NOTE

POLICING THE POLICE UNDER 42 U.S.C. § 1983: RETHINKING *MONELL* TO IMPOSE MUNICIPAL LIABILITY ON THE BASIS OF *RESPONDEAT SUPERIOR*

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INTRODUCTION

The callous murders of George Floyd and Breonna Taylor at the hands of police in 2020 sparked nationwide protests surrounding racial injustice and ignited calls to "defund the police."[1] But while technological advances have led to a rise in

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1 Leila Fadel, *Protesters Call for Police to be Defunded. But What Does That Mean?*, NAT'L PUB. RADIO (June 22, 2020), https://www.npr.org/2020/06/22/881559687/protesters-call-for-police-to-be-defunded-but-what-does-that-mean [https://perma.cc/PCA5-FJVK].

highly publicized instances of such injustices, police brutality and misconduct are not novel concepts.[2] Indeed, police misconduct has existed in the U.S. for as long as the institution of policing itself.[3] Although the public is often led to believe that police misconduct is the result of a few "bad apple" officers, there are in fact broader systemic factors at play—most significantly, a police organizational culture that incentivizes and endorses violence and brutality among officers. Although individual officers and municipalities may be held liable for civil rights violations under 42 U.S.C. § 1983, a multitude of legal barriers constrain existing legislation from effectively imposing liability on individual officers and holding police departments accountable for their officers' unconstitutional actions. Criminal liability for police misconduct, at both the state and federal levels, is similarly inadequate in deterring police brutality.

This Note will focus on reforming police organizational culture—a culture that both permits and promotes officer misconduct—by imposing municipal liability on the basis of *respondeat superior*. First, I will explore police misconduct and explain it as a result of police organizational culture. Here, I will discuss several factors that have contributed to an organizational culture that fosters police misconduct and brutality. Next, I will explore the legislative history of Section 1983 and discuss available legal remedies for victims of police misconduct. Finally, I will argue that in order to effectively address police misconduct, eliminating qualified immunity, while a good first step, is not in itself sufficient; rather, we should impose liability on municipalities through the doctrine of *respondeat superior*—a common law tort theory which holds a principal vicariously liable for the wrongdoings of an agent committed within the scope of their agency relationship. This section will involve a discussion of how *respondeat superior* can be legally implemented as well as the limitations associated with imposing municipal liability in this way.

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2 *See* Wenei Philimon, *Not Just George Floyd: Police Departments Have 400-Year History of Racism*, USA TODAY (June 7, 2020), https://www.usatoday.com/story/news/nation/2020/06/07/black-lives-matters-police-departments-have-long-history-racism/3128167001/ [https://perma.cc/V7LL-X4JJ].

3 *See id.* (noting that the United States initially adopted the British watchmen system, which later expanded to include slave patrols "tasked with hunting down runaways and suppressing rebellions amid fear of enslaved people rising up against their white owners.").

I
BACKGROUND

A. Police Organizational Culture

On May 25, 2020, officers of the Minneapolis Police Department arrested George Floyd, a middle-aged Black man, after receiving a call from a convenience store employee who reported that Floyd had paid for cigarettes using a counterfeit $20 bill.[4] Officer Derek Chauvin, a White man, quickly gained notoriety after onlookers recorded him kneeling on Floyd's neck for nine-and-a-half minutes—even after Floyd fell unconscious.[5] In the wake of Floyd's death, media attention focused heavily on the actions of Officer Chauvin and his role in the brutal murder. News headlines across the country asked how such a "bad apple" cop came to be hired by the Minneapolis Police Department in the first place. What the media did not draw much attention to, however, was the three other officers who stood by and did nothing while Floyd screamed in pain, crying out that he was unable to breathe.[6]

The murder of George Floyd is not an outlier; more than 1000 civilians are killed at the hands of police officers in the United States each year.[7] Evidently, this is not a case of one "bad apple"; this is a case of a rotten orchard. Indeed, the organizational culture of police is often considered by scholars to be the largest barrier to systemic change: "[t]he problem is not a 'few bad apples,' but an organizational climate that molds new officers into thinking and doing as the organization wishes."[8] In order for systemic change to occur, then, it is important to understand and address the factors that contrib-

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4 *See* Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html [https://perma.cc/TDB6-PBKL] (last updated Nov. 1, 2021).

5 *See* Nicholas Bogel-Burroughs, *Inside the Chauvin Jury Room: 11 of 12 Jurors Were Ready to Convict Right Away*, N.Y. TIMES (Apr. 29, 2021), https://www.nytimes.com/2021/04/29/us/chauvin-jury-brandon-mitchell.html [https://perma.cc/TZ8R-WD8J] (last updated May 4, 2021).

6 *See* Paul Butler, *The Most Important Trial of Police Officers for Killing a Black Man Has Not Yet Happened*, WASH. POST (Apr. 29, 2021), https://www.washingtonpost.com/opinions/2021/04/29/next-trial-killing-george-floyd-will-be-real-test/ [https://perma.cc/A6VR-N5Q2].

7 Lynne Peeples, *What the Data Say About Police Brutality and Racial Bias—And Which Reforms Might Work*, NATURE (June 19, 2020), https://www.nature.com/articles/d41586-020-01846-z [https://perma.cc/3N7R-MVVU] (last updated May 26, 2021).

8 Terrance A. Johnson & Raymond W. Cox, III, *Police Ethics: Organizational Implications*, 7 PUB. INTEGRITY 67, 74 (2005).

ute to such an organizational culture among police agencies in the first instance.

One contributing factor, and perhaps the most significant, is the police subculture—an informal set of rules and values passed down from older, more experienced officers to new recruits through the police socialization process.[9] The police subculture informs officers "how to go about their tasks, how hard to work, what kinds of relationships to have with their fellow officers and other categories of people with whom they interact, and how they should feel about police administrators, judges, laws, and the requirements and restrictions they impose."[10] Although the specifics of a particular police subculture vary between different police agencies due to myriad factors such as crime rates, traditions, and leadership values, the typical police subculture is characterized by widely-held beliefs among officers that "police are the only real crime fighters," "[n]o one understands the nature of police work but fellow officers," "[l]oyalty to colleagues counts more than anything else," "[i]t is impossible to win the war on crime without bending the rules," "citizens are unsupportive and make unreasonable demands," and "[p]atrol work is only for those who are not smart enough to get out of it."[11]

Though police training begins at the academy, new recruits become fully indoctrinated into the police subculture through field training programs led by veteran field training officers ("FTOs"), who play an integral role in conveying to recruits the values and attitudes of the police agency.[12] FTOs orient new recruits and provide them with their first glimpse of the harsh realities of police work,[13] teaching new recruits early on in their careers that the policing occupation is highly unpredictable with danger potentially lurking around every corner.[14] Under these uncertain conditions characterized by hypervigilance and stress, officers given the already-demanding task of keeping society safe are then further constrained by what they frequently perceive to be unrealistic legal and constitutional re-

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9 *See* STEVEN M. COX, DAVID MASSEY, CONNIE M. KOSKI & BRIAN D. FITCH, INTRODUCTION TO POLICING 177 (2017).

