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HIDDEN FORCES:
POLICE UNION INFLUENCE, SLOWDOWNS,
AND RACIAL INEQUITIES IN PLEA BARGAINING

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Introduction

This dissertation covers two themes in the criminal justice system: plea bargaining and police unions. These two topics are two powerful institutions in the current criminal justice system. The way in which various actors are able to act and respond to pressures by the criminal justice system are illustrated in the following chapters. Looking at formal models of plea bargaining and police unions allows me to focus specifically on the structures of each institution. With modeling, I am able to detail the actions allowed by each player and how it yields to either a racialized outcome or an imbalance of power.

Michelle Alexander's seminal book, "The New Jim Crow: Mass Incarceration in the Age of Colorblindness", brought the racialized criminal justice system into the general public's consciousness (2010). While the criminal justice system and racialized policing and criminalization were long studied before her work, for the first time, I experienced non-politically minded individuals thinking about this topic. Before Alexander, Angela Davis challenged the public to imagine prison abolition in, "Are Prisons Obsolete?" (2003) Bruce Western, in "Punishment and Inequality in America" echoes the call Davis makes to show the importance of structural racism in the criminal justice system. (2006) Pointing to the social control on marginalized communities that the prison system enacts, Davis encourages thinking through the structural and institutional forces that create this system and proposes dismantling them. Expanding beyond the physical prisons, Jerome Miller, in "Search and Destroy: African-American Males in the Criminal Justice System", points out institutional racism in policing strategies, in judicial proceedings, and in sentencing. (1996)

Following the calls of authors like Angela Davis and Bruce Western, this dissertation seeks to unpack some of the structures involved in the criminal justice system. Plea bargaining, combining the judicial proceedings with sentencing, produces outcomes with racial disparities. When thinking of reform, the police unions have a strong power in whether or not the policing of a certain jurisdiction can be changed. They have power in what protections the police have and whether or not new policies will be implemented. In the following three papers, plea bargains and police unions will be studied from the perspective of understanding the institutions themselves.

I was inspired to study plea bargaining when I read about the death of Kalief Browder. Kalief Browder was a sixteen-year-old teen when he was arrested in the Bronx. A 9-1-1 call placed on May 15, 2010 stated that two black men stole a backpack. Kalief and his friend were stopped by police and questioned about the robbery. Kalief asked the policemen to search him for the stolen items and nothing was found. The claimant then changed his story and alleged that the robbery had, in fact, occurred weeks prior. Kalief and his friend were then taken to the precinct and arrested. Kalief was charged with assault, robbery, and grand larceny. Because his family could not afford to pay his bail, Kalief was sent to Rikers Island jail to await trial. For three years, Kalief sat in jail awaiting trial. For two of those three years, Kalief was in solitary confinement. During his time in jail awaiting trial, Kalief was offered to take a plea deal multiple times. Once, a judge told him that he could be released that day if he pleaded guilty. Kalief refused to accept plea deals to plead guilty for a crime he didn't commit. He had previously accepted a plea for a crime he did not commit and knew the consequences of a plea deal. However, the Bronx courtrooms were clogged with cases. When Kalief was arrested, his case was one of 5,695 for that year. With that many cases, the court system relies on plea deals to get

through the numbers. In 2011, 165 cases were heard in court, but 3,991 cases were pleaded out. Because he refused to take a plea deal, Kalief remained incarcerated. He spent his last teenage years being tortured either through physical violence in Rikers or being trapped in solitary confinement. He was released when the case was dropped, the prosecution having lost contact with the complaining witness. A couple years after being released, he remained haunted by his time imprisoned and took his own life. (Gonnerman 2014, Gonnerman 2015)

Reading about Kalief's life inspired me to research more about plea bargains. He was born just days before me. A fellow New York City born gemini, I was struck by how he refused multiple plea deals and his story lived in my head. Offered release, he rejected. The system that took three years of Kalief's life away requires plea deals to survive. Referring back to the 2011 statistics, of all the cases closed, less than 0.5% of them had a trial. Because nearly all cases were closed with a plea deal, plea bargaining may be the most critical structure of the criminal judicial process.

The first paper studies plea bargains and asks the following two questions:

- How can we understand the strategies of defendants in plea bargaining?
- How does the conceptualization of Black criminality affect the institution of plea bargaining?

Understanding theories of how criminality is racialized, this paper shows how without having a racially prejudiced prosecutor, we will still see discrepancies between pleas offered to white defendants and pleas offered to Black defendants. Most criminal cases are settled out of court. Therefore, understanding the way race is built into the plea bargaining is a critical aspect of studying the criminal justice system

The second two papers focus on police unions. When looking to reform or abolish the police, I wanted to look at what structures are in place that could work against such changes. I wanted to research the institution that advocates for policies that shield officers from accountability in the aftermath of their violence. In seeking to better understand the power behind police unions, I investigate a particular aspect of police organization, their work slowdown. My second paper dives into the conditions in which the police will initiate a slowdown. My third paper uses a case study in Baltimore to identify the union influence in a slowdown.

These papers were inspired by the events in Camden, NJ. In 2013, Camden had done what some view as impossible. They dissolved their police department and built a new one from the ground up. In 2010, Camden was not a safe city. It was considered one of the most dangerous in America with high murder and drug rates. The city was in a \$14-million deficit and had to lay off half its police force. Excessive force complaints on officers in the city were neither proven nor disproven leading the ACLU to raise red flags on accountability in the city. Five officers were found guilty of having planted evidence, fabrication, and perjury. Given the state of the city, State Senator Norcross, Camden County Freeholder Cappelli, and Mayor Redd with support of southern Jersey democrats moved to dissolve the city police force and replace it with a county-led force (Landergan 2020). This worked because a state statute already in existence allows counties to make police forces that the towns and cities are required to opt into. In the transition, more officers were hired to match the 2010 pre-cut levels. Performance metrics were changed and officers are no longer awarded for the number of tickets or arrests made. The overhaul worked and now police are more integrated into the community and participating alongside protesters marching for Black lives (Landergan 2020). In order to accomplish the reform that Camden was able to complete, they dissolved the police union (Landergan 2020). When the city police were replaced by county police,

the contracts that the union had with the city were no longer relevant. Money saved by not paying officers the union rates and the benefits allowed the county to hire more officers so that staffing levels approached those before the cuts. Many pointed to Camden's reform as being only possible because the union was dissolved. Union power and influence lead me to research to understand how we think about the union's power to halt any plans for reform.

The second paper studies negotiations between the police unions and the local government and asks the following two questions:

1. What factors influence the police union's decision to initiate a slowdown and the duration of such an action?
2. How does the elected official respond to such actions, and what determines their willingness to negotiate?

Using a type of bargaining model, I show how both the mayor and police unions have multiple considerations when determining what type of offer they would either make or accept. From there, I discuss the circumstances where there would be negotiations between the mayor and the union and circumstances where there will be a slowdown.

The third paper studies continues the topic of police unions and asks the following:

1. How does the police union organize a police slowdown to further their political goals when the public demands reform?

To study this more closely, I conducted a case study on Baltimore following the death of Freddie Gray. While the public nationally and locally protested and demanded change, the police initiated a work slowdown. Given the literature on police unions, I study how the power of the union is utilized in this time.

All three papers take a look at the broader topic of criminal justice. The focus on specific structures in the system allow further researchers and policy makers to investigate how to dismantle the way each institution is able to perpetuate this system of inequality.

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Racialized Plea Bargaining: A Formal Model of Race, Criminality, and Systemic Inequities in the Criminal Justice Process

Bianca DiGiovanni

Abstract

This paper formalizes the often-secretive bureaucratic process of plea bargaining with a focus on race and shocks to the criminal justice system itself. The key outputs of this model are in articulating why plea bargains are so prevalent, and why we see a plethora of innocent people accepting plea bargains, and specifically what ways the race of the defendant affects the strategies available. By operationalizing theories of race and criminality by authors such as Khalil Muhammad and Lisa Marie Cacho, this model articulates the way racialized views of criminality lead to equilibria that are distinct by race with expected outcomes being lower for that of a black defendant. These differences lead to defendants of color receiving higher sentences in plea agreements and being more likely to agree to a plea when innocent due to the way they are perceived by the court. Extensions of these models show the way changes to the criminal justice system will affect plea bargains. Elimination of cash bail or mandatory minimums can have a positive effect on the side of the defendant. However, this model shows that, while these programs are designed and implemented to address inequalities and unfairness, they do not address the way criminality is racialized and therefore the discrepancy between the defendants across race will remain in the plea-bargaining system.

Background

The court room comes to mind when many think of criminal justice. However, to most charged with a crime, the right to defend themselves in court is never realized. Based on an informant's tip, in November of 2000, the Hearne, TX police department arrested 27 individuals for being part of an alleged drug ring. Erma Faye Stewart, a Black 30-year old mother of two, was one of those arrested. Stewart was put in jail facing felony drug distribution charges. Stewart met with her court appointed lawyer. While she protested her innocence, her lawyer encouraged her to accept a plea deal because without one, she would face between five and 99 years. Unable to post her \$70,000 bond for release and needing to return to her young children, Stewart waited a week in jail before accepting a plea deal. From her deal, she had to pay a fine of almost two thousand dollars, was sentenced 10 years of probation, and had to report to her parole officer monthly. One hour after accepting the plea deal, she was released and able to return to her family. Accepting the plea deal had devastating consequences. Living in Texas with a federal conviction, she was unable to vote for at least two years following her ten-year probation, she is no longer eligible for food stamps, she is ineligible for federal grant money for education, and three years into her probation she still has \$1,000 outstanding in her fines as well as court fees and late probation fees. Had she not taken this plea, none of these outcomes would have applied to her. A little over three months after her arrest, the trial began for the other defendants arrested with Stewart who did not accept a deal. The informant's tip was deemed a lie, and a few weeks later all outstanding cases were dropped. For Stewart, who already plead guilty, her sentence and criminal record remained. ("Four Stories - Erma Faye Stewart And Regina Kelly | The Plea" 4AD). With the privilege of hindsight, one can say Stewart should not have admitted guilt and taken a plea deal for a crime she did not

commit. However, that choice is not an easy one and awaiting trial may have equally devastating consequences.

The Foundation for Economic Education reports that 90% of felony cases never make it to court (Hunter 2017). It isn't the case that all those who plead guilty have committed a crime. The National Registration of Exonerations found that about 15% of those exonerated had originally pleaded guilty. For certain crimes, that percentage is significantly higher. For example, 78% of sex registration crimes, 66% of drug crimes, and 49% of manslaughter exonerations were originally convicted on a guilty plea ("Innocents Who Plead Guilty" 2015). Plea deals can be tempting for those charged with a crime, even when they are innocent. Moreover, if the person charged is unable to make bail, a plea deal can be a fast way of getting out of jail. A plea deal can allow someone to get out of jail for time served in exchange for admitting guilt.

There are varied motivations for wanting or needing to get out of jail quickly. Some charged with a crime need to be released from jail to take care of children and family members. Others need to avoid missing work while sitting in jail as it could lead to the loss of their employment. Also, a plea deal can reduce the length of sentence of a crime. A plea deal can also allow a defendant to be charged with a lesser crime. For those employed by the judicial system, a defendant accepting a plea deal helps speed up an overworked and undermanned system. For the government, plea deals are a necessity. PBS Frontline reports, "The criminal justice system would likely collapse if every case went in front of a judge and/or jury" ("The Problem With Pleas" 2011). There are too many cases and not enough judges and lawyers to handle them all if each one went through a trial. Thus, given the necessity of plea deals to the operation of the criminal justice system one question we might ask is: what types of strategies do prosecutors take to offer a plea that will be accepted by a defendant?

While preferable for the courts, plea deals do come with a substantial negative consequence for those charged. Upon accepting that deal, whether the individual is personally innocent or guilty, that crime and the guilty pleas become part of their record. That record can result in losing the ability to vote and no longer being eligible for federal assistance programs like food stamps and government housing. How can we understand the strategies of defendants in plea bargaining? While I look to answer this question, I cannot assume that the strategy of plea bargaining is consistent by the race of the defendant. The story of Erma Faye illuminated the way in which her assumed criminality and inability to post bond affected her decision to accept a plea. Understanding that the assumption of criminality is driven by race leads to the last question: How does the conceptualization of Black criminality affect the institution of plea bargaining?

Understanding the decision-making process of the defendant cannot be fully examined without attention to the interaction between race and criminality. Judgements of criminality fueled by concepts of a racial hierarchy influence the ways in which people are arrested, charged with crimes, and later sentenced. Criminality cannot be understood without an understanding of the ways in which race informs it, and understanding assumed criminality is integral to understanding plea bargains. Given that plea bargains occur outside of the traditional court room with a jury of peers, race operates within the institution itself. Assumptions about the defendant and the ways in which their case would fair in trial lead to differences in sentences by race.

In this paper I argue that beyond prisons themselves, the criminal justice system exploits communities of color in multiple ways. Specifically, in this paper I uncover and model the practices of inequality¹ experienced behind closed doors in plea deal negotiations and the

¹ Following the recommendation of Imani Perry, I am avoiding the term 'structural racism.' As Perry notes, the term structural racism has been beneficial in illuminating the systems at work to disadvantage people of color. However, as this term is more widely used, the structure seems too large and too big to dismantle. Instead, we can explain this production and exploitation as 'practices of inequality' (Perry 2011)

continuing practices that spill over into the courtroom. I show that there are sentence disparities, by race, for those who accept a plea offer from a prosecutor. Without having to model biases held by a prosecutor, I am able to show that there are still practices of inequality built into the institution. Black defendants are offered plea bargains considerably higher than their white counterparts.

Race and Criminality

Race and Racism

It has been well documented that people of color are disproportionately punished by the criminal justice system. In 2000, 27.9% of people arrested were Black while Black people comprised less than 13% of the total population (Free 2003). The rate that Black people are incarcerated is over five times the rate for whites (“NAACP | Criminal Justice Fact Sheet” n.d.). As the Federal Bureau of Prisons reported in October of 2019, Blacks make up 37.5% of inmates (“BOP Statistics: Inmate Race” 2019) While the rate of drug usage for Blacks and whites are about the same, the rate of imprisonment for drug charges is 6 times higher for Blacks than whites (“NAACP | Criminal Justice Fact Sheet” n.d.). In sentencing, Blacks charged with crimes have sentences averaging six months higher than whites sentenced for the same crimes (Reese 2006).

These statistical variations are not due to random chance nor the fact that Black people are more frequently engaged in criminal activity, but rather occur from a series of institutional structures. Michelle Alexander would explain this racial targeting as spanning from the War on Drugs. True to her title, Alexander points to the War on Drugs as a rebirth of the racial caste system from the Jim Crow era. Rather than looking at the criminal justice system as one plagued with racial biases and inequalities, Alexander informs the reader that the criminal justice system is a designed system of ‘racialized social control’. (Alexander 2012). Naomi Murakawa describes

the growth of the criminal justice system as being partially attributed to liberal lawmakers incorrectly diagnosing racism within the system. Under the paradigm of racial liberalism, liberal lawmakers looked to reduce procedural discretion. Looking to address racial violence, liberal lawmakers joined conservatives in calls for law-and-order. Operating under a liberal law and order regime, liberal lawmakers believed that inequality and racism in the criminal justice system stemmed from individual prejudices of police, prosecutors, and judges. To treat this racial bias, police forces were given funds to focus on better training. To fix systematic inequality in sentencing from judicial discretion, mandatory minimums and sentencing guidelines were put in place. These administrative reforms were put in to address what the lawmakers viewed as places in which racism could creep into the criminal justice system. However, the end result was one of an expansive system of incarceration and state power that ended up over-policing and over-incarcerating Black people. (Murakawa 2014). Combining the theses of Alexander and Murakawa, we see overreaching state power that disproportionately incarcerates people of color.

As part of the criminal justice system, plea deals are not immune to racial disparities. While plea deals avoid a potentially biased jury and the problematic sentencing guidelines discussed earlier, pleas still see racial disparities in lengths of sentences. Berdejo (2018) shows that racial disparities in sentencing consistently lead to defendants of color having worse outcomes. Race is used as a proxy for intrinsic criminality. When a defendant has no prior convictions, there is no signal for the defendant's baseline criminality, and in those cases Black defendants are given worse sentences than their white counterparts. Racial disparities are also found commonly in low-level offenses and misdemeanors, where there is more room for flexibility, defendants of color are given harsher sentences (Berdejo 2018). With this, Berdejó notes, "prosecutors may be using race as a proxy for a defendant's latent criminality," because he finds that the largest area of racial disparity

is in cases when defendants have no prior convictions (Berdejo 2018, 1191). He found that in cases of plea bargaining with defendants who had no prior convictions, prosecutors drop/reduce the charges of white defendants at a rate 13.6% higher than Black defendants (Berdejo 2018). This difference in cases without prior convictions shows that the prosecutor has no information on latent criminality on the defendant specifically. Because there is a statistical difference in the amount of times white defendants get their cases dropped, shows that there is something about race that prosecutors are able to pick up on in deciding deals to offer. The idea of 'latent criminality' is critical in the model of plea bargaining I will develop later in this paper. Holding previous and current charges constant, the idea of latent criminality is one variable that will differentiate the Black defendant from the white defendant. Overall, on the basis of race, the criminal justice system, including plea bargaining, discriminates against people of color and punishes them differently than their white counterparts.

Race and Criminality

Before delving deeper into criminality, it is important to step back and see how race is being formed and utilized. In their seminal book, *Racial Formation in the United States*, Michael Omi and Howard Winant define race as being, "a concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies." (Omi and Winant 1994, 55) In this paper, when referring to race, I am not merely alluding to 'phenotypes,' but instead the historical and social process that differentiates people along identities that have been racialized. More specifically, I am looking at race within the criminal justice system as a racial project that looks at racial dimensions of social structure. Rather than a neoconservative or racially liberal

idea of a race², this paper, “recognizes that the contemporary state, which was formally the architect of segregation and the chief officer of racial difference, has a tendency to reproduce those patterns in inequality in new guise” (Omi and Winant 1994, 58). The criminal justice system can best be described as a macro racial project structured to regulate, segregate, and punish Black bodies. In other words, it is described as “a stunningly comprehensive and well-disguised system of racialized social control.”(Alexander 2012, 4). This paper focuses on the manifestation of racism through the state rather than the discriminatory or prejudiced thoughts and practices of individuals (Murakawa 2014). In doing so, this approach examines how state structures create different outcomes by race. Ruth Wilson Gilmore (2007) defines racism as, “the state-sanctioned and/or extralegal production and exploitation of group-differentiated vulnerability to premature death. She continues by demonstrating how prison growth in California was part of a racial capitalist effort to address the surplus of land and labor in white rural towns at the expense of already marginalized Black and brown people.

