APOLOGIES IN BLUE

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When police use excessive force, the physical encounter is only the beginning of the injury. What typically follows is a systematic assault on the victim's character and reputation, driven by an institutional ecosystem—including law enforcement, the courts, and the media—that produces exculpatory narratives to favor the state. By shifting blame onto the injured to justify state lethality, these institutions inflict a profound epistemic harm, which is a form of institutional gaslighting that destroys the victim's standing as a credible witness to their own experience. This injury is defamation-like in structure but carries the unique authority of the state, making it far more damaging. Because this injury is narrative in nature, money alone cannot correct a public record that institutions have used their own credibility to distort. This Article argues that courts should be empowered to close that gap. In municipal liability cases alleging excessive force under Section 1983, judges should have the authority to order public institutional apologies to successful plaintiffs.

Apologies already do meaningful work across the legal landscape, influencing charging, sentencing, and settlement decisions. Extending their application here follows the bedrock remedial principle that the scope of the relief should match the violation. These "apologies in blue" would serve three critical functions. First, they would return a measure of control to victims, providing formal validation of their lived reality that can begin to reverse the legal estrangement driving marginalized communities away from public institutions. Second, they would correct the public record by compelling cities to acknowledge that harm resulted from municipal policy or custom rather than isolated misconduct, helping to dispel the "bad apple" myth with an institutional admission of systemic failure. Third, the mere availability of this remedy would create meaningful settlement leverage, incentivizing cities to resolve claims early to avoid the internal discord and public scrutiny a formal admission would provoke. This Article addresses potential objections, including First Amendment limits on compelling a city to speak, doubts about whether forced apologies can carry genuine meaning, and the risk that repeated apologies lose their moral weight, and concludes that none defeat the proposal.

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INTRODUCTION

Breaion King was a 26-year-old Black elementary school teacher in Austin, Texas, when a traffic stop upended her life.[1] In June 2015, Officer Bryan Richter clocked her speeding and followed her into a Wendy's parking lot, where she had already stopped and stepped out of her car.[2] Richter ordered her back in.[3] She complied but left the door open.[4] Richter then directed her to pull her feet inside so

1. *See* Steve Almasy & Mayra Cuevas, *Austin Police Investigating Two Officers After Teacher's Violent Arrest*, CNN (May 23, 2018, at 22:29 ET), https://www.cnn.com/2016/07/22/us/austin-police-officer-investigation/index.html [https://perma.cc/8ZKT-5UPF].
2. *Id.*
3. *Id.*
4. *Id.*

he could close it.[5] When King questioned why, the situation escalated.[6] Richter pulled her from the car, threw her to the ground, and handcuffed her.[7] Adding insult to injury, a second officer later suggested that King herself was to blame for the violent encounter and that the force was necessary because "so many people [are] afraid" of Black people due to perceived "[v]iolent tendencies."[8]

For the next year, King remained silent, paralyzed by shame and the haunting thought that she was indeed somehow responsible for her own assault.[9] She later recalled asking God what was wrong with her and what she might have done to cause the incident.[10] After video of the encounter surfaced a year later, she sued under 42 U.S.C. § 1983,[11] a federal civil rights statute that allows individuals to sue state and local government officials for violations of their federal constitutional or statutory rights.[12] King asserted numerous deficiencies in the City's policies and practices,[13] including that the City's hiring practices allowed officers "who presented a plainly obvious risk of committing use of force violations" to become part of the police department.[14] The evidence in King's case told a damning story about Richter and the Austin Police Department. Richter had a history of excessive force complaints that resulted in no discipline,[15] while the department had spent five years misreporting the racial data of arrestees to shield officers from accountability.[16] A federal court eventually ruled that a jury could find the City liable because it knew about these patterns and did nothing to stop them.[17]

The City settled in 2018 for $425,000.[18] Austin Police Chief Art Acevedo also issued a public apology, acknowledging that King had been treated in a manner

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5. *See id.*
6. *See id.*
7. *Id.*
8. *See id.*
9. *See* Rachaell Davis, *Breaion King Speaks on Why She Remained Silent for a Year Following Violent Arrest*, ESSENCE (July 25, 2016), https://www.essence.com/news/breaion-king-on-why-she-remained-silent-year-austin-police/ [https://perma.cc/39G3-PTMN].
10. *Id.*
11. King v. City of Austin, No. A-16-CA-1020-SS, 2018 WL 2027748, at *1 (W.D. Tex. May 1, 2018).
12. 42 U.S.C. § 1983. *See generally* Ndjuoh MehChu, *"Specializing" Section 1983*, 14 U.C. IRVINE L. REV. 573 (2024) [hereinafter MehChu, *"Specializing" Section 1983*] (arguing that although the statute was enacted to allow individuals to sue state and local government officials for constitutional and statutory violations, the fragmented application of qualified immunity by lower federal courts necessitates a specialized appellate court to fulfill this original purpose).
13. Plaintiff's First Amended Complaint at 3–4, *King*, 2018 WL 2027748, Dkt. No. 12.
14. *Id.* at 3.
15. *Id.* at 8.
16. *Id.* at 9.
17. *King*, 2018 WL 2027748, at *28.
18. *See* Joshua Barajas & Kennedy Huff, *No Indictment, One Apology and One Settlement for Three Police Misconduct Cases This Week*, PBS (May 25, 2018, at 16:05 ET), https://www.pbs.org/newshour/nation/no-indictment-one-apology-and-one-settlement-for-three-police-misconduct-cases-this-week [https://perma.cc/BHW5-V8KY].

inconsistent with basic human dignity.[19] As King herself recognized, such an acknowledgment is rare.[20] Samaria Rice, who received a multimillion-dollar settlement after her 12-year-old son, Tamir, was shot and killed by a Cleveland police officer,[21] described what that absence feels like: "I have not yet received an apology from the police department or the city of Cleveland in regards to the killing of my son. And it hurts."[22]

Rice's words capture something important. Money can compensate for physical and emotional injuries. Or, through nominal damages, it can formally acknowledge that a right was violated even when no measurable loss occurred.[23] But money damages, in any form,[24] cannot tell a victim they were not at fault. Money cannot undo the public narrative that holds the victim responsible. Nor can it compel an institution to confront the systemic conditions behind the harm. Defamation—the publication of false statements that injure a person's reputation[25]—offers a useful parallel. Scholars have observed that damages are often a poor remedy for this kind of injury, since compensating someone does not undo what was falsely said or written about them.[26] Some have urged that retractions should therefore be

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19. *See* Almasy & Cuevas, *supra* note 1.

20. *Teacher in 2015 Arrest Responds to Austin Police Department Chief's Apology*, KVUE (July 22, 2016, at 17:27 CT) [hereinafter *Teacher Responds to Apology*], https://www.kvue.com/article/news/local/teacher-in-2015-arrest-responds-to-apd-chiefs-apology/269-279747839 [https://perma.cc/S946-JLLP].

21. *See* Mitch Smith, *Tamir Rice's Family to Receive $6 Million from Cleveland*, N.Y. TIMES (Apr. 25, 2016), https://www.nytimes.com/2016/04/26/us/tamir-rice-family-cleveland-settlement.html [https://perma.cc/4VWP-9XV8].

22. Oliver Laughland, *Tamir Rice's Mother Calls for Apology from 'Disrespectful' Cleveland Police*, GUARDIAN (Mar. 3, 2015, at 13:51 ET), https://www.theguardian.com/us-news/2015/mar/03/tamir-rice-mother-cleveland-apology [https://perma.cc/WLR3-BZLU].

23. Thomas A. Eaton & Michael L. Wells, *Attorney's Fees, Nominal Damages, and Section 1983*, 24 WM. & MARY BILL RTS. J. 829, 862–63 (2016) (discussing the role of nominal damages in Section 1983 litigation).

24. Courts may award compensatory damages or nominal damages in Section 1983 suits against municipalities. Punitive damages are unavailable. *See, e.g.*, Ndjuoh MehChu, *From Impunity to Reparations*, 100 N.Y.U. L. REV. ONLINE 57, 90 (2025) [hereinafter MehChu, *From Impunity to Reparations*].

25. *See* HARRY SHULMAN ET AL., LAW OF TORTS: CASES AND MATERIALS 866 (6th ed. 2014) ("Defamation is the injury to one's reputation either by written expression, which is libel, or by oral expression, which is slander. The law of defamation serves to protect an individual's right to one's reputation." (quoting Idema v. Wagner, 120 F. Supp. 2d 361, 366 (S.D.N.Y. 2000))); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS 771 (5th ed. 1984) ("[D]efamation is an invasion of the interest in reputation and good name. This is a 'relational' interest, since it involves the opinion which others in the community may have, or tend to have, of the plaintiff." (citation omitted)).

26. Stanley Ingber, *Rethinking Intangible Injuries: A Focus on Remedy*, 73 CALIF. L. REV. 772, 832 (1985) ("[E]ven when plaintiffs can prove liability and obtain a money judgment, the remedy is not likely to reestablish their reputation in the community. Financial compensation for the truly intangible aspects of reputational loss is not possible."); Wannes Vandenbussche, *Rethinking Non-Pecuniary Remedies for Defamation: The Case for Court-Ordered Apologies*, 9 J. INT'L MEDIA & ENT. L. 109, 115 (2021) ("An award for

available.[27] Others have pushed further, arguing for court-ordered apologies.[28] A correction from the source of the harm, they contend, restores the plaintiff's standing in the eyes of the public in a way that damages cannot.[29] The injury that follows police violence is reputational in a similar sense, although considerably more severe because it is inflicted by the authority of the state rather than by a private actor.

This Article proposes court-ordered public apologies as a remedy when cities are held liable for excessive force under Section 1983. The proposal has roots in existing legal practice. The law already recognizes apologies as instruments of accountability across criminal and civil contexts. In tort law, 39 states have enacted apology laws.[30] These statutes reflect the recognized power of acknowledgment to promote healing and resolve disputes.[31] In criminal law, expressions of remorse routinely influence charging decisions, sentencing, and parole.[32] Courts in the United States and abroad have also ordered apologies as remedies for dignitary harms in discrimination cases.[33] Given the established remedial principle that relief must be tailored to the harm it addresses,[34] court-ordered apologies for police violence would fit within existing precedent.

The proposed remedy makes three contributions to the existing remedial framework. The first requires stepping back to appreciate how apologies function. At their most basic level, apologies empower victims[35] by giving recipients the chance to accept or reject an acknowledgment of wrongdoing.[36] That choice serves a vital purpose in police violence cases where victims are routinely gaslit and their accounts of the encounters routinely dissected and dismissed.[37] Against this

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damages years after a defamatory speech was published can hardly restore the plaintiff's reputation.").

27. *See* Elad Peled, *Constitutionalizing Mandatory Retraction in Defamation Law*, 30 HASTINGS COMMC'N & ENT. L.J. 33, 34 (2007) ("Retraction, it has been argued, is a highly efficient way to settle disputes between the media and the subjects of false defamatory reports, which is preferable to the remedy most commonly used in tort law, namely, a damages award.").

28. *See* Vandenbussche, *supra* note 26 ("The idea underpinning court-ordered apologies is to restore the claimant's reputation in the minds of the people who were misinformed by the defamatory statement or publication by compelling the defendant to take back his injurious words and apologize for spreading them.").

29. *See* Ingber, *supra* note 26; Vandenbussche, *supra* note 26.

30. *See infra* note 214 and accompanying text.

31. *See infra* notes 213, 216–17 and accompanying text.

32. *See infra* notes 218–22 and accompanying text.

33. *See infra* notes 226–31 and accompanying text.

34. *See, e.g.*, Milliken v. Bradley, 418 U.S. 717, 744 (1974) ("The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation."); Eric S. Fish, *Choosing Constitutional Remedies*, 63 UCLA L. REV. 322, 366 (2016) ("[T]he scope of remedial power is limited by the problem at hand . . . .").

35. Brent T. White, *Say You're Sorry*: *Court-Ordered Apologies as a Civil Rights Remedy*, 91 CORN. L. REV. 1261, 1274–75 (2006).

36. *Id.*

37. *See* Nancy Uddin, *"When They See Us" Depicts Gaslighting as a Form of Police Abuse*, FILTERMAG (July 11, 2019), https://filtermag.org/when-they-see-us-gaslighting/ [https://perma.cc/SH9K-8R53]; Jason Koebler, *The Police Are Gaslighting Us*,

backdrop, a formal acknowledgment, even one that isn't remorseful, carries real force. Under the status quo, victims might win money damages without ever hearing the state take responsibility. An apology fills that gap by giving the victim something money damages never could: the power to accept or reject the state's admission on their own terms. The empowering effects of an apology may also reach beyond the immediate case. Research shows that negative encounters with the criminal legal system drive people away from other institutions, including healthcare.[38] Apologies that restore even partial confidence in the law's fairness could help reverse that pattern.

Second, apologies can reshape public narratives. Victims of police violence face a persistent pattern of blame.[39] "They should have complied with orders," or "they shouldn't have resisted arrest," the critiques run,[40] regardless of what happened. Worse, artificial intelligence has made blame-shifting easier, providing cover to dismiss authentic video evidence.[41] When any video can be characterized as potentially fake, even clear evidence of excessive force can be pinned on the victim. A court-ordered apology cannot fully counter this dynamic, but it establishes an official record that assigns responsibility to the institution rather than the victim.

A public apology could mirror the National Advisory Commission on Civil Disorders report in the 1960s, which exposed racism and biased policing as the root causes of urban unrest.[42] Better known as the Kerner Report, it disputed the racist narrative that people of color are inherently disorderly.[43] A public apology could do

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VICE (June 5, 2020, at 13:42 ET), https://www.vice.com/en/article/the-police-are-gaslighting-us/ [https://perma.cc/5ZMD-N8NY].

38. *See* Alice Goffman, *On the Run: Wanted Men in a Philadelphia Ghetto*, 74 AM. SOCIO. REV. 339, 344–46 (2009).

39. *See* Mia Moody-Ramirez & Hazel Cole, *Victim Blaming in Twitter Users' Framing of Eric Garner and Michael Brown*, 49 J. BLACK STUD. 383, 384 (2018); Traci Burch, *Adding Insult to Injury: The Justification Frame in Official Narratives of Officer-Involved Killings*, 7 J. RACE, ETHNICITY & POL. 359, 362 (2022) ("There is some evidence that . . . narratives that blame victim behavior are common even when the victim did not pose a threat to officers.").

40. *See, e.g.*, Andrea Januta et al., *Challenging Police Violence . . . While Black*, REUTERS (Dec. 23, 2020, at 12:00 GMT), https://www.reuters.com/investigates/special-report/usa-police-immunity-race/ [https://perma.cc/55YB-B3QD].

