TEN YEARS AND TEN MILES: REFLECTING ON "FERGUSON"

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On August 9, 2014, Ferguson, Missouri Police Officer Darren Wilson shot and killed eighteen-year-old Michael Brown.[1] Three months later, a St. Louis County grand jury declined to indict Wilson. The activism, protests, and uprisings that followed helped to catalyze movements to confront racial injustice in U.S. criminal policy. In the days, weeks, months, and years that followed, "Ferguson" came to operate as a sort of shorthand or stand in for police violence, for racial inequality, for structural racism, for extractive models of policing, and for a host of other problems, defined and undefined.[2]

On August 9, 2014, I had never been to Ferguson, to St. Louis, or to Missouri. Weeks away from my first semester as a teaching fellow at Harvard Law School, I was preparing my first-year Legal Research and Writing course. I was only a few years out of law school myself, but I hoped to pursue a career as a law professor, teaching and writing about U.S. criminal policy. That meant cutting my teeth teaching a required skills course that focused on the conventions of legal writing, the right way to structure legal argument, and the best tactics for legal research—tasks that are undoubtedly important for lawyers, but often felt worlds away from the

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* Professor of Law, Washington University in St. Louis. As a reflection on the past decade, this Essay owes an immense debt of gratitude to the colleagues, friends, and students who have shaped my thinking over this time. Many thanks to Avrye King and Charlotte Morse for many discussions on this Essay and on this Volume—and for all their hard work to make sure that this Volume came to be. Charlotte Morse also leant invaluable research assistance for which I am deeply grateful. Thanks to all of the authors whose work is featured in this Volume for taking the time to share their perspectives on Ferguson and to the editors of the *Washington University Journal of Law & Policy* for taking the time to shepherd the essays in this Volume through the publication process.

1. *See* Larry Buchanan et al., *What Happened in Ferguson?*, N.Y. TIMES, http://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html [https://perma.cc/78JT-DNJD] (updated Aug. 10, 2015).

2. *See* S. David Mitchell, *Ferguson: Footnote or Transformative Event?*, 80 MO. L. REV. 943, 944 (2015) ("'Ferguson.' No longer does this name simply represent the geographical boundaries of a city in St. Louis County formed initially by white flight from St. Louis City and that has become increasingly African American over time. It has come to represent so much more." (footnotes omitted)).

substantive concerns and commitments that brought me to law school and law teaching.[3]

In the months that followed, I got to know students who either had come to law school to fight for racial justice and equality in the U.S. criminal system or who had been radicalized by the events they saw unfolding around them.[4] Ferguson was nearly 1,200 miles away from Cambridge, Massachusetts, but the deep sense of outrage and the cries for justice travelled fast. I was trying to figure out how to teach a class and grade assignments, but I also was trying to figure out how my own work could connect with my students who felt that law schools were failing to address the deep structural issues in Ferguson and beyond.

A decade later, I am a professor at Washington University in St. Louis School of Law. As I look out the window of my office, Ferguson lies nearly ten miles north, somewhere beyond the Tudor Revival houses and tree-lined streets where many of my colleagues and I live.[5] "Ferguson" the place is much closer than it was a decade ago, but it still feels far away. The long

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3. I consider myself very fortunate not only to have had the opportunity to work alongside excellent students in this moment, *see infra* note 4, but also to have had the opportunity to work alongside wonderful colleagues who were grappling with similar questions and whose offices I visited regularly to talk through what was going on around us and what our roles were—and should be—in such uncertain times. *E.g.*, Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2058 (2017) ("The Black Lives Matter era has catalyzed meaningful discussion about the tense relationship between police and many racially and economically isolated communicates."); Daniel Farbman, *"It Is Not an Era of Repose": How the Legal System Personalizes Injustice and Sparks Protest*, 12 LAW, CULTURE & HUMAN. 172, 173 (2016) ("The failure of law to do justice has been a catalyst for outrage and action for centuries.").

