

The fragmented US system means that the battle for criminal justice reform must be fought in multiple political arenas.



The death of George Floyd while being arrested by police in Minneapolis, Minnesota has sparked worldwide protests and calls to defund US police forces. [Nicola Lacey](#) discusses the differences between these and previous protests concerning police brutality, how the nature of the US criminal justice system affects them, and the chances for meaningful police reform.

1. We've seen protests before linked to police related killings, like in Ferguson, Missouri, in 2014. Are the protests different this time, and if so how?

Police killings of black and Hispanic Americans, men and women, have become a regular and deeply distressing aspect of US law enforcement. They were an important spur for the Black Lives Matter movement, though of course racialised police violence has, alas, a much longer history. These killings have prompted not only protests but Task Forces, inquiries and reports. Much more rarely, they have sparked prosecutions, few of them successful. In 2014, there were not only widespread protests following the fatal shooting of Michael Brown in Ferguson, but also following a number of other appalling cases, including the suffocation of Eric Garner in New York. Mr Garner's arrest and death, like that of George Floyd, was captured on camera; and both cases shed stark light not only on the normalisation of brutality in policing but also on the extraordinary disproportion between the force used and the offences under investigation: in George Floyd's case, the use of a counterfeit bank note; in Eric Garner's, the selling of untaxed cigarettes.

Three things, however, perhaps mark out the current protests as distinctive: their sheer scale and geographical spread both across and beyond the United States, drawing attention to racial disproportion and injustice in criminal justice systems across the world (some of them yet more acute than in the United States), and in all likelihood spurred by a recognition of the disparate and acute impact of COVID-19 on minority communities; the demographics of the protesters, with many regions and countries seeing substantial numbers of protesters across the ethnic, age and class spectrum; and the signs that radical steps – notably the defunding of police departments and a complete rethinking of the institutional organisation of public safety – may finally be becoming politically thinkable.

2. How does the fragmented nature of the US criminal justice system affect the responses to these protests?

A key distinguishing feature of the political system in the US is that it is highly decentralised. Not only is political authority divided between federal and state institutions, but powers within states are located – to a degree unique among the so-called 'advanced democracies' – at the local levels of city, county or metropolitan area. The criminal justice system – or perhaps we should say, systems – reflect this political decentralisation, with policy-making, electoral choices and executive decision-making split between federal, state and local levels. Moreover the power of the federal government to shape criminal justice policy at the state or local level is strictly limited. This means that systemic problems such as police racism and abuses of power are difficult to tackle at a national level. In the Obama White House, there was an unusual level of political will to develop meaningful reformist policy at the federal level, in criminal justice as in other areas such as public health; as well as a willingness to use existing legal tools such as consent decrees to counter abuses at the local level. But the progress made during that time is now under threat. And even with reformist will in the White House, the fragmented political and criminal justice systems imply that every reform battle has to be fought on multiple political fronts.

3. What are the chances for meaningful reforms to criminal justice policies in the US following the protests?

It follows that the path to meaningful structural reform in the US is far from clear. Perhaps one of the most shocking aspects of this issue is the way in which horrific examples of police violence against black Americans are regularly followed by outrage, protest, commitments to change, and then reproduced in a seemingly endless cycle in which little happens other than symbolically important (but often unsuccessful) prosecutions or disciplinary actions which have little purchase against institutional racism or structural disadvantages reflected in criminal justice. The fragmentation of the US political system is part of the explanation here. But it is only part. For similar structural issues of racial discrimination, and differential policing and punishment of 'othered' groups, afflict many countries, and have proved recalcitrant even in more unified political systems. To take the example of England and Wales, nearly two decades after the Inquiry following the racist murder of Stephen Lawrence in 1993 identified and called out 'institutional racism' in the police, continuing racial disproportions in criminal justice in England and Wales were highlighted by the [Lammy Review](#) in 2017. These – notably gross disparities in the use of police powers to stop and search – have been well understood, and criticised, for many years, without any decisive action being taken.

The key requirement in any system – and the one we must hope that the latest atrocious injustice will help to create – is an effective political coalition with the will both to think creatively about the reforms which are needed, and to drive them through in concrete legal and institutional terms. The recent declaration of will in Minnesota to [defund the police](#) and engage in this kind of creative reform is heartening. And with sufficient coordination and motivation, the system of local democracy in the US certainly provides opportunities as well as challenges. But with so many political systems to be tackled, not to mention the divisive messages coming out of the White House, there are many obstacles in the way of meaningful reform.

4. Is there a risk that the US population will lose trust in the police as a result of police violence and deaths such as George Floyd's?

There is indeed. But – and this is a further problem: that loss of trust is likely to be very unevenly distributed across different groups. This is why the polarising messages coming from the White House are so worrying, emerging as they do within an already highly polarised country, and one with a political system which rather than being oriented to compromise and the building of consensus tends towards multiple sites of competition and conflict.

- *Featured image: “[June 6 Philly mass march for George Floyd](#)” by [Joe Piette](#) is licensed under [CC BY NC SA 2.0](#)*
- *On Friday 12 June 2020, from 4:00pm to 5:30pm (BST) the LSE US Centre will be hosting the online roundtable discussion, **Race and Policing in America** with Professor Tracey L. Meares, the Walton Hale Hamilton Professor and a Founding Director of the Justice Collaboratory at Yale Law School. [More information and how to attend](#).*

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Note: This article gives the views of the authors, and not the position of USAPP – American Politics and Policy, nor the London School of Economics.

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Nicola Lacey is LSE School Professor of Law, Gender and Social Policy. From 1998 to 2010 she held a Chair in Criminal Law and Legal Theory at LSE; she returned to LSE in 2013 after spending **three** years as Senior Research Fellow at All Souls College, and Professor of Criminal Law and Legal Theory at the University of Oxford. She has held a number of visiting appointments, most recently at Harvard Law School. She is an Honorary Fellow of New College Oxford and of University College Oxford; a Fellow of the British Academy; and a member of the Board of Trustees of the British Museum. In 2011 she was awarded the Hans Sigrist Prize by the University of Bern for outstanding scholarship on the function of the rule of law in late modern societies and in 2017 she was awarded a CBE for services to Law, Justice and Gender Politics