41. *See* Eric Levitz, *The Dismaying Response to New Alex Pretti Video*, VOX (Jan. 31, 2026, at 04:30 MT), https://www.vox.com/politics/477430/alex-pretti-new-video-ice-ai-trump [https://perma.cc/6GGX-FWGM].

42. *See The Kerner Commission*, NAT'L MUSEUM OF AFR. AM. HIST. & CULTURE, https://nmaahc.si.edu/explore/stories/kerner-commission [https://perma.cc/ZP3N-7UB7] (last visited Sep. 6, 2026). The Kerner Commission was established by President Lyndon B. Johnson to investigate the causes of more than 150 race riots that occurred throughout the nation during the summer of 1967. It aimed to identify the root causes and provide recommendations to prevent future uprisings. The resulting report offered a clear conclusion, stating that "[o]ur nation is moving toward two societies, one black, one white—separate and unequal," and cited the social consequences of racism as the direct cause of the unrest. *Id.*

43. *See* Alice George, *The 1968 Kerner Commission Got It Right, but Nobody Listened*, SMITHSONIAN MAG. (Mar. 1, 2018), https://www.smithsonianmag.com/smithsonian-institution/1968-kerner-commission-got-it-right-nobody-listened-180968318/ [https://perma.cc/X8EE-CQYM].

the same thing. It wouldn't blame the victim but rather the system that failed them. By shifting the focus to systemic issues and institutional failings, court-ordered apologies could help to combat the pervasive stigmatization and marginalization of police violence victims. Moreover, since municipal liability hinges on institutional dynamics, e.g., policy or customs[44] that facilitate constitutional violations, a public apology could also serve to dispel the misconception that such violations occur only because of a few "bad apples."[45]

Third, even if court-ordered apologies never materialize, their mere availability as a remedy could drive settlement. Facing the prospect of public admissions of wrongdoing and the likely internal backlash, municipalities might prefer to avoid the negative publicity and departmental discord such apologies would create. This desire to prevent revealing gaps in the "thin blue line"[46] could motivate cities to settle to preserve institutional silence. For victims of police misconduct navigating a lengthy and expensive system already stacked against them,[47] this increased settlement pressure could provide valuable leverage. Ultimately, the prevailing plaintiff should have the final say to decide whether a court-ordered apology is delivered at all, including the right to withdraw it before public release. This approach acknowledges the complex and often evolving emotional journey victims undergo as they process trauma.[48]

This Article has three Parts. Part I examines the harms of police violence that extend beyond physical injury, focusing on the cultural distance from legal institutions that develops in communities repeatedly failed by police and the way institutional victim-blaming blocks the structural conversations that meaningful reform requires. Part II outlines the legal framework for holding cities accountable

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44. Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 694 (1978).

45. Malorie Cunningham, *'A Few Bad Apples': Phrase Describing Rotten Police Officers Used to Have Different Meaning*, ABC NEWS (June 14, 2020, at 08:12 MT), https://abcnews.go.com/US/bad-apples-phrase-describing-rotten-police-officers-meaning/story?id=71201096 [https://perma.cc/B7SU-N94E].

46. *See* Ezekiel Kweku, Opinion, *The Thin Blue Line That Divides America*, N.Y. TIMES (Jan. 4, 2024), https://www.nytimes.com/2024/01/04/opinion/thin-blue-line-capitol.html [https://perma.cc/95A4-CE6Y] (describing the thin blue line as both the colored stripe on the Blue Lives Matter flag and the dominant metaphor representing the police as the barrier between law and order and social and civil anarchy—necessary to protect society). The phrase has also come to connote solidarity and a code of silence within police ranks. *See generally* Ann C. Hodges & Justin Pugh, *Crossing the Thin Blue Line: Protecting Law Enforcement Officers Who Blow the Whistle*, 52 U.C. DAVIS L. REV. ONLINE 1 (2018) (discussing the thin blue line and how law enforcement culture could be improved by expanding First Amendment protection to public employees).

47. *See* Arthur R. Miller, *Widening the Lens: Refocusing the Litigation Cost-and-Delay Narrative*, 40 CARDOZO L. REV. 57, 59 (2018) ("No one can deny that many aspects of litigation today are expensive and time-consuming or that lawyers are at least partially to blame for that . . . .").

48. *See* Judith L. Herman, *Recovery from Psychological Trauma*, 52 PSYCHIATRY & CLINICAL NEUROSCIENCE 145, 145–46 (1998) (describing the trauma recovery process as unfolding in three stages: establishing safety, retelling the story of the traumatic event, and reconnecting with others); Sara E. Gold, *Trauma: What Lurks Beneath the Surface*, 24 CLINICAL L. REV. 201, 208–09 (2018) (explaining that trauma's effects vary by individual and can be immediate or delayed, short-lived or long-lasting).

under Section 1983. This background sets up the Article's normative contribution in Part III, which develops the argument for court-ordered apologies in Fourth Amendment excessive force claims against municipalities. This Part also addresses several potential obstacles to implementation, including First Amendment concerns regarding compelled speech, questions about the efficacy of mandated apologies, and practical challenges given the historically limited success of municipal liability claims under Section 1983. A brief Conclusion follows.

I. THE REMEDIAL GAP: THE HARMS MONEY CANNOT REACH

Under the current legal framework, remedies for excessive force violations focus almost exclusively on compensatory damages.[49] While these awards can address economic loss and physical pain, they operate on a narrow theory of relief and miss the dignitary and status harms police violence inflicts. The use of force is typically followed by an official narrative—a state-sponsored account that often seeks to justify the violence by blaming the victim.[50] For Breaion King, the shame that kept her silent for a year after the violent assault at the hands of Austin police was not incidental; it was the intended result of a system that projects guilt onto the injured to insulate itself from accountability.

Section I.A first explores how this blame-shifting works. Sections I.B and I.C then examine the deeper dignitary and status harms it produces, which operate on two levels. First, as Section I.B shows, the harm is epistemic. It attacks a victim's capacity to be believed, to have their account of what happened treated as credible. When the state builds a story that blames the victim, it reinforces a hierarchy where official accounts are accepted as fact and victim accounts are dismissed. Second, as Section I.C explores, the harm is also relational. When entire communities watch this pattern repeat, they begin to withdraw from the institutions meant to protect them. Legal scholar Monica Bell calls this phenomenon legal estrangement—"a cultural orientation about the law that emanates from collective symbolic and structural exclusion."[51]

A. The Mechanics of Blame-Shifting: Cop-Coding

When police use excessive force, the physical encounter is often followed by a second injury to the victim's character. Official narratives quickly emerge, constructed to justify what happened by shifting responsibility for police violence from law enforcement onto those who suffer it.[52] This practice, what I term

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49. *See* MehChu, *From Impunity to Reparations*, *supra* note 24 (explaining that plaintiffs' recovery in Section 1983 cases is typically limited to compensatory damages).

50. *See* Aaron Morrison, *As Officials Disparage Pretti and Good, Families of Black People Killed by Police Have Déjà Vu*, ASSOC. PRESS (Jan. 31, 2026, at 07:00 MT), https://www.yahoo.com/news/articles/officials-disparage-pretti-good-families-140051128.html [https://perma.cc/PF8W-TX3E].

51. Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2100 (2017).

52. *See, e.g.*, Sam Levin, *Killed by Police, Then Vilified: How America's Prosecutors Blame Victims*, GUARDIAN (Mar. 21, 2019, at 14:07 ET), https://www.theguardian.com/us-news/2019/mar/20/us-police-killings-district-attorney-prosecutor-reports [https://perma.cc/7L5F-JDL3]; Sam Levin, *'They Kill the Person Twice': Police Spread Falsehoods After Using Deadly Force, Analysis Finds*, GUARDIAN (May 19,

"cop-coding,"[53] has deep historical roots in the narrative machinery of American slavery. Pro-slavery theologians twisted scripture and recast brutal exploitation as God's will, portraying enslavers as benevolent agents of a divine mission.[54] Physicians invented diseases like "drapetomania" to pathologize enslaved people who sought freedom,[55] and lawmakers used these and other narratives to craft laws that criminalized Blackness itself.[56]

This narrative machinery has remained resilient since Reconstruction. Today's narrative construction around state violence is likewise a cross-institutional project playing out across spaces that shape public understanding of state violence like police departments, media outlets, and the judiciary.[57] This was evident when the Minneapolis Police Department's initial press release called George Floyd's murder a "medical incident,"[58] even as video later showed Officer Derek Chauvin pressing his knee to Floyd's neck for more than nine minutes.[59] It was at work when

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2021, at 06:00 ET), https://www.theguardian.com/us-news/2021/may/19/us-police-shootings-george-floyd-press-releases-reports [https://perma.cc/V7TK-YT94] [hereinafter Levin, *They Kill the Person Twice*].

53. *See* Ndjuoh MehChu, Cop-Coding: Life, Death, and the Stories They Tell 4 (Apr. 13, 2026) (unpublished manuscript) (on file with author) [hereinafter MehChu, Cop-Coding].

54. *See, e.g.*, Wongi Park, *The Blessing of Whiteness in the Curse of Ham: Reading Gen 9:18–29 in the Antebellum South*, RELIGIONS, Nov. 2021, at 1–2, https://www.mdpi.com/2077-1444/12/11/928 [https://doi.org/10.3390/rel12110928] ("Arguably, no other sacred text in Christianity, Islam, and Judaism has been misused and abused in the interest of racism more than the curse of Ham in Gen 9:18–29.").

55. "Drapetomania" was a fictitious mental illness coined in 1851 by Louisiana physician Samuel A. Cartwright, who claimed it explained why enslaved people fled and recommended whipping as a cure. *See* Samuel A. Cartwright, *Report on the Diseases and Physical Peculiarities of the Negro Race*, 7 NEW ORLEANS MED. & SURGICAL J. 691, 707–08 (1851); *see also* Linda Villarosa, *Myths About Physical Racial Differences Were Used to Justify Slavery—and Are Still Believed by Doctors Today*, N.Y. TIMES MAG. (Aug. 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/racial-differences-doctors.html [https://perma.cc/26Q3-VGBN] (explaining how medical myths perpetuated by Cartwright and physician Thomas Hamilton were formed to support racist ideology and are still embedded in modern medical practices).

56. *See, e.g.*, Darlene Goring, *The History of Slave Marriage in the United States*, 39 J. MARSHALL L. REV. 299, 303 (2006) ("The diminished status of African slaves began in 1705 with the promulgation of the first slave codes that defined and governed the lives of African slaves during the antebellum period.").

57. *See* MehChu, Cop-Coding, *supra* note 53, at 5.

58. *See* Scott Simon, Opinion, *After George Floyd's Death, a Press Release Obscured a Police Murder*, NPR (Apr. 24, 2021, at 08:03 ET), https://www.npr.org/2021/04/24/990376231/opinion-after-george-floyds-death-a-press-release-obscured-a-police-murder [https://perma.cc/TU2Q-2RW6].

59. Eric Levenson, *Former Officer Knelt on George Floyd for 9 Minutes and 29 Seconds—Not the Infamous 8:46*, CNN (Mar. 30, 2021, at 06:27 ET), https://www.cnn.com/2021/03/29/us/george-floyd-timing-929-846/ [https://perma.cc/V6US-9A3T]; *see* Faith Karimi, *Minneapolis Police Release 911 Call That Led to Fatal Encounter with George Floyd*, CNN (May 29, 2020, at 05:16 ET), https://www.cnn.com/2020/05/28/us/minneapolis-george-floyd-911-calls/index.html [https://perma.cc/2ACV-Y7EZ].

the *New York Times* profiled Michael Brown on the day of his funeral, declaring he was "no angel"[60]—his body having just lain in the street for hours in Ferguson, Missouri, after Officer Darren Wilson shot him following an encounter that began over alleged jaywalking.[61] When Alton Sterling was killed, a *Baltimore Sun* article cataloged his prior convictions, observing that "Alton Sterling was not an admirable man."[62] After Eric Garner was killed for selling loose cigarettes, a *New York Post* columnist called him a "career petty criminal" who was a "victim of himself."[63] The same machinery was at work after Botham Jean was killed in his own apartment.[64] On the day of Jean's funeral, investigators announced they had found marijuana inside his apartment.[65] The detail had no bearing on whether the officer's use of force was justified, but it was intended to shape public perception about who Jean was as a person—a move his attorney called a "disgusting attempt to assassinate his character."[66]

The narrative around police violence follows a familiar pattern. Civilians are typically treated as the only ones with agency, while police actions are reduced to passive events that simply occur. Take police shootings. A report might say that "a weapon was discharged" or "a suspect was killed," while noting that "the suspect reached for" or "resisted." The officer disappears from the sentence entirely, as if the shooting had unfolded out of thin air. At the same time, the victim stays firmly in the frame, described in language that casts them as the one driving the encounter.

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60. John Eligon, *Michael Brown Spent Last Weeks Grappling with Problems and Promise*, N.Y. TIMES (Aug. 24, 2014), https://www.nytimes.com/2014/08/25/us/michael-brown-spent-last-weeks-grappling-with-lifes-mysteries.html [https://perma.cc/WNM5-5N7V].

61. *See* Mariah Stewart, *'We Saw Him Lying in the Street': How a Police Killing Changed Our Lives*, GUARDIAN (Aug. 9, 2019, at 01:00 ET), https://www.theguardian.com/us-news/2019/aug/09/michael-brown-ferguson-death-black-men [https://perma.cc/BTE3-QA3Y]; U.S. DEP'T OF JUST., REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON 5–6 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown.pdf [https://perma.cc/7RDG-ZQ9W].

62. Tricia Bishop, Opinion, *The Lesson in Alton Sterling's Criminal Past*, BALT. SUN (July 7, 2016, at 15:30 ET), https://www.baltimoresun.com/2016/07/07/the-lesson-in-alton-sterlings-criminal-past/ [https://perma.cc/CG9P-EB5J].

63. Bob McManus, Opinion, *Blame Only the Man Who Tragically Decided to Resist*, N.Y. POST (Dec. 4, 2014, at 00:03 ET), https://nypost.com/2014/12/04/eric-garner-was-a-victim-of-himself-for-deciding-to-resist/ [https://perma.cc/V8N5-YDKL].

64. *See* Shaila Dewan, *Why a Police Shooting Victim's Family Won't Get a $100 Million Payout*, N.Y. TIMES (Nov. 21, 2024), https://www.nytimes.com/2024/11/21/us/botham-jean-settlement-compensation.html [https://perma.cc/43KZ-A55B].

65. *See* Courtney Gilmore & Jack Highberger, *Family of Botham Jean Decries 'Smear' of His Character*, NBC DALL.-FT. WOR. (Sep. 14, 2018, at 17:36 MT), https://www.nbcdfw.com/news/local/lawyer-for-botham-jean-calls-attempt-to-assassinate-character-disgusting/266867/ [https://perma.cc/Y9CD-87KR].