The way race has been intimately tied to criminality restricts the types of options available to the Black defendant. The main distinction between the Black and white defendant is that for the white defendant, crime is seen as a personal flaw or individual failure while for the Black defendant crime is seen as part of his inherent nature, a feature of his race (Muhammad 2010). Muhammad traces this racialized view of crime through time. Some of the earlier evidence used to support the notion of Black criminality dates back to the 1890 census where it showed that, similar to statistics of today, 30% of the prison population was Black, and only 12% of the nation’s

² The concept of the ‘neo-conservative idea of race’ is the thought that because there are no biological differences between races of people, race is an illusion and the best approach is to be color-blind.(Omi and Winant 1994) Racial liberalism, on the other hand, rejected scientific racism and black inferiority and defined the race problem of America as interpersonal and psychological with the problem being rooted in individual prejudices (Guinier 2004; Murakawa 2014)

population was Black (Muhammad 2010). Frederick Hoffman, who made that initial observation, connected these statistics to the commonly understood social Darwinism of the time. The conclusion was drawn that Black people are ‘predisposed’ to criminal activity. This conclusion, of course, did not look into the racially driven policing and incarceration system at the time that included convict leasing. As the social Darwinist view of Black criminality grew out of this fashion, it was replaced by a racial liberal view of Black criminality (Muhammad 2010). Naomi Murakawa illustrates this concept of a racially liberal view of Black criminality explaining Pres. Johnson’s view of criminality, “Black subjects’ experience of racial prejudice marked them unable to participate in the universal promise of law-and-order,” (Murakawa 2014, 90). Because these ‘Black subjects’ witnessed racial prejudice from the criminal justice system, they then resist the law enforcement and need race-neutral policing. This concept of the “injured-ego-injuring” Black person cannot help but to commit crimes due to the discrimination and prejudice they are subject to. (Murakawa 2014, 90). These manifestations of prejudice contributed to the injured-ego of the Black person therefore pushing them to criminality. From here, the idea of Black criminality morphed to being the cause of unstable housing, poverty, lack of good education, etc. While the root causes of this criminality changed from being inherently biological to being socially constructed from prejudices experienced, the basic notion was the same: Blacks are criminals. It was thought that in Black communities, crime is a reflection on their culture and humanity. However, for a white person, their humanity overwrites their crime (Muhammad 2010). This distinction in the way that crime is racially perceived has lasting effects. These effects can be seen in the differing ways communities are policed, and in the varying ways those who are arrested are later sentenced.

To illustrate the root differences in the way crime can be conceptualized between races, I would like to use the following thought experiment. Glenn Loury(1998) describes how one outcome in crime can be supported by different theories of criminality. While each view of crime can be supported by the crime statistic, the underlying theory behind them leads to differing outcomes in State response. Imagine a civilization where 10% of the population is reported to be engaged in criminal activity, there could be two underlying reasons for this statistic. Either each individual has a 10% probability of being involved in crime at any given time, or 10% of the population is just inherently criminal. By observing a crime rate of 10%, either reason could be valid (Loury 1998). If the State believed the first option, a logical outcome would be to arrest as many people as possible because any time they are incarcerated is time they can't engage in criminal activity. In the second option, there would be incentives to find the true 'bad guys'. Muhammad's articulation of black criminality shows us that the State believes the second option to be true. Of the total population, the Black minority is seen as inherently criminal thus in need of excessive policing. This view of criminality impacts the way a Black man will be treated by the criminal justice system compared to a white man.

Beyond policing strategies, the way crime is viewed racially affects outcomes in the courtroom. Previously, in this paper I reported that Black individuals are sentenced to longer sentences for the same crime as whites. Cacho (2012) shows how this difference is structured by racial criminalization. She notes, the process of being criminalized excludes the individual from protection under the law but does not shield them from the law's hand of discipline. A person who was criminalized does not need to break the law to be seen as a criminal, and this view of criminality leaves that individual ineligible to personhood as they are seen as a criminal before being seen as a person (Cacho 2012). Criminalization works in a similar way to double-

consciousness. With double consciousness, the Black person sees himself both through his own eyes and through the eyes of the racist white society (Du Bois 2014). An individual who through his race has been criminalized sees himself through his own eyes and through the eyes of a carceral state looking for reasons to discipline him.

Following themes from Muhammad, Cacho (2012) articulates the different ways criminal status works between whites and people of color, generally. As she explains, whiteness is protected from criminal status. White people are judged individually by their conduct and culpability. White bodies are privileged in the way that they are unrecognizable as criminals and they are valued in the law. While white people may be guilty of a crime, they are not inherently viewed as a criminal. On the other hand, people of color are categorized as criminals irrelevant of their innocence or guilt. This differentiation, she articulates, is the institutionalization of white privilege (Cacho 2012). Through her book, Cacho articulates the way these differences are played out in the way certain bodies are deserving of second chances while others are quickly disciplined.

Cacho demonstrates how de facto status crimes apply to some and not others. These differences lead to drastically different outcomes when it is time to be sentenced. A de facto status crime (for example “illegal alien” or “gang member”), Cacho defines, is a crime where the person’s status itself is the crime. A person need not commit anything to be offending. However, de facto status crimes are only activated when attached to the proper racial status (Cacho 2012). For example, a white person would not be assumed or seen to be an illegal alien, while a Latinx person can be assumed to be fitting that criminal status by simply being in the United States. Cacho illustrates the way this status is attached to race through looking at white youths in California who collectively committed aggravated assault on a group of elderly Latino men. While the white youth should have been tried under California’s gang laws and tried as adults, their race saved

them from the de facto criminal status of gang member, and they were tried as youths in a situation where a Black child would have been tried as an adult. They were seen as being redeemable and although they almost beat an elderly man to death, they were minimally punished (Cacho 2012). The idea that whiteness is seen as protected by criminal status and therefore privileged to a concept of redeemability plays an important role in my model.

This protection from assumed criminality expands beyond this one example. Ian Haney-López articulates this as he illustrates the way in which judges and prosecutors are actors in the legal construction of race. He explains that from the underlying concept of black criminality, comes the idea of likelihood of recidivism. Logically the assumption of inherent Black criminality would follow that the Black defendant would most likely commit another crime in the future. Therefore, higher sentences make logical sense. In contrast, the white defendant is not viewed as a repeat offender and longer sentences are therefore not required. He writes, “Judges and prosecutors are not immune to society’s pervasive depiction of minorities as prone to criminality and Whites as the victims... Non-White convicted criminals would be seen as more likely to become recidivists, making longer sentences appropriate; White convicted criminals would be seen as unlikely villains, making shorter sentences reasonable,”(Haney-López 2006, 98). While Haney-López does not point directly to the idea of white redeemability, he does put their perceived criminality in contrast to that of people of color. As whites are seen separately, in the law, from people of color, their criminality is viewed as opposite to Black and Brown defendants.

Here, I look to expand upon Cacho’s (2012) contribution. Rather than looking specifically at de facto status crime, I want to think about *de facto criminal status*. As Muhammad articulates, blackness itself is criminalized, and this is done without having specific crimes in the books. Without gang laws, I argue that Blackness would still be subject to harsher and differing sentences

than whiteness because of this expected criminality. This argument is based on the realities of how race is interpreted along with the law. California started the trend by outlawing ‘participation in a criminal street gang with knowledge that its members engage or have engaged in criminal activity’ (Bjerregaard 1998). However, even before these laws were enacted, or currently if outside a state that has gang member laws,³ being of color is still de facto criminal. For example, the FBI’s 2017 crime reports shows that 40.5% of all curfew and loitering arrests were of Black people (“Table 43” 2017). Despite representing around 13% of the population, Black people represented a plurality of loitering and curfew arrests showing the mere act of existing publicly is criminal for Black people. As a result of having de facto criminal status, Black people cannot be understood as being redeemable. Because of their race, Black people are seen as inherently criminal, and while they can be found innocent of an individual crime, they cannot be separated from criminality. This is experienced when a person grabs their handbag or wallet in an elevator when a Black person enters or the feeling of crossing the street when a group of Black teens are present. In both these examples, there is no crime being committed and no evidence that would point these Black people to be guilty of anything. However, their race links them to assumptions of latent criminality. Redeemability, on the other hand, is contingent on the understanding that the crime committed is not a reflection on the individual himself or his likelihood of committing crimes in the future. This is seen in the example of Brock Turner, a white college student, who was found guilty of three counts of felony sexual assault but was only sentenced to 6 months of prison. The judge noted, “A prison sentence would have a severe impact on him. I think he will not be a danger to others,” (Stack 2016). While he was found guilty of a crime, he was not seen as

³ There are no federal laws outlawing gang membership. States that have outlawed gang membership include: Arizona, Arkansas, California, Georgia, Illinois, Indiana, Iowa, Louisiana, Minnesota, Mississippi, Montana, Nevada, North Dakota, and South Dakota. With other states outlawing more specific gang related activities like solicitation, intimidation, and drive-bys. (Bjerregaard 1998)

a criminal. The idea of prison was thought of in relation to his personhood and the effect on his future. He was not seen as dangerous even after being found guilty of a violent crime. His redeemability was tied to his race.

How the Model Utilizes these Theories

In the model presented later in this paper, I look to use the way race and crime are interwoven as theorized by Muhammad and Cacho to show the different action spaces available to defendants by race. I conceptualize the process of being charged for a crime and then sentenced as a racial project with practices of inequality formed from racial criminalization. I focus this practice of inequality solely on the concept of redeemability being available to white defendants and not Black defendants because of the way criminality has been racialized and understood. In focusing on this one difference, I control all other differences seen between defendants of different races. To focus exclusively on redeemability, I hold the probability of being found guilty or innocent equal across the two races. I assume the maximum sentence a crime would deliver (when the redeemable signal is not used) is the same across races. I do not change the cost of bail or amount of time a defendant waits in jail prior to trial for white or Black defendants. I assume that there is the same cost between Black and white defendants to hire a lawyer to signal their innocence. These assumptions are done not because I believe them to be true or of low impact. Rather, I want to illustrate how this one practice of inequality can lead to substantial differences in the types of plea deals Black and white defendants are offered. For this model, it means that there is an action available to white defendants that is unavailable to Black defendants: white defendants can signal their redeemability along with signaling innocence or sending no signal. For

a Black defendant, he⁴ can only signal to the jury and judge his innocence or choose to send no signal.

Modeling Plea Bargaining with Assumed Black Criminality

Introduction of the model

This model brings in the theories brought forth from Cacho and Muhammad by splitting up the game by race. Because of the way race and criminality are interwoven, the actions available to the white defendant are not the same as those available to the Black defendant. The jury player uses their background knowledge of innocence and guilt along with the signal from the defendant to determine whether or not to convict and then chooses the sentence. If convicted, the sentence is determined on whether or not there was a redeemable signal sent. The true innocence or guilt matters to the jury, and with the signals they receive, they try to determine whether to convict or acquit. Their outcomes are determined by whether they deliver an accurate decision based on the truth.

I utilize the theory that because criminality is tied to race, a Black defendant is recognized inherently as criminal, and therefore cannot be redeemed. The Black defendant is able to signal his innocence for a specific crime, but he is unable to signal their distance from criminality and

⁴ When discussing the Defendant, this paper refers to this individual in masculine pronouns. This is done consciously to note what the model is assuming. This model is not considering the way that gender would affect this game structure. In her seminal piece, Kimberle Crenshaw articulates the 'intersectional experience' that is the experience of being a Black woman. This intersectionality takes into account the combined discrimination that comes from being both a woman and Black (Crenshaw 1989). Women are the fastest growing prison population, and where the population of men is starting to decrease, the population of women incarcerated has been increasing (Sawyer 2018). The women incarcerated are disproportionately Black making up 29% of the incarcerated population (Kajstura 2019). While women and Black women, in particular, are a large part of the story of criminal justice, this paper is not including an analysis of their experience in plea bargaining. Combining race and gender would require utility structures and possibly strategies to change by each combination of race and gender. However, in prioritizing a succinct model, this paper focuses on race alone and assumes gender to be male to match the racial criminalization theories that focus on men.

therefore cannot signal redeemability. However, a white defendant is not inherently tied to criminality because of his race. Because of this, their crime can be articulated as an individual flaw that is redeemable. Applying this theory on criminality and race, the model includes signals that the defendants can make at trial. However, the signals vary by race of the defendant. For a Black defendant, the signals are a costly signal of innocence, or to give no signal. For the white defendant, the signals are the costly signal of innocence, no signal, and a less costly signal of redeemability. The costs of these signals can be seen as the cost of hiring a defense attorney who can spend time on their case rather than relying on the free and overworked public defenders.

Paths of Play:

The structure of the game is as follows:

- Nature (N) moves first to determine the type of the Defendant, $\Theta \in \{0,1\}$, with 1 being Guilty and 0 being Innocent. The Defendant is aware of the move that N made, but the Jury and Prosecutor are unaware of N's move. The Jury are aware only of the probability, π_G , that the Defendant is truly Guilty.
- Prosecutor (P) chooses the plea deal, $\tau \in (0,T)$ with T being the maximum sentence the crime can receive, and 0 being no sentence. This range is not inclusive. P cannot offer 0 because even if the deal is to accept guilt without any formal repercussions, having a crime on record carries a lasting impact on the Defendant.
- Defendant (D) can accept (A) or reject ($\neg A$) the plea deal. If D accepts the plea deal, the game ends. If D rejects the plea deal, the game continues and he moves once more.
- Defendant (D) Signals to the Jury. Here, the game divides between races. If D is Black the signals they send are $a_{D1} \in \{\text{Innocence, No Signal}\}$, $a_{D1} \in \{1,0\}$. To signal innocence, there is a cost of -C. Sending no signal requires no cost. For a white Defendant, the possible actions include: $a_{D2} \in \{\text{Innocence, Redeemable}\}$, $a_{D2} \in \{1,0\}$.

Mirroring the Black defendant, the signal for innocence is costly, in the same way. For the white defendant, we can think of the redeemable signal as their version of no signal. The signal of redeemable tells the Jury that while a crime may have been committed, the individual standing trial is not criminal in nature and can be redeemed if found guilty. This is an action not available to the Black defendant.

- Jury (J) chooses to convict (C) or acquit ($\neg C$), $a_J \in \{1,0\}$, D based on the signal provided. The game ends.

The strategy set for the Prosecutor is defined as S_P s.t. $\{S_P \in R^+ \mid 0 < S_P < T\}$. The strategies for the Defendant are $S_D = (D_1^B, D_2^B, D_1^W, D_2^W)$ Where $D_1^B \in \{A, \neg A\}$ for a Black defendant after being offered a plea deal, $D_1^W \in \{A, \neg A\}$ for a white defendant after being offered a deal, $D_2^B \in \{\text{Innocence, No Signal}\}$ for a Black defendant after denying a deal, and $D_2^W \in \{\text{Innocence, Redeemable}\}$ for a white defendant after denying a deal. For the Jury, the strategies are $S_J = (J_I^B, J_N^B, J_I^W, J_R^W)$ with $J_I^B \in \{C, \neg C\}$ for a Black defendant who used the innocent signal, with $J_N^B \in \{C, \neg C\}$ for a Black defendant who sent no signal, with $J_I^W \in \{C, \neg C\}$ for a white defendant who used the innocent signal, and with $J_R^W \in \{C, \neg C\}$ for a white defendant who used the Redeemable signal.

Payoffs:

Payoffs of the model depend on whether or not the plea was accepted and whether or not the Jury finds D guilty. The cost D is subject to paying depends on the signal sent. For White defendants, they are able to alter the last stage to avoid the maximum sentence if they utilize the Redeemable signal.

- *If the Plea Bargain is accepted:* $u_D = -\tau$ and $u_R = \tau$. The Defendant gets the negative utility of the plea that was decided, and the Prosecutor gets the positive utility of that same plea. For this outcome, the Jury gets 0 utility.
- *For Signals of Innocence and No-Signal,* $a_D \in \{1, 0\}$:
 - $U_P(a_J) = T(a_J)$
 - $U_D(a_J, a_D) = -T(a_J) - C(a_D)$
 - $U_J(a_J, \theta) = \theta(a_J) + (1 - \theta)(1 - a_J)$
- *For the Redeemable Signal,* $a_D \in \{R\}$:
 - $U_P(a_J) = \frac{T(a_J)}{2}$
 - $U_D(a_J, a_D) = -T(a_J)\left(\frac{1}{2}\right) - \frac{c}{2}$
 - $U_J(a_J, \theta) = \theta(a_J) + (1 - \theta)(1 - a_J)$

This is a three-player game with a one-shot bargain game between the first two players and a signaling game between the second two players. P and D play the one-shot bargaining game with P offering the bargain and D choosing to accept or reject. If rejected, D sends a signal to J. With this, the solution concept I use it to begin with finding a Perfect Bayesian Equilibrium (PBE) on the signaling game between D and J. Using this strategy, the players' strategies must be best responses to the actions of the other players, and the Jury's beliefs about the true innocence of the Defendant must be specified and consistent with their actions. Of PBE, I focus specifically on pooling equilibria of Black and white defendants. Given that the truly guilty defendants will not want to distinguish themselves from innocent defendants and be guaranteed a tough sentence, a separating equilibrium will not hold in a PBE. Upon finding the PBE, I use backwards induction from the pooling equilibria to determine the plea bargain that P would offer.

Assumptions in this model:

The Prosecutor wants a conviction. This game starts with the Prosecutor being able to offer a plea deal. This shows that the Prosecutor does not care about the true guilt of the Defendant. The outcomes of the Prosecutor are not dependent on the true innocence or guilt. The Prosecutor's main motivation is to ensure that there is a conviction. One fundamental assumption that I am using is that individually, the Prosecutor is not motivated by race. She does not want to prosecute a person of color more than a white person. Any outcomes that indicate there is a difference in the way defendants face trial and therefore the plea deals they are offered because of their race is not contingent on the prejudices harbored by a Prosecutor.

