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Suspect Citizens

Fighting the War on Crime with Traffic Stops

On a cold December morning in 2012, Durham Police Officer Kelly Stewart, working undercover from an unmarked car, observed Carlos Riley drive off from a "known drug area" (actually, not far from the Duke University campus) in his red two-door car after conversing with an individual through the open passenger window. Officer Stewart pulled the car over, identified himself as a detective, asked the driver to get out of the vehicle, frisked him and checked his identification. After submitting to the frisk, Mr. Riley got back into his car, with the engine still running, and attempted to drive away. Officer Stewart, standing right at the open door to the car, lunged inside and was able to put on the emergency brake, bringing the car to an abrupt stop. Then, while engaged in a close physical struggle, he tried to put handcuffs on the driver, but Riley fought off that attempt. The officer pulled his service revolver from his holster, pointed it at the driver, and the struggle continued. With the officer holding his gun with both hands and Mr. Riley attempting to deflect it from being aimed directly at him, a shot was fired. The officer was hit in the leg; accounts differ as to who was holding the gun. With the officer shot and in pain, Mr. Riley pushed him from the car and drove off. The officer's badge and handcuffs had fallen into the car, and Riley had possession of the gun.

In a Durham courtroom three years later, Carlos Riley was acquitted on all charges associated with the shooting of Officer Stewart. Evidence presented showed that Officer Stewart had engaged in a pattern of racially profiling drivers, with Attorney Alex Charns noting that more than 76 percent of the traffic stops he made had been of African-American males. The particular stop that led to the confrontation was

not recorded at all in the police database. Community organizers and minority residents in Durham argued that the case reflected broad patterns of "racial profiling, police abuse, and illegal searches" (Bridges 2015a). Riley faced charges of reckless driving, robbery with a dangerous weapon, assault on a law enforcement officer inflicting serious injury, assault on a law enforcement officer with a vehicle, and assault on a law enforcement officer with a gun. In the 2015 Durham trial, the jury likely concluded that Officer Stewart had conducted a legally suspect search following a racial profiling incident, that he had shot himself during a struggle, and that Mr. Riley was guilty only of robbery (driving away in possession of the officer's gun, handcuffs, and badge). In any event, none of the charges of assault on the officer were sustained, nor was the reckless driving charge which was the initial justification for the stop (see Bridges 2015b). We can never know, of course, exactly what the jury was thinking or collectively concluded, but with their verdict they made clear that the official version of events, presented by the officer and his legal team, did not sway them.

This is highly unusual. How was it that a jury acquitted a person accused of shooting an officer, particularly a young African-American male with a felony record? (Carlos Riley had previously pled guilty to federal gun possession charges.) What drove a jury of twelve North Carolinians to such a verdict? In most American communities, citizens trust the police. Police testimony in court is typically treated with considerable deference, especially in comparison with young men accused of serious crimes and with previous felony convictions. Moreover, the facts of the case, in particular the shooting of an officer in an altercation with a civilian, were not seriously disputed. Rather, who shot whom, and under what circumstances, was in doubt. There was no doubt that an officer ended up with a bullet in his leg. Obviously, from the outcome of the Carlos Riley trial, trust in the police was lacking in that particular courtroom on that particular day in Durham in 2015.

This book is about how community trust in the police can be enhanced or eroded. We conduct the most comprehensive analysis to date of traffic stops in a single state, North Carolina, in order to explore the complex relations between police and the communities they serve. By looking in detail at over 20 million traffic stops over more than a decade, we explore the patterns apparent in the data. These make clear that powerful disparities exist in how the police interact with drivers depending on their outward identities: race, gender, and age in particular. These disparities could be justified by differences in the likelihood of criminal behavior, they

could be based on stereotypes, or a mixture of both factors might explain what we document here. Regardless, as we explore the patterns of racial, gender, and age-based difference in how police interact with members of the public, several things become clear. First, there are stark differences. Second, young men of color are clearly targeted for more aggressive treatment. Third, these differences are not fully justified by differences in criminality. Fourth, the aggressive use of traffic stops as a tool to investigate possible criminal behavior, though justified as part of the war on crime, is surprisingly inefficient, rarely leading to arrests for contraband. When we contrast the costs of targeted and aggressive policing with the benefits of it, we find that the social and community costs are high (in terms of reduced trust in and cooperation with the police) but that the number of crimes solved by traffic stop-related investigations is minimal. Finally, we show that there are feasible solutions to these issues, and that they can actually enhance community safety while simultaneously restoring trust. In fact, they enhance safety precisely because they restore trust. When large pockets of the population lose their trust and confidence in the local police, no one wins.