10 *Id.*

11 *Id.* at 186.

12 *See id.* at 181.

13 *See* Mark Malmin, *Changing Police Subculture*, LAW ENF'T BULL. (Apr. 1, 2012), https://leb.fbi.gov/articles/featured-articles/changing-police-subculture [https://perma.cc/DC9J-M54J].

14 *See* COX, MASSEY, KOSKI & FITCH, *supra* note 9, at 183.

quirements.[15] The unique demands and characteristics of policing thus lead officers to believe that nobody outside of the force can truly understand the realities of police work.[16] Moreover, officers tasked with ensuring the safety of citizens—who may not be particularly cooperative or respectful—are quickly taught to view citizens with suspicion, resulting in an "us-versus-them" mentality between police officers and the individuals with whom they interact on a daily basis.[17] This depersonalized worldview is then furthered by the persistent use of cynicism, jargon, insults, nicknames, euphemisms, and dark humor by officers, all of which serve to create a moral distance between police and the public they serve.[18]

The police subculture plays a crucial role in police agencies, providing a way for officers to deal with social isolation from their communities while simultaneously promoting a bond of solidarity among the ranks.[19] But while such a subculture may help officers cope with the unique stressors of policing, the detrimental impact that such a subculture has on society as a whole outweighs any benefit that may be derived from its existence. The police subculture—characterized by secrecy, mutual support, and officer unity—effectively creates a code of silence, known colloquially as the "blue wall."[20] This code of silence, while acting to further reinforce solidarity among the ranks, results in "an informal norm of police culture that prohibits reporting misconduct committed by other police officers."[21] Officers who violate this informal norm by reporting their colleagues' misconduct risk suffering serious personal and professional repercussions.[22] Consequently, the code of silence makes it extremely difficult to accurately investigate

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15 *See* Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 517 (2004).

16 *See id.*

17 *See id.*; COX, MASSEY, KOSKI & FITCH, *supra* note 9, at 183.

18 David Brooks, *The Culture of Policing is Broken*, ATLANTIC (June 16, 2020), https://www.theatlantic.com/ideas/archive/2020/06/how-police-brutality-gets-made/613030/ [https://perma.cc/2SRV-JGXT].

19 *See* Armacost, *supra* note 15, at 517; COX, MASSEY, KOSKI & FITCH, *supra* note 9, at 179.

20 COX, MASSEY, KOSKI & FITCH, *supra* note 9, at 177.

21 Sanja Kutnjak Ivkovic, Maria Haberfeld, Wook Kang, Robert Patrick Peacock, Louise E. Porter, Tim Prenzler & Adri Sauerman, *A Comparative Study of the Police Code of Silence*, 43 POLICING: AN INT'L J. POLICE STRATEGIES & MGMT. 285, 286 (2019). Studies have shown that over three-quarters of police recruits agree that the code of silence "exists and is fairly common across the nation." *Id.*

22 COX, MASSEY, KOSKI & FITCH, *supra* note 9, at 177.

many instances of police brutality, and has often led to a lack of accountability for officers who engage in misconduct.[23]

The police subculture also plays a critical role in the judgement, decision-making, and conduct of street-level officers.[24] Early in their careers, officers enmeshed in the police subculture cease making decisions as rational individuals based on a simple cost-benefit analysis; instead, they begin to make decisions based on the obligations and expectations of their role, acting as part of a team working towards a greater cause.[25] Scholarly studies of policing have found that individual personality traits account for very little in explaining police officers' use of reasonable or improper force, and that "most day-to-day decisions that police officers make, including the ones that are most likely to involve police-citizen contacts, are determined more by the informal norms of street-level police culture than by formal administrative rules."[26] The immense pressure on police officers who are tasked with the impossible job of keeping society safe, coupled with the significant authority and discretion exercised by street-level officers as well as a lack of supervision while on patrol, perpetuates the message that officers should pursue ends without regard to the means needed to achieve them.[27] And, when combined with an "us-versus-them" mentality and the resulting code of silence among officers, the door for police misconduct and brutality is left wide open.

The harmful effects of the informal police subculture are in turn perpetuated and encouraged by organizational policies and practices of police agencies, or a lack thereof, such as the absence of effective record keeping procedures for citizen complaints, civil rights suits, or use-of-force reports against officers. For example, the Christopher Commission—created in response to the 1991 beating of Rodney King—found that the Los Angeles Police Department had no plan for tracking officers' use of force, whether excessive or not, and lacked any form of systematic review for officers with multiple excessive force complaints.[28] Likewise, the St. Clair Commission investigating police agencies in Boston found that departments there

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23 *See* Armacost, *supra* note 15, at 518; COX, MASSEY, KOSKI & FITCH, *supra* note 9, at 178.

24 *See* Armacost, *supra* note 15, at 509.

25 *See id.*

26 *Id.* at 512.

27 *See id.* at 519.

