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BROOKINGS CAFETERIA PODCAST

BIPARTISAN CRIMINAL JUSTICE REFORM

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P R O C E E D I N G S

DEWS: Welcome to the Brookings Cafeteria, the podcast about ideas and the experts who have them. I'm Fred Dews.

The United States incarcerates more people per capita than any country in the world. Recidivism rates are high as millions of people cycle in and out of the criminal justice system. Black people like George Floyd, Breonna Taylor, and Daunte Wright are disproportionately more likely to die from police violence, and racial and ethnic minorities are simultaneously over- and under-policed. These and related problems in our criminal justice system call out for significant reform, but too often the debate falls into an opposing and unhelpful binary, from "support the blue" to "abolish the police."

In this episode of the Brookings Cafeteria, I talk with two experts who led a joint project between Brookings and the American Enterprise Institute on a broad spectrum of bi-partisan criminal justice reforms, from police reform, to reimagining pretrial and sentencing, to helping prisoners re-enter society. Rashawn Ray is a David M. Rubenstein Fellow in Governance Studies at Brookings and Brent Orrell is a resident fellow at the American Enterprise Institute. Together, they led the Brookings-AEI Working Group on Criminal Justice Reform, which issued the report "A better path forward for criminal justice," featuring essays by more than a dozen experts offering a range of research-grounded policy analysis and ideas to move the criminal justice system toward a more humane and effective footing.

Also on this episode, Metropolitan Policy Program Senior Fellow Mark Muro offers his perspective on why the American Rescue Plan's funding for state and local governments supports both innovative recovery solutions but also local discretion, as the case of Indiana demonstrates.

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And now, here's my interview with Rashawn Ray of Brookings and Brent Orrell of AEI.

Well, Rashawn, Brent, I want to welcome you both to the Brookings Cafeteria.

RAY: Thank you for having us.

ORRELL: Yeah, it's great to be here. Thanks a lot.

DEWS: Let's start with having you both introduce yourselves to listeners, maybe Rashawn go first.

RAY: Sure. I'm Rashawn Ray. I am a David Rubenstein fellow here at Brookings, and I'm also a professor of sociology at the University of Maryland. And I broadly do research on policing and criminal justice reform, voting, health disparities and race relations.

ORRELL: I'm Brent Orrell. I'm a resident fellow at the American Enterprise Institute, just about a half a block up the street from the Brookings Institution, and I spend most of my time working on two issue areas. One is workforce development and the other is criminal justice reform.

DEWS: Well, terrific, and again, thanks to you both for taking time to be on the show today. I've been at Brookings a long time and I've seen a lot of collaborations between Brookings and the American Enterprise Institute in areas like continuity of government and paid family leave and reducing health care costs. So why now a joint project on criminal justice reform?

ORRELL: So, I'll start out on this and then I'm sure Rashawn has his own perspective on it, but as I said just a minute ago, we are right next door to each other. And that is not just a question of geography, but a reflection of the nature of the relationship between these two

institutions. We aren't identical in terms of perspectives and preferences and policies, but both institutions kind of crowd toward the center and are interested in policies that work and are successful in helping people. So, I think that's why Brookings, AEI, you mentioned several other projects, but it's a pretty well-worn path and it's something that I think really makes sense relative to this issue that we're talking about today.

RAY: Yeah, I mean, I think when it comes to the collaboration, I mean, I think Brent hit the nail on the head. It's important for think tanks of our caliber to collaborate. We are very research driven. We are very policy oriented. And we thought that it would be important to come together. So when Brent reached out for the opportunity to collaborate, I immediately said yes. And I think what we produced is something that policymakers can really take heed to about what are some of the best practices, what are some of the reforms that people coalesce around across the political spectrum to hopefully get to a place where we are advancing policy on this issue instead of simply having soundbites and narratives that are thrown out into the public.

DEWS: Let's dive into the report itself, as I mentioned earlier, it's titled "A Better Path Forward for Criminal Justice," and it's again by the Brookings-AEI Working Group on Criminal Justice Reform. Can one or both of you discuss kind of the larger context of this project? Why this set of reforms and why now?