66. *Id.*

Courts also legitimize police narratives.[67] Consider how they describe neighborhoods where police–civilian encounters happen. Even when it has no bearing on the legal issue, e.g., whether use of force was reasonable, a court might still describe the incident as occurring in a "high-crime area"—a phrase that carries racial undertones and paints the victim as belonging to a world where violence is expected.[68] Judicial opinions also tend to center the officer's perspectives. Courts put a heavy thumb on the scale for what cops perceive, leaving the victim's account out entirely.[69] Viewed through this lens, the underlying question in police violence cases starts to shift from "What did the officer do?" to "Who was the victim?" The violence moves to the background, and the victim's identity and character move to the fore. As a result, accountability slips even further away.

Research on victim-blaming explains why this strategy achieves its intended effect. Studies of sexual assault show that a victim's perceived social standing shapes how the public assigns fault.[70] Victims seen as less respectable are viewed as more responsible for their suffering, and perpetrators face less punishment.[71] A 2017 study by Kristin Dukes and Sarah Gaither applied this insight to race, finding that negative, racially stereotypical information about a shooting victim increased blame on the victim and decreased blame on the shooter.[72] Even when the victim was white, media portrayals that described the victim exhibiting negative, racially stereotypical traits caused similar victim-blaming effects.[73] This suggests the effects stem from the racialized narrative itself rather than the victim's actual race.

The heightened authority police officers have likely strengthens this dynamic. Consider what happens when cop-coding brings to light a past arrest or leans on stereotypes about danger and criminality. Dukes and Gaither's insights about bias are made visible, and the public comes to see the violence as justified. Each incident reinforces stereotypes that make the next easier to excuse. By the time anyone calls for structural change, that demand meets skepticism because the narrative has already shifted blame from the institution to the victim.

B. Epistemic Injustice

Philosopher Miranda Fricker coined the term "epistemic injustice" to name the harm done to someone specifically in their capacity as a knower of their own experience.[74] Cop-coding causes precisely this kind of harm. It attacks a person's

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67. *See* Adam M. Gershowitz & Caroline E. Lewis, *Laundering Police Lies*, 2023 WIS. L. REV. 1187, 1188–91 (arguing that courts launder police narratives by uncritically accepting implausible officer accounts).

68. *Id.* at 1211–12.

69. *Id.* at 1210.

70. *See, e.g.*, Kristin Nicole Dukes & Sarah E. Gaither, *Black Racial Stereotypes and Victim Blaming: Implications for Media Coverage and Criminal Proceedings in Cases of Police Violence Against Racial and Ethnic Minorities*, 73 J. SOC. ISSUES 789, 791 (2017).

71. *Id.*

72. *Id.* at 801.

73. *Id.* at 801–02.

74. *See* MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING 1 (2007).

ability to know and speak the truth about their own trauma.[75] The harm operates through two distinct channels. The first is testimonial injustice.[76] Through cop-coding, a narrative is constructed that blames the victim, establishing a hierarchy where official accounts are accepted as fact and victim experiences are diminished or dismissed. This framing treats victim testimony as inherently suspect while treating police narratives as presumptively credible. Breaion King was portrayed as someone with violent tendencies,[77] although nothing about her conduct supported that claim.[78] Others doubted her, and eventually she began to doubt her own understanding of what had happened. "I asked God why, is there something that I've done? . . . [W]hat's wrong with me?" she later recalled.[79]

King's experience demonstrates a core harm of testimonial injustice. Victims start to doubt their ability to be credible witnesses to the harms that befall them, so grieving families have to step in to defend basic truths. Tiffany Crutcher, whose brother Terence was killed by Tulsa police,[80] captured what this demands: "While we're grieving and mourning, at the same time, we have to rally and let the world know that our loved one did not deserve to die."[81] After Renee Good was killed by federal immigration agents in Minneapolis, her partner had to publicly insist that "above all else, she was kind" against official claims that Good was a domestic terrorist.[82] When Alex Pretti was killed by federal agents during the same immigration enforcement operations, his parents issued an urgent appeal: "get the truth out about our son."[83] Officials had also labeled him a "domestic terrorist" and "would-be assassin,"[84] even though video of the encounter that led to his killing showed him helping another person with his legally carried firearm holstered.[85]

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75. *See id.*

76. *Id.*

77. *See supra* note 8 and accompanying text.

78. *See Teacher Responds to Apology*, *supra* note 20.

79. *See* Davis, *supra* note 9.

80. *See* Amna Nawaz & Karina Cuevas, *Family of Man Killed by Officer in 2016 Describes Efforts to Reform Policing*, PBS (Jan. 31, 2023, at 18:41 ET), https://www.pbs.org/newshour/show/family-of-man-killed-by-officer-in-2016-describes-efforts-to-reform-policing [https://perma.cc/A2R2-27EL].

81. *See* Morrison, *supra* note 50.

82. David Litt, Opinion, *The Trump Administration Thinks They Had It Coming*, N.Y. TIMES (Feb. 1, 2026), https://www.nytimes.com/2026/02/01/opinion/renee-good-alex-pretti-ice-minneapolis.html [https://perma.cc/6LNN-2CE3].

83. *Id.*

84. *Id.*; Nancy Cordes, *In Alex Pretti's Killing, a Sharp Contrast Between What Trump Officials Say and What Video Shows*, CBS (Jan. 25, 2026, at 23:59 ET), https://www.cbsnews.com/news/alex-pretti-shooting-contrast-official-accounts-videos/ [https://perma.cc/9RY4-4NC3].

85. *See* Ken Bensinger, *Most Fox News Reporting on Minneapolis Shooting Supports Official Version*, N.Y. TIMES (Jan. 25, 2026), https://www.nytimes.com/2026/01/25/business/media/fox-news-minneapolis-shooting.html [https://perma.cc/W6ZV-5HM5].

It is true that Good and Pretti were both killed by federal agents, not state or local police, so their cases technically fall outside Section 1983's reach.[86] But the narrative machinery works the same way, shifting blame from institution to victim. Sometimes it seizes on true but immaterial details to imply the victim brought the harm on themselves. Other times it fabricates outright, as the "would-be assassin" label pinned on Pretti did, despite evidence to the contrary.[87] Regardless of the methods, the effect is to distort the public record and recast the victim as the wrongdoer. In this way, cop-coding tracks defamation's concern with reputational harm, which, as I discuss later, has long reached misleading implications as well as outright falsehoods.[88]

If testimonial injustice attacks whether a victim is believed, the second channel, hermeneutical injustice, attacks whether they can be understood at all. It occurs when institutions control the interpretive frameworks used to make sense of experience, leaving people unable to articulate their reality in terms the system recognizes as valid.[89] Courts define the vocabulary used to evaluate citizen–police encounters.[90] Consider "reasonable suspicion," the standard that lets an officer briefly stop and investigate someone based on specific, articulable facts pointing to criminal activity.[91] The facts that count are the ones the officer perceived.[92] In *Illinois v. Wardlow*, that meant walking away from the police, ordinarily a protected right,[93] became evidence of criminality because it happened in a "high-crime area."[94] Terms defined this way reflect law enforcement priorities rather than the lived experience of those subjected to police power.[95] Imagine an officer asks for your

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86. *See infra* note 142 and accompanying text (discussing implied rights of action against federal officials for constitutional violations).

87. *See supra* note 84 and accompanying text.

88. RESTATEMENT (SECOND) OF TORTS § 563 (A.L.I. 1977) (providing that the meaning of a communication "is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express").

89. *See* FRICKER, *supra* note 74; Annalisa Coliva, *Hysteria, Hermeneutical Injustice and Conceptual Engineering*, 39 SOC. EPISTEMOLOGY 121, 124–25 (2025) (explaining that hermeneutical injustice "occurs when there is a gap in the collective hermeneutical—that is, conceptual—resources, held in place by identity prejudice against the marginalized group and by the fact that the latter cannot participate in those practices in which (new) meanings are created and shared").

90. *See, e.g.*, Janice Nadler & J.D. Trout, *The Language of Consent in Police Encounters*, *in* THE OXFORD HANDBOOK OF LANGUAGE AND LAW 326, 333–35 (Peter M. Tiersma & Lawrence M. Solan eds., 2012).

91. *See* Terry v. Ohio, 392 U.S. 1, 21 (1968) (permitting a brief investigatory stop when an officer can point to specific and articulable facts supporting reasonable suspicion of criminal activity).

92. *Id.* at 21–22 (asking whether the facts available to the officer warranted the intrusion).

93. *See* Florida v. Royer, 460 U.S. 491, 498 (1983) (recognizing that a person approached by police may decline to answer and go on their way).

94. Illinois v. Wardlow, 528 U.S. 119, 124–25 (2000) (holding that unprovoked flight in a high-crime area supports reasonable suspicion for a *Terry* stop).

95. Nadler & Trout, *supra* note 90, at 336 (describing how courts define consent in citizen–police interactions and explaining that "lower courts now seem hesitant to ever find that the defendant's grant of consent was coerced, unearthing voluntariness even when the

license. You follow the instruction by reaching for your wallet, keeping your hands where the officer can see them. Even though you are complying, the law allows the officer to label that reach as a "furtive movement." This is an elastic term that "can be used to refer to an almost-infinite number of actions that an officer might find suspicious."[96] Because the word is so broad, it can turn simple obedience into evidence of threat. A person might be doing what they were told to do, but that compliance would count for little because the officer's fear, rational or not, is given outsized importance.[97]

This dynamic is observable in what happened to Philando Castile in 2016. He was pulled over in the Minneapolis–St. Paul region for allegedly driving with a broken taillight.[98] He told the cop who stopped him that he was armed, and his girlfriend noted he was licensed to carry.[99] The officer told him not to move, then asked for his license and registration.[100] Castile moved to comply with the contradictory commands.[101] The officer shot him anyway. Castile's girlfriend, Diamond Reynolds, was in the passenger seat and livestreamed the aftermath, describing in real time what had happened.[102] In court, the legal focus shifted away from what Castile actually did and toward the officer's internal state of mind.[103] In deadly force cases, the central question is simply whether the officer reasonably feared for their safety.[104] And in case after case, a victim's "blackness (or brownness) too frequently stands in" as the proof that the fear was justified.[105]

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officer issues a direct command"); *see also* Janice Nadler, *Consent, Dignity, and the Failure of Scattershot Policing*, *in* THE CONSTITUTION AND THE FUTURE OF CRIMINAL JUSTICE IN AMERICA 93, 106 (John T. Parry & L. Song Richardson eds., 2013) (explaining that formal law defines "the boundaries of everyday police practices" and does not "take the perspective of the [policed] citizens" into account and advocating for considering those perspectives when determining appropriate police practices as well as moving away from a scattershot approach to law enforcement).

96. *See* Jeffrey Fagan & Amanda Geller, *Following the Script: Narratives of Suspicion in* Terry *Stops in Street Policing*, 82 U. CHI. L. REV. 51, 78 (2015).

97. Gershowitz & Lewis*, supra* note 67, at 1210.

98. Sam McCann, *Black Drivers Were Pulled Over Less Often After a Minnesota County Changed Its Policies*, VERA (June 7, 2023), https://www.vera.org/news/black-drivers-were-pulled-over-less-often-after-a-minnesota-county-changed-its-policies [https://perma.cc/SRH3-PNRJ].

99. *See* Julia Dahl, *When Cops and Civilians Both Have Guns*, CBS NEWS (July 7, 2016, at 16:17 ET), https://www.cbsnews.com/news/philando-castile-shooting-when-cops-and-civilians-both-have-guns/ [https://perma.cc/FS8R-MQPC].

100. *Id.*

101. *Id.*

102. MehChu, *From Impunity to Reparations*, *supra* note 24, at 96.

103. Martin Kaste, *Cop Shooting Death Cases Raise Question: When Is Fear Reasonable?*, NPR (June 30, 2017, at 10:37 ET), https://www.npr.org/2017/06/30/534992121/cop-shooting-death-cases-raise-question-when-is-fear-reasonable [https://perma.cc/M52XM7NH].

104. *See* Tennessee v. Garner, 471 U.S. 1, 7 (1985) ("[T]here can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.").

105. Jasmine B. Gonzales Rose, *Racial Character Evidence in Police Killing Cases*, 2018 WIS. L. REV. 369, 373.

That same logic shaped how Reynolds's account was treated. She described with clarity the events that unfolded when police killed her boyfriend for no apparent reason. But nothing she could have said would have moved the needle because the legal standard turns on the officer's claimed perspective[106] and the witness's say-so is powerless within it. Reynolds's experience is a window into hermeneutical injustice, and it is not an outlier. Victims and their families are aware that they have been mistreated and can express this in their own terms, but the legal and public discussion provides no interpretive framework to confirm their understanding.

A fundamental principle in remedies law is that a federal court must tailor "the scope of the remedy" to fit "the nature and extent of the constitutional violation."[107] Applying that principle here requires a full appraisal of the violation's scope. The harm operates at two levels. First, the victim is stripped of credibility and treated as an unreliable narrator of their own experience. The wrong itself is then denied recognition as a wrong. While the typical remedy is money, it can only go so far in repairing the status harms police violence inflicts. Something more is needed, and it starts with acknowledgment. The victim has to be recognized as a credible narrator of their own life. The institution must admit its account was false. From there, the power to say what happened must shift, moving away from the institution and back to the person whose credibility was wrongly destroyed. The stakes are clearest when the excessive force leads to death. As one affected family member described it, the police kill the person twice: once physically and once through a statement that kills the person's reputation.[108] Taking that seriously means recognizing both deaths.

C. Legal Estrangement: When Communities Opt Out

The epistemic harm described above does not stay contained to the individual. When a victim's account is publicly discredited by the state, the damage radiates outward. Communities watch these patterns accumulate, and what begins as an attack on one person's credibility becomes a collective lesson about who the law is for. This is where the harm shifts from epistemic to relational and where Monica Bell's concept of "legal estrangement" becomes essential. Legal estrangement describes a deep cultural orientation where marginalized communities feel structurally and symbolically excluded from the law.[109] More than just cynicism or distrust,[110] it encompasses a fundamental rejection of the legal system as a

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106. *See, e.g.*, Rachel Harmon, *When Is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1129 (2008) (explaining that the excessive force inquiry is an objective one "and should be considered from the officer's perspective"); Mitch Zamoff, *Determining the Perspective of a Reasonable Police Officer: An Evidenced-Based Proposal*, 65 VILL. L. REV. 585, 585 (2020) ("[T]he Supreme Court mandated over thirty years ago that courts determine the constitutionality of allegedly excessive force from the perspective of a reasonable officer on the scene . . . .").