Following the assumptions regarding the Prosecutor, the Jury wants an honest conviction or acquittal. It can be seen in the way that their terminal utility is determined by if they are correct in their decision. Similar to the assumptions about the Prosecutor, the Jury themselves are not individually racist. Their choice to acquit or convict is not based on their prejudices. Their strategies are based on the signals they receive. This is where race affects the outcomes: the signals.

As mentioned earlier, all parameters are assumed to be equal between defendants. With this, the π_G is held constant between the two categories of defendants. The C for hiring an attorney is constant between defendants. With that, I am saying that the cost of hiring a good defense attorney to be able to put in the time and effort to send a productive innocent signal is constant regardless of race. However, the cost of hiring a lawyer to signal that the white defendant is redeemable is cheaper because the work of articulating redeemable is built into whiteness and therefore less costly than the effort required in an innocent signal. The δ is also held constant between defendants. With that, I assume that the cost of bail is the same for a white or Black defendant. I also assume that if a defendant is unable to make bail, the time waiting in jail and the

cost of waiting in jail is the same for a white and Black defendant. In the spirit of simplification, for this iteration of the model, I will assume δ to be 0. This assumption puts the court in a state without cash bail, like California or New Jersey, where theoretically there would be no cost in waiting for a trial.

Solution:

In this model, the differences in the signals the two defendants are able to send, lead to differences in the plea offers extended by the prosecutor. This model is a game of perfect but incomplete information. To solve this game, I found the Pure Bayesian Equilibria. To do so, the equilibria must satisfy the following refinements: the Defendant's strategy must be optimal given the strategy of the Jury, the Jury's beliefs must be compatible with Bayes' law, and the Jury's strategy must be optimal given their beliefs and the Defendant's actions. The equilibria of signaling games fall into three categories: separating, semi-separating, and pooling equilibria. For simplicity sake of comparing across the racial makeups of defendants, I am focusing on one category of equilibria: the pooling equilibria. As I mentioned earlier, this is because truly guilty defendants want to present as innocent to get a better sentence. With this type of equilibrium, all types, innocent or guilty, will send the same signal to the Jury.

I look at the three pooling equilibria from the three different signals the Defendants are able to send to compare the expected utilities of each. With the expected utilities from the pooling models, I then backwards induct the plea deal the Prosecutor would offer. Given that she wants the plea to be accepted, rather than risk losing at trial, she will strike a deal that is at least as good as the expected utility of going to trial.

Pooling on the Innocent Signal

- Strategy of the Defendant: $a_D = \{1\}$. In this strategy, the Defendant is signaling Innocence. This signal is sent regardless of their true type.
- Beliefs of Jury: $h(a_D) = \{\pi_G, a_D = \{1\} 1, a_D = \text{anything else}\}$ The beliefs of the jury are a function of the actions sent by D. Because D is playing a pooling equilibrium, when J sees the signal of Innocence, they will believe D to be guilty with a probability of true guilt that was known before the game started. This is just the originally probability of being Innocent before. However, if J sees an action from D that is not the Innocent signal, J will believe that D is guilty with certainty.
 - Strategies of Jury: $a_J(a_D) = \{\pi_G, a_D = \{1\} 1, a_D = \text{anything else}\}$ With the pooling equilibrium, the Jury is unable to update on the actions of D. Because of this, they will convict with the underlying probability of true guilt. However, following their beliefs, if J sees an action outside the Innocent signal, they will convict with certainty, given their beliefs.
- Expected Utility from Trial for Following the Strategies:
 - Jury: $EU_J(\theta) = \pi_G$
 - Prosecutor: $EU_P(a_J) = T\pi_G + C$
 - Defendant: $EU_D(a_J) = -T\pi_G - C$
- Plea Offer: $\tau \leq T\pi_G + C$ For the plea offer, P knows what the expected utility is at the end of the game. Knowing this, P is able to offer a deal that is equivalent, to the expected utility of D, noting D gets the negative value of τ . If P sets $-\tau$ to be equal to the expected utility of D, she will have a higher payoff than going to trial.

Pooling on No Signal

- Strategy of the Defendant: $a_D = \{0\}$. In this strategy, D is sending no signal regardless of type.
- Beliefs of Jury: $h(a_D) = \{\pi_G, a_D = \{0\} 1, a_D = \text{anything else}\}$ Following the logic in the previous equilibrium, J is unable to update and assumes the probability of guilt based on the background knowledge before the game started.
- Strategies of Jury: $a_J(a_D) = \{\pi_G, a_D = \{0\} 1, a_D = \text{anything else}\}$ Similar to the logic in the strategy in the Innocent signal, J convicts on probability of guilt. If J sees an action outside no signal, they will convict with certainty.

- Expected Utility from Trial for Following the Strategies:
 - Jury: $EU_J(\theta) = \pi_G$
 - Prosecutor: $EU_P(a_J) = T\pi_G$
 - Defendant: $EU_D(a_J) = -T\pi_G$
- Plea Offer: $\tau = T\pi_G$ This plea offer is better for the defendant than the Innocent signal's offer. Because no cost was spent signaling, D has a utility structure that is opposite to P. With this, the Prosecutor will want to offer a plea deal that is exactly the expected utility at trial.

Pooling on the Redeemable Signal

- Strategy of the Defendant: $a_D = \{R\}$. In this strategy, D is sending the Redeemable signal regardless of type. Again, this strategy is only available to white Defendants.
- Beliefs of Jury: $h(a_D) = \{\pi_G, a_D = \{R\} 1, a_D = \text{anything else}\}$ Following the logic in the previous equilibria, J is unable to update and assumes the probability of guilt based on the background knowledge before the game started.
- Strategies of Jury: $a_J(a_D) = \{\pi_G, a_D = \{R\} 1, a_D = \text{anything else}\}$ Similar to the logic in the strategy with the Innocent signal, J convicts on probability of guilt. If J sees an action that is not the Redeemable signal, they will convict with certainty.
- Expected Utility from Trial for Following the Strategies:
 - Jury: $EU_J(\theta) = \pi_G$
 - Prosecutor: $EU_P(a_J) = \frac{T\pi_G}{2}$
 - Defendant: $EU_D(a_J) = \frac{-T\pi_G}{2}$
- Plea Offer: $\tau \leq \frac{T\pi_G}{2}$ Again, P is incentivized to offer a plea deal, similarly to the Innocent signal. For the Prosecutor, this plea deal offers a better utility to the expected utility of going to trial because the cost adds some utility to P. This preferable equilibrium is not available to the Black defendant.

Analysis

To best understand where there are practices of inequality, I look to compare the equilibria the white and Black defendants are able to play. Both defendants are able to send the Innocent signal to the Jury. In this equilibrium, P offers $\tau = T\pi_G + C$ and the offer is accepted. Black defendants are able to send the “No Signal” option. In this, they plea deal offered and accepted is $\tau = T\pi_G$. White defendants pooling on the Redeemable signal will be offered and accepted will be $\tau = \frac{T\pi_G}{2}$.

Proposition 1: White defendants fare better off in plea bargaining than their Black counterparts. Given the two equilibria offered to Black defendants, they will be better off pooling on the no-signal as it gives the best expected payoff. However, white defendants have the option of the Redeemable signal. With this signal, their expected outcome is two times better than the Black defendant's outcome.

Discussion:

Understanding the model

As seen in the solution, the plea bargain offered by the prosecutor is determined by the availability of strategies for the defendant. Looking at these categories of equilibria, a Black defendant has the best expected outcome when playing the ‘no signal’ pooling equilibrium. Signaling Innocence is costly for all defendants, and in the pooling model, the Jury does not update from the use of the costly signal, so there is no gain in the cost required to signal. For the Black defendant, the best plea deal to be expected is when using ‘no signal’ and having the prosecutor offer a plea deal to equal to, or slightly greater than, the expected utility of going to trial and having a probability greater than 0 of getting the maximum sentence.

When looking at the white defendant, it is clear to see the plea deals are going to be better. The option to use a strategy of redeemability increases the expected utility of going to trial, given the cost is below the maximum indicated above. Pooling on redeemability guarantees a better outcome at trial than no signal does. Because of this improved outcome, for a prosecutor to have a plea deal accepted, the deal would have to be better than the no-signal deal the Black defendant has. This deal would have to be at least as good as the redeemable signal's expected utility.

This model helps to illuminate how key differences in the way criminality is defined by race affects the way Black and white defendants can bargain for plea deals. By taking the Prosecutor as a purely outcome driven actor without specific goals of incarcerating Black defendants more than white defendants, we still see an outcome of plea deals offered that vary by race. The understanding that further down in the game, notions of Black criminality will lead to differentiated outcomes, the Prosecutor can increase her own utility by offering better plea deals to white defendants.

These findings map on to the conclusions Murakawa came to in tracing the growth of the prisons. With the increase in the professionalization and training of police in the system along with steps to reduce discretion in Judge's ability to sentence, the criminal justice system has only grown. Murakawa explained that racism was understood in the criminal justice system by liberal lawmakers in the ways individuals with racially motivated prejudices would be able to act on their prejudices. Motivated to eliminate places where prejudice could be realized in the criminal justice system, and not address underlying assumptions of Black criminality, judicial discretion was minimized the best they could. With the reduction of discretion along with an insistence in 'truth in sentencing' came a system of mandatory minimums and sentencing guidelines. Built into this system of reforms that have only grown, enriched, and professionalized the system is still the

underlying assumption of Black criminality (Murakawa 2014). In this model, the use of a known maximum sentence for a crime is used as the jumping off point for the plea negotiations later. The ability to know, with relative certainty, what sentence he would get if convicted at trial puts the plea deal into perspective for the defendant. This is leverage that the prosecutor is able to use in pushing for the best possible plea deal for her and, in turn, a worse plea deal for the defendant. Here, this model points to additional ways the elimination of discrimination functions as a way to further disadvantage Black people caught in the criminal justice system.

Additional Racial Implications

Earlier in the assumptions, I noted that the parameters were being held constant between the Black and white defendants. While this assumption provided a type of simplicity in the model and allowed the Black and white model to be compared, it does not match what is seen on a day to day basis. These parameters equalized the playing field for all except the concept of Black criminality and its relation to a concept of redeemability. However, the lived parameters are far from equal between the two races. Adding these differing parameters back in to the model would increase the disparities between the types of sentences and through implication the types of plea deals offered.

For example, one of the first assumptions was that the maximum possible sentence for the crime was a stable value, T . This value can be negotiated down in a plea deal: murder can be considered manslaughter to be given a lesser sentence while negotiating pleading guilty. However, the model assumed that the T during the plea bargain stage would have to be the same T in the trial stage. This does not always fit what is seen. Prosecutors have discretion on what charges to

take to trial, if any. They also have discretion on when to and when not to push for capital punishment. Beyond how changing T would affect the model, the changes in T are not consistent between races. Prosecutors ask for the death penalty more frequently for Black defendants than white ones. When looking at juvenile cases, prosecutors are more likely to charge Black youth as adults than white youth. (Free 2003). Pushing for the Death Penalty in a case increases the T of the model significantly higher and would increase the likelihood that the defendant would plead guilty to a crime to take that punishment off the table. When youth are charged as adults, the sentence length is increased and the style of punishment is more punitive than for youth offenses. This disparity between who is charged more frequently as adults would lead to changes in the expected likelihood in plea bargaining.

In this iteration of the model, the cost of waiting for trial, δ , was eliminated for simplicity's sake. However, adding this parameter back in would require assumptions on the equal cost of choosing to wait for trial that does not always match. The parameter, δ , encompasses the cost of either having to post bail or the cost of waiting incarcerated for the trial. While it is not straightforward to measure the differences between race in the cost of waiting in jail, the cost of bail is a measurable cost in the model. Bail is not distributed uniformly. Black individuals are given higher amounts for bail (Free 2003). To figure out the proper bail amounts, courts are turning to statistical models that look to model 'risk'. These models are built from existing data on who and what is considered to be of higher risk, and then output data that further propagates racial disparities (Koepke and Robinson 2018). With higher bail amounts and histories of economic disparities, it is likely that more Black defendants find themselves in jail awaiting trial unable to pay their way out, like Erma Stewart. Going beyond the mental and emotional cost of being in jail waiting to attest your innocence, there is a cost in the court room for being in jail prior

to trial. By having to await trial from a jail cell, the defendant is more likely to be found guilty, and is offered lower plea deals (Dobbie, Goldin, and Yang 2016). Here, we see that once again these differences would lead to higher disparities in the plea deals offered to Black defendants.

To simplify the model, Nature's role was colorblind. Both the Black and white defendants had the same probability of being actually guilty. This is a vast oversimplification that does not match the lived experience. Numerous scholars point out that Black folk are more likely than their white counterparts to be stopped or even arrested. This is a central thesis of Michelle Alexander's work. Black drivers are stopped disproportionately more often than white drivers (Epp et al 2014). And while Black and other communities of color are overpoliced and over stopped, searches of white drivers more often yield discovery of contraband (Pierson et al 2020). This is the same with stop and frisk. While Black people are more likely to be stopped and frisked, they are less likely than white people to be found with contraband (Gelman et al 2007). Extrapolating on those findings, the likelihood of a Black defendant being guilty would be less than a white defendant. Black defendants are brought in because of their assumed criminality, while white defendants seem to be brought in when there is more evidence pointing to their culpability. This would change the model to allow for two separate probabilities of being guilty for the white and Black defendants. With that, the assumption would have to follow that the jury is aware of the differences in probability.

While these parameters were excluded from the model, we know that if added in they would impact the outcomes. Each parameter works in the same direction. Regardless of what parameters are missing, Black defendants fare worse off in plea bargains. In each case, the inclusion of having parameters that vary by race systematically disadvantage the Black defendant over the white defendant. The model shows the best possible case of plea bargaining with the

assumption of Black criminality. The outcomes of the model are better than what should be expected and experienced by those caught up in the criminal justice system.

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When Negotiations Fail:

Understanding the Triggers of Police Slowdowns

Abstract

This paper presents a formal model examining the negotiations between police unions and city governments, focusing on the conditions that lead to police slowdowns and the scenarios where negotiations prevail. Through the model, we analyze the conditions under which a bargain would be offered and accepted, preventing a slowdown. The findings suggest that when the cost of a slowdown is high for the union, such as when the union faces potential penalties such as disbandment or fines, the mayor can offer a lower bargain that would still be accepted by the union, avoiding a slowdown. Conversely, if the revenue generated by the police for the city is significant, the mayor is incentivized to offer a bargain to avoid the financial losses associated with a slowdown. However, when the potential revenue loss is low and the costs of bargaining outweigh the benefits, the model predicts that a slowdown is likely to occur. This research provides insights into the strategic interactions between police unions and city governments, highlighting the delicate balance between negotiation and conflict in maintaining public order.

Introduction

Steve Fletcher was a City Council Member for Ward 3 in Minneapolis, MN. Prior to his tenure in office, he was a community organizer. He remembered black canvassers harassed by police while working. He recalled the shooting of Jamar Clark in 2015 and Justine Damond in 2017. His political platform was police reform. He ran on accountability. This platform proved continually relevant in his first two years in office when before George Floyd's murder, four other residents were killed by police violence, the police took stage at a Trump rally, they continued to use "warrior training", and bodycam footage was released showing officers instructing EMTs to dose individuals detained with ketamine to sedate them. His attempts to introduce reform were consistently resisted. (Fletcher 2020)

He and his colleagues were met with blocks at every junction they tried to reform the police. Rather than trying to cut the police budget, he suggested redirecting some of their funds to create an Office of Violence Protection. He was unsuccessful. Fletcher points his finger at the police union, the Minneapolis Police Federation for the opposition. He and his colleagues have faith in the police chief. When the chief fired officers who committed significant violent acts on individuals, his decision was overturned by the Federation. When the department banned "warrior training" the Federation decided to ignore the ban and continue. (Fletcher 2020)

Fletcher witnessed the varied powers of the police union, first hand, during his first term in office. From reinstating fired officers, refusing to comply with department orders, to political attacks. Fletcher said, "reform can be daunting, even scary"(Fletcher 2020). The pushback is strong. He points out that the pushback went beyond politics and impacted the residents of the city. In wards where councilmen opposed police demands, the ward would experience a

slowdown. Anecdotal evidence points to this being organized rather than coincidence. Business owners were told by police officers to complain to the council to their councilman directly about the slow 9-1-1 response times. After he voted to cut the department's budget, he got the calls complaining about response times. Fletcher spoke out about this retaliatory action and politicians across the country reached out about their similar experiences. (Fletcher 2020) Other councilmen who pledged to disband the police department withdrew their positions following the police's response. (Holder et al 2020)

Police slowdowns have a long history in police unions. Slowdowns can be experienced as a pullback, a work-to-rule, a blue flu, or any other type of labor restriction by the police⁵. Slowdowns are the police equivalent to a strike. As a public sector union with an impact on public safety, they are explicitly not allowed to strike. However, their slowdown mirrors the strike a private sector union may operationalize. The Tucson police union initiated a blue flu in response to what they considered illegal and immoral wage negotiations. (Ayres and Ayres 1981). In Oklahoma City, officers participated in a slowdown where they stopped writing traffic tickets and answering radio calls rejecting the wage increase that an arbitration panel recommended. (Ayres and Ayres 1981). When officers in Cleveland were fired for refusing to patrol an area they felt unsafe in, 2,000 police officers stopped working in protest. (Ayres and Ayres 1981) Protesting working conditions that are deemed unfair or wages that are seen as too low is an understood part of a union's repertoire. However, police slowdowns have a distinct difference to private sector strikes. Police, by the definition of their role, have a large power over

⁵ I define pullbacks to be when the police will reduce initiated work. Rather than proactively doing their work, they will wait for direct order to do policing. Work-to-rule is when the officers work exactly as detailed by their contracts. For example, they will only go out with two people in a car. This makes the work go significantly slower than ordinary. A blue flu is when police officers call out of work in large numbers causing a shortage of workers.

citizens of their city and their employers, the city. This type of power is not seen in a private sector union. The police have political power over politicians by influencing their electoral chances. They can influence public opinion of the city government. The police union does contribute to the finances of a city through fines and tickets. Most influential to an average citizen is that a police slowdown can impact their safety or their conception of safety in their neighborhoods. Fletcher illustrated how the police slowdown was instigated by calls for reform. As acts of violence committed by police officers are put into the public zeitgeist, calls for reform will continue. Understanding the mechanisms and decision making process behind initiating a police slowdown and how city government can avoid a slowdown will become more critical. By analyzing these interactions, policymakers, researchers, and public administrators can better predict outcomes, design more effective negotiation strategies, and ultimately ensure that public services are maintained while determining reform options.