Two reasons explain the disjuncture between the low benefits but high costs of aggressive traffic policing of those who fit police profiles. First, the very targeting which characterizes a "criminal patrol" ensures that most middle-class white Americans are unaware of it. That is, police behavior seems normal, respectful, and appropriate to most of us. To individuals who fit into certain demographic profiles, however, it is anything but. Since most Americans, particularly voters, are not subjected to these behaviors, however, it has remained off the radar, far from mainstream political discussion, and supporting the police has remained the accepted norm. The second reason why we have not compared the costs to the benefits of these new police practices has been that we have assumed the costs to be zero. If the costs of the policy are zero, and there are any benefits at all, then by definition the benefits outweigh the costs. As we will see in detail below, traffic stops, and the detentions and searches that sometimes result from them, have traditionally been considered only as momentary, trivial inconveniences, meriting no special concern. We argue that this perspective is misguided. If police searches within a neighborhood or of a certain class of citizens are repeated, intrusive, and upsetting, these can place a significant burden on that group of individuals, a high cost indeed. Only if we assign a value to those detentions and searches can we reasonably assess whether that cost is greater or lesser than the corresponding benefit.

As America continues to struggle to understand how to balance public safety needs with respect and equity for all its citizens, in particular its most socially vulnerable, we hope that this analysis can inform reasoned debate. Such debate must be based on the best available evidence, and our goal is to provide that here. While we have no simple solutions, we can document very clearly the extent and nature of those racial disparities that do exist. These are substantial, growing, and unjustified by the crime-fighting value of the policies that lead to them.

Traffic Stops and Public Perceptions of Them

No one likes being pulled over by the police. But we can all recognize when we have been caught after perhaps inadvertently applying a little too much gas. We know when we deserve a speeding ticket (though we hope to avoid it), and we know when failing to signal a lane change merits and does not merit police attention; typically it does not. A long line of legal research has established that while no one likes to come into contact with the law, even those who receive a judicial sanction can accept it if they feel the process has been fair. John Thibaut and Laurens Walker (1975) found that individuals' assessment of court proceedings is affected not only by the outcome, but by their sense of whether the procedures were fair. Tom Tyler and Robert Folger (1980) expanded on this idea outside of the courtroom setting, looking at citizen interactions with police. They found that here too when citizens call the police, or are stopped by them, their perception of how fairly they were treated by the police affects their satisfaction. This was independent of the outcome, such as whether they were issued a citation or whether the officer solved the problem that led to the contact. Tom Tyler and Jonathan Jackson (2014) make the point that people comply with the law because they perceive it to be legitimate.

While white Americans typically have very high ratings for the legitimacy of the police and courts, these numbers are lower for African-Americans. Crucially, this sense of legitimacy is linked to cooperation with the police (e.g., helping to solve a crime) and appears to affect citizens' interactions with government in general, beyond the judicial system. For example, rates of voting move from 36 percent among those with high legitimacy to just 23 percent among those ascribing low levels of legitimacy to the police and the courts (Tyler and Jackson 2014, 89). So feelings of how one is treated by the police, or the courts, affect both future cooperation as well as more general factors of democratic

participation such as voting. Recall that legitimacy, throughout Tyler's various works, is unrelated to the favorability of the outcome the individual received in their interaction with the legal system; rather it has to do with the sense of fairness of the procedures.