107. Milliken v. Bradley, 418 U.S. 717, 744 (1974) ("The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation.").

108. Levin, *They Kill the Person Twice*, *supra* note 52.

109. Bell, *supra* note 51.

110. *See* MehChu, Cop-Coding, *supra* note 53, at 48 (noting that "[l]egal estrangement builds upon the concept of legal cynicism, which describes a deep-seated

legitimate protective force, fueled by the realization that the law is a tool used on the community rather than for it.[111]

Bell identifies three building blocks of legal estrangement. The first is procedural injustice, which refers to direct negative experiences with law enforcement, such as being profiled, treated with contempt, or subjected to unequal treatment.[112] The second is vicarious marginalization, which recognizes not only that estrangement is personal, but also that people are shaped by what they see and hear happening to others, even those outside their immediate circle.[113] The third is structural exclusion, which names the broader condition that ties these together: the experience, common among low-income people of color, of existing in a kind of legal limbo that is present enough to be punished but absent enough to be unprotected.[114] When an entire community watches the state publicly destroy a neighbor's reputation, the message lands on everyone. No one in that community can expect the legal system to take their side, believe their account, or treat them as worthy of protection.

The effects of that lesson show up in concrete, measurable ways. When people see the legal system as working against them, they begin to avoid institutions connected to it, including ones that have little to do with the carceral apparatus.[115] Studies bear this out. People who have experienced or witnessed unfair treatment by the legal system are more likely to avoid hospitals and emergency services, afraid that seeking help will bring law enforcement into their lives.[116] Alice Goffman documented this pattern directly, finding that people with serious injuries sometimes refuse medical treatment rather than risk a police encounter.[117] Sarah Brayne's research reached a similar conclusion, showing that people who had come to distrust the legal system were more likely to go without medical care even when they felt they needed it.[118] These findings show how far legal estrangement reaches. Once people come to see the legal system as an institution that works against them, that distrust spreads far beyond it, seeping into healthcare, emergency services, and

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distrust 'in the basic intention of the laws' and its enforcers" (quoting Emily Ryo, *Fostering Legal Cynicism Through Immigration Detention*, 90 S. CAL. L. REV. 999, 1015 (2017))).

111. *See* Bell, *supra* note 51, at 2100–04 (describing unfair treatment, bias, and the abuse of authority by law enforcement as procedural injustice and showing how these firsthand experiences drive individuals toward a fundamental rejection of the legal system).

112. *See id.*

113. *Id.* at 2104.

114. *Id.* at 2114.

115. *See* Sarah Brayne, *Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment*, 79 AM. SOCIO. REV. 367, 367–68 (2014) (introducing the concept of "system avoidance" and finding that individuals with criminal justice contact withdraw from surveilling institutions, including medical and financial institutions, that keep formal records).

116. *Cf.* Goffman, *supra* note 38, at 344–46, 353 (describing how young men facing legal system contact view medical facilities as "paths to confinement" and routinely forgo necessary hospital treatment to avoid law enforcement).

117. *Id.* at 345.

118. *See* Brayne, *supra* note 115, at 379.

every other institution associated with the state. Places meant to offer help start to feel like places people feel the need to avoid.

The injuries described in this Part show that state violence unfolds in a two-stage process. The physical use of force comes first, followed by the narrative assault on the victim's credibility. The harms at this second stage are multiple and layered. By shielding the carceral state from accountability, cop-coding preserves the hierarchical structures that enable state violence in the first place. These are structures where official accounts carry weight and victim accounts do not, where some bodies are perceived as threatening and others as entitled to threaten them. It is a cross-institutional project that inflicts epistemic and relational harms on police violence victims, harms that money cannot reach. Bridging this gap requires moving from the sociological reality of these harms to the legal mechanics of constitutional repair. That means examining the scope of federal courts' remedial authority under Section 1983, which I take up next.

II. JUDICIAL POWER TO ISSUE CONSTITUTIONAL REMEDIES

Modern abolitionist movements invite us to recognize policing's roots in settler colonialism and slavery.[119] They call on local governments to acknowledge and repair generations of harm inflicted by police on primarily nonwhite communities.[120] However, most local governments fail to do this, with Chicago's reparations plan being a notable exception.[121] Typically, cities take a limited approach with "reformist reforms,"[122] such as those mandated by consent decrees.[123] These reforms only tinker with existing practices and perpetuate the idea that police violence can be reduced to the misconduct of a few "bad apples" rather than addressing root causes.[124] This Part establishes the legal framework for a more transformative solution. Section II.A discusses the doctrinal foundations of federal courts' authority to fashion remedies for constitutional violations. Section II.B then

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119. *See, e.g.*, Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1839 (2020).

120. *See* Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 834–35 (2021).

121. *Id.* at 835.

122. For a comprehensive discussion on reformist reforms, see generally Ndjuoh MehChu, *Neither Cops nor Caseworkers*: *Transforming Family Policing Through Participatory Budgeting*, 104 B.U. L. REV. 73, 107–09 (2024) [hereinafter MehChu, *Neither Cops nor Caseworkers*], which argues for the implementation and expansion of participatory budgeting to unravel the connection between economic deprivation and family policing; and Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L.J. 2497 (2023), which examines the turn of left social movements to "non-reformist reforms" as a framework for reconceiving reform.

123. ERWIN CHEMERINSKY, PRESUMED GUILTY 303–04 (2021) ("A consent decree is 'a court-ordered and court-enforceable settlement, overseen by a federal judge.' In a consent decree, the Justice Department and a city or state enter into an agreement requiring that specific reforms be instituted. Usually a monitor is appointed to oversee the process. The federal court retains the case and can impose sanctions on the government if it does not meet the terms of the agreement." (citations omitted)).

124. Ndjuoh MehChu, *Policing as Assault*, 111 CALIF. L. REV. 865, 910 (2023) [hereinafter MehChu, *Policing as Assault*].

examines the system of remedies for state misconduct under Section 1983 with a focus on the rigorous standards for holding municipalities liable for excessive force.

A. Federal Judicial Remedies

In the landmark *Marbury v. Madison* decision, the Supreme Court declared that "every right, when withheld, must have a remedy."[125] The Court stressed that such remedies were vital to the United States maintaining its status as "a government of laws, and not of men."[126] *Marbury*'s pronouncement has come to represent a broader ideal: the redress of individual legal rights through tailored remedies.[127] Although this aspiration may be limited when weighed against competing societal interests,[128] it endures as a cornerstone of American law. That said, the Constitution itself is nearly silent about remedies for constitutional breaches.[129] As a result, courts have consistently assumed responsibility in fashioning remedies for constitutional violations.[130] Constitutional remedies serve three vital purposes: compensation, accountability, and deterrence.[131] They are supposed to provide recompense to victims of government abuse,[132] offer a means for holding government officials accountable to their victims,[133] and discourage officials from repeatedly violating the Constitution.[134]

The parameters of judicial remedies have evolved over time. Professor Richard Fallon identifies three "overlapping yet discernibly distinctive eras."[135] The first era began with the Founding generation. Back then, there was no separate system for handling constitutional violations. Instead, courts "relied on a preexisting background system of common law rights and remedies"[136] to hold both government officials and ordinary citizens accountable.[137] As Professor Akhil Amar described it, "Plaintiff would sue defendant federal officer in trespass; defendant would claim federal empowerment that trumped the state law of trespass under the principles of the supremacy clause; and plaintiff, by way of reply, would play an

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125. 5 U.S. (1 Cranch) 137, 163 (1803).

126. *Id.*

127. Richard H. Fallon, Jr., *Bidding Farewell to Constitutional Torts*, 107 CALIF. L. REV. 933, 936 (2019).

128. *Id.*

129. *See, e.g.*, Carlos M. Vázquez, *The Constitution as a Source of Remedial Law*, 132 YALE L.J.F. 1062, 1062 (2023) ("It is often remarked that the Constitution expressly addresses remedies in only two provisions: the Takings Clause and the Suspension Clause.").

130. Fallon, *supra* note 127, at 941.

131. *See, e.g.*, Carey v. Piphus, 435 U.S. 247, 254 (1978) ("[T]he basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights . . . .").

132. Fallon, *supra* note 127, at 969–70.

133. *Id.*

134. *See* Richard H. Fallon, Jr. & Daniel J. Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 HARV. L. REV. 1733, 1788 (1991).

135. Fallon, *supra* note 127.

136. *Id.*

137. *Id.*

even higher supremacy clause trump: Any federal empowerment was ultra vires and void" because the defendant violated the Constitution.[138]

The second era saw Congress and the Supreme Court create a freestanding system of governmental liability. This system treated constitutional breaches and their remedies differently from those for private wrongs.[139] Perhaps the most significant development in constitutional remedies occurred in 1871, when the Reconstruction Congress passed 42 U.S.C. § 1983. Section 1983 created a direct cause of action, enabling individuals to sue for damages and injunctions when state officials violated their federal constitutional rights.[140] However, it was not entirely clear how Section 1983 would fit with existing common-law claims. Specifically, questions arose about "whether the common law had any role to play in the new constitutional suits."[141] Another significant development came in 1971. That year, the Supreme Court decided *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, establishing an implied right of action for damages against federal officials.[142] As the system of federal remedies for constitutional violations became more robust, the Supreme Court also created governmental immunities, ostensibly to balance individual rights with the needs of government.[143]

The third and current era is characterized by the collapse of constitutional remedies. Supreme Court rulings have made it very difficult to successfully sue government officials, especially cops, by expanding legal doctrines that protect them from lawsuits. In *Bivens*, the Court recognized an implied right to sue federal officials for damages for constitutional violations, the federal counterpart to Section 1983's remedy against state officials.[144] That remedy has been steadily eroded,[145] while increasingly stringent immunity doctrines have sapped Section 1983's remedial power. Scholars argue these decisions show the Court does not understand how judicially crafted remedies fit into our constitutional tradition.[146] The next Section examines Section 1983 in more detail.

B. 42 U.S.C. § 1983

1. Overview

The social forces that led to Section 1983's enactment and its legislative history provide an initial foundation for understanding the statute's potential to address the status harms police violence inflicts. After slavery was abolished, Congress ratified and added to the Constitution the Thirteenth, Fourteenth, and

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138. Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 YALE L.J. 1425, 1506–07 (1987).

139. Fallon, *supra* note 127.

140. *Id.*

141. *See, e.g.*, William Baude, *Is Qualified Immunity Unlawful?*, 106 CALIF. L. REV. 45, 52 (2018).

142. 403 U.S. 388, 389 (1971).

143. Fallon, *supra* note 127, at 936–37.

144. *See Bivens*, 403 U.S. at 397.

145. Fallon, *supra* note 127, at 937; *see also* Egbert v. Boule, 596 U.S. 482, 486 (2022) (declining to extend *Bivens* and signaling strong reluctance to recognize new *Bivens* claims).

146. Fallon, *supra* note 127, at 937.

Fifteenth Amendments.[147] These Reconstruction Amendments were intended to shore up protections for the formerly enslaved.[148] The Thirteenth Amendment eradicated slavery and involuntary servitude except as a form of criminal punishment.[149] The Fourteenth Amendment sought to elevate freed Black people to equal citizenship and secure the "equal protection of the laws."[150] And the Fifteenth Amendment made it unlawful to disenfranchise voters on the basis of race, color, or previous condition of servitude.[151]

Despite slavery's abolition and the constitutional guarantees the Reconstruction Amendments afforded to Black Americans, a new era of racial oppression swiftly emerged. The Reconstruction era, spanning the 1860s and 1870s, was marked by widespread racialized violence.[152] Congressional records reveal a disturbing pattern of state-sanctioned abuse, including baseless arrests of Black citizens[153] and white police officers inflicting brutal violence with impunity.[154] These systemic violations undermined the Fourteenth Amendment's guarantee of equal protection, and with Klan members permeating the ranks of state and local governments, there was little hope that accountability or redress would come from these institutions.[155] Congress thus felt a pressing need to devise a bold federal remedy, and it did so by enacting the Civil Rights Act of 1871.[156]

The Act aimed to curb the Klan's reign of terror through a variety of means, including civil and criminal penalties for conspiracies to deprive individuals of their fundamental rights, as well as the authorization of martial law and suspension of habeas corpus in extreme cases.[157] Now codified as Section 1983, Section 1 granted citizens access to federal courts to sue "[e]very person who, under color of [law],

147. *See generally* Jack M. Balkin, *The Reconstruction Power*, 85 N.Y.U. L. REV. 1801 (2010) (explaining how modern doctrine on the Thirteenth, Fourteenth, and Fifteenth Amendments fails to capture the broad powers given to Congress in enforcing the Reconstruction Amendments).

148. *See* Richard Briffault, *Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1141–42 (1977).

149. U.S. CONST. amend. XIII.

150. U.S. CONST. amend. XIV.

151. U.S. CONST. amend. XV.

152. Osagie K. Obasogie & Anna Zaret, *Plainly Incompetent: How Qualified Immunity Became an Exculpatory Doctrine of Police Excessive Force*, 170 U. PA. L. REV. 407, 418 (2022); *see also* Bryan Stevenson, *A Presumption of Guilt: The Legacy of America's History of Racial Injustice*, *in* POLICING THE BLACK MAN 8 (Angela J. Davis ed., 2017) ("In place of slavery, belief in a racial hierarchy took virulent expression in newly defined social norms, including lynching and other forms of racial terrorism; segregation and Jim Crow; and unprecedented mass incarceration.").

153. CONG. GLOBE, 42d Cong., 1st Sess. 321 (1871).

154. *Id.* at app. 185.

155. *See id.* at 321 (describing Klan influence over state and local officials).

156. *Id.*

157. David H. Gans, *Repairing Our System of Constitutional Accountability: Reflections on the 150th Anniversary of Section 1983*, 2022 CARDOZO L. REV. DE NOVO 90, 97.

subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights . . . secured by the Constitution and laws."[158]

Legislative records indicate that Section 1983's architects envisioned it would provide a broad remedy for federal civil rights violations. Debate on the provision itself was limited, but the little that occurred reveals a clear purpose.[159] Representative Samuel Shellabarger, who sponsored the bill containing Section 1983 in the House, stressed its role in safeguarding "human liberty and human rights" and advocated for its "liberal[] and beneficent[]" interpretation.[160] Opponents were apprehensive that the law's breadth would lead to "heavy damages" and subject state officials to burdensome and unwarranted litigation in distant federal courts.[161] Senator Allen Thurman, Section 1's most fervent critic, complained that it contained "no limitation whatsoever."[162] This history shows that both proponents and opponents understood that the law would have far-reaching impacts, potentially affecting entire state systems and practices rather than just isolated incidents. By enacting Section 1983, Congress appears to have recognized that state-sanctioned violence was not limited to individual bad actors but a pervasive issue requiring an equally comprehensive solution. This historical context supports interpreting Section 1983 as a tool for broad communal recompenses, which court-ordered apologies could offer although directed to individual victims.