28 *See id.* at 497 (explaining that although reports of force were required when force exceeded the ambiguous "greater than 'firm grip'" standard, there was no

had failed to monitor and evaluate the performance of street-level officers.[29] Significantly, these police departments are not outliers; a systematic Human Rights Watch study reached similar conclusions after investigating fourteen police departments across the United States.[30] The study found that many of the problems faced by these police departments had a "significant organizational component."[31] In many police departments, for instance, civil right suits against officers—even those in which the plaintiff was awarded significant damages—did not prompt any sort of internal review.[32] These lawsuits, moreover, frequently did not appear in the offending officer's file.[33] Such an absence of proper recordkeeping makes it nearly impossible for departments to identify and track any potentially problematic officers.[34] Accordingly, police officers with records of misconduct—including officers with significant complaints or lawsuits against them—have no incentive to change their violent or problematic behavior.[35]

Even when citizen complaints are reflected in officers' files, however, departments too often abide by a system of promotional decision-making without regard to officers' disciplinary records.[36] As noted by various commissions, there is often a distinct group of officers whose repetitive violent actions result in a disproportionate number of citizen complaints.[37] Notably, these problematic officers are often promoted within their departments.[38] By promoting these officers, departments reward and encourage the aggressive behavior of police and indicate to others that, despite formal policies that may say otherwise, violent or hostile policing tactics are permissible.[39]

B. The Legislative History of Section 1983

In theory, individuals harmed by police misconduct can seek both civil and criminal redress. 42 U.S.C. § 1983 ("Section 1983"), which provides a legal remedy for private individu-

procedure for auditing reports, and supervisors of officers who had filed such reports were not even aware of the database where the reports were kept).

29 *See id.* at 502.
30 *Id.* at 504.
31 *Id.*
32 *Id.* at 504–05.
33 *Id.* at 505.
34 *See id.*
35 *See id.* at 474.
36 *See id.* at 496.
37 *See id.*
38 *See id.*
39 *See id.* at 506.

als whose civil rights have been violated by government employees acting under color of state law, is the primary legal mechanism relied upon by victims of police misconduct.[40] Section 1983 provides, in relevant part, that "[e]very person who . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.[41]

Section 1983, known colloquially as the Civil Rights Act of 1871 or the Ku Klux Klan Act of 1871, is the result of a nineteenth-century Congressional effort to break down barriers to federal court recovery for newly freed slaves who were facing increasing levels of violence that went unaddressed by local governments.[42] Since the statute's enactment in 1871, however, the effectiveness of Section 1983 has been significantly curtailed by a succession of Supreme Court cases.[43] This is due in part to the Court's apparent reluctance to hold municipalities liable under Section 1983, as evidenced by landmark decisions in *Monroe v. Pape* and *Monell v. Department of Social Services*.[44] The Supreme Court's 1961 holding in *Monroe*—that government actors could be held personally liable under Section 1983—paved the way for a flood of civil suits against individual officers.[45] At the same time, though, the *Monroe* Court closed the door to suits against municipalities.[46] The Court found that while alleged actions of police officers fell "under the color of state law" as defined by Section 1983, local governments could not be considered "person[s]" within the meaning of the statute.[47] In so holding, the Court relied on an analysis

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40 *See* 42 U.S.C. § 1983; Edward C. Dawson, *Replacing* Monell *Liability with Qualified Immunity for Municipal Defendants in 42 U.S.C. § 1983 Litigation*, 86 U. CIN. L. REV. 483, 491 (2018).

41 42 U.S.C. § 1983.

42 Lisa D. Hawke, *Municipal Liability and Respondeat Superior: An Empirical Study and Analysis*, 38 SUFFOLK U. L. REV. 831, 834 (2005).

43 *See Civil Remedies*, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES (last visited April 22, 2021), https://www.hrw.org/report/1998/07/01/shielded-justice/police-brutality-and-accountability-united-states# [https://perma.cc/L8VB-J2V5].

44 *See* Monroe v. Pape, 365 U.S. 167 (1961); Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978).

45 *See Monroe*, 365 U.S. at 187; Dawson, *supra* note 40, at 492.

46 *See Monroe*, 365 U.S. at 187. Based on its reading of the legislative history, the *Monroe* Court held that municipalities were not a "person" for the purposes of Section 1983. *Id.*

47 Hawke, *supra* note 42, at 832.

of Section 1983's legislative history, with particular emphasis on the Congressional rejection of the Sherman Amendment, which proposed strict liability for municipalities when state actors violate individuals' federal rights within municipal boundaries.[48] The Court reasoned that in rejecting the Sherman Amendment, Congress was aiming to avoid imposing municipal liability on municipalities.[49] Municipal liability was thus barred by the Supreme Court's interpretation of Section 1983's legislative history in *Monroe v. Pape*.

Over the next seventeen years, however, the Court began to slowly chip away at the definitiveness of its prior holding in *Monroe*.[50] Through a series of cases, for instance, the Court determined that municipal liability may in fact be permissible for damages and injunctive relief.[51] Yet it was not until the Supreme Court's decision in *Monell v. Department of Social Services* that the Court ultimately overruled *Monroe*.[52] After reanalyzing Section 1983's legislative history, the *Monell* Court rationalized that Congress' rejection of the Sherman Amendment did not actually indicate a complete and total rejection of municipal liability under Section 1983.[53] To the contrary, the Court found that municipal entities *could* be held liable as "person[s]" under Section 1983.[54] In finding that Congress did in fact mean to bring municipalities within the definition of "person[s]," the Court reasoned that municipalities had the same abilities as individuals to cause the type of harm that Section 1983 was enacted to address.[55] But while the Court held that municipalities fell within the meaning of "person[s]" under Section 1983, they did so with one caveat: municipalities could not be held vicariously liable under a theory of *respondeat superior*—that is, based on the principal-agent relationship between municipalities and the officers which they employ.[56] This conclusion stemmed from the Court's belief that since *respondeat superior* liability would raise concerns similar to those of the rejected Sherman Amendment, Congress could not have intended for Section 1983 to impose such liability.[57] Furthermore, the *Monell* Court was unable to reconcile a

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48 *See id.* at 835.
49 *See id.* at 835 n.33.
50 *See id.* at 837.
51 *Id.*
52 *Id.* at 838.
53 *Id.* at 838 n.49.
54 *See* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).
55 *Id.*at 685–86.
56 *See id.* at 691.
57 *See* Hawke, *supra* note 42, at 839.

respondeat superior theory with Section 1983's causation clause, which required that the municipality cause the plaintiff's injury.[58]

