Foreword

*Senator Cory A. Booker**
*and Roscoe Jones, Jr.***

The *Harvard Law & Policy Review* has chosen an important and timely topic for this issue on *Policing in America on the 50th Anniversary of* Miranda v. Arizona, the subject of which celebrates the golden anniversary of one of the most well-known and influential legal decisions of the twentieth century. That decision sparked a criminal justice reform revolution. And its ripple effects still impact us today.

Nothing is more powerful than an idea whose time has come. Fifty years ago, that idea came in the form of a legal case called *Miranda v. Arizona*,[1] which required police officers to inform a person who becomes a suspect in a criminal investigation of certain rights,[2] including the right to remain silent and to have counsel, before the suspect can be questioned.

Miranda did not change our respect for the rule of law, which is a fundamental tenet in American democracy. Every American benefits when our communities and neighborhoods are safe and secure. And police officers deserve our respect. Day in and day out, so many of our men and women in uniform serve honorably and put themselves in harm's way to keep us safe.

But *Miranda* did change America for the better by breathing life into a core American value, the promise of fairness. By ensuring that the government informs the individual of his or her rights before custodial questioning—the right to silence during police questioning and the right to counsel—these warnings not only reduced improper pressure, but made the system itself fairer and more just.

That is why *Miranda*'s legacy permeates our courts and, even more importantly, our national conscience. It stands for the idea that not just police conduct, but the entire justice system, must be consistent with our core values, a justice system that lives up to our highest ideals and fundamental guarantees of liberty and justice for all.

Miranda no doubt stands for other American values. The decision is rooted in the idea of freedom of choice—the choice of a suspect of a crime to decide whether to answer questions during police interrogations or

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[1] 384 U.S. 436 (1966).

[2] *See id.* at 467–73 ("You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer before questioning and have a lawyer present during questioning. If you cannot afford to hire a lawyer, one will be provided for you.").

whether to consult with a lawyer. If the individual invokes his or her right to silence or to counsel, all police questioning must stop.[3] The police may only interrogate the individual if they obtain a waiver of his or her rights to silence and counsel.[4] If the police violate these rules, any statement obtained during the interrogation is inadmissible at trial.[5]

The decision also stands for the idea that progressive reforms and good policing are not incompatible. In fact, *Miranda* warnings strike the right balance between protecting freedom of choice and improving American policing. They provide clear standards for law enforcement. And they protect citizens by ensuring that people in custody know their legal rights.

But the primary lesson of *Miranda* is a concern with fundamental fairness not just in policing, but also throughout the justice system, and that idea remains as relevant today as it was fifty years ago. Half a century after *Miranda*, the nature of the relationship between police and the community continues to be a critical topic of national dialogue. Tragic events across the country—in New York, Ferguson, North Charleston, and Baltimore—have reminded us how critical police-community trust is to the fabric of our democracy. These incidents have raised the public's awareness and sparked a national debate about how police and citizens interact and how they *should* interact.

Far from just a policing or interrogation case, the logic of, and basis for, *Miranda* informs the growing chorus of voices calling for us to reform our broken criminal justice system. More than ever, we need to restore "justice" to our justice system. Why is that the case?

Our broken system has held back people's potential: we incarcerate more of our own citizens here in America than any other country on Earth,[6] charging them with overly punitive sentences, releasing them, and then blocking their opportunities to succeed in work, school, and as a member of society.

Our broken system is a drag on our economy costing American tax payers more than a quarter of a trillion dollars a year,[7] with estimates that the poverty rate here in our country would have been twenty percent lower between 1980 and 2004, if not for mass incarceration.[8]

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[3] *Id.* at 444–45.

[4] *Id*. at 444.

[5] *Id.*

[6] *See* INST. FOR CRIMINAL POLICY RESEARCH, *World Prison Brief: Highest to Lowest – Prison Population Total*, http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All [http://perma.cc/GU7E-HQNZ].