Since 1999, the US Department of Justice has conducted a Police–Public Contact Survey every three years, drawing from a large sample of Americans aged sixteen and older. Between 17 and 21 percent of the public reported contact with an officer in the previous twelve months in surveys between 2002 and 2008. Consistently, across all the surveys, traffic stops and traffic accidents were the most common reason for the contact: between 53 and 59 percent of all citizen contact with the police related to this (in 2008, 44 percent were drivers in a traffic stop, 3 percent were passengers, and 12 percent were involved in a traffic accident). Other reasons for interactions with the police were (in declining order of frequency): reporting a crime or a problem to the police (21 percent in 2008), receiving assistance or service from the police (6 percent), police investigating a crime (6 percent), and police suspecting the citizen of wrongdoing (3 percent). Altogether, fewer than 10 percent of citizen interactions with the police involve criminal investigations, and almost 60 percent involve traffic stops or accidents, with routine traffic stops by far the most common source of all police contact (see Eith and Durose 2011, 3, Tables 2 and 3).

It is no exaggeration then to say that traffic stops are the epicenter of police–citizen interactions. Perceptions about their fairness will go a long way toward shaping citizens' opinions of the police and even the government more broadly. So it is good news that, among those having contact, the vast majority felt that the interaction was legitimate and that the police acted respectfully. Whereas 74 percent of African-American drivers pulled over in 2008 for a traffic stop perceived that they were stopped for a legitimate reason, this number was much higher (79 percent) when it was a speeding stop than when it was for a vehicle defect (61 percent). Among White drivers, 92 percent of those stopped for speeding, and 87 percent of those stopped for a vehicle defect believed the stop was for a legitimate reason (Eith and Durose 2011, 8, Table 11). These are high numbers in both cases, but clearly white drivers perceive some extra legitimacy for the police, and there may be good reasons for this racial divide. A recent study by a team of Stanford psychologists and computer scientists analyzed audio transcripts taken from police body cameras in Oakland California in April 2014. Looking at the language used in the interactions, and

comparing how the officers interacted with black and white drivers, this study of 981 traffic stops and over 36,000 utterances found that officers used more respectful language when interacting with white drivers: they were more likely to refer to them by their last names rather than by their first name or by a nickname, more likely to say "please," less likely to use negative words, and so on (see Voigt et al. 2017). If officers are apologetic, hesitant, grateful, and formal in their addresses to white drivers, but informal, disfluent, negative, and commanding in their interactions with blacks, then there should be no surprise that the two population groups express different levels of satisfaction following such interactions. To be clear, the differences in the Voigt et al. study were subtle rather than stark. But they were consistent and statistically meaningful.

This sense of the appropriateness of police interaction is fundamental to how citizens can be expected to respond to it. Virtually all Americans appreciate the value of the police investigating crimes. Everyone understands the need to patrol the highways for unsafe drivers. But given the enormous range of traffic laws, we all know that we routinely violate some of them. We do not expect to be given a problem by the police for such issues, however, and we have an intuitive sense of whether a police stop was legitimate or may have been based on a technical violation of the law that was then used as a pretext. Legally speaking, we may understand that a technical violation is indeed a violation, but seeing that used as a pretext for a police interaction would be recognized as just that: a pretext for something else based on a suspicion. We may be prepared to "face the music" when caught driving 15 mph over the posted limit, but would understandably be annoyed if pulled over for driving just 2 mph over the limit.

We will come back to the question of how the police interact with the public, and pay particular attention to the question of whether the member of the public is likely to feel that their traffic stop or interaction was legitimate, or may have been motivated by something other than safety on the roads.

A Transformation in Police Crime-Fighting Strategies

Our interest in the subject of police traffic stops and their repercussions draws from a gradual shift in police practice that occurred over several decades. As Tom Tyler, Jonathan Jackson, and Avital Mentovich (2015) describe it, the police moved from working on crimes in progress, or on solving crimes that had previously occurred,

to a proactive strategy of preventive measures aimed at deterring future crimes. This more proactive approach to policing has led to more frequent police-initiated nonvoluntary public contacts with the legal system, both through increased stop, question, and frisk activities and via zero-tolerance policies that bring more people within the criminal justice system through arrests, court appearances, and even time in jail. (604)

That is, rather than seeking the cooperation of the public to help solve crimes that have already occurred, the "new" model of policing seeks to stop the crime in the first place. Rather than contacting citizens to help them solve a crime that all may want to see resolved, in the new model of policing, police interactions with members of the public are more aggressive and suggest that individuals are under suspicion. While sometimes that suspicion is well warranted, often it is not. This shift in the style of public contacts "so that they have increasingly communicated police suspicion and mistrust of members of the public with whom the police are dealing" (603) is of particular interest in this book.