I will never forget joining a student protest with my then-supervisor and dear friend Susannah Barton Tobin on an evening in December of 2014. I remember catching Susannah's eye as the students around us chanted "What do we want? Justice! When do we want it? Now! And if we don't get it? Shut it down!" What was "justice?" *See* Benjamin Levin & Kate Levine, *Redistributing Justice*, 124 COLUM. L. REV. 1531, 1547 (2024) (critiquing the equation of criminal prosecution and conviction with "justice"). Were we "it?" What would it mean to "shut 'it' down?" And even if we were "it," should it (or, perhaps, we) be "shut down?"

4. For a powerful account of this period and this process of radicalization from one such student activist (and my excellent student at Harvard), see generally DERECKA PURNELL, BECOMING ABOLITIONISTS: POLICE, PROTESTS, AND THE PURSUIT OF FREEDOM (2021).

5. St. Louis was famously segregated along Delmar Boulevard (formerly known as Morgan Street), which runs east/west. *See* WALTER JOHNSON, THE BROKEN HEART OF AMERICA: ST. LOUIS AND THE VIOLENT HISTORY OF THE UNITED STATES 191 (2020) ("Morgan Street is today known as Delmar—a street name that has become a byword for segregation in the city of St. Louis. Ask anyone from the city and they will tell you: south of Delmar is white, north of Delmar is Black."). Washington University's Danforth Campus, which houses the law school, lies about a half-mile south of Delmar, nestled between the "inner ring" St. Louis County municipalities of Clayton and University City.

echoes of residential segregation make even short physical distances seem insurmountable.[6] Nevertheless, "Ferguson" as a shorthand feels close—a motivation for much of my own research and a recurring theme in my teaching as well as the inspiration for many of students working on issues of racial and criminal justice. And, even though the protests of 2014—like the protests of 2020, or the ones of 1992 before them—have long since receded, the outrage, activism, and movement building have left indelible marks not only on the city where I now live, but on a nation that continues to grapple with a long history of racial injustice and state-sanctioned brutality.

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The essays in this Volume mark a decade since Michael Brown's death and the subsequent protests and uprisings across the country. The authors look back on the past decade—their own experiences and our experiences as a nation—to consider the impacts of the Ferguson uprisings and the landscape of criminal justice and racial justice advocacy, scholarship, and teaching today.

In this Essay, I provide a brief introduction to the Volume and essays that follow. In Part I, I situate the Ferguson uprisings in the broader context of activism responsive to racial injustice in the U.S. criminal system.[7] In Part II, I describe the essays that follow. Finally, in Part III, I offer a few words on the twenty-fifth anniversary of the *Washington University Journal of Law & Policy*, and the importance of this Volume in continuing the journal's mission.

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6. On the long-reaching echoes of segregation in Ferguson, see C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 76 (2015); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 757 (2020).

7. Throughout this Essay, I refer to the "criminal system" advisedly—mindful of critiques that the system may not actually be a system. *See* LAWRENCE M. FRIEDMAN, CRIME AND PUNISHMENT IN AMERICAN HISTORY 461 (1993) ("[T]he criminal justice 'system' is not a system at all."); Sara Mayeux, *The Idea of "The Criminal Justice System"*, 45 AM. J. CRIM. L. 55, 65–66 (2018); Bernard E. Harcourt, *The Systems Fallacy: A Genealogy and Critique of Public Policy and Cost-Benefit Analysis*, 47 J. LEGAL STUDS. 419, 421 (2018). Despite its significant shortcomings, the phrase remains a useful shorthand for a difficult-to-define set of institutions. *See* Benjamin Levin, *After the Criminal Justice System*, 98 WASH. L. REV. 899, 939–42 (2023) (describing the benefits of the "criminal system" as a label for institutions of U.S. penal administration).