C. Civil Remedies for Police Misconduct Under the Current Section 1983 Regime

The *Monell* Court thus left open only a very narrow window for municipal civil liability. Liability can be imposed where the individual officer's violation stems from a "policy" or "custom" of the municipal entity.[59] In so holding, the Court essentially found that municipalities should be held liable only when the municipality itself was "causally responsible and at fault for the constitutional violation committed by their individual officers."[60] For plaintiffs, however, this is a very difficult standard to prove in court.[61] Despite numerous attempts by the Supreme Court to define the "policy or custom" requirement over the years, what a plaintiff must prove still remains vague, leading to confusing and inconsistent results in practice.[62] Since municipalities and police departments are unlikely to have explicit policies allowing misconduct, a plaintiff must generally, at the very least, prove that "the misconduct was so regular as to become a de facto city policy."[63] In the typical case, however, showing evidence of a policy or custom sufficient to demonstrate municipal liability requires extensive discovery, significantly driving up litigation costs for plaintiffs.[64]

When such barriers to municipal liability are combined with qualified immunity protection for individual officers, victims of police brutality are seldom able to recover. Although a comprehensive discussion of qualified immunity is beyond the scope of this Note, a basic understanding of the doctrine is critical to understanding the limitations inherent in pursuing civil sanctions against individual officers. The doctrine of qualified immunity was initially introduced by the Supreme Court in 1967 as a way to protect government officials, including police officers, from financial liability when acting in good

58 *See id.*

59 *See Monell*, at 690–91.

60 Dawson, *supra* note 40, at 494.

61 *See id.* at 498.

62 *See id.* at 497–98.

63 Orion de Nevers, *A Dubious Legal Doctrine Protects Cities from Lawsuits Over Police Brutality*, SLATE (June 2, 2020), https://slate.com/news-and-politics/2020/06/monell-supreme-court-qualified-immunity.html [https://perma.cc/B4UW-33Z4].

64 *See id*; Dawson, *supra* note 40, at 498.

faith.[65] The Court based this holding on the belief that officers who were overly fearful of being held personally responsible for misconduct may be deterred from effectively carrying out their duties.[66] Providing some "breathing room" for officers to make reasonable mistakes of fact and law, the Court rationalized, would help alleviate this concern.[67] But while qualified immunity served its intended purpose at the time of its enactment, the doctrine has been markedly expanded over the past several decades and is today often considered to act as a free pass for abuse of power by police officers.[68] Over time, the Court has trended towards bolstering the qualified immunity defense, "both substantively and by giving qualified immunity cases a special precedence on the Court's docket."[69] But while the Court has continued to strengthen qualified immunity protection for individual officers, it has consistently held that municipalities are *not* entitled to a qualified immunity defense.[70]

In its current form, the qualified immunity doctrine protects government officials as long as their actions do not violate "clearly established statutory or constitutional rights of which a reasonable person would have known."[71] Practically speaking, an officer who has been sued need only file a document with the court invoking qualified immunity before the burden of proof shifts to the plaintiff to prove that qualified immunity is not available.[72] To succeed, the plaintiff must show "that the official violated a statutory or constitutional right" and "that the right was 'clearly established' at the time of the challenged conduct."[73] Under the first prong, the Supreme Court held in *Graham v. Connor* that in cases of alleged excessive police force, the claim must fall within the Fourth Amendment's pro-

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65 Hailey Fuchs, *Qualified Immunity Protection for Police Emerges as Flash Point Amid Protests*, N.Y. TIMES (June 23, 2020), https://www.nytimes.com/2020/06/23/us/politics/qualified-immunity.html [https://perma.cc/U4SJ-G5T5] (last updated Oct. 18, 2021).

66 *See id.*

67 *See* WHITNEY K. NOVAK, CONG. RSCH. SERV., LSB10492, POLICING THE POLICE: QUALIFIED IMMUNITY AND CONSIDERATIONS FOR CONGRESS 1 (2020).

68 *See* Fuchs, *supra* note 65.

69 Dawson, *supra* note 40, at 495.

70 *Id.* at 496.

71 NOVAK, *supra* note 67 at 1.

72 *See* Joseph M. Schreiber, *Where there's no consequence, there is no change: Qualified Immunity and Respondeat Superior in Police excessive force cases*, SCHREIBER & KNOCKAERT, PLLC (June 11, 2020), https://www.lawdoneright.net/news/11/where-there's-no-consequence%25. . .d-immunity-and-respondeat-superior-in-police-excessive-force-cases [https://perma.cc/K5XD-K7AJ].

73 *Id.*

hibition of unreasonable search and seizure.[74] In assessing Fourth Amendment violations, courts ask if the "officer's actions [were] 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."[75] Consequently, an officer's malicious or racially-motivated intentions will shield them from liability if the belief was objectively reasonable at the time.[76] The second prong that a plaintiff must prove—that the right was clearly established at the time of the challenged conduct — may be even more difficult to establish than the first. To meet this demanding standard, a plaintiff must very specifically define the right at issue and show that "such a violation of law was subject to a 'robust consensus of cases of persuasive authority.'"[77] Thus, an officer's very narrowly-defined unconstitutional actions must have occurred in the past and at least one court—but probably at least several courts—must have previously held that the conduct was in violation of the Constitution.[78]

Accordingly, a plaintiff who brings a claim against an officer for unconstitutional misconduct will fail to fulfill their burden of proof if no court has previously ruled against that specific conduct, even if the officer's conduct was outrageously egregious.[79] In turn, a second plaintiff who alleges the same misconduct will not be able to defeat an officer's qualified immunity defense for the same reasons, creating an impossible Catch-22 situation.[80] The expansion of the qualified immunity doctrine since its 1967 enactment therefore poses a significant barrier to civil recovery for victims of police misconduct. Still, even in the rare case where a qualified immunity defense is not successful and a civil lawsuit is decided in the plaintiff's favor, there is little incentive for officers to discontinue the hostile or violent behavior that initially led to the suit. In the vast majority of cases, individual officers are indemnified by their departments and municipalities for any damages awarded to the plaintiff.[81] Individual officers are therefore not disadvantaged in any practical way by a civil judgment against them—they are

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74 *See id.*

75 *Id.*

76 *See id.*

77 *Id.*

78 *Id.*

79 *See id.*

80 *See id.*

81 Rachel A. Harmon, *Legal Remedies for Police Misconduct*, in 2 REFORMING CRIMINAL JUSTICE: POLICING 27, 35 (Erik Luna ed., 2017).

not subject to any financial responsibility, the suit does not result in discipline, it has no effect on promotional prospects, and it does not impact how they are perceived by other officers within their department.[82] And, as attorneys are hired on their behalf to defend their case, officers are far removed from the litigation process, making court proceedings "relatively painless" for officers.[83] Theoretically, the indemnification of individual officers by departments and municipalities should incentivize those departments and municipalities to take action in order to prevent subsequent officer misconduct and avoid similar payouts in the future. In practice, however, indemnification by municipalities is infrequent due to individual officers invoking a qualified immunity defense.[84] And, when municipalities *are* called upon to indemnify officers, they often utilize "financial arrangements to pay settlements and judgments that do not penalize police departments, and therefore do not create strong incentives to avoid additional violations."[85] So, even when municipalities expend significant financial resources for judgments against individual police officers in Section 1983 actions, civil suits under Section 1983 do little to deter future officer misconduct.