Especially problematic is that the "risk-management" model is applied unevenly across racial lines; to a considerable extent white neighborhoods still enjoy the old, community-based style of policing, while minority neighborhoods receive more intense scrutiny. The result of this is a significant decline in citizen perceptions of police legitimacy within minority neighborhoods, which has negative consequences for public–police cooperation in fighting crime. Tyler, Jackson, and Mentovich explain:

Our argument is that it is not contact with the police per se that is problematic. In fact, the results of the study suggest that when the police deal with people in ways that they experience as being fair, contact promotes trust and a variety of types of desirable public behavior. Rather, it is contact that communicates suspicion and mistrust that undermines the relationship between the public and the police. (603)

At the same time as these non-voluntary contacts have increased, their nature has changed. The

police now more frequently approach members of the public with an attitude of suspicion and distrust as they search for signs of criminal character and likely future criminal behavior (e.g., 'a regulatory gaze'). Consequently, an increasing number of people are having involuntary interactions with the police during which they are more likely to be treated as if they are suspected of having deviant tendencies and suspect character. Rather than communicating reassurance, trust, and respect, the police communicate suspicion, mistrust, and fear. (604)

As these strategies were applied to traffic stops, several innovations occurred. One related to the way sheriffs and highway patrol officers

patrolled mostly rural areas with interstate highways. They developed "drug courier profiles" and stopped hundreds or thousands of drivers, often fitting a particular demographic profile, in a needle-in-a-haystack strategy of finding a small number with significant contraband.

The US Drug Enforcement Agency (DEA) promoted the use of profiles largely on the basis of the work of Florida state trooper Bob Vogel, later elected Sheriff of Volusia County, Florida. In a laudatory profile in the *Orlando Sentinel*, Charles Fishman (1991) explains Vogel's laser-like focus on drug couriers, in spite of the fact that they typically were only in transit through his rural stretch of I-95 near Daytona Beach. Fishman writes: "The pipeline wasn't causing much of a law enforcement problem for Vogel. (An early element of the courier profile, in fact, was that cars obeying the speed limit were suspect – their desire to avoid being stopped made them stand out.)" In fact, according to Webb (2007), Fishman's early work on drug interdiction was thrown out by various judges who considered his "hunch" that drugs may be in the car an unconstitutional violation of the need to have probable cause before conducting a search. Vogel responded by studying the Florida vehicle code, finding that there were hundreds of reasons why he could legally pull a car over.

> He found them by the hundreds in the thick volumes of the Florida vehicle code: rarely enforced laws against driving with burned-out license plate lights, out-of-kilter headlights, obscured tags, and windshield cracks. State codes bulge with such niggling prohibitions, some dating from the days of the horseless carriage.
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> "'The vehicle code gives me fifteen hundred reasons to pull you over,' one CHP [California Highway Patrol] officer told me." (Webb 2007)

So, while it was those patrolling rural areas of the country, often focused on "oustiders" in transit through their jurisdictions who developed these profiles, Sheriff Vogel's discovery that he could scrutinize the highway code for various technical violations of the law was later adopted more generally. Anyone driving in a car is at risk for a technical violation, especially when such things as "driving in an unsafe manner" are determined by the observations of the officer, not according to objective criteria. This legal innovation, however, represented a powerful transformation of policing practice.

The shifts associated with "old" and "new" style policing were slow in coming and predate Officer Vogel. In fact, the constitutional seeds of this shift go back to the 1960s, when the Supreme Court ruled in *Terry* v. *Ohio*, 392 U.S. 1 (1968) that police officers may legally "pat down" or frisk an individual based on "reasonable suspicion" rather than "probable