2. Municipal Liability Under Section 1983

Despite its grand ambitions, Section 1983 fell dormant shortly after enactment because the Supreme Court limited its scope to actions authorized by state law.[163] However, *Monroe v. Pape*[164] revived the statute by including unauthorized official conduct under its ambit.[165] *Monroe* also held that municipalities were not Section 1983 "persons" and therefore could not be sued under the statute.[166] But just 17 years later, the Court construed Section 1983's legislative history in *Monell v. Department of Social Services of New York* to reach the opposite conclusion.[167] *Monell* held that municipalities may be liable under Section 1983 for their own constitutional breaches.[168] However, liability does not attach simply because a municipality employs an offending official.[169] The Court interpreted Section 1983's

158. 42 U.S.C. § 1983.

159. *See* CONG. GLOBE, 42d Cong., 1st Sess. app. 309–10 (1871) (statement of Rep. Maynard (R-TN)) ("I suppose there is not much objection to [Section 1], from that fact that so far there has been very little said about it.").

160. *Id.* at app. 68.

161. CONG. GLOBE, 42d Cong., 1st Sess. 365 (1871).

162. *Id.* at app. 217.

163. Briffault, *supra* note 148, at 1135.

164. 365 U.S. 167 (1961).

165. *See id.* at 187.

166. *Id.* at 187–92 (excluding cities from definition of "persons" under Section 1983).

167. 436 U.S. 658, 663, 701 (1978).

168. *Id.* at 691.

169. *See, e.g.*, Theodore Eisenberg, *Section 1983: Doctrinal Foundations and an Empirical Study*, 67 CORN. L. REV. 482, 515–16 (1982).

"causes to be subjected" language as excluding vicarious liability.[170] This means that it is insufficient for plaintiffs to show that a rank-and-file cop employed by the defendant municipality violated their rights. Rather, plaintiffs must establish that the municipality's own "policy or custom" caused the violation.[171]

3. Culpability and Causation Standard

Plaintiffs can satisfy the municipal policy or custom requirement in four ways.[172] First, plaintiffs can point to an express municipal law or policy that violated their federal rights.[173] Second, they can prove a final policymaker's decision directly caused their injury.[174] Third, they can demonstrate a widespread unwritten practice so entrenched it amounts to a "'custom or usage' with the force of law."[175] Finally, plaintiffs can allege municipal inaction,[176] usually framed as a failure to train,[177] screen, or supervise employees.[178]

The Supreme Court has emphasized that municipal inaction claims must meet rigorous culpability and causation standards.[179] As articulated in *Board of the County Commissioners of Bryan County v. Brown*, "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights."[180] Culpability requires showing deliberate indifference to a known or obvious risk.[181] To establish causation, the plaintiff must demonstrate the inaction was the "moving force [behind] the constitutional violation."[182] The Court has said

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170. *Monell*, 436 U.S. at 691–92 (rejecting respondeat superior liability for cities).

171. *Id.* at 694.

172. Connick v. Thompson, 563 U.S. 51, 61–62 (2011) (delineating ways to show municipal policy or custom).

173. *Id.* at 61.

174. *Id.*; *see also* Pembaur v. City of Cincinnati, 475 U.S. 469, 480 (1986) (finding that a prosecutor's decision to command officers to forcefully enter the petitioner's clinic "directly caused the violation of petitioner's Fourth Amendment rights").

175. Adickes v. S.H. Kress & Co., 398 U.S. 144, 168 (1970).

176. *See* City of Canton v. Harris, 489 U.S. 378, 380 (1989); *see also Connick*, 563 U.S. at 61–62 ("Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law.").

177. *E.g.*, *Canton*, 489 U.S. at 387–89.

178. *E.g.*, Bd. of the Cnty. Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 397, 404–08 (1997); *see also* Karen M. Blum, *Making Out the* Monell *Claim Under Section 1983*, 25 TOURO L. REV. 829, 830 (2009) ("[T]he *City of Canton* method of demonstrating liability . . . occurs when plaintiffs point to a failure to 'blank': a failure to train, a failure to supervise, a failure to discipline, a failure to adequately screen, etc.").

179. *Connick*, 563 U.S. at 61, 70; *see also Bryan Cnty.*, 520 U.S. at 404, 410, 415 ("Where a court fails to adhere to rigorous requirements of culpability and causation, municipal liability collapses into respondeat superior liability.").

180. *Bryan Cnty.*, 520 U.S. at 404.

181. *Canton*, 489 U.S. at 389; *see also Bryan Cnty.*, 520 U.S. at 411 ("A plaintiff must demonstrate that a municipal decision reflects a deliberate indifference to the risk that a violation of a particular constitutional or statutory right will follow the decision.").

182. *Canton*, 489 U.S. at 389 (alteration in original) (quoting Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 694 (1978)).

that "[i]n virtually every instance where a person has had [their] constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident."[183] As a result, federal appellate courts have required that plaintiffs show proximate cause to establish that the city's inaction was a "moving force" behind a constitutional violation.[184]

4. Excessive Force

To win on an excessive force claim against a city, a plaintiff must establish two things. First, the plaintiff must show that the officer's use of force violated their Fourth Amendment rights against unreasonable seizures. The Supreme Court's decision in *Graham v. Connor*[185] governs the excessive force inquiry, which asks whether the force used was objectively unreasonable. This entails balancing "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight."[186]

Second, the plaintiff must show that the city's practices were the direct cause of the excessive force.[187] Plaintiffs typically rely on three theories of liability to prove this causal link. One theory is that the department's excessive force was so common it became a custom, and city policymakers knew about it but did nothing to stop it.[188] Another theory is that the department inadequately trained officers regarding the proper use of force. This could include specific flaws in the training that directly led to officers' actions, a history of similar incidents, or a clear need for better training.[189] Finally, plaintiffs might argue the department failed to properly supervise or discipline cops who used excessive force.[190] As with inadequate training, plaintiffs must show a pattern of past violations or a clear need for better supervision to hold the city liable.[191] By establishing both the constitutional violation and the city's responsibility for the violation through one of these theories,

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183. *Id.* at 392 (quoting City of Okla. City v. Tuttle, 471 U.S. 808, 823 (1985) (Rehnquist, J., concurring).

184. *See, e.g.*, Cash v. Cnty. of Erie, 654 F.3d 324, 342 (2d Cir. 2011) (equating "moving force" with proximate cause); Smith v. District of Columbia, 413 F.3d 86, 102 (D.C. Cir. 2005) ("We have equated moving force with proximate cause. Proximate cause 'includes the notion of cause in fact,' and requires an element of foreseeability." (citations omitted) (quoting W. PAGE KEETON ET AL., *supra* note 25, at 165)).

185. 490 U.S. 386 (1989).

186. *Id.* at 396.

187. *See* City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986) ("[None] of our cases authorize[] the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm.").

188. *See* MARTIN A. SCHWARTZ, SECTION 1983 LITIGATION 104 (Kris Markarian ed., 3d ed. 2014) (explaining that a custom supports liability only when the practice was pervasive and entrenched enough that municipal policymakers knew or should have known of it yet allowed it to continue).

189. *Id.* at 107.

190. *Id.* at 97.

191. *See* Sarah Mikva Pfander, *The Path to Municipal Liability for Racially Discriminatory Policing*, 69 UCLA L. REV. 1270, 1293 (2023).

plaintiffs can hold the municipality accountable for the excessive force used by its officers.

Although municipalities are the only Section 1983 defendants that enjoy no immunity,[192] the stringent liability standards operate as de facto immunity because liability is rarely established.[193] For plaintiffs attempting to establish a widespread custom or practice and municipal notice, for example, it can be difficult to demonstrate a sufficient pattern of constitutionally violative conduct.[194] Courts apply inconsistent standards when determining whether prior incidents are similar enough to create such a pattern.[195] And plaintiffs must work hard in discovery to amass satisfactory evidence of similar prior incidents to survive summary judgment,[196] having to show not just that there were prior complaints of excessive force, but also that those complaints had merit and that the use of force warranted a disciplinary response.[197] But even if a plaintiff overcomes these steep barriers, only compensatory damages are typically available.[198] This is because municipalities, also unlike other Section 1983 defendants, are not subject to punitive damages.[199] Between the functionally immunizing liability standards and municipalities' exemption from punitive damages, victims are typically remediless when municipalities violate their rights. A more expansive remedial scheme for cities is overdue.

III. APOLOGIES IN BLUE: RECONSTRUCTING POLICE NARRATIVES

This Part develops the Article's central proposal that courts should have the authority to order municipal apologies as part of the remedial framework under Section 1983. It begins by exploring the contours of apologies and situates its protean conceptions within the broader role apologies already play in the law. Section III.A makes the affirmative case, arguing that court-ordered apologies can restore victim credibility, challenge the narrative that police violence is the work of isolated bad actors, and create incentives for early settlement. Section III.B takes up the counterarguments by examining concerns about institutional sincerity,

192. Owen v. City of Independence, 445 U.S. 622, 638 (1980) ("We hold, therefore, that the municipality may not assert the good faith of its officers or agents as a defense to liability under § 1983.").

193. *See* Fred Smith, *Local Sovereign Immunity*, 116 COLUM. L. REV. 409, 412 (2016).

194. *See* Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 524 (2004) ("It turns out, however, that the standard for proving a claim based on a pattern of departures from the official rules is quite high, and—in practice—is often unattainable.").

195. *See* Kit Kinports, *The Buck Does Not Stop Here: Supervisory Liability in Section 1983 Cases*, 1997 U. ILL. L. REV. 147, 170–73.

196. *See* G. Flint Taylor, *A Litigator's View of Discovery and Proof in Police Misconduct Policy and Practice Cases*, 48 DEPAUL L. REV. 747, 759–60 (1999).

197. *See, e.g.*, Johnson v. Holmes, No. 16-CV-00016, 2017 WL 4707463, at *9 (W.D. Va. Oct. 19, 2017).

198. Nominal damages are also sometimes available. For further discussion of nominal damages, see *infra* note 233 and accompanying text.

199. City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981).

compelled speech under the First Amendment, the risk of diminishing returns, and the deeper challenge of systemic racism.

A. Court-Ordered Apology

1. Beyond Sorry: Understanding Apologies

While not commonplace,[200] apologies carry considerable weight in the law. Before surveying this landscape, it is important to establish a working definition of an apology. As a starting point, Merriam-Webster defines it as "an admission of error or discourtesy accompanied by an expression of regret."[201] Some studies adopt a narrower conception, counting mere utterances of the word "sorry" as apologies.[202] In contrast, leading scholars in apologetic discourse, like Jennifer Robbennolt, take a broader view. According to Robbennolt, an "apology is a statement offered by a wrongdoer that expresses acknowledgment of the legitimacy of the violated rule, admission of fault and responsibility for its violation, and the expression of genuine regret and remorse for the harm done."[203] Sociologist Nicholas Tavuchis shares a similar view.[204] Philosopher Nick Smith, however, argues for an even more comprehensive definition. Notably, he contends that an apology must include a commitment to reform and avoid reoffending.[205] Smith critiques Robbennolt's definition, arguing that under her framework an "offender could provide no redress for the injury and commit the same offense and this would have no bearing on whether the apology is 'full.'"[206]

My goal here is to acknowledge the multifaceted nature of apologies and the fact that what we desire from them is context-dependent. For example, a simple acknowledgment that the harm was unintentional might suffice for minor incidents.[207] Conversely, if I am rear-ended, I might care most about a commitment to repair any damage. To navigate these diverse understandings, I propose a conception of apology that entails (1) corroborating the factual record, (2) accepting responsibility, and (3) expressing remorse. This definition, which draws from the works of Smith,[208] Tavuchis,[209] and Robbennolt,[210] notably excludes an expressed commitment to reform. This omission is deliberate, as such promises imply a

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200. *See* Benjamin J. McMichael, R. Lawrence Van Horn & W. Kip Viscusi, *"Sorry" Is Never Enough: How State Apology Laws Fail to Reduce Medical Malpractice Liability Risk*, 71 STAN. L. REV. 341, 349–50 (2019).

201. *Apology*, MERRIAM-WEBSTER, (11th ed. 2022), https://www.merriam-webster.com/dictionary/apology [https://perma.cc/4GD2-7NTT] (last visited Sep. 8, 2026).

202. NICK SMITH, JUSTICE THROUGH APOLOGIES: REMORSE, REFORM, AND PUNISHMENT 22 (2014).

203. *Id.* (quoting Jennifer K. Robbennolt, *Attorneys, Apologies, and Settlement Negotiation*, 13 HARV. NEGOT. L. REV. 349, 352 (2008)).

204. *See* NICHOLAS TAVUCHIS, MEA CULPA: A SOCIOLOGY OF APOLOGY AND RECONCILIATION 23 (1991).

205. SMITH, *supra* note 202, at 18–19.

206. *Id.* at 22–23.

207. *See id.* at 20.

208. *See supra* notes 202, 205 and accompanying text.

209. *See supra* note 204 and accompanying text.

210. *See supra* note 203 and accompanying text.

capacity for moral transformation[211] that, given the structural critiques of policing, I find problematic to assume. This framework provides a foundation for understanding apologies within the context of policing while acknowledging the varied nature of apologetic discourse.

2. Apologies in the Law

The potential of apologies to heal rifts has led to their embrace in law. One notable example is the emergence of apology laws in tort.[212] Studies have shown that apologies from doctors to patients can improve communication, promote healing, and resolve disputes.[213] These findings have influenced 39 states (and the District of Columbia) to enact apology laws—laws intended to reduce lawsuits and medical malpractice claims by making apologies inadmissible in court.[214] The idea is that a doctor's apology might make patients less likely to sue or more willing to settle existing claims, so it is desirable to encourage doctors to apologize without fear that it will be used against them.[215] While the effectiveness of apology laws in lowering lawsuits is debated,[216] their popularity remains high.[217]

The criminal system likewise treats remorse as meaningful, weighing it in decisions about charging and sentencing. When a minor is charged with a crime, their apology could determine whether they are tried as a juvenile or adult.[218] Federal judges may give lighter sentences to defendants who express genuine remorse,[219] potentially reducing their prison time by several years, especially for those facing lengthy sentences under the Federal Sentencing Guidelines.[220] A defendant's remorse can influence juries to forgo the death penalty in capital cases.[221] Parole

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211. SMITH, *supra* note 202, at 18–19.

212. McMichael, Van Horn & Viscusi, *supra* note 200, at 341.

213. *Id.*

214. *Id.*

215. *Id.*

216. *See, e.g.*, Yonathan A. Arbel & Yotam Kaplan, *Tort Reform Through the Back Door: A Critique of Law and Apologies*, 90 S. CALIF. L. REV. 1199, 1201 (2017) (arguing that apology laws dilute deterrence).