[7] In 2010, the United States spent more than eighty billion dollars on correction expenditures at the federal, state, and local levels. When including expenditures for police protection and judicial and legal services, the direct costs of crime rise to $261 billion. *See* MELISSA S. KEARNEY ET AL., TEN ECONOMIC FACTS ABOUT CRIME INCARCERATION IN THE UNITED STATES (2014), http://www.hamiltonproject.org/files/downloads_and_links/v8_THP_10CrimeFacts.pdf [http://perma.cc/HS5Q-X9CC].

[8] *See* Michael Mitchell & Michael Leachman, *Changing Priorities: State Criminal Justice Reforms and Investments in Education*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 28, 2014), http://www.cbpp.org/research/changing-priorities-state-criminal-justice-reforms-and-invest

Our broken system has *broken our children*: we incarcerate more kids in America at a higher rate than any other country,[9] and we utilize practices when detaining them that the United Nations has found causes severe mental and physical pain.[10]

And our broken system has held back the very idea of justice in America—perpetuating policies that have disproportionately and unjustly placed black men in American prisons at rates higher than the number of black men incarcerated in South Africa under apartheid.[11]

When the Supreme Court decided *Miranda* in 1966, during the height of the Civil Rights Movement, the dream of racial equality and fairness for all was at the forefront of the Court's agenda. The Warren Court, a Court known for its vigorous protections of minorities, built *Miranda* on a cornerstone of championing individual rights and using procedural rules to respect the dignity and worth of every human being and to level the playing field for all Americans.[12] But the final chapter of *Miranda* has not yet been written, and its legacy is still being shaped. The challenge for us is to use the powers of government to fulfill *Miranda*'s promise of fairness to fix our broken system.

The discussion around *Miranda*'s fiftieth anniversary could not come at a more critical time. Today, sweeping criminal justice reforms are occurring across the nation. Congress is now considering legislation to address mass incarceration. Sentencing reform is a priority for the President and his Attorney General. Judges across the country are voicing their criticism of sentencing laws that erode their discretion. States are seeking to reduce their prison populations. The relationship between law enforcement and the communities they serve is the subject of vigorous national debate.

This foreword is divided into four parts: the first section describes the historical context of *Miranda* in order to introduce the background of events leading up to *Miranda*. The second section details the modern day challenges of fulfilling *Miranda*'s promise. The third section summarizes the collection of articles in this volume that touch on *Miranda*'s legacy and impact

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ments-in-education [http://perma.cc/G7UT-AG6P] (citing Robert H. DeFina & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, CRIME & DELINQ. (Feb. 23, 2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1348049 [http://perma.cc/L33Y-YBRJ]).

[9] *See* Anna Aizer & Joseph Doyle, *What is the Long-term Impact of Incarcerating Juveniles?*, VOX CEPR's POLICY PORTAL (July 16, 2013), http://www.voxeu.org/article/what-long-term-impact-incarcerating-juveniles [http://perma.cc/6B9X-2FXB].

[10] The United Nations Special Rapporteur of the Human Rights Council found that "the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering." Juan E. Méndez (Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment), *Interim Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011).

[11] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, *in* RACE, CRIME, AND PUNISHMENT: BREAKING THE CONNECTION IN AMERICA 28 (Keith O. Lawrence ed., The Aspen Institute 2011), http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/Race-Crime-Punishment.pdf [http://perma.cc/J2K8-DYLP].

[12] *Miranda*, 384 U.S. at 457 (finding that emotional pressure exerted on a suspect in custody is "destructive of human dignity").

on our justice system. And the last section concludes with a call to action for us to fulfill *Miranda*'s promise of fairness by fixing our broken justice system.

I. *Miranda*'s Historical Context

Before exploring the articles in this volume, we must ask a basic question: If *Miranda* now permeates the consciousness of America's view on fairness, why did this change come to pass in the first place? Stated differently, how did *Miranda* change America's view on fairness? The answer is simple. The historical background leading up to this seminal case in American criminal jurisprudence yielded critical and enduring lessons about past flaws, and contemporary weaknesses, of our criminal justice system.

We often take *Miranda* for granted. We watch television and see the police inform suspects of their *Miranda* rights. It is tempting to believe *Miranda* has always been around to guard against government abuses. But that is not so.