To analyze the slowdowns, I ask the following questions: What factors influence the police union's decision to initiate a slowdown and the duration of such an action? How does the elected official respond to such actions, and what determines their willingness to negotiate? I am approaching these questions with a formal model. Because unions are not legally allowed to strike, there is no data about their decisions to initiate a slowdown. There is no way of knowing how many slowdowns did not happen. Regardless of the information available, these slowdowns are important to understand. Police unions have many forms of power. They have strong legal support, they have legislative protections, they have contractual protections, they have leverage in local government, and they have influence in public opinion. However, without understanding the power that they have in a slowdown, the full extent of their power cannot be fully understood. In approaching this model, I want to compare the police's incentives and outcomes

with those of the mayor, or city. I am putting their power in relation to that of the city's government.

Many books on police unions are from the 1970's. They look at the new formation of collective bargaining. After the Boston Police Strike of 1919, police unions took a hiatus. However, in the 1960's and 1970's collective bargaining of police unions took off (Burpo 1971; Gammage and Sachs 1972; Juris and Feuille 1973). This early literature focuses on the incremental financial and structural gains of the police unions at the time they began to gain strength: recognition of their organization, better pay, better job conditions, a voice in policies, and professionalization (Burpo 1971). This focus captures a sudden change in the way police organizations functioned. The authors are able to capture the newly formed power of the organizations and the effect they had on their cities and officers. I want to update the discussion on police unions by looking at the police unions in a more contemporary setting, seeing how they respond to calls for change and accountability.

There are studies that do look at police slowdowns. Sullivan and O'Keefe (2017) look at the New York City police slowdown as a natural experiment. Using the police slowdown as the treatment, they look at how changes in proactive policing affects crime. They find that aggressive policing, especially minor offenses, causes an increase in major crimes (Sullivan and O'Keefe 2017). Carr et al. find a similar effect. They use a police slowdown, once again, as a natural experiment. Nashville police, while disputing the terms of their contracts, decreased self-initiated police actions and did not write traffic citations. The authors use this period to see if traffic citations have an effect on major motor vehicle accidents using the police slowdown as the treatment. They found that this slowdown had no effect on the number of traffic accidents (Carr, Schnelle, and Kirchner Jr. 1980). These two studies show that aggressive and proactive

policing does not deter crime. Chandrasekher (2016) finds slightly dissimilar results. She uses the New York City police slowdown of 1997 when they were negotiating their contracts. She finds that while ticketing was reduced during that time, as the police withheld that financial gain for the city by not writing tickets, arrest enforcement stayed the same during that period. She found an increase in misdemeanors and violations during this period and a minimal increase in larcenies and assaults (Chandrasekher 2016). What these studies have in common is that they use the police slowdowns as a treatment to look at crime or accidents as the variable of interest. This paper makes the slowdowns themselves the variable of interest. Rather than looking at the effect it may have on crime, I intend to look at how the variables that affect whether or not the public will experience a slowdown when there is a breakdown in negotiations between the police union and the local government.

Literature

Public and Private Sector Unions

Literature on unions articulates how private sector unions differentiate from those in the private sector. Unlike their private sector counterparts, public sector unions often wield significant political and economic influence due to the essential nature of the services they provide. However, both share many similarities. Freeman and Medoff introduced the theory of “exit versus voice”. They identify that economic agents, the individuals in a market, are able to express their displeasure either by exiting the market or using their voice. Because of these two options, they explain that union workers keep their jobs longer because their collective bargaining gives them a voice rather than requiring them to leave their jobs when displeased. (Freeman and Medoff 1984). With the collective voice the union employs, Freeman and Medoff

explore differences between unionized and non-unionized workplaces. Because unions demand higher wages and fringe benefits for their workers, the union raises the labor costs for the employer. They also reduce the spread between the highest and lowest paid members working towards equality in the workforce. A union will cost the employer more because they are able to ensure higher wages than for firms that are non-unionized. Firms that are unionized have smaller profits than the non-unionized counterparts. On the other hand, the union's impact on management and organization tends to more professional employees in a unionized workplace. (1984). While this all focuses on the private sector, there are important takeaways. The exit versus voice is a critical theory to keep in mind. A strike of employees is a way to express what an exit would look like if their needs are not met. The idea of exit when striking is not an option is important to understand. Their analysis underscores the need to consider both economic and political dimensions in union-government negotiations, especially in scenarios involving public safety.

Kearney's (1984) work expands the study of unions and fills the need to consider public sector unions. He points out how public sector bargaining is a multidimensional process. Federal, state, and local laws all complicate the ability for public sector unions to act collectively. He looks at the politics involved beyond the standard employer employee relationship. There are legal protections for government unionized workers, and there are also limitations on their abilities to strike. Varying based on the location and the type of work, there are many legal restrictions in the union's ability to strike. In many cases, workers who provide essential services are prohibited from striking. This typically includes health care workers, police, and fire departments. Punishments for striking can vary either being fines and deductions in pay, legal risks to the unions that could lead to their dissolution, or having all striking employees fired. The

legal ramifications for striking are the outcomes of the ethical considerations in a public-sector union striking. There is the concern of public welfare in the case of essential services. Kearney highlights that the potential harm to society should be weighed against the union's demands. This ties to the idea of fairness and equity where there could be specific marginalized populations that are disproportionately affected by the strike. Additionally, he argues the concept of accountability. In the case of public sector unions, their employers are public officials who are accountable for the welfare of their community. The public officials are expected to protect their constituents by the effects a strike could have on them. Given the legal and ethical concerns behind a strike, public unions will employ other ways to limit their labor. Kearney highlights slowdowns, work-to-rule, and sick-outs⁶. With the particularity of the political space in which public unions and governments find themselves in while bargaining, public opinion and its accompanying political pressure finds its way into the bargaining outcomes. Kearney explains that union leaders need to navigate through a political landscape that can include lobbying, endorsements, or campaign contributions to further their policy interests. (1984).

Police Unions

Police unions have a long history in the United States. Police organizations date back to the early 1900s and even the late 1800s. They organized for increased pay, health benefits, and for the social aspect (Juris and Feuille 1973). By the early 1900s, there were 37 cities with organized police organizations (Gammage and Sachs 1972). Like most other unions, their history includes

⁶ This paper refers to sick-outs as blue flu to be more specific to police officers particularly, and also because the author enjoys the rhyme. The author would also like to add that while one article referred to firefighter's sick-outs as 'red rash', multiple sources in various fire departments only laughed and had not heard of such a phrase.

For simplicity's sake all types of work restrictions - work-to-rule, blue flu, slowdowns, etc will be called a slowdown putting them all under one umbrella of restricting and limiting the policing activities

strikes some more infamous than others with the Boston strike being particularly notable. While there were two police strikes prior, Ithaca and Cincinnati, the Boston police strike of 1919 was so significant that new police unions would not be founded for a few decades. The Boston police held a four-day strike to demand better working conditions. They were overworked, underpaid, working in a vermin-infested station, and were required to pay for their own uniforms. Of the nineteen hundred police officers employed in Boston, around twelve hundred walked out when the police commissioner suspended nineteen officers for engaging in union activity. Looting and rioting started the first day and seven residents were killed, requiring the National Guard to be brought in to suppress crowds (Burpo 1971; Gammage and Sachs 1972). Following the strike, the American Federation of Labor dissolved its affiliations with any police organization and there were a couple of decades of inactivity for police unions (Gammage and Sachs 1972).

It wasn't until the late 1930s that police unionism restarted. In 1937, police officers in Portsmouth, VA chartered with the American Federation of State, County, and Municipal Employees (AFSCME). During the 1940s and 50s, the AFSCME and Fraternal Order of Police (FOP) slowly grew memberships. However, it wasn't until the 1960s when collective bargaining for public sector employees began to be legalized that we really saw an increase in police unions (and all public sector unions). During this time there were also non affiliated organizations growing from the police departments and making demands on behalf of all the police. Police Benevolent Associations (PBA) in various cities were using their strength to demand pay increases from their cities despite not being officially affiliated with any national union organizations. In 1969, the New York PBA requested to affiliate with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The AFL-CIO approved the affiliation under two conditions: that national constitutional structure would be defined, and that

its jurisdiction would not encroach upon employment already represented by other AFL-CIO affiliations. In 1969, the New York PBA formed the International Brotherhood of Police Officers (IBPO) (Gammage and Sachs 1972). The IBPO did not successfully take off, and many police unions remain unaffiliated. Following the growth in police unions we see an increase in police militarization in the 1960s and 1970s. Scholars attribute this dynamic to increased racial tensions regarding civil rights. While protesters were calling out the police on their violence, conservative politicians were dismissing and demonizing the protesters. Here, the police unions took the side of the conservative politicians.

The objective of this paper is not to detail the history of police unions, but rather to detail and detangle one the various powers that are specific to police unions – their slowdowns. Early police unions organized with similar goals as private-sector unions. They organized for wages, for health and life insurance, they wanted uniforms to be provided by the city. As national, state, and local governments allowed collective bargaining for public sector employees, the police unions gained institutional, structural, economic, and physical power. They were recognized to bargain for their members and formalized their power through contracts. They were able to see gains in police bills of rights in various states. They have lobbying power. They support candidates in elections. What differentiates police unions from many private sector unions is that like most other public sector unions, there are concerns for public safety when police do not do their labor. And unlike many public sector unions, the work of the police is, in recent times, often under well-deserved scrutiny. As the public is more commonly able to witness police killing civilians, they demand reform. However, we must remember that the police can respond to those calls of reform with their own power.

As mentioned earlier, studies that research police slowdowns use the slowdown as a treatment to measure another variable. These studies are useful in understanding the impact of ‘broken-windows policing’ or highway patrol monitoring. They also highlight slowdowns in their various uses. Infrequently discussed in the literature, however, is how the police decide whether or not to slow down and, if so, for how long. I look at the slowdown as the dependent variable to better understand how and when it is used. This paper models police slowdowns to illustrate what ability the mayor may have to stop a slowdown and how a police union may decide the length of time their slowdown should be.

New York’s 2014-15 Police Slowdown

An infamous slowdown of this nature occurred in New York City winter 2014-2015. On July 17th 2014, Eric Garner was killed in New York City by police and the incident was caught on video. This occurred less than a month before Michael Brown was killed by police in Ferguson, MO. The nation was watching. On December 4th, it was announced that officer Pantaleo was not indicted for the killing of Eric Garner. Eighteen days later two policemen were killed by a civilian who was an anti-police extremist. The police blamed Mayor DeBlasio for a lack of support. Mayor DeBlasio was publicly critical of the police. His campaign ran on ending ‘stop and frisk’ in New York and he made claims that he did not feel safe with his biracial son being out late at night because of both violence and the police in New York. He was also especially critical of the police when Eric Garner was killed. After two of their own were killed, the police turned their back on Mayor DeBlasio at the funeral and began a work slowdown for about seven weeks. During that time, they only performed the necessary duties of their jobs, they left their squad cars only if compelled and absolutely necessary, and they responded to calls in pairs

(Sullivan and O’Keeffe 2017). During this work slowdown zero quality of life summons (which include public consumption of alcohol and disorderly conduct) were issued on New Year’s Eve. To further demonstrate how this work slowdown was a reaction to Eric Garner’s death, the police restricted their labor once more after Officer Pantaleo was fired in August of 2019. While the police union of New York, the Police Benevolent Association, never publicly sanctioned any restriction of labor, during this slowdown of 2019, the president of the PBA, Patrick Lynch, issued a statement telling officers to, “proceed with the utmost caution” and saying “We will uphold our oath, but we cannot and will not do so by needlessly jeopardizing our careers or personal safety.” While never completely accepting responsibility for the organized slowdown, it is easy to use Lynch’s own words to read between the lines to see that this was a sanctioned, if not organized, action by the union.

Studies by Chalfin and McCrary (2017) have examined the impact of this slowdown on crime rates, highlighting the delicate balance between labor actions and public safety. Their findings suggest that while the slowdown did not lead to a significant increase in crime, it raised important questions about the long-term implications of such tactics for both the union and the public.

The Bargaining Model

Elements of the Model

I developed a model to investigate the bargaining that determines the outcome of a police slowdown. It is a complete game of perfect information with two sequentially rational players: the police union (P) and the mayor’s office (M). While this model uses the mayor to represent

the local government official, this can be interchanged with councilman or other positions. This model will detail the union's decision whether or not to initiate a slowdown, and if so, for how long. It will also illuminate the mayor's office's decision to negotiate with the union, and if so how much will they offer. Using this model, I show how the union will decide the length of their slowdown and what the mayor is willing to offer to prevent it.

For the game, I am assuming a limited set of inputs to allow for simplicity and flexibility to use this as a framework to understand slowdowns in multiple locations and situations. In the model, the police union wants something from the bargain. The outcome of the bargain will be (x_i) . The bargain is a continuous variable that allows the mayor to pick a specific amount to offer. The bargain from the mayor can be thought of in multiple ways. For the purposes of this model, the bargain is in one dimension. This, most likely, would be financial gains for the officers in the form of pay increases, benefits increase, or increased resources. However, we can also think about offers from the mayor to be along the lines of legal protections for the unions against accountability or even voicing support for the union and rebutting charges against police. Internal discipline procedures can be built into the police contracts to allow for minimal oversight of the police (Rushin 2016). In 47 cities, there are provisions in the police union contracts that impede accountability (Harris and Sweeney 2021). And these provisions have a strong negative effect on those living in the cities. Newly implemented collective bargaining can lead to increased violent instances of misconduct by police officers (Dharmapala, McAdams, and Rappaport 2019). For the simplicity of this model, we will assume the bargain to be in one dimension, but further models can expand these to multiple dimensions.

If the police union chooses not to accept x , their next action is determining how long to schedule their slowdown. The slowdown length of time is denoted by the variable, t . Similar to x ,

t is a real number continuous variable. However, the slowdown does not come without a cost. The model includes C as the cost to the union. C is predetermined before the game starts and is known to the union and the mayoral office. As mentioned earlier when reviewing the work of Kearney, the cost of initiating a strike or slowdown can vary by location and legislation. Historically, high-profile public sector strikes were met with high costs. For example in 1981 when PATCO, the Professional Air Traffic Controllers Organization, held a strike despite their no-strike clause, President Reagan fired over 11,000 strikers and banned them from future federal employment. New York City has Taylor's Law that establishes the right for public employees to unionize, but also articulates their prohibition of striking. When NYC Transit workers held a 12-day strike in 1966, they not only completely stopped the city, but they also violated the law. That violation led to fines for the union with some union leaders getting put in jail for their role. (Kearney 1984). While these examples are particular to complete strikes, there are still potential costs to unions for initiating a slowdown. Slowdowns are in a legal gray area where they can possibly be interpreted as a work stoppage. For example, in 1971, the New York City Police Benevolent Association had a slowdown where they reduced the arrests and citations, responded more slowly to non-emergency calls, and instigated a work-to-rule slowdown further slowing down policing in the city. The city took them to court. Court injunctions forced officers back to work with their typical policing practices. It was ruled that the PBA violated the Taylor Law and was penalized. The union was fined and officers engaged in the slowdown lost two-days of pay for each day that they participated in the slowdown. (Van Gelder 1971) With the laws of the locality and the historic interactions between the union and the city, C is known by both parties.

This game is modeled where the mayor is driven by reelection. Because of this, the model includes an election bonus, E , if reelected. However, the police union is not motivated by electoral results as long as they get their preferred negotiation. I am modeling this as if the police union does not care who is in the position of leadership. Rather, they are looking to have their demands met. This is because a police union is able to work between contracts being signed and renegotiated. While their pay will remain on their old contract's dictated rates, police unions can wait extended time between contract negotiations. (Chandrasekher 2017) If a contract expires, when the next contract is agreed up, back pay is given to the employees working without a contract during that time. There is no harm for the union to out wait a mayor. However, the mayor's needs for reelection are immediate. The mayor cannot out wait public opinion and can even have the union influence an election in or against the incumbent's favor.

Scholars have examined how public sector employees are able to negotiate best, often attempting to influence who their employer is by influencing elections. Off-cycle elections often have lower turn-out. Here, unions are advantaged. If the union gets all their members to vote, they can be the majority of those who show up and therefore decide who wins. Anzia determines that in off-cycle elections teachers end up getting paid 3% more (Anzia 2011). Moe investigates how public-sector unions can work against public interest. He investigates the strength of teachers' unions. While public opinion supports public school reform, teachers' unions are able to block or slow down reform. Through their ability to influence school board elections, they can virtually select their employer and are able to ensure the best outcome for them as employees rather than for the students (Moe 2011). Whether or not a municipality has a public-sector union affects the amount of money the employees receive from the city. Anzia and Moe determine that the presence of a union positively increases their pay. They find that firefighters and police

unions make more money (and cost the city more) when they have a union (Anzia and Moe 2015).

Along with the union's ability to mobilize the officers to vote, the union is also able to influence the public's perception of the mayor. A key factor in voter's decision making on mayoral elections is their perception of keeping law and order. High crime rates lead to lower support for the mayor and will hurt the incumbent during an election. The decline in crime under Mayor Rudy Giuliani's administration, driven by policies like the "broken windows" approach, played a significant role in his re-election in 1997 when crime rates were a central topic (Messner et al., Social Problems, 2001). Voters credited Giuliani with restoring safety to the city, reinforcing the connection between crime rates and electoral success. A police slowdown demonstrates the police's displeasure in the city government. For voters who are concerned with crime and support the police, this could be a decisive factor in their voting. It is important to note that slowdowns do not necessarily cause an increase in crime. However, I argue that the police publicly opposing the mayor will affect the voters' actions and the voter's interpretations of safety in the city.