D. Criminal Sanctions for Police Misconduct

As an alternative to civil liability, police officers may also be prosecuted for constitutional violations under both federal and state criminal law. In practice, though, it is often more difficult to criminally prosecute an officer than it is to pursue a civil suit against the officer.[86] Under federal law, 18 U.S.C. § 242 is most often used by federal prosecutors to charge officers with excessive force incidents in violation of the Fourth Amendment.[87] To convict an officer under this statute, federal prosecutors must prove beyond a reasonable doubt that the officer violated the Constitution and that the officer did so willfully—both of which can be extremely difficult to prove in court.[88] Further, in light of prosecutorial principles that restrict federal prosecutors from initiating charges unless they are likely to succeed at trial, prosecutors may be hesitant to pursue crimi-

82 *See* Alison L. Patton, *The Endless Cycle of Abuse: Why 42 U.S.C. 1983 is Ineffective in Deterring Police Brutality*, 44 HASTINGS L.J. 753, 767–68 (1993).
83 *Id.*
84 De Nevers, *supra* note 63.
85 Harmon, *supra* note 81.
86 *See id.* at 40.
87 *Id.*
88 *See id.* at 41.

nal cases against officers at the outset.[89] Indeed, fewer than 100 officers per year are charged with constitutional violations under federal law.[90]

Criminal charges against police officers are similarly uncommon under state law. Since police officers often act as the prosecution's star witnesses in criminal cases, state prosecutors may be reluctant to bring criminal charges against officers, who may then refuse to testify in future cases.[91] Additionally, as a result of the aforementioned blue code of silence, officers are unlikely to testify against their colleagues for fear of trouble in their department or concerns that they may be denied backup by fellow officers in later dangerous situations.[92] Like civil liability, then, the rarity of criminal sanctions brought against officers who engage in police misconduct makes the threat of criminal punishment ineffective in deterring hostile or aggressive tactics by police. Consequently, there is currently no effective solution to deter police misconduct and for victims of police brutality to seek legal redress.

II
ANALYSIS

A. Imposing Municipal Liability on the Basis of Respondeat Superior

In response to public outcry in the wake of George Floyd's murder, Congress has introduced legislation designed to eliminate, or at least reform, qualified immunity protection for police officers.[93] Eliminating or reforming qualified immunity is a good first step to tackling the issue of police misconduct. But such a solution, which focuses on holding individual "bad apple" cops accountable, does nothing to address the broader systemic issue of police organizational culture that is so often the root cause of police misconduct. Imposing municipal liability based on *respondeat superior* can close this gap by incentivizing municipalities to directly confront organizational cultures that encourage and allow police misconduct to flourish. Indeed, an informal poll of several experts in 2015 found that the most common response when asked what one change would be most helpful to "fix" the law under Section 1983 was

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89 *Id.*
90 *Id.*
91 *See* Schreiber, *supra* note 72.
92 *See id.*
93 *See* NOVAK, *supra* note 67, at 4–5.

the adoption of *respondeat superior* liability for municipal defendants.[94]

The doctrine of *respondeat superior*, Latin for "let the master answer," holds a principal vicariously liable for the wrongdoings of its agent committed within the scope of their agency relationship, whether or not the principal is itself at fault.[95] Holding both the agent and principal responsible for the agent's wrongdoings "ensures victims are fully compensated, incentivizes employees to discharge their duties with care, and incentivizes employers to promote safe business practices."[96] Rooted in common law tort theory, the *respondeat superior* doctrine stems from the notion that a principal has the ability to exercise control over its agent's behavior and should therefore shoulder some responsibility for its agent's conduct.[97] To date, imposing tort liability through *respondeat superior* has been effectively used to impact corporate behavior in a wide variety of areas. In response to potential tort liability—and the looming threat of punitive damages—companies are incentivized to put an end to potentially wrongful practices or behaviors by individuals under their control.[98] Proponents of imposing municipal liability for police misconduct on the basis of *respondeat superior* argue that like all other employers, municipalities should be held responsible for the conduct of officers in the course and scope of their employment: "[j]ust as private employers are responsible for the torts of their employees who violate federal rights in the course of employment, municipalities [should be] responsible in the same manner."[99] *Respondeat superior*, unlike current efforts to address police misconduct, would address informal incentives and sanctions perpetuated by the organizational hierarchy and leadership, "which in turn shape the street-level officers' use of discretion in every-day work."[100]

Critics of imposing municipal liability based on a *respondeat superior* theory may argue that since municipalities already indemnify individual officers who are ordered to pay

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94 *See* Dawson, *supra* note 40, at 504.

95 *See Respondeat Superior*, FREE DICTIONARY, https://legal-dictionary.thefreedictionary.com/respondeat§uperior [https://perma.cc/33G8-TGSA] (last visited Sept. 25, 2021).

96 De Nevers, *supra* note 63.

97 *See* FREE DICTIONARY, *supra* note 95.

98 *See* Schreiber, *supra* note 72.