When *Miranda* was decided in 1966, the Court had not established clear guidance on how police interrogations should be handled in order to be consistent with the spirit of our Bill of Rights. Nor was police coercion uncommon at the time. In fact, the Supreme Court did not ban physical abuse as an interrogation tactic in state cases until 1936 in *Brown v. Mississippi*.[13] In that case, officers investigating the murder of a white planter beat three black tenant farmers. The officers hung one of the suspects from a tree and whipped him until he confessed,[14] and they stripped and severely beat the others until they confessed.[15] Following the admissions of the confessions into evidence, the black tenant farmers were convicted by a jury and sentenced to be hanged.[16] The convictions were affirmed on appeal by Mississippi's highest court.[17] The Supreme Court of the United States ultimately reversed the convictions, and decided that the Federal Constitution prohibited confessions extracted by police violence from being admitted into evidence.[18]

But coercion is not just physical. In the thirty-five confession cases the Court decided between 1936 and 1964, police interrogation methods included threats, lengthy questioning, denial of food or sleep, and solitary confinement.[19] But *Miranda* changed the rules of the game. By requiring suspects be informed of their rights before custodial interrogation, *Miranda*

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[13] *See* 297 U.S. 278 (1936).
[14] *Id.* at 281.
[15] *Id.* at 282.
[16] *Id.* at 279.
[17] *Id.* at 280.
[18] *Id.* at 287.
[19] *See* Richard A. Leo, *The Impact of* Miranda *Revisited*, 86 J. Crim. L. & Criminology 621, 625 (1996).

ensured a fairer balance between individual rights and the government's interest in prosecution.

The genius of *Miranda* was that it promoted reliable confessions while respecting the dignity of those who might confess. Coercive interrogations often create a high risk of false confessions and unreliable information from the accused. By regulating interrogations, *Miranda* ensured confessions would be more reliable and thus more helpful in obtaining justice.

Miranda benefitted law enforcement without causing harm. Early studies showed the decision did not significantly impede the ability of police officers to solve crimes.[20] Subsequent studies in the 1990s confirmed that "there is no compelling evidence that *Miranda* causes a significant number of lost convictions."[21] A 1996 study even showed the relationship between a suspect's response to *Miranda* warnings and conviction rates was not statistically significant.[22]

What *Miranda* did was respect basic rights. It required safeguards prior to questioning so people knew their rights and did not feel pressured to talk. The Court justified its decision with an extensive review of police interrogation practices. It found that police frequently obtained confessions through ploys, many of which were codified in police manuals,[23] like advising officers to "persuade, trick, or cajole" the defendant into talking.[24] Rejecting those tactics, *Miranda* acknowledged a basic truth: "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weaknesses of individuals."[25]

Miranda aimed to curtail inappropriately harsh police methods, but the decision also ensured a fairer criminal process in general. Observers have said that the Warren Court did not like the fact that "wealthy (often white) defendants with the money and presence of mind to hire an attorney tended to do better than poor (often black or [Latino]) defendants who did not."[26]

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[20] *See, e.g.*, Richard H. Seeburger & R. Stanton Wettick, Jr., Miranda *in Pittsburgh—A Statistical Study*, 29 U. PITT. L. REV. 1, 11–20 (1967) (finding that in one detective division within Allegheny County after *Miranda,* suspect confessions significantly declined but the conviction rate remained about the same); Michael Wald et al., *Interrogations in New Haven: The Impact of* Miranda, 76 YALE L.J. 1519, 1523 (1967) (concluding that *Miranda* handicapped police in New Haven, Connecticut, from obtaining a confession necessary for conviction in only six out of 127 cases); James W. Witt, *Non-Coercive Interrogation and the Administration of Criminal Justice: The Impact of* Miranda *on Police Effectuality*, 64 J. CRIM. L. & CRIMINOLOGY 320, 325 (1973) (concluding that the post-*Miranda* rate for "successful" police interrogations in a California city declined only two percent).