217. McMichael, Van Horn & Viscusi, *supra* note 200, at 349.

218. *See* Martha Grace Duncan, *"So Young and So Untender": Remorseless Children and the Expectations of the Law*, 102 COLUM. L. REV. 1469, 1471 (2002) ("In many jurisdictions, the presence of contrition is a legitimate argument for retaining juvenile jurisdiction, whereas its absence militates in favor of 'binding the child over' to the criminal system.").

219. U.S. SENT'G GUIDELINES MANUAL § 3E1.1 cmt. n.3 (U.S. SENT'G COMM'N 2025); *see* United States v. Fagan, 162 F.3d 1280, 1284 (10th Cir. 1998) ("Several circuits have specifically held that a moral element is implicit in acceptance of responsibility and is satisfied by the defendant's expression of contrition and remorse.").

220. *See* Julie R. O'Sullivan, *In Defense of the U.S. Sentencing Guidelines' Modified Real-Offense System*, 91 NW. U. L. REV. 1342, 1415 n.274 (1997) (collecting sources).

221. *See* Riggins v. Nevada, 504 U.S. 127, 144 (1992) (Kennedy, J., concurring) ("In a capital sentencing proceeding, assessments of character and remorse may carry great weight and, perhaps, be determinative of whether the offender lives or dies.").

boards also take apologies into account when deciding whether to release incarcerated people.[222]

Private law offers a useful parallel. In defamation, the law recognizes an injury much like the one at the heart of this Article. When a private actor makes false statements that harm someone's reputation, scholars have long argued that the injury is distinct from physical or economic loss and is one that money cannot adequately address.[223] This insight has led some to urge that retractions—a "withdrawal of the defamatory charge"—should play a more central role in defamation remedies.[224] And others have urged court-ordered apologies to "restore the claimant's reputation in the minds of the people who were misinformed by the defamatory statement or publication by compelling the defendant to take back his injurious words and apologize for spreading them."[225]

Cop-coding inflicts harm that closely resembles defamation, but there is a critical distinction between the two. In cop-coding, the false narrative attached to the claimant usually carries the weight of institutional authority. This might look like a police department's press release, a court opinion painting a victim as dangerous, or a charging document listing prior arrests. Because an institution stands behind each of these, the harm is more likely to become entrenched and more difficult to contest.

Courts in other contexts have already recognized that dignitary harms of this kind call for remedies beyond damages. Some countries have adopted court-ordered apologies as remedies for victims and communities, particularly in discrimination cases. Australia provides notable examples, with courts mandating apologies from employers and other parties that discriminate based on pregnancy and maternity leave,[226] race, [227] or sexual orientation.[228] In *De Simone v. Bevacqua*, an Australian court ordered an employer who sexually harassed an employee to apologize to all staff, recognizing the apology's importance in rebuilding trust and deterring future discrimination.[229] Similarly, a New York court upheld an order requiring a corporate executive to apologize for making antisemitic remarks.[230] These cases demonstrate that court-ordered apologies can serve as powerful tools for remedying dignitary harms.[231]

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222. *See* Stephanos Bibas & Richard A. Bierschbach, *Integrating Remorse and Apology into Criminal Procedure*, 114 YALE L.J. 85, 94 (2004).

223. *See supra* notes 25–29 and accompanying text.

224. *See* Peled, *supra* note 27.

225. Vandenbussche, *supra* note 26.

226. *See Escobar v Rainbow Printing Pty Ltd [No. 2]* [2002] FMCA 122, ¶¶ 1–2, 43 (Austl.).

227. *See Bull v Kuch* [1993] HREOCA 15, 8–9 (Austl.); *Woomera Aboriginal Corp v Edwards* [1993] HREOCA 24, annexure A (Austl.).

228. *See Burns v Radio 2UE Syd Pty Ltd & Ors [No. 2]* [2005] NSWADT 24, ¶¶ 32–34.

229. *See De Simone v Bevacqua* [1994] 7 VAR 246, 273–74 (Austl.).

230. Imperial Diner, Inc. v. State Hum. Rts. Appeal Bd., 417 N.E.2d 525, 529 (N.Y. 1980).

231. *See* Rachel Bayefsky, *Remedies and Respect: Rethinking the Role of Federal Judicial Relief*, 109 GEO. L.J. 1263, 1335 (2021).

Apologies in this context are thus like nominal damages in lawsuits. Nominal damages, small awards like a dollar, are given when a legal right is violated but the claimant cannot establish damages under a different measure.[232] These awards serve as "symbolic vindication,"[233] publicly "affirm[ing] that the defendant violated the plaintiff's rights."[234] Just as nominal damages validate the plaintiff's rights, an apology publicly acknowledges that the victim's rights were violated and validates their experience. In the context of police violence, a mandated apology can serve three important functions. First, by validating victims' experiences, it increases their belief in the procedural fairness of the legal system and is dignity affirming. Second, apologies can challenge the narrative that blames victims for their own suffering and dispel the misconception that police violence is merely the result of a few "bad apples" rather than a systemic issue. Third, the prospect of issuing public apologies may push cities toward settlement as they weigh the risks of implicating officers and triggering internal backlash.

3. Apologies for Police Violence

Current remedies for police violence almost exclusively focus on monetary damages, yet money alone cannot address the deep psychological and societal wounds inflicted by state violence. Consider Samaria Rice's powerful statement after her 12-year-old son, Tamir, was killed by Cleveland police: "I have not yet received an apology from the police department or the city of Cleveland in regards to the killing of my son. And it hurts."[235] This pain points to a fundamental gap in our remedial framework—the need for official acknowledgment of harm and institutional responsibility.

The Breaion King case noted in the Introduction demonstrates how institutional apologies can fill this gap. When Austin Police Chief Art Acevedo acknowledged that King was treated in a manner inconsistent "with the expectations of all of . . . us as human beings,"[236] it provided something monetary settlement alone could not: public validation of her humanity and official recognition of institutional failure. This validation proved particularly meaningful given the department's history of systemic racism, including five years of misreporting arrestees' race to mask racial bias.[237]

Who, exactly, should apologize? Ordinarily, an employer is liable for the wrongful acts its employees commit on the job, a doctrine known as respondeat

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232. DAN B. DOBBS & CAPRICE L. ROBERTS, LAW OF REMEDIES 225 (3d ed. 2017).

233. *See, e.g.*, Hassan v. City of New York, 804 F.3d 277, 293–94 (3d Cir. 2015); *see also* Bayer v. Neiman Marcus Grp., lnc., 861 F.3d 853, 872 (9th Cir. 2017) (describing nominal damages as "purely symbolic"). *But see* Uzuegbunam v. Preczewski, 592 U.S. 279, 282–83 (2021). The Supreme Court observed that even though nominal damages might be small amounts of money, they are still "concrete" rather than symbolic because the defendant has to pay something. *Id.* at 290–91.

234. Gregory C. Keating, *Is There Really No Liability Without Fault?: A Critique of Goldberg & Zipursky*, 85 FORDHAM L. REV. 24, 32 n.47 (2017).

235. Laughland, *supra* note 22.

236. Almasy & Cuevas, *supra* note 1.

237. *See supra* note 16 and accompanying text.

superior.[238] As noted, the Supreme Court held in *Monell* that this rule does not apply to municipalities under Section 1983.[239] Reading the statutory text providing that a person is liable who "subjects, or 'causes to be subjected'" another to a constitutional violation, the Court concluded that a city answers only for harms its own conduct caused, not for those of its employees alone.[240] Simply employing an offending cop does not trigger liability; rather, plaintiffs must prove that a city's own "policy or custom" caused the violation.[241] While individual offenders in criminal law typically apologize to victims and the state,[242] the complex organizational structures of local government complicate assigning responsibility and facilitating apologies. This raises several questions: Who should apologize on behalf of a city? Should it be the mayor, the chief of police, or a spokesperson? Should those with policymaking authority over the harmful policy apologize? What if the responsible parties have since left their positions? These questions highlight the complexity of institutional apologies. Nevertheless, it seems logical that the mayor or chief of police would be best positioned to stand in for the city and address the institutional structures and culture that led to the constitutional harm. Therefore, when this Article calls for the "city" to apologize, it refers to the mayor or police chief in the relevant locality. I now consider the benefits of these apologies.

a. Victim Empowerment: Procedural Justice and Validation of Lived Experiences

Public statements by police leadership are a common response to police violence against civilians.[243] These statements often aim to address public distrust in the police, which such events can severely intensify.[244] However, crafting these messages can be a delicate balancing act as officials try to acknowledge mistakes while avoiding criticism that could be seen as undermining their officers.[245] Political and legal pressures further complicate these apologies.[246] "[A]pologies that acknowledge specific faults might admit culpability that could lead to criminal charges or lawsuits."[247] These dynamics often lead to a predictable outcome:

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238. *See* RESTATEMENT (THIRD) OF AGENCY § 2.04 (A.L.I. 2006) (providing that an employer "is subject to liability for torts committed by employees while acting within the scope of their employment").

239. *See* Monell v. Dep't of Soc. Servs. of N.Y., 436 U.S. 658, 691–94 (1978) (construing 42 U.S.C. § 1983 and holding that municipalities cannot be held liable under a respondeat superior theory).

240. *See id.* at 691–92, 694.

241. *See id.* at 694.

242. *See* SMITH, *supra* note 202, at 9–10.

243. *See* Thomas C. O'Brien, Tracey L. Meares & Tom R. Tyler, *Reconciling Police and Communities with Apologies, Acknowledgements, or Both: A Controlled Experiment*, 687 ANNALS AM. ACAD. POL. & SOC. SCI. 202, 202 (2020).

244. *Id.*

245. *Cf. A Request for An Apology: Statement from Victim in a 1994 Brooklyn Rape Case*, N.Y. TIMES (Jan. 12, 2018), https://www.nytimes.com/2018/01/12/nyregion/statement-from-victim-in-a-1994-brooklyn-rape-case.html [https://perma.cc/D4QV-RUMX] (illustrating victim demand for official police apology).

246. *See* O'Brien, Meares & Tyler, *supra* note 243.

247. *Id.* at 206.

apologies that avoid taking responsibility.[248] Thomas C. O'Brien, Tracey L. Meares, and Tom R. Tyler term these "partial apologies," distinct from offering no apology or no acknowledgment at all.[249]

O'Brien, Meares, and Tyler recently investigated the impact of police apologies and acknowledgments of responsibility in Black communities, focusing on this demographic "because of the particular challenge that law enforcement ha[s] building trust" in these communities.[250] They recruited 678 African American participants ages 18 to 84 and randomly assigned them to one of four scenarios.[251] Each scenario presented a hypothetical public statement from a police chief addressing public distrust, varying in the degree to which the official recognized distrust and acknowledged responsibility for it:

(1) recognized distrust only;

(2) "*acknowledged* agency responsibility for community distrust of police *but did not apologize*";

(3) "*apologized* for the distrust but did *not acknowledge* police responsibility in creating the distrust"; and

(4) "*acknowledged* police responsibility for public distrust of the force *and apologized* for that distrust."[252]

The study then analyzed how these varying statements impacted participants' willingness to cooperate with police, such as seeking help or helping with crime solving.[253] When people help the police voluntarily, that suggests "they view police as a source of help rather than harm."[254] This willingness to cooperate also indicates they perceive the law and legal authorities as procedurally just. Recall again that procedural injustice is one element of the tripartite framework that constitutes legal estrangement.[255] Therefore, if apologies improve perceptions of procedural justice within the communities most heavily policed, mandating apologies could potentially mitigate conditions of legal estrangement.

The researchers found that "the combination of apology *and* acknowledgment" (Option 4 above) was most effective in fostering a perception of procedural justice.[256] This finding has significant implications for addressing legal estrangement in heavily policed communities. Public apologies from authorities can be powerful tools for rebuilding trust in the legal system, particularly for victims of police violence from marginalized communities. Apologies from cities can increase trust in the fairness of the legal system itself. This is particularly significant given the documented connection between legal estrangement and the avoidance of other institutions, including healthcare. This kind of institutional avoidance hits

248. *Id.*
249. *Id.*
250. *Id.* at 206–07.
251. *Id.* at 207.
252. *Id.* at 208.
253. *Id.* at 207.
254. *Id.*
255. *See supra* Section I.C.
256. O'Brien, Meares & Tyler, *supra* note 243, at 209–10 (emphasis added).

marginalized communities hardest, given the compounding effects of discrimination and state surveillance many already navigate.[257] As a result, these acts of contrition can encourage police violence victims, who often face multiple life challenges, to use essential services they might otherwise avoid. Addressing trust in the legal system through apologies can thus have broader implications for victims' engagement with various essential services, potentially improving their access to necessary resources and overall well-being.

Empowerment also means validating victims' experiences. Police violence, especially involving excessive force, can be a deeply dehumanizing ordeal that strips individuals and communities of their dignity.[258] These encounters shatter fundamental aspects of personhood—one's sense of safety, security, and bodily autonomy.[259] Victims are left feeling violated, humiliated, and dehumanized.[260] Because these incidents often unfold in public and attract public interest, victims face scrutiny that compounds their loss of dignity.[261] They are blamed,[262] their character assassinated,[263] and meaningful remedies are elusive.[264] The trauma compounds when victims encounter denial of their reality through disbelief, skepticism, or outright rejection of their accounts.[265] This erasure of victims' lived

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257. Thuy-Trinh Nguyen & Caterina Roman, *Living in the Margins: Assessing Police Engagement as a Form of Victim Help-Seeking Through Legal Estrangement*, 19 VICTIMS & OFFENDERS 613, 618 (2023).

258. *See, e.g.*, John Felipe Acevedo, *Reclaiming Black Dignity*, 99 TEX. L. REV. ONLINE 1, 1 (2020) (arguing that the concerns of communities disproportionately victimized by police are not just about physical violence but are a matter of dignity, as police "enact a dignity taking on that community and claim that dignity for themselves").

259. *See id.* at 4 ("The racial or other discriminatory animus of police misconduct dehumanizes the targeted person and causes them to suffer a loss to their body, which is their property.").

260. *See* John Felipe Acevedo, *Restoring Community Dignity Following Police Misconduct*, 59 HOW. L.J. 621, 645 (2016) ("[P]olice misconduct results in a dignity taking as it dehumanizes the individual . . . .").

261. *See* David B. Owens, *Violence Everywhere: How the Current Spectacle of Black Suffering, Police Violence, and the Violence of Judicial Interpretation Undermine the Rule of Law*, 17 STAN. J. C.R. & C.L. 475, 488 (2022) ("When someone is killed by the police, immediate release of footage, if it exists, is frequently demanded. The current Spectacle of Black Suffering implicates us all as witnesses, even if we do not *wish* to be party to these acts. The public are 'simultaneously fearful subjects, authorizing witnesses, and critical participants.'" (emphasis added) (quoting Austin Sarat & Aaron Schuster, *To See or Not to See: Television, Capital Punishment, and Law's Violence*, 7 YALE J.L. & HUMANS. 397, 400 (1995))).