I. CYCLES OF OUTRAGE

Recent years have seen a spike in writing and activism focused on U.S. criminal policy, with a particular emphasis on inequality across lines of race and class. The summer of 2020 stands as a sort of highpoint—with massive protests across the country hailed as a sort of "racial reckoning."[8] The 2020 protests were catalyzed by public reactions to the Minneapolis Police Officer Derek Chauvin's murder of George Floyd, an unarmed Black man. And, in this respect, the summer of 2020 followed on a long pattern of public outcry following revelations about police brutality. There is nothing new about the brutality or the reactions.[9] From the state-sanctioned violence against Black enslaved people, to the lynchings of the Jim Crow South, cycles of brutality and outrage have defined U.S. race relations.[10] Whether that violence has been at the hands of police officers or private actors bearing the actual or assumed authorization of the state, its impunity has repeatedly drawn the ire of activists, advocates, and observers of injustice.

And, such cycles have been a feature of public discussions about policing in my lifetime—from the 1992 beating of Rodney King by Los Angeles Police Officers that sparked protests and riots across the country, to officers' forty-one shots that laid low Guinean student Amadou Diallo in New York in 1999, to the shooting of fourteen-year-old Tamir Rice by

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8. For such a characterization, see *2021 Symposium: Policing, Race, and Power, Reckoning and Reformation: Reflections and Legal Responses to Racial Subordination and Structural Marginalization*, STAN. L. REV., https://www.stanfordlawreview.org/symposium/policing-race-and-power [https://perma.cc/D2QM-3PL2]; Thalia González & Rebecca Epstein, *Racial Reckoning and the Police-Free Schools Movement*, 72 UCLA L. REV. DISCOURSE 38, 44 (2024) (collecting sources) (describing the "racial reckoning" of 2020 as how "education justice activists exerted increased pressure at local and national levels to end entrenched carceral conditions and policing practices in public schools").

9. *See* Walter Johnson et al., *The World Ferguson Made*, INQUEST, Aug. 6, 2024, https://inquest.org/the-world-ferguson-made/ [https://perma.cc/MAM6-YWB3] ("The August 2014 murder of Michael Brown and subsequent uprising in Ferguson, Missouri, drew national attention to the city of St. Louis, the militarization and impunity of police departments nationwide, and the ongoing economic and legal war against Black people in the United States. It was one more death slotted into a seemingly endless column, extending back to the foundation of the United States and forward into the future among: Eleanor Bumpurs, Sean Bell, Amadou Diallo, Oscar Grant, Tamir Rice, Rekia Boyd, Philando Castile, George Floyd, Sonya Massey, and on and on and on.").

10. For a historical account that traces the long arc of uprisings and outrage, see generally ELIZABETH HINTON, AMERICA ON FIRE: POLICE VIOLENCE, BLACK REBELLION AND THE FRACTURING OF A NATION (2022).

Cleveland officers in 2014. While the names, the faces, and the circumstances change, the criticisms and demands remain surprisingly similar.[11] The contemporary rallying cry of "Black Lives Matter" was spawned by George Zimmerman's killing of Trayvon Martin in 2012,[12] but it continued to gain cultural purchase in the years that followed, picking up steam after Michael Brown's death, and carrying forward into a new decade.

As the years have passed, "Ferguson" and "Michael Brown" have become entries in this long index—reference points for a moment of outcry, a community and a nation's sense of indignation. Writing a decade after Brown's death, Blake Strode, a St. Louis native who is now the Executive Director of ArchCity Defenders, described a "change in the air" in 2015 when he returned to the city after his time in law school.[13] Yet Strode suggests that

> the further removed that we've gotten from that original flashpoint of the taking of Mike Brown's life, that energy has waned. . . . [While] that energy has been honed in helpful, productive ways, . . . it's been kind of a slow backslide in a lot of ways, particularly when I think about the institutions of power in St. Louis. Corporate America and government institutions have very much reinstituted a sort of status quo.[14]

The facts of each case of police violence, of course, matter tremendously for everyone directly involved, but many of the details fade over time. And, many of the details come to matter less than the problems and principles that the cases come to represent. Ferguson the place (much like Brown the person) carries a particular meaning for the people of St.