[21] George C. Thomas III & Richard A. Leo, *Effects of* Miranda v. Arizona*: "Embedded" in Our National Culture*, 29 CRIME & JUST. 203, 255 (2002) (emphasizing that the number of lost convictions attributable to *Miranda* is empirically unknowable "because the very question presumes a counterfactual world that does not exist").

[22] Richard A. Leo, *Inside the Interrogation Room*, 86 J. CRIM. L. & CRIMINOLOGY 266 (1996).

[23] *See* Miranda v. Arizona, 384 U.S. 436, 448–55 (1966).

[24] *Id.* at 455.

[25] *Id.*

[26] *See* John F. Stinneford, *The Illusory Eighth Amendment*, 63 AM. U. L. REV. 437, 468 (2013).

Miranda teaches us that our justice system should respect basic human dignity.[27] We now must take that lesson to heart. We must constantly be on guard to combat abuses and policies that promote unfair practices and outcomes throughout our justice system. The challenge for us today is to ensure our entire justice system comports with our touchstone values of liberty and justice for all.

II. *Miranda* in the Modern Day: The Current Incarceration Crisis

Fifty years after *Miranda*, our justice system is broken in different ways, and too often fails to value the dignity and worth of Americans. Nor does it live up to the ideals upon which our nation was founded, a nation built upon the bedrock of liberty and justice for all. In other words, our contemporary criminal justice system fails to live up to *Miranda*'s promise of fairness.

America has an incarceration crisis. While home to less than five percent of the world's total population, we have nearly twenty-two percent of the world's prison population.[28] And nearly three-fourths of this population is composed of nonviolent offenders.[29]

In the 1980s and 1990s, Congress adopted laws that drastically changed the way our country handled nonviolent drug crimes.[30] In fact, the federal

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[27] *See Miranda*, 384 U.S. at 457 (declaring that the atmosphere within an interrogation room "carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive of human dignity").

[28] *See* Roy Walmsley, *World Prison Population List*, Int'l Ctr. for Prison Studies (10th ed. 2013), http://www.prisonstudies.org/sites/prison-studies.org/files/resources/downloads/wppl_10.pdf [http://perma.cc/859G-ZSXM] (indicating that the national population of the United States is nearly 4.5% of the world population and the prison population is 22% of the world's incarcerated population).

[29] The Sentencing Project, The Federal Prison Population: A Statistical Analysis 1 (2006), http://www.sentencingproject.org/doc/publications/inc_federalprisonpop.pdf [http://perma.cc/R6JG-ZF9G].

[30] *See, e.g.*, Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, Tit. II, § 1005(a), 98 Stat. 1976, 2138–139 (1984), 18 U.S.C. § 924(c) (1982 ed.) (Supp. II) (increases the mandatory minimum sentence for firearm possession during and in relation to a crime of violence from not less than one year or more than ten years to a sentence of five years); Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104(a)(2), 100 Stat. 449, 456–57 (1986), 18 U.S.C. § 924(c) (1982 ed.) (Supp. IV) (makes five-year mandatory sentence applicable to firearm possession during and in relation to drug trafficking and increases the five-year sentence to a ten-year sentence, if the firearm is a machine gun or equipped with a silencer); Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1002, 100 Stat. 3207, 3207-2 to 3207-6, 21 U.S.C. § 841 (1982 ed.) (Supp. IV) (establishes a series of mandatory minimum terms of imprisonment ranging from five years to life depending on the substance involved, its weight, the offender's criminal record, and extent of any physical injury; sets the cocaine powder to cocaine base (crack) ratio at 100 to 1 (e.g., penalty for five grams of base = penalty for 500 grams of powder)); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6371, 102 Stat. 4181, 4370 (1988), 21 U.S.C. § 844 (1988 ed.) (establishes a five-year mandatory minimum for possession of more than five grams of cocaine base (crack)); An Act to Throttle Criminal Use of Guns, Pub. L. No. 105-386, § 1(a)(1), 112 Stat. 3469 (1998), 18 U.S.C. § 924(c) (1994 ed.) (Supp.IV) (establishes mandatory minimums for brandishing (seven years) or discharging

prison population has increased by nearly 800% over the past thirty years.[31] Tragically, children of imprisoned Americans, Americans of color, and their families are disproportionately affected.