99 Hawke, *supra* note 42, at 844.

100 Frank Anechiarico & Stephen L. Lockwood, *The Responsibility of the Police Command for Street-Level Actions*, 12 L. & Pol'y 331, 336 (1990).

damages to plaintiffs in Section 1983 civil suits, adopting such a doctrine would provide no added financial incentive for municipalities to change their practices. But while it is true that municipalities often indemnify police officers under the current Section 1983 regime, the qualified immunity doctrine invoked by individual officers most often lets the municipality off scot-free.[101] If victims of police misconduct could directly sue the municipality instead of the individual officer, plaintiffs would not be barred by the individual qualified immunity defense—of which there is no equivalent available for municipalities—and municipalities would be at risk for more direct and significant financial consequences.[102] Concerns of financial liability will encourage municipalities to raise hiring standards, improve officer training, and discipline officers for their wrongful actions. Indeed, scholars have noted that "[o]fficers will violate the law if they are insufficiently trained or equipped to follow it, a condition that is determined largely by departments and municipalities rather than officers themselves."[103] For individual officers to change, department-wide policies must be implemented to address the organizational culture of police agencies, which will in turn require top-down pressure and strong leadership by those at the highest level.[104]

Imposing municipal liability through the doctrine of *respondeat superior* will incentivize municipalities to improve officer training and to better regulate officers' use of force and interactions within the community, by creating "legal and political linkage between patrol service on the street and public officials who have the power to influence the quality of that service."[105] Similarly, municipalities will be encouraged to invest in accountability mechanisms, such as the creation of written administrative directives regarding high-risk patrol practices, which would inform officers of admissible parameters surrounding use of force and of the potential sanctions that may be used to address instances of officer misconduct.[106] The prospect of financial consequences may further motivate municipalities and police departments to enact a comprehensive system of receiving and investigating citizen complaints,

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101 *See* De Nevers, *supra* note 63.

102 *See id.*

103 Harmon, *supra* note 81, at 30.

104 *See* Armacost, *supra* note 15, at 521.

105 Anechiarico & Lockwood, *supra* note 100, at 346; *see* Dawson, *supra* note 40, at 503–04.

106 *See* Anechiarico & Lockwood, *supra* note 100, at 345.

which should also be included in officers' files.[107] Today, many jurisdictions have ineffective—and in some cases, nonexistent—systems for tracking such complaints, and little incentive to improve these systems.[108] Officer files, in turn, should be considered by the department when making promotional decisions, which can be enforced through municipal legislation.[109] Moreover, departments would be pressured to regularly engage in systematic reviews of its officers. Officers with citizen complaints or lawsuits against them—whether or not the lawsuits were successful—should be required to participate in counselling, as well as mandatory racial and cultural awareness training.[110]

Critics of adopting the *respondeat superior* doctrine for municipalities may also contend that if the *Monell* "policy and custom" doctrine is abolished, plaintiffs will be unable to challenge more widespread issues of abuse by municipal defendants. Such critics argue, for instance, that imposing municipal liability based on a *respondeat superior* theory would prevent plaintiffs from being able to gather the necessary evidence to prove, and in turn enjoin, pervasive patterns and practices of abuse.[111] As Professor Edward Dawson points out, however, this would not be the case; adopting the *respondeat superior* doctrine would simply mean that plaintiffs would not be *required* to engage in extensive discovery of municipal policies, practices, or customs.[112] Class actions would still be available for plaintiffs who seek to challenge widespread municipal customs or policies which violate constitutional rights.[113] Accordingly, a *respondeat superior* solution will not create any new barriers to challenging such customs or policies in federal courts.

B. Adopting Respondeat Superior for Municipal Defendants: Procedural Barriers to Implementation

Practically speaking, imposing municipal liability on the basis of *respondeat superior* would require overruling the Court's holding in *Monell*. One way of accomplishing this is through the courts. Although the Supreme Court seems to continue to favor its ruling in *Monell*, at least three former or

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107 *See id.*
108 *See* Armacost, *supra* note 15, at 537.
109 *See* Patton, *supra* note 82, at 805.
110 *See id.* at 806.
111 *See* Dawson, *supra* note 40, at 515.
112 *Id.*
113 *Id.*

current Supreme Court justices have expressed a desire to overrule it.[114] Justice John Paul Stevens, for instance, has asserted that the text of Section 1983, policy, legislative history, and common law all support imposing the *respondeat superior* doctrine on municipalities.[115] In the 1997 case of *Board of County Commissioners v. Brown*, Justice Stephen Breyer agreed with and added to Justice Stevens's critiques in a dissent joined by three other Justices, calling for a re-examination of the *Monell* doctrine.[116] Justice Breyer argued that in addition to the *Monell* doctrine's questionable origins, it had become unnecessarily complicated and too confusing to apply in practice.[117]

Although some scholars in the late 1990s and early 2000s believed that the Court's reversal of *Monell* was plausible following the dissent in *Brown*, this hope has yet to be realized.[118] Nevertheless, scholars believe that such a change is in fact feasible, for two primary reasons.[119] Firstly, scholars point out that in interpreting Section 1983—and in contrast to more typical statutory interpretation—the Supreme Court has proven willing to change and reverse its own doctrine even in the absence of any Congressional amendment.[120] The Court's basis for doing so largely lies in policy considerations; the Court has, in the past, been open to changing its prior doctrinal interpretation when it believes that Section 1983 can be significantly improved.[121] Second, such a change in Section 1983 doctrine may be feasible because the Court has shown an "equivocal attitude" towards issues surrounding municipal liability.[122] This ambivalent attitude is especially promising in light of the Court's consistently enthusiastic position on the doctrine of qualified immunity. Whereas the Court has continued to encourage and strengthen the qualified immunity defense over time—often in unanimous or 7–2 decisions—the same cannot

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114 Hawke, *supra* note 42, at 850.

115 *See* Dawson, *supra* note 40, at 504.

116 *See id.*

117 *See id.*; Hawke, *supra* note 42, at 846.

118 Dawson, *supra* note 40, at 504.

119 *See id.* at 535.

120 *Id.* For instance, the Court in *Monell* reversed its holding in *Monroe* in order to allow for municipal liability under Section 1983. *Id.*

121 *See id.* at 536. Why the Court has favored an approach "more similar to federal common law making than to conventional statutory interpretation" when it comes to Section 1983 is an interesting question.Perhaps the answer is that in the unique case of Section 1983, the statutory text, legislative history, and common law do not provide sufficient guidance. *Id.*

122 *Id.* at 537.

be said for municipal liability cases.[123] When it comes to *Monell* liability, the Court has proven itself to be much more apathetic. Many of the early cases establishing the "policy and custom" doctrine were plurality, as opposed to majority, opinions, and later holdings in this area were often based on 5–4 decisions.[124] And, as mentioned above, several Justices have shown a willingness to overturn *Monell*.