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11. For historical comparisons, see *id.*; Farbman, *supra* note 3, at 173.

12. It's worth noting that Zimmerman wasn't a police officer, but—as noted above—many of the killings that have sparked outrage in the past (e.g., the Jim Crow-era lynchings) weren't carried out by state actors, but they were perceived as reflecting official support for or at least tolerance of violence against Black people.

13. *See* Johnson et al., *supra* note 9 (quoting Blake Strode). Attorney, activist, and Ferguson native Derecka Purnell similarly described an "energy in the streets and a sense of promise that the world was going to be different." Johnson et al., *supra* note 9 (quoting Derecka Purnell).

14. *See* Johnson et al., *supra* note 9 (quoting Blake Strode). *Cf.* Keeanga-Yamahtta Taylor, *Did Last Summer's Black Lives Matter Protests Change Anything?*, NEW YORKER, Aug. 6, 2021 (describing the aftermath of the 2020 uprisings and arguing that "[u]nrealized demands for change can turn into cynicism, despair, and detachment, leaving the forces of reaction intact and on the offensive. Our moment is full of promise and also peril.").

Louis, but it comes to stand as a shorthand for people far removed from the fraught politics of St. Louis County.

II. TEN YEARS AFTER

The essays in this Volume each take "Ferguson"—the place, the moment, or the movement—as their starting point. For some of the authors, that means thinking about how a decade of activism and increased attention to the injustices of the criminal system have changed the law school classroom. For others, it means reflecting on how the Ferguson uprisings changed their personal perspectives. While for others, it means considering how a decade of critical engagement has shaped (or might shape) new approaches to criminal legal thought and policy.

In *Law and Disorder: Why Police Violence Thrives Despite Protests*, Aya Gruber takes a long view, situating the Ferguson Uprisings not only within a decade of similar uprisings, but also alongside many decades of protests—and decades of backlash.[15] Gruber confronts the persistence not only of racialized police violence, but also the persistence of public demands for increased police power as a means of responding to crime. In this respect, Gruber builds on her own work on policing as an engine of racial inequality and also contributes to a critical literature that questions foundational claims about the relationship between policing and crime and also questions the actual function of police—both historically and in the present.[16]

In *Ferguson & Me: A Transformative Ten Years*, Christopher Williams reflects on his experiences as a student at the University of Missouri, his journey to law school, and his eventual return to legal academy.[17] Williams

15. Aya Gruber, *Law and Disorder: Why Police Violence Thrives Despite Protests*, 78 WASH. U. J.L. & POL'Y 11 (2025).

16. *See, e.g.*, Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 1781, 1824–25 (2020) ("[T]he historical, material, and ideological critiques create a framework for understanding the fundamental problems of policing. They suggest policing is not broken, but working in ways that reflect and extend the status quo social relations."); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 689 (2020) (describing "policing as part of a broader program of racial control"); Aya Gruber, *Policing and "Bluelining"*, 58 HOUS. L. REV. 867, 873 (2021) (arguing that "policing . . . has succeeded spectacularly at what I call 'bluelining,' that is, maintaining raced and classed spatial and social segregation through the threat and application of violence").

17. Christopher Williams, *Ferguson & Me: A Transformative Ten Years*, 78 WASH. U. J.L. & POL'Y 61 (2025).

situates the Ferguson Uprising not only in the context of a long history of anti-Black violence but also in the contemporary restrictions on Critical Race Theory. In this respect, he examines the ways that the Ferguson Uprisings have been transformative as a positive radicalizing event, but also transformative as a negative catalyst of backlash and revanchist sentiment.

