE6T-MVB4>].

411. For instance, Fisk & Richardson, *supra* note 401, at 720, argue that reform requires the willing cooperation of union representatives, as if workers would happily acquiesce to reduced job security. For a more idiosyncratic view, Benjamin Levin argues that critiques of police unions must be understood as either criticism of unions in general or general abolitionism. Such a false binary obscures the fact that abolition is impossible without first abolishing police unions and their collective bargaining agreements. Cloaked in the language of radicalism, his thesis points toward no change at all. Levin, *supra* note 286, at 1339.

412. Levin, *supra* note 286, at 1335 (quoting Shawn Gude, *Why We Can't Support Police Unions*, JACOBIN (July 31, 2015), <https://www.jacobinmag.com/2015/07/black-lives-matter-patrick-lynch-ferguson> [<https://perma.cc/L2US-DLWV>]).

413. *Id.* at 1369. Levin goes on to suggest, maddingly, that this is a distinction without a difference.

414. "Accelerating capital mobility has dramatically altered the balance of power between labor and capital. Employers threatened with a primary strike can shift production to other locations. The most effective union responses—protest tactics designed to follow or immobilize capital—are prohibited by law. Meanwhile, the Supreme Court has undermined the doctrinal foundations of the 1950s decisions by extending constitutional protection to the exercise of economic power by other groups." James Gray Pope, *Labor and the Constitution: From Abolition to Deindustrialization*, 65 TEX. L. REV. 1071, 1072 (1987).

415. For a recent account of the use of regulations to diminish labor power, see Catherine L. Fisk & Diana S. Reddy, *Protection by Law, Repression by Law: Bringing Labor Back into the Study of Law and Social Movements*, 70 EMORY L.J. 63 (2020).

Labor does not build power by avoiding hypothetical charges of hypocrisy.⁴¹⁶

While consensus is unlikely in this controversial topic, amending police unions does offer something for all sides of the political spectrum. Contemporary anti-police brutality activists are suspicious of most proposals which bill themselves as “reforms.”⁴¹⁷ From the “neighborhood policing” of the 1970s to recent policies like training and body cameras, these invariably funnel more money into police departments. No matter how well intentioned these ideas may be, they take money that could be spent on education or housing and give it to police departments instead, which has the ultimate effect of entrenching police power.⁴¹⁸ Unlike those “reforms,” targeting police unions would make it easier to investigate and remove officers who harm the public and violate the constitution and would do so without increasing the number of officers or department budgets. Or, to rephrase the point with different ideological commitments: a technical exclusion to 1960s labor law is revenue neutral in the short-term and could substantially reduce municipal expenditures over time.⁴¹⁹

V. CONCLUSION

The past fifty years demonstrate how precious moments of true progress can be, especially in the realm of criminal justice, with its infamous “cycles of inaction.” Substantial efforts at police reform therefore deserve close study, especially those like the BPC, whose failures should serve as a cautionary lesson to contemporary actors. To that end, this Note related the history of the BPC, from the origins of the DPD in the 1830s to the department’s utilization of STRESS as a tool of racialized terror, resulting in widespread demands for public accountability. The hope was to end police misconduct by putting the people of Detroit in control, but DPD head John Nichols channeled this desire into an internal police commission modeled on the ineffective LABPC. The BPC’s founders thought they could nonetheless serve as a

416. See David Rolf, *A Roadmap to Rebuilding Worker Power*, CENTURY FOUND. (Aug. 9, 2018), <https://tcf.org/content/report/roadmap-rebuilding-worker-power/> [<https://perma.cc/GLG5-U2S9>].

417. Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1814 (2020).

418. The same may not be true regarding DOJ interventions, which typically involve additional training and data collection systems. See Walker & Macdonald, *supra* note 368, at 504–05.

419. So far, serious campaigns in opposition to police unions have been waged by the left, e.g., Carly Margolis, *Targeting Police Unions, Rethinking Reform*, 46 N.Y.U. REV. L. & SOC. CHANGE 224 (2022).

check on law enforcement but underestimated the persistence of the opposition they would face: from a fickle public whose interest was ever waning, from elected officials whose commitment ran no deeper than veneer, from judges happy to entertain any legal objection, from state and federal policies that impoverished and imprisoned city residents, and from police power which “aspires to a world of total impunity.”⁴²⁰

The BPC founders placed faith in officials to honor the words they enshrined into law and believed those laws conferred real power, enough to redraw the racial and legal dynamics that had always defined Detroit. Law may be the language of power, but it is not a spell or incantation. Civilians did not make themselves the head of a sprawling paramilitary organization with some paragraphs of text and a victory margin in the single digits. Because the federal government faces none of the structural shortcomings of a local entity like the BPC, the 2003 consent decree brought about departmental improvements which the BPC had long given up hope of achieving. However, the federal government sits many miles away from Detroit, and its power centers may be actively hostile to the interests of everyday Detroiters. Local activists may find more success by reforming the powerful police unions that make officer accountability a byzantine struggle behind closed doors.

The path forward is neither easy nor clear, as the well-intentioned struggles of the BPC demonstrate. Its founders closely studied the past failures of commissions in Philadelphia and Los Angeles and worked assiduously to avoid their mistakes, yet their efforts ultimately yielded a body without legal or political significance. Unsympathetic judges and indifferent politicians may derail any popular movement for change, no matter how well-studied or legally sound. Future activists may be similarly disappointed, but they should not be surprised.

420. GEO MAHER, *A WORLD WITHOUT POLICE: HOW STRONG COMMUNITIES MAKE COPS OBSOLETE* 224 (2021).