RAY: So, what we wanted to do is to essentially go through the criminal justice pipeline from the beginning to end, thinking about starting with a police contact all the way up to what happens when people are released trying to reenter society. And what we did was we went out and gathered some of the best experts on this topic: academics, practitioners, other individuals who specialized on this topic. And we ask them to pair up in many ways with someone who

might have slightly different views from themselves, but who still approach things from a very research oriented perspective.

And part of, I think, what we came to and what we concluded—and Brent and I talk about this in the conclusion—is that we oftentimes need an "and" approach rather than simply an "or" approach. And for too long, we've seen: inaudible] where people are like, on the policing front, either you support the police or you're for "abolish the police." And we found that both of those perspectives don't really speak to a majority of Americans who want to see safety, who want to see a reduction in over-policing when it comes to racial disparities, and who also want to see police responding in ways that we would expect that align with our values.

So, the way we thought about this was to walk people through the pipeline of what it looks like when it comes to contact with the criminal justice system. And we think that the people who did this, from thinking about policing to pretrial detention to prison culture to what happens when we have police and schools to thinking about employment and correctional opportunities and then reentry, are all the pathways that we want to see to move us toward a better nation.

ORRELL: That's all exactly right. I immediately reached out to Rashawn. We hadn't had a chance to meet before this, but I just sensed that the time was really ripe. It's always ripe around these kinds of very challenging, difficult policy issues to look for areas of consensus or at least areas where it might be possible to resist the polarization that we see going on around so much of our politics and policy.

This issue area is really kind of a unicorn in federal policy in the sense that really since the early 2000s, Republicans and Democrats have been working together very closely on criminal justice related issues. We had activity in the Bush administration when I was working in

the Bush administration. We created new programs around employment for returning citizens. We had the passage of the Second Chance Act. President Obama, of course, was aggressive around banning the box and establishing his own presidential commission and really looking hard across the government at criminal justice reform issues. President Trump really pushed forward with the First Step Act and got that signed into law with significant sentencing reform. That really covers the waterfront of American politics in terms of interest in this issue. And we wanted to make sure that, especially in the middle of a presidential transition, that we kind of sustained that picture in people's minds of Republicans and Democrats, conservatives and progressives and liberals working together around this issue.

DEWS: I just want to emphasize again, for listeners, this isn't just about police reform, it's about a whole range of criminal justice related issues. And the authors that the two of you have collected for this project span the gamut. We have other scholars from Brookings and AEI, but also scholars from Rand Corporation, University of Wisconsin, Texas Southern University, Justice Policy Institute, Cato Institute, University of Delaware. So, a very large range of contributors to all the different essays in this volume. And again, it's on the Brookings website, brookings.edu.

Rashawn, let me ask you about the chapter on police reform that you coauthored with Clark Neily from Cato Institute. And it's not the only piece of this report, but it is one of the more high profile areas of reform. And that's, again, police and police departments. And so in your chapter, you talk about a series of reforms around accountability, training, and culture. Could you set the context of why this set of reforms is needed?

RAY: Well, I think right now, obviously, particularly in what happened to George Floyd, that was the tip of the iceberg for those of us who do work in this area. And one thing that we

know that Clark and I aim to highlight is that every year in the United States, over one thousand people are killed by law enforcement. And not only do we not have a good sense of the context around a majority of those killings; police killings, even though they stayed fairly constant over the past few years, if we look over the past 20 or 30 years, you'll see a huge increase besides the past few years. And I think that's something that's concerning. It suggests that it's a pattern that people want to get under control.

And obviously, when it comes to race, we see even larger racial disparities. And to put this in context, pretty much every eight hours a person is killed by law enforcement in the U.S. And for a lot of people, that's too many. But that's also coupled in some cases with these racial disparities that exist, particularly when it comes to police stops and use of force, that black people are 3.5 times more likely than whites to be killed by police when they're not attacking or don't have a weapon. And even in cities like Washington, D.C., which recently released a report on use of force, overwhelmingly finds that the people were stopped when there was no citation given, but where force was used and over 80 percent of those individuals were black.