Along with maintaining enforcement of the law, police departments can be significant sources of revenue for cities. In the model, R is representative of revenue produced by the police department. This revenue generation is often a byproduct of various policing activities, such as issuing fines, fees, and tickets, as well as through civil asset forfeiture. These are all actions that can be halted or limited during a slowdown. Cities often rely on this income to fund various municipal services, and in some cases, these revenues can constitute a substantial portion of the city's budget. For instance, in Ferguson, Missouri, traffic fines and court fees were reported to be the second largest source of revenue for the city in the years leading up to the Department of

Justice investigation in 2014 (Harvard Law Review, 2016). McIntire and Keller found that 730 municipalities rely on tickets and fines for at least 10% of their revenue (McIntire and Keller 2021). In 2016, 7% of Chicago's operating budget came from tickets (Sanchez and Kambhampati n.d.). That was almost \$264 million dollars in tickets. A slowdown will reduce police activity, especially ticketing, resulting in negative utility for the mayor's office. In this model, the mayor's office is negatively impacted by the slowdown in part by the loss in revenues over time.

While the revenue brought in by the police can have a sizable impact in the city's funds, their revenue may be replaceable. For example, in 1997 the New York City police union participated in a nine-month slowdown. During this time, it could be assumed that ticket writing would decrease. In some ways, it did. There was a 13% reduction of total criminal tickets issued. However, there was a 26% reduction in criminal tickets issued specifically by patrol officers. While only the NYPD can issue criminal tickets, only the patrol officers participated in the slowdown. The Housing and Transit Bureaus, within the NYPD, are represented by a separate union and they did not participate in the slowdown. Importantly, during this nine-month slowdown, there was no statistically significant decrease in parking tickets. At the time, there were 13 agencies that could issue parking tickets. While patrol officers decreased their ticket writing by 38%, the effect to the city's revenue was completely offset by the other agencies increasing the number of tickets they issued (Chandrasekher 2016).

The Game

I am approaching the question with a formal model. Because unions are not legally allowed to strike, there is no data about their decisions to initiate a slowdown. There is no way of knowing

how many slowdowns did not happen. Regardless of the information available, these slowdowns are important to understand. Police unions have many forms of power. They have strong legal support, they have legislative protections, they have contractual protections, they have leverage in local government, and they have influence in public opinion. However, without understanding the power that they have in a slowdown, the full extent of their power cannot be fully understood. In approaching this model, I want to compare the police's incentives and outcomes with those of the mayor, or city. I am putting their power in relation to that of the city's government.

I developed a model to investigate the bargaining that determines the outcome of a police slowdown. It is a complete game of perfect information with two sequentially rational players: the police union (P) and the mayor's office (M). This model will detail the union's decision whether or not to initiate a slowdown, and if so, for how long. It will also illuminate the mayor's office's decision to negotiate with the union, and if so how much will they offer. Using this model, I show how the union will decide the length of their slowdown and what the mayor is willing to offer to prevent it.

The structure of the bargaining model is as follows:

- Mayor (M) moves first. Seeing growing displeasure with the police union, the mayor makes an offer $x_i \in (0, X)$ to the police union (P)
- Police Union (P) observes the offer and then chooses to reject or accept, $a_m \in 0, 1$. If P accepts, the game ends. If P rejects, P chooses a length of time $t_i \in (0, T)$ to slow down.

- Nature (N) finishes the game determining the outcome of the mayoral election, $\Theta \in 0, 1$

With 1 being the incumbent being reelected. $\Theta = 1$ with the probability π . The electoral

chances of reelection reduce with a slowdown so π is a function of t . With $\pi(t) = \frac{1}{2+t}$

The strategy set for the Police Union is defined as S_P s.t. $\{P_1, S_P \in \mathbb{R}^+ \mid 0 < S_P < T\}$

where $P_1 \in \{0, 1\}$ for rejecting or accepting the mayor's offer with the next action being

determining the length of the slowdown. The strategy set for the Mayor is defined as S_M

s.t. $\{S_M \in \mathbb{R}^+ \mid 0 < S_M < X\}$. The upper limit of the strategy set for the Mayor is

determined by the boundaries of the negotiation. This can be the city budget or the

amount of legal leeway they have.

The payoffs of the model are as follows:

- $u_P = ax_i + (1-a)(t_p) - (1-a)C(t_p)^2$ The utility for P is determined by the benefits of a slowdown, either the bargain from (x_i) , by the cost of participating in the slowdown for a period of time, and by the length of time the slowdown lasts. The cost (C) is the risk that the union takes on as they continue to engage in actions that violate their legal contract and it is the increased cost to continue to manage and facilitate the slowdown. The cost works against the positive benefit of slowing down over a period of time. This benefit is the continuation of pay for less work. Note, if M's offer is accepted, the utility will only be x_i . If P slows down, there will be no benefit from the offer, but only the benefit of time of the slowdown subtracted by the cost of slowing down.

- $u_M = -ax_i - (1 - a)R(t_p) + E(\Theta_i)$ The utility for M is a result of losses from the slowdown, losses from the offer, and from the result of the election. The losses of a slowdown will be the revenue (R) lost over the length of the slowdown. The losses from the offer (x_i) is the negative of the negotiation that P receives in an accepted offer. Winning the election gives an election bonus of E. If P does not accept the offer, there will be no loss of the offer, but there will be the loss of revenue. If P accepts the offer, there will be the loss of utility from the offer, but no loss in revenue. With θ_1 being the realized probability that the mayor is reelected. The likelihood of being reelected will decrease as the time of the slowdown increases. From that, π is a function of t defined as $\pi(t) = \frac{1}{2 + t}$ If there is no slowdown, there will be a $\frac{1}{2}$ likelihood that the mayor is reelected. With a slowdown, that probability declines.

Assumptions

In order to create a formal model of the bargain between mayors and the police union, I made a few assumptions. First, the overall structure of the model is a one-shot bargaining model. I took away the opportunity for P to make a counteroffer. While this assumption does not fit well under contract negotiation, it matches the inspirational case. With a slowdown following calls for reform, there is no contract negotiation back and forth. The mayor has the opportunity to show support to the police by opposing charges, by speaking on behalf of them, or by offering legal protections to defend the department. Once that does or does not happen, there isn't a negotiation between the mayor and the union. There is only the union's response. However, in making this

assumption, I am collapsing slowdowns that occur during contract negotiations to be in the same category as slowdowns that happen in response to public outrage and calls for reform. The decision calculus between the two would not be the same. However, to make the model legible and generalizable, this assumption was made.

I also make various assumptions in the utility structure in the model. I assume that the only positive utility the police union achieves in the slowdown is the length of time of the slowdown. However there could be many other areas to provide a positive utility. For the mayor, an electoral benefit may not be suitable in every case. If the mayor is ineligible for another term, there would still be additional variables that would dissuade M from allowing a slowdown. On the other hand, a public display of not supporting the police could be politically beneficial, for the mayor. With De Blasio, his platform was being against the police. A slowdown that demonstrates that the police do not support him should not hurt his reelection chances.

Solution

This game is created building upon foundational models of game theory. The theoretical basis for analyzing bargaining interactions between unions and government officials can be traced back to Nash's (1950) The Bargaining Problem, which introduces the concept of a Nash bargaining solution. This model provides a foundational framework for understanding how two parties can arrive at a mutually beneficial agreement based on their utility functions. In the context of police slowdowns, the Nash solution offers insights into how the union and the mayor's office might negotiate to maximize their respective payoffs, considering the costs and benefits of both action and inaction.

The game is solved using backwards induction and subgame perfect equilibria.⁷ P will accept a bargain if the bargain is greater than or equal to the expected utility of engaging in a slowdown. Accepting an offer from M will give them the utility $U_P = x_m$. To compare with the utility of a slowdown, P maximizes the utility of a slowdown. P will engage in a slowdown with $t_p = \frac{1}{2C}$. With this, P will only accept an offer at least as good as the benefit from a slowdown:

$$x \geq \frac{1}{4C}$$

For the police, the higher the cost of the slowdown, the lower the minimum offer they will accept. In cities where there is an anticipated high cost of the police, the mayor's office can easily offer a bargain that will be accepted and prevent a slowdown.

For M to determine x_m they need to compare the utility of an offer at some x to the utility of a slowdown with P's ideal length of time. The utility of an offer needs to be greater than or equal

to the utility of a slowdown at time $t_p = \frac{1}{2C}$. Which means that

$U_M(x = x_m, t = 0) \geq U_M(x, t = t_p)$ Using the t_p calculated earlier, we find the inequality shows the most M will offer:

$$x \leq R \left(\frac{1}{2C} \right) + \frac{E}{4C + 10}$$

⁷ The appendix includes a complete solution of the model.

Considering what P will accept and what M will offer, x_m must fulfill this inequality:

$$\frac{1}{4C} \leq x \leq R \left(\frac{1}{2C} \right) + \frac{E}{4C + 10}$$

Analysis

Finding the range for x in which a bargain would be offered and accepted, allows understanding under which conditions we would and would not see a slowdown. If there is a high cost for the union to slow down, the bargain the mayor would offer can be significantly low. If it is understood that the union can be disbanded or fined a large amount, we will not see a slowdown. The mayor can give a small offer. The accepted offer would deliver the mayor a better utility than if a slowdown were to happen. If the revenue the police produce for the city is high, we would also expect to see negotiations on the bargain to be accepted because the mayor would need to offer a bargain to avoid losing that revenue by having a slowdown.

We would expect to see a slowdown if the inequality does not hold. If

$$\frac{1}{4C} > R \left(\frac{1}{2C} \right) + \frac{E}{4C + 10}$$

There would be no bargain that M could offer to P for P to accept. The inequality above would hold if R was particularly low. If R is close to 0, and E is not too large, the cost the city would have to bargain would be higher than the cost of slowing down. The offer the city would provide would be smaller than the utility P got from slowing down and the model would expect a slowdown to occur.

The cost to the union and the mayoral incentives for reelection are hard to measure, but the revenues generated by the police are not, and they can vary by location. For Chicago, a sizable proportion of revenue is generated from fines and forfeitures. In 2018, fines and forfeitures accounted for over 10% of Chicago's general fund and 5% of total governmental revenues (Maciag 2019). As I mentioned earlier, in 2016, 7% of Chicago's \$3.6 billion dollar operating budget came from tickets (Sanchez and Kambhampati n.d.). Coupling the need for Chicago's police revenue to continue with an election bonus for the mayor, the model would expect to see no slowdown. That is unless there is no cost for the police union.

While the revenue brought in by the police can have a sizable impact on the city's funds, their revenue may be replaceable. For example, in 1997 the New York City police union participated in a nine-month slowdown. During this time, it could be assumed that ticket writing would decrease. In some ways, it did. There was a 13% reduction of criminal tickets issued. However, there was a 26% reduction in criminal tickets written by patrol officers. While only the NYPD can issue criminal tickets, only the patrol officers participated in the slowdown. The Housing and Transit Bureaus, within the NYPD, are represented by a separate union and they did not participate in the slowdown. Importantly, during this nine-month slowdown, there was no statistically significant decrease in parking tickets. At the time, there were 13 agencies that could issue parking tickets. While patrol officers decreased their ticket writing by 38%, the effect to the city's revenue was completely offset by the other agencies increasing the number of tickets they issued (Chandrasekher 2016). At the end of this long slowdown, the Police Benevolent Association accepted the same contract that was available to them one year prior. The mayor did not make another offer given the slowdown. Because of the minimal effect the PBA had on the city's revenue, the mayor did not have an incentive to make an offer. For cities that rely on the

police union as a source of revenue without having other ways to supplement, more often than not there will be no slowdown. The mayor could not afford the slowdown and therefore would have to make an offer. In the case of 1997 New York, the revenue stream would not be interrupted by a slowdown. While there is no measure for E in this case, Mayor Rudy Giuliani, the 1997 mayor of New York City, may not have been concerned that the slowdown would have any effect on his reelection and did not put much weight to E for this model.⁸ However, we can see how R had a large impact in the slowdown. Because R was low, the mayor did not have much to lose in the slowdown. I also argue that C was low for the union. Giuliani was a pro-police mayor and supported the PBA. The likelihood of legal consequences for the slowdown was low and therefore C, in the model, was low.

Discussion

This model shows the way in which the variables of city revenue generated by policing, costs to the union, and electoral motivations would either encourage the mayor to make concessions to avoid a slowdown or determine that the police department will instigate a slowdown. The present analysis of police slowdowns as a strategic bargaining game contributes to the broader literature on public sector labor relations by providing a nuanced understanding of how police unions and city governments navigate these complex disputes.

Future research could build on this analysis by exploring the variations in R, C, and E.

Focusing on negotiations made between the mayor and the police union would illuminate times

⁸ Mayor Giuliani was strongly in support of the NYPD during his tenure as mayor. He was the mayor of stop and frisk, is credited with bringing 'broken windows policing' to New York, supported the PBA when they opposed a civilian review board, and brought police into public schools. (Lieberman 2021) In this case, the public's perception of Giuliani being pro police would not have been altered by a slowdown.

where there may have been the possibility of a slowdown that was avoided by an offer from the city that the union accepts. Additionally further studies could look downstream at interactions between the mayor and the union following a slowdown. How do further negotiations look after the threat of a slowdown is seen as real. This model could expand to be a signaling model where the union could signal the threat of slowdowns and the mayor would have to update based on that signal.

Another iteration of this model should include the public. Right now, the model assumes that a slowdown is meant specifically as a statement to the mayor. However, the public may be the audience that the police union intends to speak. Including the public would add another variable to the utility of the police having them look to public opinion. While the current model has the mayor care about the public's view by reelection, this makes for a slight imbalance. It is possible that the union could garner support with a slowdown and have the public voice demands for the union, or the union could risk public support with a slowdown.

Additionally, comparative studies of police labor disputes in different cities and countries could provide further insights into how legal and political contexts shape the outcomes of these strategic interactions. Police unions exist in Canada, Australia, Germany, and Finland. Similar to the States, the Australian and Canadian police unions are specifically denied the right to strike. However, they engage in similar ways with blue-flus or work-to-rule stoppages. Case studies of other countries can put the slowdowns I modeled into context to see if, indeed, this model is generalizable.

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Unseen Power?

Examining Police Union Influence During the 2015 Baltimore Slowdown

Abstract

This case study explores the 2015 police slowdown in Baltimore, focusing on whether the police union played a significant role in orchestrating the event. Through semi-structured interviews with journalists and experts familiar with the case, this study examines the dynamics of police behavior, union influence, and the broader implications for public policy. The research reveals that despite expectations, the Baltimore police union did not assert significant influence during the slowdown, failing to secure public support or negotiate favorable outcomes. Instead, the union's role was largely confined to protecting officers during prosecutions, resisting reforms, and maintaining its political leverage. The study sheds light on the limitations of police union power in day-to-day operations and highlights their influence in shaping public discourse and political outcomes. These findings contribute to ongoing debates on police reform and the structural challenges in addressing accountability within law enforcement.

Introduction

As an institution, the police present as strong. They are an armed force employed by the government with enforcement power. As the representing body of the police, police unions similarly represent as a strong force. They are seen as a special interest group, not only bargaining for their members, but also shaping politics. Being one of a few types of public-sector unions, police unions benefit from representing workers with a monopoly on their labor source. The public hears from union representatives making strong statements, public officials have to reckon with union representatives as they negotiate their contracts. With such a powerful base, it would follow that in the face of backlash from the public following viral acts of civilian violence and death at the hands of the police, we should see the strength of the police union at full force. In cities like New York, St. Louis, Ferguson, Atlanta, Baltimore, and Chicago, both residents and the national public looked to reform or abolish the police in the aftermath of civilian deaths at the hands of police. These calls could be seen in protests, in the news media, and on social media. Here, further investigation is needed to understand the way that this political institution, the police, is able to respond. How does the police union organize a police slowdown to further their political goals when the public demands reform? This paper investigates the Baltimore police slowdown focusing on the organization and structure the union provides in the aftermath of Freddie Gray's murder.

Following the deaths of Michael Brown and Eric Garner by police in 2014, activists have engaged the public to think more critically about policing in the United States and abroad.

Activist Johnetta Elzie was in Ferguson, MO hours after Mike Brown was shot and saw his body

in the street. Within weeks, Elzie was one of the cofounders of Campaign Zero, an organization that calls for policy reform of policing (Owens, 2022). Focusing on ten policy solutions, Campaign Zero strives to “live in a world where the police don’t kill people by limiting police interventions, improving community interactions, and ensuring accountability” (“Campaign Zero” n.d.). However, since Ferguson, over 135 unarmed Black people have been killed by the police (Thompson 2021). These publicly viewed killings widely shared and broadcasted, gave the public a close-up view of police violence. With patterns of racially targeted police violence being discussed in mass, we saw a growth in this public imagination of a world without the killings of unarmed Black men and women. Calls for police accountability began to gain in popularity as the criminal justice system was viewed with a more critical eye. These calls for accountability were amplified with the 2020 murders of George Floyd and Breonna Taylor. After these deaths, accountability was replaced with calls of defunding or abolishing the police.

However, reforms face strong opposition. Police have political power that their union is able to harness. In Cleveland, a federal consent decree ordered the police department to make reforms. However, the reforms were not taken seriously. An official from the U.S. Justice Department believed that the union told the officers to do the bare minimum and not follow all the reforms. In St. Louis, the elected top prosecutor, Gardner, proposed an independent misconduct office. Union leadership was able to block the proposal from ever going to a vote; they hired a lawyer to try to limit the prosecutor’s office from being able to investigate misconduct, and campaigned against her in the next election. In Minneapolis, councilman Fletcher wanted to redirect money from hiring more police officers to violence prevention. He claims that after that proposal, 911 calls in his district were responded to more slowly (Scheiber, Stockman, and Goodman 2020).

Police Unions as a Source of Power

In the 1960s collective bargaining for public sector employees began to be legalized and we saw an increase in police unions (and all public sector unions). During this time there were also non-affiliated organizations growing from the police departments and making demands on behalf of all the police. Police Benevolent Associations (PBA) in various cities were using their strength to demand pay increases from their cities despite not being officially affiliated with any national union organizations. In 1969, the New York PBA requested to affiliate with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). The AFL-CIO approved the affiliation under two conditions: that national constitutional structure would be defined, and that its jurisdiction would not encroach upon employment already represented by other AFL-CIO affiliations. In 1969, the New York PBA formed the International Brotherhood of Police Officers (IBPO) (Gammage and Sachs 1972). The IBPO did not successfully take off, and many police unions remain unaffiliated. Following the growth in police unions we see an increase in police militarization in the 1960s and 1970s attributed to the dynamic to increased racial tensions regarding civil rights. With politicians fearing appearing “soft on crime” and increases in budgets, police departments and their respective unions continue to grow in strength.