In *Reflections on the Ferguson Report*, Eisha Jain asks: "How does law shape police lawlessness? And what can lawyers do to promote change?"[18] Jain examines the Department of Justice's Ferguson Report as a way of gaining greater insight into police/civilian interactions. Jain argues that the report demonstrates the pervasiveness of unlawful police practices and also gives lie to common judicial pronouncements that the political process—rather than judicial intervention—can curb abusive policing.

Like Jain, Jessica Eaglin suggests that reexamining Ferguson and the Ferguson Uprisings might help us understand contemporary trends in criminal policy. In *Opening the Black Box*, Eaglin examines the discourse regarding algorithms in the criminal process—particularly in the contexts of bail, policing, and sentencing.[19] Eaglin argues that revisiting the Ferguson Uprisings as a moment of possibility for activism on racial justice in the criminal system should invite a reexamination of the "stagnating" discourse and race and algorithms on criminal policy.

In *The Legacy of Ferguson: Building Worker, Community, and Student Power to Respond to the Carceral State*, Donna Coker, Melody Sinckler, and Kira Mikes confront the larger social context of the Ferguson Uprisings and the relationship between political economy and Michael Brown's killing.[20] Coker, Sinckler, and Mikes describe "Building Worker and Community Power to Confront the Carceral State," a law school class that was a collaboration between students at the University of Miami and the Miami-Dade County community organization, Beyond the Bars. Rather than simply focusing on police violence or problematic doctrines of criminal law and procedure, the course takes aim at the way social and economic forces that have created the conditions for racial injustice in the criminal system.

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18. Eisha Jain, *Reflections on the Ferguson Report*, 78 WASH. U. J.L. & POL'Y 81 (2025) (manuscript at 1).

19. Jessica M. Eaglin, *Opening the Black Box*, 78 WASH. U. J.L. & POL'Y 93 (2025).

20. Donna Coker et al., *The Legacy of Ferguson: Building Worker, Community, and Student Power to Respond to the Carceral State*, 78 WASH. U. J.L. & POL'Y 115 (2025).

Finally, Trevor Gardner steps back to suggest that the fractious debates about criminal policy over the past decade might give rise to some common ground and a shared agenda (or at least a shared framework) for thinking about reform. In his essay *Auditing Criminal Justice Minimalism*,[21] Gardner begins with widespread academic acceptance of the Department of Justice Ferguson Report's conclusions to argue that debates between radicals and moderates, abolitionists and reformers, and different schools of thought on criminal law and social change actually belie some shared commitments. Gardner argues that "criminal law minimalism" might offer a useful frame for different academics, activists, and advocates to communicate and assess policy change.[22] Gardner contends that most critical commentators (whatever their ultimate ideological or political project) tend to agree that there should be *less* criminal law and punishment. Building on this insight, he argues that minimalism might serve as the basis to evaluate or "audit" policy proposals—urging commentators to express their first-principles commitments and then ask whether a given proposal leads to more criminal law or punishment than necessary to advance those commitments. If so, it should be rejected. If not, it might advance a minimalist agenda.

III. LAW & POLICY

Why this conversation here and now? I hope that it's not terribly controversial to suggest that a law school in St. Louis should be concerned with considering the aftereffects of police violence in St. Louis. And while any anniversary (a decade, a century, etc.) has an admitted artificiality to it,

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21. Trevor George Gardner, *Auditing Criminal Justice Minimalism*, 78 WASH. U. J.L. & POL'Y 147 (2025).