Although scholars believe that the Court's Section 1983 interpretation is largely driven by policy concerns, imposing municipal liability based on a *respondeat superior* theory can also be justified by looking to the more conventional sources of statutory interpretation—text, legislative history, and common law.[125] First, the statutory text allows for the adoption of *respondeat superior* for municipalities.[126] In *Monell*, the Court took a broader reading of the statutory term "person[s]" than it did in *Monroe*, finding that "person[s]" *did* include municipalities.[127] However, the Court also found that the statutory term "causes to be subjected" indicated that something more than *respondeat superior* liability was needed; rather, proof of "direct responsibility or causation on the part of the municipal defendant" was required.[128] Despite this holding, several Justices have since agreed that the statutory language of "causes to be subjected" *can* be read to impose *respondeat superior* on municipal defendants.[129] Under this view, "the municipal defendant 'causes' the plaintiff 'to be subjected' to injury by employing the officer who, acting under color of law, violates the plaintiff's rights."[130] Moreover, the statutory text of Section 1983 includes no mention of the word "policy," which appears to be the basis for the *Monell* Court's "policy or custom" requirement. Accordingly, eliminating the unnecessarily complex "policy or custom" requirement would bring Section 1983 more in line with the statutory text.[131] Thus, the statutory text of Section 1983 not only allows for municipal liability on the basis of *respondeat superior*, but is in fact the better reading of the Congressional language.[132]

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123 *See id.*
124 *See id.* at 538.
125 *See id.* at 527.
126 *See id.* at 530.
127 *See* Monell v. Dep't of Soc. Servs., 436 U.S. 658, 691 (1978).
128 Dawson, *supra* note 40, at 530.
129 *See id.*
130 *Id.*
131 *See id.*
132 *See id.*

The legislative history of Section 1983, moreover, does not pose a barrier to adopting *respondeat superior* liability for municipal defendants. Although there have been lengthy debates about the legislative history, it has become apparent that the statute is unclear, as evidenced by a wide variety of different statutory interpretations; whereas some Justices have interpreted Section 1983 to prohibit any form of municipal liability, others have found that municipal liability is permissible if caused by a municipal "policy or custom," and still others have read the statute to call for *respondeat superior* liability.[133] While this Note will not recount the debates surrounding Section 1983's legislative history, it appears that the legislative history of the statute does support *respondeat superior* liability for municipalities.

Finally, imposing municipal liability based on a theory of *respondeat superior* is supported by common law. Although the Court is not bound by common law when engaging in statutory interpretation, the Court has, in interpreting various aspects of Section 1983, frequently relied on the common law of torts.[134] To be sure, the Court has rationalized that Congress, in drafting Section 1983, would have "been mindful of and intended to adopt the common law rules of tort law as they existed at that time."[135] There is extensive evidence that the doctrine of *respondeat superior* liability not only existed in 1871, but also extended to municipalities at that time.[136] Ultimately, the conventional sources of statutory interpretation—text, legislative history, and common law—appear to support imposing municipal liability based on a theory of *respondeat superior.*

Still, there exists an alternative solution: Congress can pass legislation allowing for municipal liability based on *respondeat superior*. It is a popular misconception that the Supreme Court has the final say on the scope and meaning of federal law.[137] When the Court rules on a constitutional issue, this is essentially true; such decisions can be altered only by

133 *See id.* at 531.

134 *See id.* at 532.

135 *Id.*; Rehberg v. Paulk, 566 U.S. 356, 363 (2012) (explaining how the Court analyzes common law analogs in determining the scope of immunity under Section 1983).

136 Dawson, *supra* note 40, at 533.

137 Leon Friedman, *Overruling the Court*, AMER. PROSPECT (Dec. 19, 2001), https://prospect.org/features/overruling-court/ [https://perma.cc/6C4S-XFPC].

constitutional amendment or by a new decision of the Court.[138] But occasionally, when Congress enacts a statute that is later misinterpreted by the Supreme Court, Congress will amend or re-enact the legislation in order to clarify its original intent.[139] Although Congressional overrides have been on the decline over the past couple of decades, they do still occur from time to time.[140] It is true that a Congressional override is not an easy undertaking—in order to override a Supreme Court decision, both houses of Congress must agree.[141] But it is possible. Here, since the Supreme Court's decision in *Monell* was based on statutory interpretation—and not on the Constitution itself—Congress has the ability to override this policy.[142] Only a minor legislative tweak would be necessary; Congress need only pass a short decision "to reinforce congressional intent in a way that the judiciary cannot distort it."[143]

C. Limitations of Municipal Liability Based on Respondeat Superior as a Solution to Reducing Police Misconduct

Of course, imposing municipal liability based on *respondeat superior* is not without its limitations. First, several police departments across the United States are not controlled by their respective municipalities.[144] In Baltimore, for instance, the city itself is not the principal of police officers.[145] In these locations, then, a *respondeat superior* theory will likely do little to address increasing rates of police misconduct. Another concern raised by the imposition of municipal liability on a *respondeat superior* basis is that without *Monell*'s difficult-to-meet "policy or custom" requirement, many more plaintiffs would likely bring civil lawsuits against municipalities, leading to greater litigation costs for municipalities.[146] Nevertheless, it can be argued that it only makes sense to shift litigation costs

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138 *The Court and Constitutional Interpretation*, SUP. CT. U.S., https://www.supremecourt.gov/about/constitutional.aspx [https://perma.cc/E75R-MCFB] (last visited Sept. 25, 2021).

139 *See* Friedman, *supra* note 137.

140 *See* Rachel M. Cohen & Marcia Brown, *Congress Has the Power to Override Supreme Court Rulings. Here's How.*, INTERCEPT (Nov. 24, 2020), https://theintercept.com/2020/11/24/congress-override-supreme-court/ [https://perma.cc/VAQ9-RXNL].

141 Pablo T. Spiller & Emerson H. Tiller, *Invitations to Override: Congressional Reversals of Supreme Court Decisions*, 16 INTL. R.L. ECON. 503, 506 (1996).