The job of a police union is varied and all encompassing. As to be expected with a union, police unions have collective bargaining power. Taking the government’s position, DiSalvo (2015) explains how public sector unions cost the city money. He is correct. Police unions are able to win their members increased salaries. Anzia and Moe (2015) show that when police are unionized, they have increased wages and benefits compared to non-unionized police forces. As a public service, they have special negotiating power. They have a leverage they can bring to the table as they are an ‘essential’ service with a monopoly on the market (Juris and Feuille 1973).

Police unions were founded to bring material and capital gains to the officers. They have been successful in that area.

Police unions have strong political influence. They are able to shape their local political environment in a few different ways. One way we can see their strength is in their power as a voting bloc. Off-cycle elections have lower turnout. However, during these elections, public sector unions are able to mobilize their workers to turnout to vote. In these elections, special interest groups, like a police union, will do well because they represent a large voting population. For example, Anzia (2011) finds that in off-cycle election years, teachers unions are able to get their workers a 3% increase in their pay. Beyond voting, police unions can work to get their preferred candidate elected. They will back campaigns of those they support to get specific officials elected (Anzia and Moe 2015, Keenan and Walker 2005). While a public official is in office, we see the union's political power to influence the budgets ensuring the police remain well funded (Walker 2008). We are also able to see the police union's strength in the way they are able to get specific legislation enacted. Police unions are known for having strong lobbies (Juris and Feuille 1973). Through lobbies, police unions are able to weaken accountability. For example, in 2018 a bill was introduced in the California legislature to restrict the police officer's discretion when using lethal force. California police unions worked together to successfully block the bill (Rad et. al 2023). This theme of police unions working to protect themselves from outside forces is one that is seen regularly.

Police unions, their contracts, and states' Police Bills of Rights work together to shield police from accountability. Shielding police from accountability and oversight is one of the largest patterns researchers have found. While the public has raised concerns about and fought to eliminate police violence, police unions push back. In and of themselves, police unions create an

environment of more violence. Looking at a police department in Florida, Dharmapala et al. (2014) found that the newly unionized sheriff's department saw a 40% increase in violent incidents of misconduct among the officials after unionizing. Unions will use their funding to financially back officers accused of misconduct by supporting their legal fees and making it harder for the local government to fire a member. Along with the support to the individual officer, police unions are able to stop advancements of accountability or eliminate attempts of accountability that were enacted. It is no wonder there is a positive correlation with police union protections and civilian abuse. In the police union contract, there can be clauses that restrict accountability. Misconduct allegations can be limited in the ways they are investigated. For example, some union contracts allow the officer to know the identity of the complainant ahead of time. This includes civilian complainants. Officers are also given at least 24 hours advance notice before they are questioned, and some contracts allow officers to get their questions in advance. (Harris and Sweeney 2021, Keenan and Walker 2005, Rad et al. 2023, Rushin 2016). These protections can be in the city contract with the union or statewide in the Police Bill of Rights. Police are protected from internal investigation. External oversight is also limited by the police union. Police unions in Maryland were able to impede the creation of a civilian review board, and in Philadelphia and New York City, contract procedures that inhibit investigations caused their civilian review board to be dismantled (Keenan and Walker 2005). With these protections against investigation and oversight, the police union reinforces the norm of this 'code of silence' (McCormick 2016, Walker 2008). The union fosters this brotherhood in the police force where officers will not testify or speak out against other officers. We are left with an us vs. them mentality between officers and the public.

The opposition mentality is promoted by the union. The union fosters this insular culture in the police force, and they also publicly posture making sure the public knows where they stand. For example, in 2014, Michael Brown was killed by officer Darren Wilson. Following Brown's death, witnesses to the shooting spoke, activists spoke, journalists spoke all about police violence targeted towards communities of color. Darren Wilson did not speak publicly to defend himself. Rather, the voice of the St. Louis Police Officer's Association's Executive Officer, Jeff Roorda took the mic. He went on national news programs adamantly supporting Wilson and the police. (McCormick 2015). This action is not uncommon. Following Freddie Gray's death, Eric Garner's death, and Laquand McDonald's death the police union loudly pronounced their support for the officer(s) involved. The police union loudly draws a line in the sand showing that they will support their officers no matter what. When the public demands disciplinary records of officers, the police union will fight any release of information. This further drives a wedge between the police and their public as they fight against any type of transparency. (Walker 2008) While they fight to ensure their secrecy, the union will also act as public relations to garner support by launching advertisement campaigns. In New York City, the police union spent over \$125,000 to advertise voters to vote against a ballot measure that would enhance the civilian review board (Geringer-Sameth 2019). In Memphis, the Police Association put up billboards advertising the rising crime rates and the reduced number of officers. Their advertisement was meant to garner public support for the police and push the mayor's hand to increase their budget. (Poe 2017). Police unions are comfortable playing either side of the coin. They will appeal to the public when it feeds their interests and they will work against the public when it does not.

Overall, a police union has many different avenues of power that they can wield. They can elect their preferred candidate and ensure the legislation works in their favor. They can

garner public support or shield themselves from the public's prying eyes. They collectively bargain for both capital gains and contractual protections. They are able to shield themselves from ridicule and oversight and they are able to eliminate powers that look to control them. They fight back against accountability at every step of the way. Because of all this power, we would expect to see the union rallying their troops during a time of upheaval. We would expect to see the union acting in the police officer's best interests and the officers looking to their union for leadership. We would expect the union to harness the power of all members to demand change from the city. This paper takes a deep dive into the Baltimore police force following Freddie Gray's death. I investigate the slowdown and look to see how the union organizes this strike-like action to achieve their goals. However, I find that we don't see the union's organizing force in the slowdown. Rather they are playing catch up as their officers stop doing their work.

Methodology

Participant Recruitment

The participants for this study were identified through a comprehensive review of articles pertaining to Baltimore's slowdown in 2015. Authors of these articles were contacted to inquire about their interest in participating in an interview. The selection of interview subjects was based on their relevance to the topic and their potential to provide valuable insights into the slowdown. I interviewed Brad Heath, Brandon Soderberg, David Graham, and Peter Moskos. Brad Heath is a writer for Reuters and used to act as the Justice and Investigations Editor at USA Today. Brandon Soderberg is a reporter who was born and raised in Baltimore and is a cofounder of the Baltimore Beat. David A. Graham is a staff writer for The Atlantic where he covers politics and

criminal justice. Peter Moskos is a professor at John Jay College and worked as a Baltimore police officer for a year following his graduate degree.

Data Collection

Semi-structured interviews were conducted with the participants. The interviews were designed to allow for flexibility while ensuring consistency in the information gathered. A set of predetermined questions was used as a guide, covering key aspects related to Baltimore's slowdown in 2015. However, the interview process also allowed for spontaneous exploration of topics that emerged during the conversation. The interviews were conducted virtually using the video conferencing platform, zoom, and recorded then transcribed. Prior to each interview, informed consent was obtained from the participants, outlining the purpose of the study, the nature of their involvement, and the confidentiality measures in place to protect their privacy.

Complicating the idea of Union Power

Police can restrict labor in a few ways. They can participate in a 'blue flu' where many officers call out sick en masse. Police can work-to-rule where they follow orders exactly as written. This leads to a reduction in work as officers will not go out without another officer, or will not work above their required hours. There is also a pullback where officers will reduce the amount of work they do by no longer being proactive in their work. They will not issue tickets or summons and only respond when called. In some cases, police have been shown to strike completely. In this paper, all of these reductions of labor will be considered a slowdown.

Union-Supported Slowdowns

Looking for union power in police slowdowns, we can find some clear examples. Some union-organized slowdowns include the Baltimore slowdown in 1974 and New York City slowdown in the winter of 2014-2015. When looking at these slowdowns, I am looking to see the union power the way we would expect. This would be the organizing power, the ability to shape public opinion, to shape budgets, and to change legislation in their favor.

In the winter for 2014 to 2015, New York City police officers engaged in a slowdown that could not be ignored. Eric Garner was killed by police in July of 2014. Following his death, the city was publicly critical of the police department. New York City mayor, Bill DeBlasio was one of the voices publicly criticizing the police. However, the criticism was not isolated to a specific time. Mayor DeBlasio's campaign ran on ending 'stop and frisk' in New York and he made claims that he did not feel safe with his biracial son being out late at night because of both violence and the police in New York. Months of tension between the New York City Police Department and the mayor finally broke when two police officers were killed by an anti-police extremist. The police blamed Mayor DeBlasio's lack of support for the death of the two officers. At the service for the two fallen officers, the police turned their back on the mayor. Hundreds of officers faced away from DeBlasio. This public action of disapproval matches the methodology of a police union. This was an organized event with publicity. The news was able to pick this up immediately forcing the mayor to address the police. In fact, before this funeral and before the death of the two officers, the New York Police Benevolent Association sent officers a petition to stop Mayor DeBlasio from attending their funeral if they are killed while on duty. (Altman 2014) The union was able to make a clear point before and after the funeral.

The funeral was the start of a weeks-long police slowdown. It was a work-to-rule slowdown where officers would only do work when directly asked. They responded to calls, but they did not initiate tasks independently like writing up tickets or issuing summons and they would only go out to do work in pairs. What makes this slowdown interesting is that it was clearly organized. For three weeks there was absolutely no proactive policing. This was not merely a reduction, but an almost complete stop. The police stopped providing revenue for the city. It was glaringly obvious when over New Years Eve, there were no quality-of-life summons, which includes drunken disorderly, the entire night (Sullivan and O’Keeffe 2017). During this time, there was a 66% decline in arrests, a 94% decline in traffic tickets and summons for minor offenses, and a 92% drop in parking violations(Celona, Cohen, and Golding 2014). This points to the fact that the police were looking to punish the city specifically by cutting their generated income.

While the steep decline in work that brought money into the city already speaks to an organized stoppage, there is more evidence that the New York pullback was union organized. Officers, reporting anonymously, named the Police Benevolent Association (PBA) as the organizing party of this stoppage (Lind 2015). In a memo the PBA denied sending, reportedly, the Police Benevolent Association encouraged their workers to make arrests only when ‘absolutely necessary’ and accused the mayor for violence against the police saying, “The mayor’s hands are literally dripping with blood because of his words actions and policies and we have, for the first time in a number of years, become a ‘wartime’ police department. We will act accordingly” (Ryan Gorman [@GormoExJourno] 2014). While the PBA took no ownership of the memo, publicly the president on the PBA at the time, Pat Lynch used similar language at a press conference saying, “That blood on the hands, starts on the steps of City Hall, in the office

of the mayor.” (Paybarah 2014). It is universally understood that the PBA organized the slowdown. And it was clear that the slowdown was meant to hurt the mayor’s image. Turning their back on the mayor and accusing him of the deaths of the two officers made a clear statement. The slowdown came to an abrupt end around three weeks later when the commissioner demanded the police to go back to work and from then on policing was business as usual. The union was unable to make any political gains, but did make an effort.

The New York slowdown showed the strong influence the police union has. The slowdown was well defined, almost completely adhered to, and was tied to their political stance. The union president, Lynch, blamed the mayor for police officers’ deaths. The claim of being a ‘wartime’ police department puts the police in opposition of the city government. Their fight was to not act and show the city how much they are needed. However, the battle was lost. The city did not experience a large loss in revenue. New York City has other ticket writing agencies. There are 13 different agencies that can write tickets. During a New York City slowdown in the 1990’s, the other agencies increased their ticket issuance to offset the decline created by the police stopping (Chandrasekher 2016). New York City is able to be flexible and make up those losses in revenue. Also, the decline in this proactive policing in New York did not lead to an increase of violent crime. Rather we can see either no effect or a decrease in violent crime (Sullivan and O’Keeffe 2017; Chandrasekher 2016). Without the police proactively policing, the city was not at a loss. In fact, judging by the crime rates, the city did well. Without the data to back up their point, the New York City union had no leg to stand on. They could not demand changes from the mayor; they could not gain public sympathy. The slowdown abruptly ended with no gains for the New York City Police Department.

Baltimore does have a history of having a successful union organized slowdown. However, they had to deal with the consequences. In 1974, Baltimore police joined a strike alongside other public employees. More than 2,800 officers participated in a four-day strike holding signs in the picket line. They were protesting their wage in a time of growing inflation. Around 481 police officers publicly signed the strike. While they were successful in achieving a raise, more than 80 police officers were fired for their participation in a strike. More than that, the Fraternal Order of Police lost their collective bargaining rights for eight years. (MacGillis 2020a; Times 1974). Seen as a public safety necessity, the police cannot legally strike. Publicly announcing a strike and acting in one had consequences. It is important to remember that unions will typically not announce their support of a strike because of risk to their collective bargaining rights. Apart from the fired officers and the union's consequences, the strike was successful. They were able to get the city to concede to their requirements.

Baltimore's 2015 Slowdown

After the murder of Freddie Gray, Baltimore experienced a police slowdown. For months, Baltimore police exhibited a pullback. Officers stop initiating action. Police cruisers would no longer be seen in many communities they were usually found. (MacGillis 2019). During the week of Freddie Gray's funeral, arrests dropped 61% (Fischer-Baum 2015). Looking at data from 2014-2017, there was a 70% decrease in field interviews, a 50% drop in arrests from outstanding warrants, and a 30% drop in narcotics arrests (Heath 2018). These drops have all happened while responses to 911 calls remained relatively unchanged (Heath 2018). While there was still a public demand for the police force, the officers held back the supply. Given that we study the police union as a strong political power, it would follow that the union would have had

an organizing factor in the pullback. They would set the stage for whether or not the police will be proactive in their duties. However, speaking with reporters on the ground, this does not seem to be the case. To sum it up, Peter Moskos states, “By and large, they’re [slowdowns] not [organized]” (Moskos 2023). This was not a unique viewpoint. All of the journalists I spoke with did not believe the union was an organizing force. What does that mean when we think about union power, and how can we understand the slowdown if not an organized act?

First, I want to understand what this slowdown was, if not an organized protest. In the aftermath of the prosecution charging the officers involved in Freddy Gray’s death, police officers in Baltimore approached their job differently. Consequences of their actions were seen⁹. Through their own network, police talking about the prosecutor and their fears lead to a change in the way they approached their daily work. As Heath puts it, “The calculus for every interaction just kind of changed... In an economic sense, that makes a lot of sense, right? People respond to incentives, and they, you know, don’t want to be the guy with the mug shot.” (Heath 2023) Heath speaks to a specific culture of the police. Rather than thinking of the cops responsible for the death of a city resident as ‘bad apples’, each officer who was part of the slowdown would have to see themselves in a similar situation where they could also be prosecuted for their action. Instead of identifying the problem, they closed ranks and defended themselves.

Wanting to understand further if this could have any type of organizing, my resources pointed within the department. Rather than looking towards the union or commissioner, Graham suggests looking to sergeants. He asks, “What are the sergeants hearing from department leadership and what are they not hearing and what are they telling officers on the beat? Or not

⁹ Here, the ‘consequences’ that the police were feeling were the public’s negative reaction and the looming prosecution

telling them” (Graham 2023). Here, the knowledge or fear the sergeants are instilling in the officers could be seen as the initiating action that changed policing. This could even be possible that what seems like a pullback could just be police talking with each other. According to Moskos, this looks like “...organized in a loose sense because cops talk to each other... They hear what’s going on, ” (Moskos 2023). These conversations are going on informally and behind their union’s back, so to speak.

While the slowdown was not union organized, the officers remained backed by the union. The union, along with the police commissioner claimed there was no slowdown (Graham 2015). Which is true, by definition rather than by outcome. There was no organized protest encouraging the officers to reduce their work or their efficiency. However, the union did publicly support the officer’s reaction to the public unrest and the prosecution. In a public statement, union president Gene Ryan said, “There is no respect. The police are under siege in every quarter. They are more afraid of going to jail by doing their jobs properly than they are of getting shot on duty” (Baltimore City FOP [@FOP3] 2015) Echoing the fears of the officers, the union notes that these are individual fears and decision calculi making this change in behavior. Here, when the union speaks, there is no strong point to a political agenda. The union is defending the mental state of the officers. Denying the slowdown but also understanding the officers, the union is making no claims. Unlike the New York case, there was no blame set on any one in leadership. This is not union power as we understand it, but rather examples of the union having to react to what their members are doing and acting on the defensive.

Baltimore is not alone in this pattern of officers initiating a self-determined slowdown. Following the released footage of the murder of Laquan McDonald, protests began, investigations were initiated, and a slowdown was begun in Chicago. Similar to Baltimore, gun

violence rose and arrests declined. After the footage was released, 13 months after the murder, Chicago had a 31% decline in arrests. Moskos, comparing Baltimore to Chicago notes that these, again, are not organized slowdowns. He says, “Baltimore and 2015 Chicago... Those are not organized” (Moskos 2023). Like Baltimore, Chicago’s police union noted how officers did not want to be the next viral video (Rappaport 2016). The President of Chicago’s Fraternal Order of Police, Dean Angelo Sr. explained that it was a problem with morale saying it is the lowest he has ever seen (Schaper 2016). Chicago’s slowdown mirrors Baltimore in very distinct ways. While the public was statistically in more danger, as gun violence increased, the police do not claim an organized slowdown or political stance. Rather, they shift to individualized reactions. This type of inaction was named the “Ferguson effect”. After Michael Brown’s death and national outcry, officers were supposedly more conscious of public scrutiny, therefore they pulled back on their work while crime grew. (Arthur and Asher 2016) While the manner in which they pulled back differed, Atlanta’s police had similar defenses for their slowdown. After officers were charged for Rayshard Brook’s death, Atlanta experienced a ‘blue flu’. One-hundred and seventy officers called out sick following the charges (Silverman and Sanchez 2020). In three out of the six zones in Atlanta, officers were not responding to calls. There were reports of police refusing to leave their precincts unless another officer called for help (Silverman and Sanchez 2020; Almasy, Young, and Sayers 2020) What makes Atlanta similar to Baltimore and Chicago is that the officer’s reason to call out was pointed to individual feelings. The union claimed that the officer morale was low, the lowest they have ever seen. The union says their officers are being treated poorly. (MacGillis 2020b). Driving home the point that this was not organized, the regional director of the International Brotherhood of Police Officers for Atlanta, Vince Champion, acknowledged that this was happening. He noted that there are officers calling

out sick en masse, and that there are officers walking off shifts. He does drive home that this was not union organized, and that the union had no prior knowledge of this (Almasy, Young, and Sayers 2020). The fact that we can see this type of action across multiple cities shows that Baltimore is not an exception. The police union's power in these times is weak. They are unable to make any change for the officers or protect their interests. The union is shown as defending their own, but unable to control them.