American families and children are impacted by the costs of prison. Over 2.7 million American children have a parent who is incarcerated,[32] and approximately ten million American children at one time in their lives had a parent in prison.[33]

Americans of color are disproportionately burdened by the failures of our justice system. There are more black men behind bars or under correctional supervision today than there were enslaved in 1850.[34] And while African Americans make up only thirteen percent of the total United States population, they make up a whopping forty percent of the U.S. prison population.[35]

Nearly one in three (thirty-two percent) people held in federal prisons are Latino.[36] And Latino men are almost four times as likely to go to prison at some point in their lives as non-Latino white men.[37]

In the past five years alone, the number of Native Americans incarcerated in federal prisons has increased by over twenty-five percent.[38] In South Dakota, the state with the fourth highest percentage of Native American re-

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(twelve years) a firearm during and in relation to drug trafficking or a crime of violence); *see also* Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 103(b)(1)(c), 117 Stat. 651, 653 (2003), 18 U.S.C. § 2252 (2000 ed.) (Supp. III) (establishes a five-year mandatory minimum sentence for receipt or attempted receipt of child pornography).

[31] *See Federal Drug Sentencing Laws Bring High Cost, Low Return*, THE PEW CHARITABLE TRUSTS (Aug. 27, 2015), http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/federal-drug-sentencing-laws-bring-high-cost-low-return [http://perma.cc/VR3Q-J64Z].

[32] THE PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 4 (2010), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2010/CollateralCosts1pdf.pdf [http://perma.cc/RMM5-MKQN].

[33] Nat'l Resource Ctr. on Children & Families of the Incarcerated, Rutgers Univ., Camden, CHILDREN AND FAMILIES OF THE INCARCERATED FACT SHEET (2014), https://nrccfi.camden.rutgers.edu/files/nrccfi-fact-sheet-2014.pdf [https://perma.cc/GTY5-UGVC].

[34] *See* Katie Mulvaney, *Brown U. Student Leader: More African American Men in Prison System Now Than Were Enslaved in 1850*, POLITIFACT (Dec. 7, 2014), http://www.politifact.com/rhode-island/statements/2014/dec/07/diego-arene-morley/brown-u-student-leader-more-african-american-men-p/ [http://perma.cc/A25M-U6Q7] (concluding that the U.S. Bureau of Criminal Statistics put the number of African-American men under federal and state supervision in 2013 at about 1.68 million—about 800,000 above the number of African-American men enslaved in 1850).

[35] *See* Leah Sakala, *Prison Policy Initiative, Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/Ethnicity*, PRISON POLICY (May 28, 2014), http://www.prisonpolicy.org/reports/rates.html [http://perma.cc/3QJ7-75A3].

[36] THE SENTENCING PROJECT, HISPANIC PRISONERS IN THE UNITED STATES 1 (2003), http://www.sentencingproject.org/doc/publications/inc_hispanicprisoners.pdf [http://perma.cc/9RDR-GHLN].

[37] *Id.*

[38] U.S. SENTENCING COMM'N, QUICK FACTS: NATIVE AMERICANS IN THE FEDERAL OFFENDER POPULATION 1 (2015), http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Native_American_Offenders.pdf [http://perma.cc/US5A-ESX9].

sidents, Native Americans are 57.5% of the federal caseload, but only 8.5% of the total population.[39]

To make matters worse, the sad reality is that in today's America, prisoners are never truly free from the burdens of our criminal justice system. Every year, approximately 600,000 Americans reenter their communities unable to work, to vote, to go back to school, or to get a loan. It is therefore unsurprising that American prisons have become revolving doors, with two out of every three former offenders rearrested within three years of their release.[40]

The millions of wives, sisters, husbands, daughters, sons, friends, and the people they love who have been incarcerated are burdened disproportionately by an outdated, archaic, and overly punitive system. These millions of Americans have the ability to advance our country, our economy, and our global competitiveness. They just need to be given the opportunity.