142 De Nevers, *supra* note 63.

143 Cohen & Brown, *supra* note 140.

144 Hawke, *supra* note 42, at 848.

145 *Id.*

146 *See id.* at 850.

from plaintiffs—who typically have limited financial resources—to municipalities with deep pockets, which would make it easier for plaintiffs to seek legal redress in courts. Victims of police misconduct and brutality will not only find it easier and less costly to pursue litigation but may also be awarded more generous damages upon recovery, which would further the statutory goal of victim compensation.[147]

Additionally, imposing municipal liability on the basis of *respondeat superior* will encourage judicial efficiency by helping to simplify Section 1983 litigation. To ensure that the municipality is not dismissed from a given case, a plaintiff will need only to show that the individual officer was acting within the scope of employment with the municipal defendant when they engaged in allegedly unconstitutional conduct.[148] This standard is much simpler and easier to apply than the multifaceted test that courts must apply under the current *Monell* doctrine.[149] Adopting a *respondeat superior* theory would thereby help "[eliminate] the complex and costly inquiries into municipal policy, custom, government structure, training, and hiring that are required under the current doctrine in order for a plaintiff to impose liability on a city in a lawsuit under [Section] 1983."[150] And in addition to reducing backlog in federal courts, the need for less extensive discovery will save significant time and financial resources for attorneys on both sides.

Moreover, imposing municipal liability on the basis of *respondeat superior* would better serve the constitutional value of federalism.[151] Federalism concerns have played a significant role in the Court's development of Section 1983 liability, as exemplified by the Court's repeated assertions that in interpreting Section 1983, it must be cautious to "avoid imposing liability in ways that unduly interferes with the powers and abilities of state and local governments to structure their own operations."[152] In reality, however, the *Monell* doctrine effectively requires scrutinizing local policies and those who implement such policies, which is highly intrusive into the interests of states and localities.[153] To satisfy *Monell*'s "policy or custom" requirement, courts may, for example, be required to look to state law in order to determine if certain officials are "policy-

147 *See* Dawson, *supra* note 40, at 510, 519.
148 *See id.* at 521.
149 *See* Hawke, *supra* note 42, at 847.
150 Dawson, *supra* note 40, at 511.
151 *Id.*
152 *Id.* at 523.
153 *See id.* at 524.

makers" in the context of a specific government function as well as in examining whether or not a practice is sufficient to amount to a "custom."[154] Eliminating *Monell*'s "policy or custom" requirement would allow federal courts to focus on federal constitutional law within their area of expertise, as opposed to questions of state and municipal law.[155] Federal courts would no longer have to inquire into and decide upon questions surrounding municipal policies, customs, and training, which widely vary depending on the state or municipality.[156]

But while there are clear benefits to imposing municipal liability for police misconduct based on the tort doctrine of *respondeat superior*, one issue that this solution fails to directly address is the structural racism within the institution of policing that is inherently intertwined with police misconduct. Considered in light of the policing institution's history, this is not surprising; police departments originated from slave patrols in the eighteenth century, and though much has changed since the eighteenth century, police continue to be tied up in racial strife.[157] Whether racial bias exists in higher levels within the police force as opposed to the general population remains unanswered. One study, for instance, found that police officers tend to harbor higher rates of prejudice than do civilians, but the effect size in this study was plagued by regional and demographic effects.[158] But while structural racism within policing is an important question—one that is beyond the scope of this Note—the evidence is clear that racial minorities are disproportionately subjected to excessive use of force by police officers.[159] African Americans, in particular, are disproportionately victims of police misconduct, relative to both their overall share of the total population as well as the percentage of crimes they commit.[160] One study has estimated that Black men are 2.5 times more likely to be killed by police during their lifetime as opposed to white men.[161] So while

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154 *See id.* at 497.

155 *See id.* at 508.

156 *See id.* at 510.

157 *See* Zack Beauchamp, *What the Police Really Believe*, VOX (July 7, 2020), https://www.vox.com/policy-and-politics/2020/7/7/21293259/police-racism-violence-ideology-george-floyd [https://perma.cc/8TNE-DMF9].

158 *Id.*

159 Press Release, AMERICAN MEDICAL ASSOCIATION, *AMA Policy Recognizes Police Brutality as Product of Structural Racism* (Nov. 17, 2020), https://www.ama-assn.org/press-center/press-releases/ama-policy-recognizes-police-brutality-product-structural-racism [https://perma.cc/X5VJ-EWFC].

160 *See* Beauchamp, *supra* note 157.

161 Peeples, *supra* note 7.

imposing *respondeat superior* on municipal defendants will lead to increased accountability for police departments and municipalities and will in turn help to reduce the overall number of instances of police misconduct, this solution will not effectively address the underlying structural racism within police agencies that results in disproportionate use of force against racial minorities. In addition to reactive legal remedies such as the one proposed in this Note, proactive solutions must also be implemented to address racism in the police force in the first instance. Imposing municipal liability based on *respondeat superior* is an important first step to re-establishing trust between police agencies and the communities which they serve. But in the fight to eliminate police misconduct, structural racism is a factor that cannot be ignored.

CONCLUSION

Current legal remedies available to victims of police misconduct are inadequate, as they often undervalue or altogether ignore broader organizational factors.[162] Indeed, the vast majority of police commissions and task forces assembled over the last few decades have found that repetitive incidents of misconduct were caused, at least in part, by systemic features of police culture.[163] As one former police officer has expressed, "[t]he bad apples rot the barrel . . . [a]nd until we do something about the rotten barrel, it doesn't matter how many good [ ] apples you put in it."[164] In order to deter future police misconduct, then, legal remedies must focus not just on the individual officers, but on the departments that employ and train them.[165] Municipalities and departments which permit and foster a dysfunctional organizational culture that teaches officers—whether explicitly or implicitly—that misconduct is acceptable *should* bear some legal responsibility. As the Court noted in *Monell*, Section 1983 was "intended to give a broad remedy for violations of federally protected rights."[166] Since the scope of claims available under Section 1983 has been narrowed by a succession of Supreme Court cases over the years, overruling *Monell* to impose the *respondeat superior* doctrine on municipalities would bring Section 1983 back in line with Congressional intent. Ultimately, rethinking *Monell* to impose

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162 *See* Armacost, *supra* note 15, at 456.

163 *See id.* at 457.

164 Beauchamp, *supra* note 157.

165 Harmon, *supra* note 81.

166 Monell v. Dep't of Soc. Servs., 436 U.S. 658, 685 (1978).

municipal liability for police misconduct on the basis of *respondeat superior* will not only help reduce instances of police misconduct in the first place, but will result in a more equitable and just legal system for the community as a whole. "It's about time we hold our communities to the same standards as our trucking companies."[167]

167 De Nevers, *supra* note 63.