262. *See supra* Section I.A.

263. *Id.*

264. *See, e.g.*, Sonali Kolhatkar, *In America, Justice for Victims of Police Brutality Remains Elusive*, COMMON DREAMS (Sep. 22, 2017), https://www.commondreams.org/views/2017/09/22/america-justice-victims-police-brutality-remains-elusive [https://perma.cc/7RBU-9SUV].

265. *See* Sherry F. Colb, *Denial and Devaluation as Weapons Against African Americans and Women*, JUSTIA: VERDICT (Feb. 28, 2018), https://verdict.justia.com/2018/02/28/denial-devaluation-weapons-african-americans-women [https://perma.cc/H7J6-AJWM] (discussing police brutality against Black people and

experience is why some have likened police abuse to a form of gaslighting.[266] The combination of the physical violation, the subsequent gaslighting, and the public humiliation can be devastating, leaving victims feeling stripped of their basic human dignity. Against this backdrop, an official acknowledgment of wrongdoing can be a vital first step in validating victims' experience and reality. It can mark the beginning of a journey toward reclaiming their dignity, as demonstrated by Breaion King's story.[267]

b. Counternarrative to "Bad Apples" Myth

A city's apology to a police violence victim can also serve as a powerful tool for dismantling dangerous narratives about victims and about the institution of policing itself. A public apology that corroborates the factual record and details the institutional failings that led to a violation would confront the misleading narrative that police misconduct is solely attributable to a small number of rogue cops, often referred to as the "few bad apples" theory.[268] This theory has dominated discussions about police accountability.[269] The killing of Sonya Massey in July 2024 is a case in point. The county sheriff blamed the incident on a "bad apple,"[270] ignoring that Sean Grayson, the white cop who killed Massey, had a history of red flags that the department missed.[271] An apology along the lines I propose would attribute the violation where it properly lies—to municipal shortcomings rather than solely individual misbehavior. It would challenge the notion that police violence stems primarily from isolated incidents. This approach aligns with emergent structural critiques of policing, which emphasize the systemic factors that lead to police violence.[272] In short, it redirects the focus from individual blame to institutional responsibility, fostering a more holistic understanding of police misconduct. It recognizes that the roots of police violence often lie in broader systemic issues, rather than in the actions of a few aberrant cops. This perspective can create paths

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noting that "African Americans have undoubtedly felt tremendous sorrow and despair to find their accounts of brutality rejected in favor of the stories of their tormentors").

266. *See* Uddin, *supra* note 37.

267. *See supra* Introduction.

268. *See, e.g.*, MehChu, *Policing as Assault*, *supra* note 124, at 916 ("The term 'bad apples' in the context of policing is a shorthand used by defenders of police practices to suggest that police misconduct can be isolated to the actions of a few, aberrant officers.").

269. *See id.*

270. Daniela Dehaghani, *Deputy Fired and Charged After Fatal Shooting of Sonya Massey in Her Home*, KATV (July 24, 2024, at 23:24 MT), https://katv.com/news/local/deputy-dismissed-and-charged-after-fatal-shooting-of-sonya-massey-in-her-home-katv-news-arkansas-jefferson-county-sheriff-lafayette-woods-is-a-friend-of-masseys-father-james-wilburn-who-is-a-resident-of-pine-bluff [https://perma.cc/MXX6-5285].

271. Holly Yan et al., *Deputy Who Killed Sonya Massey Was Removed from the Army, Had DUIs and Needed 'High Stress Decision' Classes, Records Show*, CNN (Aug. 1, 2024, at 11:39 ET), https://www.cnn.com/2024/07/27/us/sean-grayson-misconduct-sonya-massey-death/index.html [https://perma.cc/BEF8-APFE].

272. *See, e.g.*, Mariame Kaba, *Foreword to* ANDREA J. RITCHIE, INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR xi, xv (2017) (writing that "violence is inherent to policing"); MICOL SEIGEL, VIOLENCE WORK: STATE POWER AND THE LIMITS OF POLICE 9 (2018) (describing policing as "violence work").

to non-reformist reforms that address the underlying structures and cultures enabling police violence.

c. Incentivizing Settlements

This third benefit is ancillary. Unlike victim empowerment and narrative correction, which flow from the apology itself, settlement leverage flows from the remedy's mere availability, a secondary advantage for plaintiffs even in cases that never reach an apology. If court-ordered apologies for excessive force became part of our Section 1983 remedial framework, the prospect could accelerate settlements in excessive force cases. Municipalities, facing the prospect of public admission of wrongdoing, would need to contend with police unions that wield significant influence. Police unions are very powerful, "powerful enough even to keep the Department of Justice from effectuating positive change in cities like Pittsburgh, Pennsylvania."[273] These unions emerged in their modern form during the 1960s and 1970s, when states extended collective-bargaining rights to public employees and transformed police fraternal organizations into politically powerful unions.[274] They have very deep pockets that "give[] them enormous power to influence public policy because they can donate a portion of these funds to politicians viewed as friendly to their interests."[275] Because "their core mission [is] to protect their membership from discipline,"[276] they also don't like to have their officers thrown under the bus.[277] Thus, they would likely resist scenarios where individual officers might be implicated in wrongdoing.

While the proposed remedy would call for the municipality or police department to acknowledge wrongdoing and the systemic forces that *caused* the violations, it is not inconceivable that the flesh and blood officer(s) who directly inflicted the harm would be implicated. For example, a police chief might say: "Our protocols on screening were not up to speed. We should have ensured that we checked Officer X's background before hiring them to the force. Our failure to do so led to Y's injury. Our thoughts and prayers go out to Y's family." This statement would probably provoke union leadership, who could invoke the binding arbitration and disciplinary protections written into their contracts to override the chief's decisions and shield the implicated officers.[278]

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273. Falco Anthony Muscante II, *Police Brutality & Unions: Collective Bargaining Is the Problem, Not Law Enforcement*, 13 U. MIA. RACE & SOC. JUST. L. REV. 24, 35 (2023).

274. *See* Ayesha Bell Hardaway, *Rise of Police Unions on the Back of the Black Liberation Movement*, 55 CONN. L. REV. 179, 196–98 (2022) (documenting the rapid expansion of police collective-bargaining rights during the 1960s, when 14 states first enacted statutes granting them).

275. Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 756 (2017).

276. *Id.* at 767.

277. *Id.* at 715 ("In part because [police] union leaders are elected by the membership, many are reluctant to publicly question the legality of their members' behavior . . . and often describe criminal punishment of officers who kill as being politically motivated efforts to scapegoat individual officers for systemic problems.").

278. *See generally* Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191 (2017) (documenting contractual provisions, including binding arbitration, that constrain a department's ability to discipline officers).

To prevent such turmoil and avoid revealing dents in the "thin blue line,"[279] cities might settle cases early, hoping to sidestep court-mandated apologies that could damage departmental morale and union relationships. While trading institutional accountability for faster settlements might seem problematic, it could give Section 1983 plaintiffs valuable leverage in a system heavily stacked against them.[280] This dynamic becomes especially significant when considering the substantial financial costs of litigation.[281] It also eases the emotional toll, as plaintiffs "go through years of litigation – really aggressive and hostile questioning – just to get to a point of settlement where it should have gotten in the first place."[282] Thus, even in the subset of cases that settle before any apology is ordered, the remedy's availability still works to plaintiffs' advantage by encouraging earlier resolution.

d. Implementation Mechanisms

To maximize effectiveness while addressing practical and legal concerns, court-ordered apologies should include several key features. First, the apologies should acknowledge, in concrete terms, the systemic factors that enabled the violation. For example, the apology might note the departmental policies and practices that contributed to the violation or name the oversight mechanisms that failed to catch the problem. What's important is that the apology makes clear the systemic conditions that made the violation possible, reducing the likelihood that the harm gets written off as the work of a single rogue actor.

Second, apologies should be logged in a centralized repository. A searchable record would enable future researchers and communities seeking to understand patterns of police violence to piece together how these failures recur across departments. Third, prevailing plaintiffs should have final authority over whether apologies are delivered, including the right to withdraw them before public release. This matters because it gives victims more agency over their own healing. Trauma is a complex emotion,[283] and while an apology might feel necessary to a victim at one point, that same apology could feel unwelcome or retraumatizing by the time litigation has ended. Giving plaintiffs final authority over whether the apology is delivered accounts for that shifting dynamic instead of treating every victim's experience as identical.

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279. *See* Kweku, *supra* note 46 (describing the "thin blue line" as "the dominant metaphor for police").

280. *See, e.g.*, MehChu, "*Specializing" Section 1983*, *supra* note 12, at 578 ("The qualified immunity standard . . . gives disproportionate power to courts that are skeptical of civil rights plaintiffs and inclined to shield governmental defendants, given that the standard is not the preponderance of judicial views but the absence of any dispute.").

281. *See* Yotam Kaplan & Ittai Paldor, *Social Justice and the Structure of the Litigation System*, 101 N.C. L. REV. 469, 515 (2023) ("Private litigants are typically onetime players, as most individuals do not regularly engage in litigation. Therefore, they find it expensive to uphold their rights in court and often forego doing so.").

282. N'dea Yancey-Bragg, *Police Misconduct Settlements Can Cost Millions, but Departments Rarely Feel the Impact*, USA TODAY (Nov. 17, 2023, at 05:06 ET) (quoting Alexa Van Brunt of Northwestern University Law School's MacArthur Justice Center Clinic), https://www.usatoday.com/story/news/nation/2023/11/17/who-pays-police-misconduct-settlements/71516795007/ [https://perma.cc/37VX-XJAM].

283. *See supra* note 48 and accompanying text.

The key is structuring the apologies to serve their essential validating and truth-telling functions while navigating legal and practical constraints. When properly designed, court-ordered apologies can help transform how we understand and address police violence, moving beyond individual blame to confront systemic causes and consequences.

B. Against Court-Ordered Apologies

Court-ordered apologies face significant criticism, with Nick Smith as a leading critic. Smith argues that "[t]he legal process can accomplish many objectives without apologies from offenders."[284] He contends that legal proceedings effectively "assign blame, . . . identify and affirm the values breached, recognize the victims as members of the moral community, levy penalties, and oversee the completion of sentences and efforts at redress."[285] Consequently, Smith questions whether court-ordered apologies add any value while highlighting their potential costs.[286] He likens them to "coercive practices of authoritarian states and religious institutions," urging that "[w]e should view them with appropriate suspicion."[287] However, public apologies offer unique benefits that the legal process often cannot provide. While legal decisions assign blame and impose sanctions, they frequently fail to translate these outcomes into a narrative readily accessible to the public. The complexity of legal language and procedures can alienate laypeople, limiting their comprehension and engagement with the outcome. Public apologies can bridge this gap by providing a human face to institutional accountability and fostering a more direct connection with the public. These aspects may justify court-ordered apologies, despite criticism from Smith and others. Nevertheless, the limitations concerning mandated apologies warrant careful consideration, which I will now address.

1. The Insincerity Problem

While O'Brien and co-authors' research shows that law enforcement apologies to communities of color could help bridge the gap between these two groups, it also reveals potential problems with court-ordered apologies. One concern is that police departments, with a history of victim-blaming, might resort to formulaic apologies that avoid taking responsibility. After all, a "judge cannot compel emotions or heartfelt feelings."[288] These partial apologies could worsen public distrust within Black and Brown communities.[289] This concern is compounded by cognitive dissonance, the tendency to hold onto beliefs even when evidence contradicts them.[290] A court-ordered apology after a contested case in which the city initially denied wrongdoing could create this dissonance, potentially undermining the apology's effectiveness.

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284. SMITH, *supra* note 202, at 58.
285. *Id.* at 59.
286. *Id.* at 59, 62.
287. *Id.* at 52.
288. Vandenbussche, *supra* note 26, at 116–17.
289. *See* O'Brien, Meares & Tyler, *supra* note 243, at 209–10.
290. *See* KENNETH S. BORDENS & IRWIN A. HOROWITZ, SOCIAL PSYCHOLOGY 255 (2d ed. 2002) (explaining that cognitive-dissonance theory suggests people who publicly commit to a position are more likely to strengthen their beliefs to maintain consistency with those views, even when confronted by real-world evidence that contradicts them).

Even if a city apologizes and *says* all the right things, concerns might remain that the apology is insincere or lacks true remorse, like a child forced to apologize for snatching a toy. Imagine two kids playing in the sandbox. One child, A, grabs the other child's favorite toy without asking. The other child cries. Prompted by their parent, A says they are sorry and snatches another toy to play with. Did A truly understand that what they did was wrong? Did the victim feel any better? Critics of forced apologies use situations like this to argue that apologies without genuine remorse have little value.[291] Young children lack the ability to fully understand the impact of their actions. Forcing them to apologize does not necessarily lead to empathy.

While not directly comparable to children, a similar concern arises when police departments are forced to apologize. If, as scholars in the abolitionist tradition urge,[292] the core function of policing is to dominate and control marginalized groups, then forcing cities to apologize when their police departments are found liable for excessive force does not guarantee genuine remorse. Just as A may not fully grasp the consequences of their toy-snatching, the city may not empathize with the harm it causes because it views its role through a lens of control and domination. Officials might see themselves as maintaining order, not causing harm. From this view, forcing apologies might seem like a superficial remedy that fails to promote genuine accountability, healing, or transformation.

However, dismissing apologies entirely because of their actual or perceived insincerity might be an overreaction. I should pause here to address what might seem inconsistent. While I exclude promises of reform from the apology framework due to skepticism about policing's capacity for fundamental change, I keep expressions of remorse despite similar doubts about cities' sincerity. This seeming contradiction is justified because expressions of remorse, even if potentially insincere, serve a distinct function from promises of reform. They acknowledge harm and validate victims' experiences, which is inherently valuable. Remorse can be expressed without implying a commitment to systemic change, whereas promises of reform suggest a transformative capacity that structural critiques of policing challenge. Even seemingly remorseless apologies can be beneficial for three reasons.[293]

First, even "insincere" apologies require institutions to publicly admit wrongdoing, creating valuable historical records and precedents. Second, when a city apologizes, it must assume a position of vulnerability,[294] acknowledging fault and ceding narrative control. This represents a power shift,[295] giving victims choice in whether to accept or reject the apology. Third, institutional accountability doesn't

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291. Stephanie H. Murray, *Is It Wrong to Tell Kids to Apologize?*, ATLANTIC (May 6, 2024), https://www.theatlantic.com/family/archive/2024/05/should-kids-apologize-parenting-debate/678294/ [https://perma.cc/XXG6-TTBJ].

292. *See, e.g.*, ALEX S. VITALE, THE END OF POLICING (2017) (arguing that the central purpose of police is to manage and contain marginalized groups, not to keep the public safe).

293. *See* White, *supra* note 35.