American taxpayers feel the burdens of our criminal justice system too. In addition to the billions lost in jobs and productivity, Americans spend over eighty billion dollars each year to keep millions of nonviolent, low-level offenders imprisoned.[41] The price tag is truly staggering. It costs about twenty-nine thousand dollars a year to house one inmate at the federal level.[42] In contrast, our country spends a little over eleven thousand dollars a year on average per elementary school student.[43] Imagine the good we could do if we could re-appropriate those tens of billions of dollars in taxpayer money and economic losses away from imprisonment and invest in our children's future.

We must start to deconstruct the perverse order of our priorities and build a more just society by making necessary changes at the federal level. Fortunately, a roadmap for addressing these problems exists.

In both blue states such as New Jersey and Connecticut and red states such as Texas and Georgia, state and local officials have developed and instituted sweeping reforms that have reduced their prison populations and crime rates. They are focusing their efforts on areas where the justice system most needs reform. We should follow their example on the federal level.

First, Congress should pass legislation that promotes "front end" reform, such as ending, or at a bare minimum cutting back on, the impact of mandatory minimum sentencing for nonviolent drug crimes.

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[39] *Id.*

[40] Nat'l Inst. of Justice, Off. of Justice Programs, U.S. Dep't of Justice, Recidivism (June 17, 2014), http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx [http://perma.cc/CX4D-9737].

[41] *See* Kearney et al., *supra* note 7, at 13.

[42] Annual Determination of Average Cost of Incarceration, 76 Fed. Reg. 16711 (Mar. 18, 2013).

[43] The Condition of Education 2015, Nat'l Ctr. for Educ. Statistics (2015), https://nces.ed.gov/programs/coe/pdf/coe_cmb.pdf [https://perma.cc/9NJR-Y96D].

Second, we should enact "behind the wall" reforms, such as eradicating the cruel practice of juvenile solitary confinement and increasing educational and job skills training opportunities.

And third, we should pass legislation that enacts "back end" reforms that assist in sealing criminal records and removing barriers to employment and housing for nonviolent formerly incarcerated people.

As we seek to reform our criminal justice system at the national level, we must reflect on our deeply held beliefs. We strive to pursue equal justice under law for all, an idea so important to us all that it is etched on the marble of the highest court of our land. Work on sentencing reform is grounded in the simple truth that all people deserve to be treated with dignity and respect. By reforming our criminal justice system—on the front end, behind the wall, and on the back end—we can uphold our cherished values, protect human dignity, and empower America's next generation of artists, scientists, engineers, inventors, and entrepreneurs. This is a change worth having. This is the promise that *Miranda* gave us. This is the challenge we must face.

III. *Miranda* in Review

Miranda gave Americans more faith in the fairness of our justice system and the integrity of police practices. By requiring citizens to be notified of their rights, this decision helped mend a trust gap between law enforcement and the communities that they serve. It gave us more confidence in government.

At this unique moment in America's history, we find ourselves in a time of profound change. In the last eighteen months, our national conscience has awakened to the harsh reality that our justice system is broken, but many Americans have confronted this crushing reality for far too long. We must now join together as one nation and restore faith between police officers and the communities they serve.

Now is the time to ask the hard questions. How much has changed in police and community interactions since *Miranda*? What are the contemporary problems in law enforcement and corrections? And, more importantly, what are the solutions? The contributors to this volume seek to answer those questions. They each explore innovative legal and policy solutions to the issue of just policing in twenty-first century America.

In *Can Foreign Experience Inform U.S. Policy on Killings of and by Police?*, Franklin E. Zimring, the William G. Simon Professor of Law and Director of Criminal Justice Studies at the University of California, Berkeley, School of Law, surveys available statistics on police use of deadly force in an effort to put the data in comparative perspective. His article addresses the extent to which America is unique in the character and the rate of killings as a byproduct of urban policing.

Professor Zimring provides a brief survey of police killings in five nations and conducts a sustained analysis of police in Germany and the United

Kingdom. His article provides important comparative lessons about whether the dangers confronting police officers require their use of lethal force and examines what alternative countermeasures exist to keep police safe.