22. Elsewhere, Gardner has advocated for minimalism as a desirable theoretical or normative frame for addressing the injustices of the criminal system. Trevor George Gardner, *The Conflict Among African American Penal Interests: Rethinking Racial Equity in Criminal Procedure*, 171 U. PA. L. REV. 1699, 1722 & n.85 (2023) (arguing that minimalism is a more desirable "normative position" than abolition in part because it "recognize[s] the state's responsibility to protect members of the African American underclass from private violence."). For other claims about minimalism as preferable to abolition, see generally Máximo Langer, *Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then*, 134 HARV. L. REV. F. 42 (2020); Christopher Slobogin, Essay, *The Minimalist Alternative to Abolitionism: Focusing on the Non-Dangerous Many*, 77 VAND. L. REV. 531 (2024); Rachel E. Barkow, *Promise or Peril?: The Political Path of Prison Abolition in America*, 58 WAKE FOREST L. REV. 245, 266, 284 (2023). For a more skeptical take on minimalism, see generally Benjamin Levin, *Criminal Law Minimalisms*, 101 WASH. U.L. REV. 1771 (2024).

a nice round number offers a convenient opportunity to reflect. (It takes little imagination to concoct new anniversaries at a chosen time or date.) But, why consider *this* anniversary in the *Journal of Law & Policy*?

The journal that is now known as the *Washington University Journal of Law & Policy* was first published in 1968. In 1968, the Journal initially was published as the *Urban Law Annual*—a journal focused on the "legal problems of urban areas."[23] The *Urban Law Annual* reflected a shifting emphasis of U.S. law students who sought to direct their labors towards addressing injustice and who understood student-edited law reviews as a site for activism and for advancing a political agenda. The 1960s and 1970s spawned similar projects—from the *Fordham Urban Law Journal* (reflecting a similar focus on the problems of urban poverty)[24] to the *Harvard Civil Rights-Civil Liberties Law Review* (reflecting an explicitly progressive politics of racial equality). Whatever the boundaries or limits mainstream law reviews and legal scholarship,[25] these journals represented an effort to refocus the discussion.

In 1983, the Journal changed its name (if not its focus) with a rebranding: the *Journal of Urban and Contemporary Law*.[26] Reading the page-long preface to the 1983 edition from Editor-in-chief Dennis P. Birke, it's worth asking how much work "urban" is doing as a euphemism, proxy, or shorthand—a catchall category to consider questions of race and class or a means to address issues of social policy and equality that might have been viewed as outside of the realm of mainstream legal scholarship (and, hence, the province of the mainline Law Review).

Finally, 1999 saw the *Journal of Law & Policy* drop "urban," inviting a broader universe of topics and scholarly engagement.[27] The first issue under the new name—featuring authors ranging from Canadian Supreme Court Justice Louise Arbour to Critical Race Theory pioneer Derrick Bell—consisted of published essays based on the Law School's Public Interest Speakers Series, entitled "Access to Justice: The Social Responsibility of Lawyers."[28] In introducing the issue, faculty advisor Karen Tokarz declared

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23. Daniel R. Mandelker, *Preface*, 1 URB. L. ANN., at v (1968).
24. *Id.*
25. Of course, those boundaries have shifted over time and remain shifting.
26. Dennis P. Birke, *Preface*, 24 J. URB. & CONTEMP. L. 1, at v (1983).
27. *See generally Preface*, 1 WASH. U. J.L. & POL'Y 1, at v (1999).
28. Karen Tokarz, *Introduction*, 1 WASH. U. J.L. & POL'Y 1, 1 (1999).

that the Journal's "mission is to publish cutting edge scholarship that critiques and develops policy, and highlights the distinctions between law and justice."[29]

This Volume marks the twenty-fifth anniversary of the *Journal of Law & Policy*—twenty-five years of "highlight[ing] the distinctions between law and justice."[30] But this Volume also carries the vestiges of the year of the Journal's *initial* founding—1968. That year, the *Urban Law Annual* was first published. That publication debut was hardly a headline in a year marked by war, assassinations, global uprisings, and unrest. It was a year when the fault lines that underlay the United States became apparent, as social and political earthquakes shook the foundations of cities across the country. Over a half century later, the essays in this Volume consider a landscape shaped by those quakes—and decades of quakes since. They offer us cause for optimism and pessimism, and they offer us an opportunity for reflection.

29. *Id.* at 12.
30. *Id.*