So, these are the concerns that people have. And it speaks to not only the structure, but also the culture of policing. And part of what Clark and I wanted to pull out are not only setting the tone that police officers have an extremely difficult job, I think most difficult job in America. Not only are they asked to do more things today than they were 30 or 40 years ago, not only oftentimes are they having to work tons of overtime and dealing with their own mental health issues, but then all of those concerns spill over into the public. And it's very clear that despite some of the reforms that have been made on other aspects of criminal justice, the needle hasn't shifted as much as it should when it comes to bipartisan efforts on police reform.

ORRELL: I'll just add a couple of things to that. As Rashawn points out, to see this kind of growth in police-related killings—it's shocking all on its own, right? But it's also shocking in the context of an American society which is, when it comes to homicide, about as safe as it was in the 1950s. America is actually, from the standpoint of the worst kind of violent crime—homicide—actually a pretty safe country. And yet we see the spike in killings that are associated with police. So, that's something that ought to draw our attention, has drawn attention. Why would police be involved to this degree in killings of people in this country at a time when it's actually greatly diminished from peaks that we saw in the 70s, 80s and 90s? So that's one point I wanted to make on this, is this really should concern us greatly.

I think the other thing that I would just point out is, and I said this at our event last week, we know that we have a world that we don't particularly like right now in terms of police violence. And much of that has been attributed to the qualified immunity issue, which we're going to get to and talk about. The reason we talk about reform of qualified immunity is that we don't really know what the world looks like without it. And what we don't want, and this is why we talk about it in terms of reform, is some sort of a snapback because we go too far too quickly without really knowing the impact of the policy changes. So, I think we're very incrementalist in our approach and our recommendations. There are some of us, like Clark, I think, who would like to go further and faster. And there are some like me who want to go slower, but we're all headed in the same direction.

DEWS: Well, let me follow up on that point that you both raised about police-involved violence. And looking at the list of reforms in just this chapter on police reform—and there's at least six that you and Clark, Rashawn, detail. Which of these are addressed specifically to addressing that problem of police-involved shootings, for example?

RAY: I think they all have a role to play in the process because policing is part of a continuum. But obviously reforming qualified immunity and restructuring civilian payouts for police misconduct is important. As most people know qualified immunity is a court's doctrine that essentially alleviates any sort of financial culpability and responsibility for law enforcement, but also other government officials. And when we actually do the research, what we find is that instead the civilian payouts for police misconduct overwhelmingly fall on taxpayers. If we look at only the top 20 metro areas around the United States, over two billion dollars with a B has been spent out over the past five years. That's something that a lot of the public doesn't know. It doesn't matter whether or not people are conservative or liberal, Republican or Democrat, that a lot of people have an issue with their funding being used in that way. And it's clear that a restructuring needs to take place.

And it's particularly important because, Brent's made an important point, which was related to crime, is that in theory there would be an assumption that as crime increases, that police killings would also increase as a way to counteract that. That would make sense. Unfortunately, that's not what's happening at all. We can look at most large cities around the United States and what we see is very little association, basically none at all, between the violent crime rate and the police killing rate, suggesting that those are things that are out of whack with one another.

So, doing something around qualified immunity like Colorado has done, New Mexico, like New York City has done, like the House bill—the George Floyd Justice in Policing Act—aims to address something that Senator Tim Scott seems to be open to discussing on behalf of Republicans, I think are things that the public wants to see, particularly because a poll that Cato actually participated in—this was might even been before George Floyd or around that time—

and over 60 percent of Americans actually want to see qualified immunity go away, including a substantial percentage of Republicans.

DEWS: Qualified immunity and the idea of maybe requiring police to obtain, say, liability insurance does seem to me as a civilian looking in on this as responses to the end result of police violence, police killing. But are there reforms that need to be taken that can help police officers and police departments not get to that point in the first place?

RAY: Well, I think obviously some better statues around use of force, I mean, there's a lot of low hanging fruit that Republicans and Democrats overwhelmingly agree on about banning chokeholds and body-worn cameras and those sort of things. The research I've done shows that those do little without some of the larger reforms that we're talking about, partly because the policies don't necessarily change around the way those things are actually being implemented. I mean, the Derek Chauvin trial, for example, is about one individual officer, not all of the other incidents that we talk about. And even though we talk about these thousand police killings that happen every year, there are oftentimes hundreds of thousands of use of force incidents that people think could have been handled potentially a different way.