Analysis

Literature on police unions illustrates the various ways in which we can see their power. Police unions are known for their ability to shape public opinion, influence legislation and public officials, shield their officers from accountability, and collectively bargain on the officer's behalf. The literature does not speak of when the union is powerless in their ability to control officers when they want to slow down. The Baltimore FOP was also not able to conjure power from this slowdown to create change for the officers. This puts a wrench in original theories of police union power. While the other areas of power remain true, this lack of resourcefulness at a critical time is important to study. A slowdown can be costly to a union and lead to fines, firing officers, jail time, or the end of a collective bargaining agreement with the city. If the FOP of Baltimore was not organizing this slowdown to support their political gains, they should have had the power to get the officers back to work. However, as mentioned earlier, this slowdown went on for months. The union leaders were playing defense and unable to turn any action into a win.

In terms of public opinion, the police were in choppy waters. Protesters called out the police. People were in the streets demanding change. Residents heard the union's defense that

the police were fearful to do their job. They saw the increased violence in their neighborhoods. Some were becoming fearful in their own communities. However, some of the residents of Baltimore were not convinced that the police were acting out of fear. One mentioned that he believes the police are slowing down out of anger saying, “They’re absolutely angry that six police officers were charged,” (Campbell and Donovan 2015). The union was not able to completely convince public opinion. The slowdown could not be wrapped up to garnish more support for the police department. Some residents did see a silver lining in the slowdown. They were used to their community being harassed and unjustly arrested by the police. One mentions, “I don’t think police arresting fewer people is a bad thing. Maybe police will chill out a little bit in these neighborhoods and give people a chance to breathe,” (Campbell and Donovan 2015). The union had a large way to go with the residents in certain areas of Baltimore. Already on weak standing as they saw the police harassing their residents, the slowdown did not garner any more support.

The slowdown wasn’t just witnessed by the public, it was targeted to the elected officials, as well. One area of power that the union typically has is regarding public officials. The slowdown occurring immediately after charges were fired is not a coincidence. The prosecutor was meant to see this as a direct response to her choices. Peter Moskos, a current professor of criminology and former Baltimore police officer, had a strong take on the way prosecution would affect the way police work. He mentions that the drop in arrests is responsive to political leaders. He explains, “When I say political opinion, I’m counting the elected prosecutor as a politician there, and one who very much affects policing. Especially, if you charge, I mean, innocent cops...She charged 6 cops. You know, she did want to send a message” (Moskos 2023). Heath also mentions how the prosecutor was a strong motivating factor for the officers saying,

“The risk that a politicized prosecutor or something is going to come after you and use you as a scapegoat for something that goes badly. That’s the one that was talked about the most.” (Heath 2023). It is important to think about Baltimore City Prosecutor, Marilyn Mosby, as a power in opposition to the union and that this is an unusual relationship. Typically, the police and prosecutors have a close symbiotic relationship. They, often, work together. Police assist prosecutors in both plea bargaining and in preparing for trial. Because of their close relationship, prosecutors tend to avoid charging officers. The norm is that police are immune from being investigated by their colleagues, prosecutors. This was not the case, this time.

As discussed earlier, the police union has influence in local government. They can help get candidates elected that support their cause. In Baltimore, the prosecutor is elected into office. The Fraternal Order of Police of Baltimore donated to Mosby’s campaign (Fieldstadt 2015). The union supported her and assisted in her successful campaign. The union did not see that support carry on in the wake of Gray’s death. In fact, when the union was unsuccessful in blocking charges against the officers involved, they switched to argue that Mosby was biased in the case. They asked for her to recuse herself, presuming that she would be biased because her husband is a city councilman (Fieldstadt 2015). All of these attempts failed. Once again, union president, Ryan, took to the public to gain their support. When Lt. Rice was acquitted, Ryan said, “We again strongly urge Mrs. Mosby to stop her malicious prosecution against the remaining three officers.” He called to the prosecutor saying, “Mrs. Mosby, put a stop to these prosecutions and let us move forward to find the real solutions for the problems facing our city.” Directly to the public, he asked for their support saying, “The citizens of Baltimore deserve better from Mrs. Mosby’s office and should request a review of the improper actions of the prosecution.” (Boynton 2016) There was no public outcry for review of the prosecutor. However, Mosby did

drop the charges for three of the five officers. When the first two officers were acquitted, Mosby dropped all the cases. The cases were not dropped because the union demanded. The cases were dropped because Mosby could see they could not be won.

However, Gene Ryan did get his wish in one aspect. While not initiated by the general public, Mosby did answer for her decision to prosecute the officers. The officers who were charged for Gray's death sued Mosby. The lawsuit claimed the officers were defamed and falsely imprisoned. (McLaughlin and Almasy 2016). Prosecutors are meant to be protected from charges brought against them. They are protected from 'malicious prosecution'. To allow her job to continue to be done ethically and without prejudice, her position was supposed to give her absolute immunity for any work done for her job. However, Mosby was not protected. The Judge on the case, Marvin J. Garbis blocked Mosby's argument to dismiss the case and then later rejected Mosby's motion to stay discovery. (Hager 2017) There is no publicly available information connecting Judge Garbis to the police of Baltimore, but it is noteworthy that Garbis later sided with the police union calling changes to the pension reforms for police and fire unconstitutional (Bradford 2018). This shows where the union is able to influence politics. They were unable to stop the prosecution, but they were able to publicly criticize it and support their own. More powerfully, the police were able to bring charges against a prosecutor. It is extremely rare for charges to be brought against a prosecutor. Just the fact that the judge did not immediately dismiss the case is powerful on its own.

The union's presence during this time shows a clear divide on when they act and when they do not. The Baltimore FOP did publicly support the charged officers. They fought for there to be no charges made. And although the union was not successful in stopping the prosecutor, they did try. When the prevention of the charges could not be stopped, the union attacked back

showing how they can be a vengeful enemy. At the same time, they were absent in the slowdown. There was no organization, no effort to make this a political move, and no ability to stop it. The union's only action was to tell the public that the officers are scared.

Discussion

With the current literature regarding police unions, we would expect to see the Baltimore police union shine leading up to and during the slowdown. Their officers were being prosecuted, the public opinion was against them, and the police were withholding their labor. The slowdown had the possibility to transform policy, garnish support for the police, or show power of the union. The union could have used the media to gain public support. They could have negotiated with city officials promising to get the police back working with some concessions. However, we did not see any example of union power. The union was not able to get the force back to work. The union did not get public opinion on their side. The police force got nothing apart from charges dropped after two cases were already acquitted.

Pattern in Other Cities

Baltimore's slowdown and union response is illustrative of a pattern we have seen. We see a similar story in Chicago. Following the released footage of the murder of Laquan McDonald, protests began, investigations were initiated, and a slowdown was begun. Similar to Baltimore, gun violence rose. Also similar to Baltimore, arrests declined in Chicago. After the footage was released, 13 months after the murder, Chicago had a 31% decline in arrests. Moskos, comparing Baltimore to Chicago notes that these, again, are not organized slowdowns. He says, "Baltimore and 2015 Chicago... Those are not organized" (Moskos 2023). Like Baltimore, Chicago's police

union noted how officers did not want to be the next viral video (Rappaport 2016). The President of Chicago's Fraternal Order of Police, Dean Angelo Sr. explained that it was a problem with morale saying it is the lowest he has ever seen (Schaper 2016). The union president also directly criticized the prosecution of officers. When Van Dyke was found guilty of second-degree murder of Laquan McDonald, the president of the FOP issued a statement saying, "What cop would still want to be proactive fighting crime after this disgusting charade, and are law abiding citizens ready to pay the price?" (Vi Nguyen [@ViNguyen] 2018). While he disagreed with the legal actions, he included the public in his statement looking for sympathy and public support of the police. Chicago's slowdown mirrors Baltimore in very distinct ways. While the public was statistically in more danger, as gun violence increased, the police do not claim an organized slowdown or political stance. Rather, they shift to individualized reactions. This type of inaction was named the "Ferguson effect".

The 'Ferguson effect' is named from the police's reaction from calls for accountability in Ferguson, Missouri. After Michael Brown's death and national outcry, officers were supposedly more conscious of public scrutiny, therefore they pulled back on their work while crime grew. (Arthur and Asher 2016) While the manner in which they pulled back differed, Atlanta's police had similar defenses for their slowdown. After officers were charged for Rayshard Brook's death, Atlanta experienced a 'blue flu'. One-hundred and seventy officers called out sick following the charges (Silverman and Sanchez 2020). In three out of the six zones in Atlanta, officers were not responding to calls. There were reports of police refusing to leave their precincts unless another officer called for help (Silverman and Sanchez 2020; Almasy, Young, and Sayers 2020) What makes Atlanta similar to Baltimore and Chicago is that the officer's reason to call out was pointed to individual feelings. The union claimed that the officer morale

was low, the lowest they have ever seen. The union says their officers are being treated poorly. (MacGillis 2020b). Driving home the point that this was not organized, the regional director of the International Brotherhood of Police Officers for Atlanta, Vince Champion, acknowledged that this was happening. He noted that there are officers calling out sick en masse, and that there are officers walking off shifts. He does drive home that this was not union organized, and that the union had no prior knowledge of this (Almasy, Young, and Sayers 2020). We see this pattern. The public has an outcry of police violence, and the police claim to be persecuted. The union is not able to control these slowdowns. They do not start or stop it, but they defend it after the fact.

How to understand union power to the police

There is some disconnect between how the police union presents to the public and how they present to their own constituents. Police union power can be seen by the public, can influence legislators and public officials, and will greatly impact the city budget. However, in reviewing these slowdowns, there seems to be a different interpretation of union power to the police officers specifically. The officers' actions are not initiated by or beholden to their union. Rather they act and the union reacts. This leads to a loss of power for the union. Harnessing the labor of the police would be a way to create change for them, but the union is not doing that. The union isn't making progress in their goals, the police officers are not benefiting in any way, and the public is suffering. How can the union be understood from the eyes of the officer?

The disconnect between the union leadership and the membership does call into question what it means for there to be a union organized slowdown. Saying the union participated in a slowdown could mean that the leadership initiated a slowdown, or that the members of the union

are doing a collective action without the leadership. When analyzing a police slowdown not organized by the union, I must reconsider the concept of organization. Initially, I viewed an organization as guided by its leadership, making decisions on behalf of its members. However, this case suggests that an organization's identity can also be shaped by its members' actions, even when they diverge from official directives. The union leadership, in this context, may have long-term goals that conflict with immediate actions like a slowdown, prioritizing strategic positioning over short-term demands for revenge or reactionary measures. Meanwhile, officers might recognize the value of the union in the broader fight for benefits and protections, and choose to act independently to avoid jeopardizing the union's status. This duality—members acting autonomously while still relying on union protections—highlights the complex relationship between leadership and membership. The union's role becomes a balancing act between advancing its long-term objectives and navigating the immediate pressures from its rank and file, who may push for more immediate action without formal endorsement.

To find what the union influences are to the police department, I turn to Moskos, a former Baltimore officer. He describes the union as not being influential in the day to day life of the department. He explained, “[the union] was a nonentity. The union is so much less important in the police department that I think outsiders realize” (Moskos 2023). And that the real experience of the union is how it is able to talk about their politics. While he stated that unions consistently swing more red than the force, he did say, “...a union ends up being sort of the id of the police department in an ugly way” (Moskos 2023). Apart from representing them in salary negotiations, Moskos explained that the unions were not a part of the officers’ everyday lives.

While they may not be heavily involved in the day to day lives of the officers, they are involved in the political sphere. On a regular basis, the union gets to bargain for the officers

when their contracts are up. However, they are not absent between negotiations. Importantly, part of any union's job is to protect their workers. As Soderberg mentioned, "To be fair, a union's job is to do just that, you know. A union's job is to represent its workers as aggressively as possible" (Soderberg 2023). Which is true. Soderberg also iterated what they are able to do beyond that. He defined them this way, "The way I've come to understand the police, but especially the police union, is that it's a special interest group," (Soderberg 2023). Soderberg describes the way in which the police union is able to affect policy, political outcomes, and public opinion. In regards to the case around the murder of Freddie Gray. The union is influential in the way in which the public or prosecutor's office looks for consequences. He explained, "The bar is at charging the guy. So what does the union say? The union says, 'We're gonna fight this'" (Soderberg 2023). The bar is set pretty low. He went on, "The only thing that came out of that uprising in terms of a victory was charging the cops. (Which is something that if you or I or anyone we knew were to have killed someone wouldn't have been a question)," (Soderberg 2023). The union is able to release statements, make public appearances, and tweet pushing against the idea of charging an officer for killing someone. "What happens with police is they [police union] not only say, 'We support this guy.' They say, 'There wasn't a crime. The guy who got shot, well, he was actually the aggressor and he deserved to be shot...'" (Soderberg 2023). Because it is something so publicly argued against and can often not happen, it is taken as a win by protesters when an officer is charged. That baseline, as Soderberg put it, is significantly different than if a regular person was connected to someone's death.

The police union is significantly influential in the way politicians can approach reforms. From my conversation with Soderberg, he stated, "Anything that reduces police power or offers a solution that doesn't involve police is a fundamental existential threat to police and their

power. [The Union is] there to protect people's jobs" (Soderberg 2023). Pushing against reform is the driving purpose of police unions in the way that they are trying to protect the jobs of the workers they represent. As Soderberg mentioned earlier, the baseline set is already low. The reforms that the elected politicians suggest are not particularly extreme. Even though the reforms are minimal, we see the union fighting back. Soderberg said, "Those reforms are already extremely watered down. And then, the police find every single way to sabotage those reforms. They fight them in court, they fight them in the court of public opinion" (Soderberg 2023). This is important because the fight is rigged. Soderberg pointed out, "So the union's leverage is this inability to do anything else about crime. The city and the politicians can't critique the police. And so we are in this, sort of, moment of mutually assured destruction" (Soderberg 2023). The union has a voice to sway public opinion, or at least to influence it. For the union, there aren't consequences for their actions; unlike, elected officials who can lose office. Again, Soderberg summed it up, "I think police unions are their rhetoric... it's still successful in terms of garnishing power and moving through the halls of power and preventing change" (Soderberg 2023). The power of the union is both impressive and persistent. While the union can do whatever they want to capture public opinion, elected officials with power cannot withstand a negative public reaction. Spikes in crime are helpful for police power, because as Soderberg said, the city has no other action they can take against crime. In gubernatorial elections governors are punished for crime rates (Cummins 2009). In mayoral elections, crime also negatively impacts votes for incumbents (Daigneau et al 2023). Not only can union affect current politics, they have long standing impacts. As Graham said, "You can replace the chief of police. You can replace the police commissioner... Those folks are going to stick around for four or five years, and the sergeants are going to be there. And so if you have buy-in from the sergeants, they will make

things happen” (Graham 2023). The police unions and their influence do not disappear in an election cycle. Without officers and then the unions following, change is going to be hit with much resistance. However, some believe that changes are not possible within the system. Soderberg concluded, “The practice of the police is not reformable... You cannot reform this. You have to get rid of it... It is designed to be resistant to reform and to absorb reforms and spit them back out.” (Soderberg 2023). In looking at how the cities fared after the slowdown, you can see the effect on the police’s resistance to change.

The Aftermath

The impact this police slowdown had on the public of Baltimore was longstanding. As noted, arrests declined 61% immediately after (Fischer-Baum 2015). And while the slowdown was reported to be a reduction or elimination of proactive policing, residents anecdotally proclaimed otherwise. In a historically Black neighborhood, residents complained of their 911 calls going unanswered (Graham 2015). Before the slowdown, Baltimore had homicides and non-fatal shootings. However, the week after the funeral of Freddie Gray the homicide rate doubled (Fischer-Baum 2015). The slowdown of police activities after Freddie Gray lasted years (Heath 2018). Just one month after Freddie Gray’s funeral, homicides increased 300% (Heath 2018). The rest of the year continued with an increase in homicides with 2015 having 62% more homicides than 2014 (MacGillis 2019). By 2017, Baltimore had its highest per-capita murder rates. Soderberg explained it succinctly “In May of 2015... They [the police] have kicked off a spike of murders. That’s lasted nearly a decade. That’s killed more than 300 people per year. For eight years” (Soderberg 2023).

The police union may not have initiated or controlled the slowdown, but it played a significant role in its creation. The union's political power shields officers in all aspects,

influencing elections, shaping policies, and winning legal battles in the name of protecting the police. This "protect at all costs" mentality has become ingrained in the culture. The union helped enforce a belief that when a person is killed by the police, they are at fault for their own death. This entrenched mindset, where civilian deaths are seen as part of the job, fueled officers' fears of being punished for simply "doing their job." The unions explicitly stated that officers feared repercussions, reinforcing this defensive stance. As Moskos described, the union acts as the "id" of the force, embodying its most instinctual and reactionary impulses. This is demonstrated in the aftermath of Freddie Gray's murder. Although the union did not officially call for the slowdown, the identity and culture it cultivated within the department created the conditions for officers to react out of discomfort and fear. While not directly responsible, the union set the stage for the slowdown to occur. While the union set the stage, it was unable to control the outcomes or leverage them to its own political agenda.

The case of the Baltimore police slowdown reveals the complex nature of police union power. On one hand, the union exerts significant influence over political reforms and public opinion, effectively blocking changes that threaten the status quo. This power is evident in the union's leadership, which strategically navigates political arenas to protect its members and maintain control. However, the slowdown also exposes the union's limitations, particularly its inability to control the actions of individual officers. This disconnect between leadership and rank-and-file members complicates our understanding of union power, suggesting that officers can and will act independently when they feel threatened, even without the union's explicit endorsement. This lack of control highlights a critical challenge in police reform efforts: simply dismantling or weakening the union may not be enough to address the deeper issues within

police departments. Reforming the culture and practices of both the union and its members requires a nuanced approach that goes beyond targeting the union leadership, alone.