294. *See id.*

295. *Id.*

require genuine institutional remorse. The value lies in formal acknowledgment and its impact on public discourse, not in the sincerity of institutional feelings.

2. The First Amendment

The First Amendment's protection against compelled speech could also be a hurdle for court-ordered apologies. The compelled speech doctrine prevents the government from forcing individuals to affirm beliefs and messages against their will.[296] Courts have upheld this right in various contexts, such as refusing to pledge allegiance to the U.S. flag[297] or display state-mandated license plate messages.[298] Traditionally, the Speech Clause has been interpreted as a safeguard against government intrusion into private speech, rather than a source of rights for the government itself.[299] This interpretation adds complexity to court-ordered apologies when applied to institutions. Defendants may refuse to apologize for many reasons. For instance, they might steadfastly maintain their innocence despite contrary evidence. Compelling such persons to publicly accept blame and express remorse effectively forces them to renounce their core beliefs about themselves and lie.[300] Consequently, one scholar warns that "[c]ourt-ordered apologies aim to reach into a human being and tamper directly with their beliefs."[301] This raises an important question: How do these concerns translate when the offender is not a sentient being but an institution like a municipality?

Cities, like corporations, are collective entities and are generally considered subjects of public law rather than private law.[302] This distinction is important because courts have granted various rights to both for-profit and nonprofit corporations, including the right "not to speak or be associated with speech of others."[303] Recent Supreme Court decisions have further blurred the lines between corporate and natural persons. In *Citizens United v. Federal Election Commission*, the Court ruled that the First Amendment prohibits suppressing political speech based on the speaker's corporate identity.[304] The Court emphasized that "[t]he identity of the speaker is not decisive in determining whether speech is protected," noting that "[c]orporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First

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296. *See* W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 645 (1943) (Murphy, J., concurring) ("The right of freedom of thought . . . guaranteed by the Constitution against State action includes both the right to speak freely and the right to refrain from speaking at all . . . .").

297. *Id.* at 642 (majority opinion).

298. Wooley v. Maynard, 430 U.S. 705, 717 (1977).

299. David Fagundes, *State Actors as First Amendment Speakers*, 100 NW. U. L. REV. 1637, 1638 (2006).

300. SMITH, *supra* note 202, at 52.

301. Michael Hristakopoulos, *On the Moral and Constitutional Perversity of Court-Ordered Apologies*, 45 VT. L. REV. 365, 367 (2021).

302. *See* Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353, 355 (2009) (referring to the municipality as a "public employer").

303. Elizabeth Pollman, *Reconceiving Corporate Personhood*, 2011 UTAH L. REV. 1629, 1657.

304. Citizens United v. FEC, 558 U.S. 310, 365 (2010).

Amendment seeks to foster."[305] This concept of corporate personhood was further reinforced in *Burwell v. Hobby Lobby Stores, Inc.*, where for-profit businesses were deemed "persons" under the Religious Freedom Restoration Act, allowing them to claim religious exemptions from general laws.[306]

The government's dual capacity to both enrich and threaten free speech, as well as its coercive power, sets it apart from other speakers. Most courts have summarily dismissed the idea that First Amendment protections should be extended to government speech.[307] However, growing recognition of the importance of government speech in modern life has led a minority of courts to hold that public entities' expression deserves protection under the Speech Clause.[308] In light of decisions like *Citizens United* and *Hobby Lobby* that have bolstered corporate personhood, Hannah J. Wiseman argues that municipal corporations should not be denied similar rights due to their public status. She grounds her argument in the "object neutral" nature of the First Amendment, which protects "freedom of speech" without specifying the entities entitled to such protection.[309] Moreover, Wiseman argues that "it should not matter that municipal corporations exist only at the whim of the state and that their powers can be stripped away by the state," noting that *Citizens United* acknowledged states as creators of all types of corporations.[310] Treating municipalities as "persons" under Section 1983 adds another layer of complexity to the debate over municipal speech rights.

While a comprehensive analysis of the conflicting precedent is beyond this paper's scope, David Fagundes's work in *State Actors as First Amendment Speakers* offers a valuable framework from which to build. His approach considers "both the institutional character and the substantive content of" speech, acknowledging government's "dual role as both peril to and participant in the system of freedom of expression."[311] This perspective could inform future research on the constitutional status of local government speech when governments are forced to apologize for excessive force, potentially uncovering new strategies for addressing systemic issues in law enforcement while upholding the Constitution.

For now, it is enough to note that the compelled-speech objection carries little weight in this proposal, since the heart of that objection is government coercion of private speech, e.g., forcing someone to affirm a belief or carry a state message.[312]

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305. *Id.* at 342–43 (quoting Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n, 475 U.S. 1, 8 (1986)).

306. Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 707–08 (2014).

307. *See, e.g.*, Muir v. Ala. Educ. Television Comm'n, 688 F.2d 1033, 1038 n.12 (5th Cir. 1982) (en banc) (declaring that "[g]overnment expression" is "unprotected by the First Amendment").

308. *See, e.g.*, Nadel v. Regents of Univ. of Cal., 34 Cal. Rptr. 2d 188, 197 (Ct. App. 1994); Cnty. of Suffolk v. Long Island Lighting Co., 710 F. Supp. 1387, 1390 (E.D.N.Y. 1989).

309. Hannah J. Wiseman, *Rethinking Municipal Corporate Rights*, 61 B.C. L. REV. 591, 641 (2020) (quoting Fagundes, *supra* note 299, at 1648).

310. *Id.* at 643.

311. Fagundes, *supra* note 299, at 1685.

312. *See supra* notes 296–98 and accompanying text (discussing *Barnette* and *Wooley*).

Conversely, a court-ordered municipal apology presents a different scenario in which the compelled speaker is the government itself, not a private citizen. Because the doctrine exists to protect private conscience, and a government speaker does not have that, most courts have declined to extend Speech Clause protection to government speakers.[313]

3. The Law of Diminishing Returns

Another concern is that mandated apologies, even if *sincere*, could become routine pronouncements over time and lose their moral significance.[314] There is something to this worry, as "apologies also have a law of diminishing returns" and "overdoing it can make each individual apology feel less sincere."[315] Two responses temper this concern, however, and they operate on different levels. The practical response points out a flawed premise: the concern only makes sense if apologies become common. But lawsuits against police departments for excessive force are rarely successful, even as violence continues.[316] The standard for establishing municipal liability under *Monell* remains stringent, which makes risk of oversaturation unlikely to materialize.

But suppose that successful *Monell* claims did become more common, perhaps due to future technological advances that make it easier for plaintiffs to access the kind of evidence *Monell* demands. Or perhaps courts start crediting circumstantial evidence of a pattern more readily. Even under those imagined circumstances, the diminishing returns objection would still be blunted because of the substance of the apologies contemplated here. Unlike a rote "I'm sorry" that can start to feel hollow with repetition, an apology tied to a specific finding of harm doesn't hollow out in the same way. Each rendition confirms that victims suffered real harm and places responsibility squarely on the institution. Equally important, each affirms the version of events that victims maintain.

4. Permanence of Racism?

In response to the urban unrest of the 1960s, President Lyndon B. Johnson formed the National Advisory on Civil Disorders, also known as the Kerner Commission.[317] Led by then-Illinois Governor Otto Kerner, the 11-member Commission was charged with investigating the root causes of the riots.[318] The Commission's unflinching report identified "white racism" as the cause, directly

313. *See supra* note 307.

314. *See* Lee Taft, *Apology Subverted: The Commodification of Apology*, 109 YALE L.J. 1135, 1142 (2000) (arguing that the moral weight of apologies stems from the offender confronting the repercussions of their wrongdoing).

315. Jacoba Urist, *The Art and Science of Apologizing*, ATLANTIC (Feb. 23, 2016), https://www.theatlantic.com/science/archive/2016/02/how-to-apologize/470457/ [https://perma.cc/YA3Q-EQR7].

316. Eaton & Wells, *supra* note 23, at 838 ("Few suits against local governments succeed . . . .").

317. *See* Justin Driver, *The Report on Race That Shook America*, ATLANTIC (May 2018), https://www.theatlantic.com/magazine/archive/2018/05/the-report-on-race-that-shook-america/556850/ [https://perma.cc/2Z85-EN89].

318. *Id.*

contradicting the dominant narrative that solely blamed Black communities.[319] While this official acknowledgment helped shift the national conversation, its transformative impact has never been fully realized.[320] Consequently, one objection might be that even if "apologies in blue" can similarly open doors for honest conversations about systemic racism, discriminatory policing, and the need for transformative changes, they may meet a similar fate. The backlash to the Black Lives Matter movement supports this view.

The Black Lives Matter movement emerged to raise awareness about systemic racism and the routine killings of Black people at the hands of law enforcement, often without accountability.[321] While the movement successfully fostered widespread recognition of systemic racism within policing,[322] it also "sparked a national narrative about the suffering of police officers."[323] Police and their allies successfully reframed the narrative into one of police victimhood. They argued that "they were under attack" and required even more protection under the law.[324] "Blue Lives Matter" bills sprung up nationwide as a result,[325] codifying harsher punishments for assaults or killings of police officers.[326] Essentially, efforts to raise consciousness about the devaluation of Black lives led to a movement to further empower law enforcement.

Drawing from Derrick Bell's work, India Thusi has argued that the backlash to the Black Lives Matter movement is "evidence of the permanence of racism as a juridical and discursive matter in this country."[327] Bell maintained that "racism is a principal stabilizing force in a nation of varied people whose opportunities and status are wildly disparate, and are likely to remain so."[328] Yet even if we accept that a shifting public narrative cannot bring transformative change in a society where racism is permanent, the proposal still has value. As Bell argued, "we need a mechanism to make life bearable in a society where blacks are a permanent, subordinate class."[329] When institutions officially acknowledge that

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319. *See id.*

320. *Id.* (arguing that "little has changed since the Kerner Commission denounced 'white racism'").

321. *See, e.g.*, Rashawn Ray, *Black Lives Matter at 10 Years: 8 Ways the Movement Has Been Highly Effective*, BROOKINGS (Oct. 12, 2022), https://www.brookings.edu/articles/black-lives-matter-at-10-years-what-impact-has-it-had-on-policing/ [https://perma.cc/HDU4-JP4M].

322. *Id.* (writing that "Black Lives Matter shifted public opinion," as more people began to see "officer-involved shootings involving Black people to be signs of a broader problem").

323. India Thusi, *Blue Lives & the Permanence of Racism*, 105 CORN. L. REV. ONLINE 14, 16 (2020).

324. *Id.* at 19.

325. *Id.* at 16–17.

326. *See* Lisa M. Olson, *Blue Lives Have Always Mattered: The Usurping of Hate Crime Laws for an Unintended and Unnecessary Purpose*, 20 SCHOLAR: ST. MARY'S L. REV. ON RACE & SOC. JUST. 13, 14–17 (2017).

327. Thusi, *supra* note 323, at 14.

328. Derrick Bell, *The Permanence of Racism*, 22 SW. U. L. REV. 1103, 1105 (1993).

329. Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 377 (1992).

individual experiences of harm stem from systemic failures, it can reduce victims' isolation and self-blame while strengthening community bonds. While apologies in blue may not dismantle the permanent structures of racism that Bell identified, they can make navigating those structures more manageable by providing essential psychological and practical resources for survival. Sometimes this looks like simply validating what people have lived through. Other times, it is communities drawing closer together or becoming more sophisticated in how they advocate for themselves. Either way, these apologies carry real value because they hold *potential* to transform the system and can help communities facing victimization get through the daily reality of navigating oppression. Apologies in blue thus represent one of Bell's "mechanisms" that, while not eliminating subordination, make life more bearable within it.

CONCLUSION

In police excessive force cases, the injury rarely ends with the physical encounter. It evolves into a multilayered assault sustained by a narrative that impugns the victim's character and shifts responsibility for state violence onto the injured. This cross-institutional project is enabled by law enforcement alongside a network of actors—including courts, the media, and medical examiners—that sanitize state lethality. Blaming victims without evidence inflicts a profound epistemic harm that amounts to a form of institutional gaslighting.[330] As Breaion King's experience illustrates, victims can come to question their own understanding of what happened to them, sometimes even blaming themselves.[331] As a result, affected individuals and communities can withdraw from institutions altogether, coming to associate the state with trauma rather than see it as a guarantor of rights.[332]

Samaria Rice made this failure clear. Cleveland settled her lawsuit over the killing of her 12-year-old son, a boy who was shot for playing with a toy gun in a park[333] and then blamed for his own death.[334] Yet the city never apologized, and she said that absence "hurts."[335] Money could compensate for the loss, but it could not give her what she really wanted: an official acknowledgment that the city did something wrong and bears responsibility. Her experience reveals the shortcomings of current remedial frameworks where moral and narrative harms are left unaddressed. To bridge this gap, this Article argues that constitutional repair should include court-ordered apologies in Section 1983 municipal liability cases as a remedy for the narrative harms that damages cannot reach.

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330. *See supra* Section I.B.

331. *See supra* notes 77–79 and accompanying text.

332. *See supra* Section I.C.

333. *See* Lauren Hodges, *Cleveland to Pay $6 Million to Settle Tamir Rice Lawsuit*, NPR (Apr. 25, 2016, at 11:26 ET), https://www.npr.org/sections/thetwo-way/2016/04/25/475583746/cleveland-to-pay-6-million-to-settle-tamir-rice-lawsuit [https://perma.cc/875W-HDU3].

334. *See* Barbara E. Armacost, *Police Shootings: Is Accountability the Enemy of Prevention?*, 80 OHIO ST. L.J. 907, 958–59 (2019) (noting that filings described Tamir Rice as directly and proximately responsible).

335. Laughland, *supra* note 22.

Apologies already do meaningful work across the legal landscape, influencing areas like charging,[336] sentencing,[337] and settlement decisions.[338] Applying them here aligns with the core idea that remedies must be narrowly tailored to the harm caused.[339] This proposal offers three distinct benefits. First, it empowers victims by returning to them the power of acknowledgment, providing a formal validation of their lived reality that can begin to mend the legal estrangement that often drives marginalized communities to withdraw from essential public institutions. Second, it corrects the public record by identifying systemic institutional failures rather than blaming "bad apples," forcing an admission that the harm resulted from a municipal "policy or custom" rather than an isolated, aberrant actor. Third, it gives plaintiffs a strategic advantage by facilitating settlements, as municipalities may want to avoid the negative fallout of a public admission, thus strengthening victims' leverage in a legal environment that frequently uses character attacks to shield the state from accountability.

336. *See supra* note 219 and accompanying text.

337. *See supra* notes 220–22 and accompanying text.

338. *See supra* notes 280–82 and accompanying text.

339. *See, e.g.*, Milliken v. Bradley, 418 U.S. 717, 744 (1974) ("The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation.").