cause." These interpretations were solidified and extended a generation later, in *Whren* v. *United States*, 517 U.S. 806 (1996). This landmark decision validated the police strategy of targeting individuals who fit a "profile" said to be associated with drug activity. Here the Court validated the right of police officers to pull over a car for any traffic violation, but ruled that there was no constitutional requirement of equity in treatment of traffic offenders. By breaking the law, any law, offenders opened themselves up to the possibility of police action. That action need not be equitable, the Court said. The police were not expected to stop all speeders, all those veering slightly out of their lane as they drive, all those driving in the passing lane of a freeway, or all of those with a cracked brake light, a dangling mirror, or an obscured license tag. Officers could pick and choose those offenders who seemed to be of greater interest. And, with hundreds of traffic laws and great discretion in their interpretation, officers could pull over virtually any car. Once pulled over, officers could seek consent or use probable cause to conduct a search of the driver, passengers, or the vehicle. Effectively, the Court permitted the use of routine traffic stops for targeted criminal investigations. The war on crime was the justification for these actions.

Two Fundamental Supreme Court Cases Create a New Regime

To those readers who are not lawyers, the 1968 movement from "probable cause" to "reasonable suspicion" may not appear to be an important distinction, but suspicion is a very low standard as compared to probable cause. It meant that the police could stop and frisk great numbers of people even if they had no reason to believe they were actively engaged in any illegal activity. Today police use the phrase "Terry stop" to describe situations where they detain an individual momentarily in order to investigate them, including conducting a physical search of their body. Note that even in a Terry stop, the police must be able to point to "specific and articulable facts" that generate a reasonable suspicion toward the individual about to be searched or patted down. Many traffic stops fall under the legal umbrella of a Terry stop: a momentary detention based on suspicion rather than a longer detention based on arrest, or a search based on probable cause.

Justice William O. Douglas was highly critical of the "new regime" he said we were entering in 1968 with the *Terry* decision. He wrote in his dissent in *Terry* v. *Ohio*:

> Until the Fourth Amendment … is rewritten, the person and the effects of the individual are beyond the reach of all government agencies until there are reasonable

grounds to believe (probable cause) that a criminal venture has been launched or is about to be launched.

There have been powerful hydraulic pressures throughout our history that bear heavily on the Court to water down constitutional guarantees and give the police the upper hand. That hydraulic pressure has probably never been greater than it is today.

Yet if the individual is no longer to be sovereign, if the police can pick him up whenever they do not like the cut of his jib, if they can "seize" and "search" him in their discretion, we enter a new regime. (Justice Douglas, dissenting, *Terry* v. *Ohio*, p. 39)

We may well have entered a "new regime" with policing in the USA with the development of the war on crime, beginning in the 1960s and accelerating in the 1980s and 1990s. While *Terry* was an important shift, the Justices confronted something even more generic in *Whren*, and the combined result of both *Terry* and *Whren* was clearly as Justice Douglas indicated, to "give the police the upper hand." Whereas in *Terry* the Court allowed for a pat-down based on mere suspicion rather than probable cause, in *Whren* the Court acquiesced to the idea that the police may stop a car for virtually any reason. Although the Court ruled in *Whren* that race by itself would be unconstitutional as grounds to decide which cars to stop and which to let alone, it also sustained the legitimacy of a search resulting from a selective traffic stop. Since there was no doubt that the traffic stop had been legally justified (as almost any traffic stop would be), the resulting search was not unconstitutional. The opinion contains this passage, recognizing the allegation of the petitioners that virtually any car on the road can be found to be in violation of some law, and that the police should not be able selectively to enforce the law when they please:

Since, they contend, the use of automobiles is so heavily and minutely regulated that total compliance with traffic and safety rules is nearly impossible, a police officer will almost invariably be able to catch any given motorist in a technical violation. This creates the temptation to use traffic stops as a means of investigating other law violations, as to which no probable cause or even articulable suspicion exists. Petitioners, who are both black, further contend that police officers might decide which motorists to stop based on decidedly impermissible factors, such as the race of the car's occupants. (*Whren*, p. 810)

But, in a unanimous decision written by Justice Scalia, the Court held:

Petitioners urge as an extraordinary factor in this case that the "multitude of applicable traffic and equipment regulations" is so large and so difficult to obey perfectly that virtually everyone is guilty of violation, permitting the police to single out almost whomever they wish for a stop. But we are aware of no principle that would allow us to decide at what point a code of law becomes so