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Conclusion

Together, these papers cover two aspects of the criminal justice system- plea bargaining and police unions. The first paper shows that racial disparities will occur in offers of sentences in plea bargaining regardless of prosecutorial prejudices. The assumption of Black criminality will affect a Black defendant further along in the process, and, therefore, incentivize the prosecutor to deliver a harsher sentence. In the second paper, I find that there is a range of concessions that a mayor can offer to the police union to avoid a slowdown. This will mean that with the proper disincentives, the mayor could hinder reform to change policy in favor of the union to avoid the consequences of a slowdown. Lastly, the third paper calls into question how capable the union is in organizing their police force and using the slowdown for political gains.

The findings from the formal model of plea bargaining reveal critical insights into the strategic decisions made by defendants and prosecutors within the judicial system. The model demonstrates that the plea deals offered to and accepted by defendants will vary by race without having a racially motivated prosecutor. The understanding that the assumed redeemability of the white defendant will lead to a shorter sentence, the prosecutor will offer a lower plea deal so it is accepted. By purposely designing a non-prejudiced prosecutor, this model implies that the plea bargaining system is not going to be a stage on which we see reform on sentencing disparities. However, given that the court system would crumble without plea bargaining, it shows that serious changes need to occur in the criminal and judicial spheres..

The second paper explores the power dynamics between police unions and city governments, focusing on the strategic negotiations that determine whether a police slowdown will occur. The findings reveal that the balance of power is heavily influenced by the cost of a

slowdown to the union and the city's reliance on police-generated revenue. When the union faces high costs or severe penalties, the mayor can offer a lower bargain that is still acceptable, thereby preventing a slowdown. However, if the revenue generated by the police is minimal, the model predicts that the union will be more inclined to reject any offer, leading to a slowdown. These findings highlight the complex interplay between economic and political pressures in maintaining public order, with implications for policymakers seeking to prevent labor disruptions in essential services.

The findings from the case study on the 2015 Baltimore police slowdown reveal that the police union played a minimal role in orchestrating or mitigating the slowdown, contrary to what existing literature on police unions and their influence might suggest. Despite the potential for the union to leverage the situation to negotiate better terms or influence public opinion, the union failed to demonstrate significant power or control over the officers' actions during the slowdown. Interviews with key reporters and experts highlighted that the union's influence in the day-to-day operations of the police force was limited, and its political power, while present, did not translate into direct action during this critical period. The implications of these findings challenge assumptions about the strength of police unions in crisis situations, suggesting that their influence may be more nuanced and context-dependent than previously understood. This has important implications for understanding labor actions in law enforcement, particularly in urban settings where the relationship between the police, the public, and political leadership is complex and fraught with tension. This study points to the power of the police as an organization that can block reform even without a defined organizational structure.

These papers join the broad set of literature on the criminal justice system. By looking at plea bargaining, the first paper adds to the literature on racial disparities in criminal sentencing.

While the racial disparities were well documented before this paper, the model presented allows the reader to see how the discrepancies arise and why simple changes like sensitivity training will not fix the problem.

The second two papers are able to speak to a few areas of research. The set of literature on policing is vast. And these two papers look at powers that have control over officers and powers that claim to, but do not. This adds to our understanding of how to see the entire system of policing. The two papers also speak to discussions on unions. Being a public sector union, the model of bargaining looks at an employer who is also an elected official. Focusing on slowdowns, the last two papers are able to look at activity that could destroy the union but still occur. This shows a better understanding of how unions think about the cost of making a statement through a restriction of work. The last paper gets to complicate the understanding of the union's power of slowdowns by questioning if they are union lead or not further expanding our literature on unions and their powers.

As expected, this dissertation project was unable to answer all the questions I would like to have posed. I would like to see further studies on plea bargaining that can include more data. Qualitative and quantitative data are hard to find for plea bargaining because of the secrecy of their nature. Further studies in how they are negotiated and where the pressures come from would shine more light on this topic. The first paper briefly touches on how bail and the elimination of cash bail would impact plea bargains. I would like to see studies that measure how plea bargaining and overall sentencing changed as states removed cash bail. For police union studies, I would like to see more case studies on other slowdowns. While working on this dissertation I was unsuccessful at getting anyone from New York City to talk. I would love to have been able to compare the way the union's leadership acted towards the officers in both

slowdowns. I also can see an expansion of the slowdown model adding in the idea of an audience and ways in which they will influence either party. By including the response of the audience, the model will show how the cause of the slowdown affects the negotiation - for example, would the public respond better to a slowdown demanding cost of living salary increases or a slowdown supporting an officer who killed a civilian.

In conclusion, this dissertation advances our understanding of the criminal justice system by examining key components: plea bargaining, police union negotiations, and the role of police unions in orchestrating slowdowns. Together, these papers contribute to the broader literature on criminal justice and policing, offering new insights into racial disparities, union dynamics, and the complex interplay of power within law enforcement. While the dissertation provides valuable findings, it also opens avenues for further research. With this research and the other avenues it opens, the institution that comprises the entire criminal justice system will be slightly less opaque.

Appendix 1: Racialized Plea Bargaining: A Formal Model of Race, Criminality, and Systemic Inequities in the Criminal Justice Process

Pooling Equilibrium

In a pooling equilibrium, each type of D sends the same signal. Here's how I calculated the expected utility:

Both Defendants (Innocent Signal)

- **Strategy of the Defendant:** $a_D = \{1\}$. In this strategy, the Defendant is signaling Innocence. This signal is sent regardless of their true type.
- **Beliefs of Jury:**

$$h(\text{guilty} \mid 1) = \pi, \quad h(\text{innocent} \mid 1) = 1 - \pi, \quad \text{and} \quad h(\text{guilty} \mid 0) = 1.$$

Following the logic in the previous equilibrium, J is unable to update and assumes the probability of guilt based on the background knowledge before the game started.

- **Strategies of Jury:** $a_J(a_D) = \{\pi_G, a_D = \{1\}1, a_D = \text{anything else}\}$
With the pooling equilibrium, the Jury is unable to update on the actions of D. Because of this, they will convict with the underlying probability of true guilt. However, following their beliefs, if J sees an action outside the Innocent signal, they will convict with certainty, given their beliefs.

Expected Utility of the Innocent Signal

- **For the Defendant**
If the Jury chooses to convict with the probability
 $\pi_G : EU_D = Pr(a_J = 1 \mid s_J^*) \cdot (-T) - C$
Where $Pr(a_J = 1 \mid s_J^*) = \pi_G$
Thus,
 $EU_D(a_J) = \pi_G \cdot (-T) - C$

- **For the Prosecutor:**

$$EU_P(a_J) = (a_J)(T)$$

Because the jury will convict with probability π_G the expected utility for the Prosecutor is:

$$EU_P(a_J) = T\pi_G$$

- **For the Jury**

With a pooling equilibrium, the jury is unable to update its beliefs and will choose innocence or guilt based on π

Therefore the utility will be: $EU_J(\Theta) = \pi_G$

Plea Offer

Optimal Offer, t , to ensure acceptance:

To ensure D accepts, we need the utility of accepting the same or better than the utility of going to trial.

$$-t \geq \pi_G \cdot (-T) - C$$

Simplifying:

$$t_{innocent} \leq \pi_G \cdot T + C$$

Black Defendants (No Signal)

- **Strategy of the Defendant:** $a_D = \{0\}$. In this strategy, the Defendant is signaling nothing. This signal is sent regardless of their true type.

- **Beliefs of Jury:**

$$h(\text{guilty} \mid 0) = \pi, \quad h(\text{innocent} \mid 0) = 1 - \pi, \quad \text{and} \quad h(\text{guilty} \mid 1) = 1.$$

Following the logic in the previous equilibrium, J is unable to update and assumes the probability of guilt based on the background knowledge before the game started. However, if they see a signal outside of the pooling signal of no-signal, they will assume guilt with 100% certainty

- **Strategies of Jury:** $a_J(a_D) = \{\pi_G, a_D = \{0\}1, a_D = \text{anything else}\}$
With the pooling equilibrium, the Jury is unable to update on the actions of D. Because of this, they will convict with the underlying probability of true guilt. However, following their beliefs, if J sees an action outside no-signal signal, they will convict with certainty, given their beliefs.

Expected Utility No Signal

- **For the Defendant**

If the Jury chooses to convict with the probability

$$\pi_G : EU_D = Pr(a_J = 1 | s_J^*) \cdot (-T)$$

Where $Pr(a_J = 1 | s_J^*) = \pi_G$

Thus,

$$EU_D(a_J) = \pi_G \cdot (-T)$$

- **For the Prosecutor:**

$$EU_P(a_J) = (a_J)(T)$$

Because the jury will convict with probability π_G the expected utility for the Prosecutor is:

$$EU_P(a_J) = T\pi_G$$

- **For the Jury**

With a pooling equilibrium, the jury is unable to update its beliefs and will choose innocence or guilt based on π

Therefore the utility will be: $EU_J(\Theta) = \pi_G$

Plea Offer

Optimal Offer, t , to ensure acceptance:

To ensure D accepts, we need the utility of accepting the same or better than the utility of going to trial.

$$-t \geq \pi_G \cdot (-T)$$

Simplifying:

$$t_{no-signal} \leq \pi_G \cdot T$$

White Defendant (Redeemable Signal)

- **Strategy of the Defendant:** $a_D = \{R\}$. In this strategy, the Defendant is signaling Innocence. This signal is sent regardless of their true type.

- **Beliefs of Jury:**

$$h(\text{guilty} \mid R) = \pi, \quad h(\text{innocent} \mid R) = 1 - \pi, \quad \text{and} \quad h(\text{guilty} \mid 0 \text{ or } 1) = 1.$$

Following the logic in the previous equilibrium, J is unable to update and assumes the probability of guilt based on the background knowledge before the game started.

- **Strategies of Jury:** $a_J(a_D) = \{\pi_G, a_D = \{R\}1, a_D = \text{anything else}\}$
With the pooling equilibrium, the Jury is unable to update on the actions of D. Because of this, they will convict with the underlying probability of true guilt. However, following their beliefs, if J sees an action outside the Innocent signal, they will convict with certainty, given their beliefs.

Expected Utility of the Redeemable Signal

- **For the Defendant**

If the Jury chooses to convict with the probability π_G :

$$EU_D = Pr(a_J = 1 | s_J^*) \cdot \frac{(-T)}{2} - \frac{C}{2}$$

Where $Pr(a_J = 1 | s_J^*) = \pi_G$

Thus,

$$EU_D = \pi_G \cdot \frac{(-T)}{2} - \frac{C}{2}$$

- **For the Prosecutor:**

$$EU_P(a_J) = (a_J)(T)$$

Because the jury will convict with probability π_G the expected utility for the Prosecutor is:

$$EU_P(a_J) = T\pi_G$$

- **For the Jury**

With a pooling equilibrium, the jury is unable to update its beliefs and will choose innocence or guilt based on π

Therefore the utility will be: $EU_J(\Theta) = \pi_G$

Plea Offer

Optimal Offer, t , to ensure acceptance:

To ensure D accepts, we need the utility of accepting the same or better than the utility of going to trial.

$$t \geq \pi_G \cdot \frac{(-T)}{2} - \frac{C}{2}$$

Simplifying:

$$t_{innocent} \leq \pi_G \cdot T + C$$

Appendix 2: When Negotiations Fail: Understanding the Triggers of Police Slowdowns

Abbreviations

- **P** - Police Union
- **M** - Mayoral Office
- **t** - time length of slowdown
- **x** - negotiations
- **a** - accept offer
- **r** - reject offer
- θ - election result of Mayor winning reelection
- π - Probability of mayor winning election $PR(\theta = 1) = \pi$
- **C** - cost of union to participate in the slowdown
- **E** - election bonus

Solving for the Optimal t that P Would Choose

1. P's Utility Function

P's utility function when rejecting M's offer and slowing down for time t is:

$$u_P = t_P - C(t_P)^2$$

2. Maximization Problem

To find the optimal t , we maximize u_P with respect to t . This involves taking the derivative of u_P with respect to t , setting it equal to zero, and solving for t .

The utility function for P is:

$$u_P(t) = t_P - C(t_P)^2$$

Taking the derivative of $u_P(t)$ with respect to t :

$$\frac{du_P}{dt} = -2C(t_P)$$

3. Setting the Derivative to Zero

To find the optimal t , set the derivative equal to zero:

$$-2C(t_P) = 0$$

4. Solving for t

$$t_P = \frac{1}{2C}$$

Thus, the optimal value of t that P would choose is:

$$t^* = \frac{1}{2CP}$$

Therefore

The police union (P) will choose the slowdown duration $t^* = \frac{1}{2CP}$, where C represents the cost parameter and P is the positive payoff from slowing down.

Determining the Minimum x that P Would Accept

1. P's Acceptance Condition

P will accept M's offer x if:

$$x \geq tP - C(tP)^2$$

2. Substituting the Optimal t^*

Given the optimal $t^* = \frac{1}{2C}$, substitute this into the acceptance condition:

$$x \geq \left(\frac{1}{2C}\right) - C\left(\frac{1}{2C}\right)^2$$

Simplifying each term:

$$x \geq \frac{1}{2C} - C \cdot \frac{1}{4C^2}$$

$$x \geq \frac{1}{2C} - \frac{1}{4C}$$

Combining the terms:

$$x \geq \frac{1}{4C}$$

Therefore

Given the optimal slowdown duration $t^* = \frac{1}{2CP}$, the minimum offer x that M needs to make for P to accept is:

$$x^* = \frac{1}{4C}$$

Determining the Value of x that M Would Offer

1. M's Utility Function

When P accepts the offer, M's utility function is:

$$u_M = -x + \frac{E}{2}$$

If P rejects the offer and chooses $t = \frac{1}{2C}$, M's utility is:

$$u_M = -R\left(\frac{1}{2C}\right) + E\left(1 - \frac{1}{2 + \frac{1}{2C}}\right)$$

2. Maximization Condition

M will choose the highest x that P will accept, but not more than the utility loss from the slowdown. Therefore, x should satisfy:

$$-x + \frac{E}{2} \leq -R\left(\frac{1}{2C}\right) - E\left(1 - \frac{1}{2 + \frac{1}{2C}}\right)$$

Simplifying

$$-x + \frac{E}{2} \leq -R\left(\frac{1}{2C}\right) + E\left(\frac{C+2}{2C+5}\right)$$

Solving for x :

$$x \leq R\left(\frac{1}{2C}\right) + \frac{E}{4C+10}$$

Therefore

The value of x that M would offer, given that $t = \frac{1}{2C}$, is:

$$x \leq R\left(\frac{1}{2C}\right) + \frac{E}{4C+10}$$

Range for x

To satisfy both P's and M's conditions, x must lie within the following range:

$$\frac{1}{4C} \leq x \leq R\left(\frac{1}{2C}\right) + \frac{E}{4C+10}$$

1. P's Condition

P will accept the offer x if:

$$x \geq \frac{1}{4C}$$

2. M's Condition

M will offer x if:

$$x \leq R\left(\frac{1}{2C}\right) + \frac{E}{4C+10}$$

3. Therefore

The value of x must satisfy:

$$\frac{1}{4C} \leq x \leq R\left(\frac{1}{2C}\right) + \frac{E}{4C+10}$$

Appendix 3 : Unseen Power? Examining Police Union Influence During the 2015 Baltimore Slowdown

Semi-structured Interview Questions

Interview with Brad Heath

- A sense of what it was like writing this article? Who were you talking to and what motivated it?
- What were you thinking while writing this what was this process.
- How much was this talked about at the time
- Article 3 years later, why did this come up then? What struck out to you in 2018?
- What was the public opinion
- How long after the riots did you start to see the slowdown?
- You mentioned that Lt. Gearhart and others have said that this didn't come from orders that they just told the officers the facts and let them decide. Do you believe that to be the case given that this was happening at such a large scale (70% decline in field interviews, 50% reduction in outstanding warrants)?
- In NYC the union acknowledged that they did encourage a slowdown, why do you think that would be different.
- Has this trend continued in the years since?
- If you were to write this article now, what would you have changed and why? Have there been more changes?

Interview with Brandon Soderberg

- A sense of what it was like writing this article? Who were you talking to and what motivated it? What were you thinking while writing this what was this process.
- How much was this talked about at the time
- Article 5 years later, why did this come up then? What struck out to you in 2020?
- What was the public opinion
- The comparison with NYC and the union there not proving its point in the slowdown. However, are we saying that Baltimore's union did? While NYC union administration openly admits to the slowdown, is there any evidence that Baltimore's did as well?
- I want to talk about the slowdown v the increases in overtime. How do we picture both of these happening at the same time?
- How does corruption play? I spoke with others who mentions that Baltimore wasn't organized in a slowdown, but rather had one corrupt player after another Generally thinking about the undermining of reform policies, do you see a way in which we can imagine Baltimore's police department changing towards improvement?
- Has this trend continued in the years since?
- If you were to write this article now, what would you have changed and why? Have there been more changes?

Interview with David Graham

- A sense of what it was like writing this article? Who were you talking to and what motivated it? What were you thinking while writing this what was this process.
- You mentioned that the neighborhood didn't want no policing, but rather responsive policing. In the time since then has that sentiment continued? Thinking about abolition movements, or are those better in places where there is less crime?
- Do you think there was a slowdown?
- Why do you think Baltimore and New York were so different in their slowdown response?
- Mayor v. Prosecutor?

- You mentioned the Heather Mac Donald column about the Ferguson effect. You mentioned then that it was too soon to say. What do you think now? And how would you define the effect? Individual people or an organized movement.
- Has this trend continued in the years since?
- If you were to write this article now, what would you have changed and why? Have there been more changes?

Interview with Peter Moskos

- In the book you mention brotherhood and family among the officers but never the police union. Why?
- Did the union play a part in your daily life in the force?
- How was public opinion towards police in your time?
- Did that affect you or your peers?
- Were there slowdowns?
 - If so, organized or not?
 - How were they organized
- What do you think regarding slowdowns?