In the wake of a police shooting of an unarmed young black man in Ferguson, Missouri, the nation was alarmed to watch police armed with equipment made for the battlefield standing toe-to-toe with American protesters. In *Local Democratic Oversight of Police Militarization*, Kara Dansky, Founder and Managing Director of One Thousand Arms, focuses on the role of local democratic institutions in reining in police militarization.

Ms. Dansky explores the significance of local governments establishing an agency responsible for ensuring that its police are not excessively militarized. She also considers the impact of excessive militarization on minorities. In addition, she proposes a guide for local residents to use that will help them effectively voice their concerns about the acquisition of military equipment by police departments.

In Miranda *and the Evolution of Policing*, Edward A. Flynn, the Chief of Police in Milwaukee, Wisconsin, discusses the challenges of creating and maintaining professionalized policing in the United States. Building upon his own decades of experience in policing, Chief Flynn explores the progressive reforms in terms of practice and leadership that have transpired in American policing post-*Miranda*.

Chief Flynn observes that *Miranda*, and the President's Commission on Law Enforcement and Administration of Justice, improved not just policing, but systemic practices throughout the criminal justice system. As a result of these reforms, he argues that law enforcement developed effective tactics that led to a reduction in crime, uses of force, and complaints against police that coincided with the decline in urban riots.

In *The Uses and Abuses of Police Discretion: Toward Harm Reduction Policing*, Katherine Beckett, a Professor in the Law, Societies, and Justice Program at the University of Washington Department of Sociology and an adjunct professor in the University of Washington's School of Law, examines the nature of police discretion and explains how its exercise was impacted by the War on Drugs and the adoption of "broken windows policing."

Professor Beckett argues that efforts to encourage a muscular police response to low-level offenders had an important consequence, namely, the flooding of American prisons and jails with people who do not pose significant threats to public safety, including Americans who suffer from a lack of access to traditional housing, or who suffer from substance abuse or mental health problems. She suggests that police discretion can be used to implement policies at the municipal level that would channel nonviolent, minor offenders out of the criminal justice system and toward services.

Finally, while the details leaked by Edward Snowden about the mass surveillance programs of the NSA are widely known, less familiar are the growing technological capabilities of local police departments. In *The New*

Surveillance Discretion: Automated Suspicion, Big Data, and Policing, Elizabeth E. Joh, Professor of Law at the University of California, Davis, School of Law, examines the use of police surveillance technologies and bulk data collection to make decisions about people *before* any search, detention, or arrest occurs.

Professor Joh explores the scope of "surveillance discretion," when police may target a person or persons for governmental investigation. The expansion of surveillance discretion by big data presents an underappreciated challenge to police regulation. Yet, this article explores the challenges new technologies raise for the expansion of government domestic surveillance and how police departments use big-data tools on people suspected of criminal activity.

IV. Conclusion

Today, we face a critical moment in our nation's history. To paraphrase Langston Hughes, "There is a dream in the land with its back against the wall . . . to save the dream for one, it must be saved for all."[44] Our broken justice system operates in a way that belies our country's promise and potential. It's not fair, it's not smart, and it doesn't reflect our values.

Miranda represents the idea of fundamental fairness, a value as old as our Constitution and enduring as any of our most cherished beliefs. Over the last half century, we have made great strides in ensuring that promise, but much work remains to be done. We must ensure that *Miranda*'s value of fairness applies throughout our broken criminal justice system. The articles in this volume make a substantial contribution to the ongoing national conversation on how to fix our broken justice system. With the insight of these articles, we can improve American policing, stay true to *Miranda*'s values, and ultimately make our justice system more just.

We must recommit ourselves—as a country—to tackling the difficult legal and policy problems that sustain our broken criminal justice system. We must pledge to take a stand against injustice and make our justice system—and ultimately our Union—more perfect. And we must get to work. This is our chance. This is our opportunity. This is our moment.

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[44] Langston Hughes, Dream of Freedom, reprinted in The Collected Poems of Langston Hughes 542 (Arnold Rampersad et al. eds., 1944).