So, when it comes to the insurance model, it's not only about malpractice insurance on behalf of officers, but it's also about police departments having insurance policies and having some liability here, which currently is set up that it falls on taxpayers, it comes from general funds. And in places like Chicago, they oftentimes have to either appropriate money or take out what are called police brutality bonds to actually cover some of these costs. And I think that's something that taxpayers don't really want to see. They want to see investments in education, in work infrastructure. Those are the things that really reduce crime. And then we can start to

address some of the ways that we see police contact come into play and some of these deleterious outcomes.

ORRELL: What I would add to that, and this came up at our event as well, is the question of police culture, which I think there's a shared view that police cultures are very difficult to change. In fact, we were quoting the former chief of police in Baltimore who just said, after laboring at attempting to shift the city's police culture, ultimately he said he thought it had to be taken apart and rebuilt from the ground up.

So, I think that is also an important issue. And I think it's important from a couple of different perspectives. I think that, just echoing what Rashawn said, policing is really difficult work and potentially dangerous. I don't think it's quite as dangerous sometimes as it's made out to be, but it is potentially dangerous and it puts people under enormous stress. And then we see them acting out of that stress at times in some of these incidents of excessive use of force. We need to really do a better job of equipping and preparing our police officers and supporting them in doing the work that they do. Their own mental health, their own psychological profiles, their own emotional states play a huge part in this. And the warrior culture of policing, I think, sometimes gets in the way of effectively supporting officers in that way.

I would say the second factor here is around training of police officers, of screening candidates for the police force so that we ensure that we're getting the right people into the jobs.

And then finally, I think, and this is very much reflected in the work and the volume, is what Rashawn mentioned about how much we ask police officers to do. We've got police officers doing a lot of work that isn't policing. And we need to kind of diversify the toolkits of police forces around the country so that they're bringing the right service to the problem that they're trying to address. Is it a homelessness problem? Is it a mental health problem? Is it an

addiction problem that is really driving the behavior? We've got this thing called the police force. It's a hammer. So everything turns into a nail. And there are some very interesting kinds of experiments on this going on around the country right now. But I think are really worthwhile following, evaluating so that we can figure out how to diversify that toolkit that our public safety officers have.

DEWS: Let’s pause to hear from Mark Muro on how the American Recovery Plan helps states and localities pursue innovative solutions to post-pandemic recovery.

MURO: Hello, I'm Mark Muro, a senior fellow at the Metropolitan Policy Program at Brookings, and I wanted to say a few things about the big American Rescue Plan from Congress and how it can be used by states, tribes, and localities to maximum effect.

Last month my colleagues Joe Parilla and Fund for Our Economic Future’s Brad Whitehead noted that money from the new American Rescue Plan and the $1.9 trillion federal COVID-19 relief package represents an opportunity for state officials to invest in their communities rather than simply spend those significant allotments. They stressed that the act’s $350 billion gives governments a chance to move beyond relief and see the new trajectory by deploying the money smartly and equitably.

Well, now some of that money is heading to your town and your street, so I want to make a few observations about it and tell you about one pretty impressive use of it. Now, I want to make sure that my thoughts are viewed as preliminary, since the Treasury Department just dropped its 150-page formal guidance about this money this week, and we're still digging through that. But even so, I think it's pretty clear that this legislation is a major opportunity for communities.

The reason? The funding for state and local governments appears to be incredibly flexible and therefore even more supportive of innovative recovery solutions. In this respect, I'd say that despite scattered carping about the need for more accountability, the most striking and under discussed aspect of ARP is that it represents not only the largest positive fiscal jolt to state and local budgets in decades, but also the one most supportive of local discretion.

That's not to say the funds are totally without restrictions. For example, ARP rightly bars the use of recovery funds to offset tax cuts. It also flatly prohibits depositing recovery funds into pension accounts. Beyond that, the state and local use will be subject to those 150 pages of Treasury Department clarifications, guidance, and oversight. With that said, the $350 billion caters to local prioritization and should be viewed by states, localities, and their residents as a massive prod to communities' aspiration.

In technical terms, the funds allow for a lot of discretion. They are substantial and available for use until 2024 and encumbered with minimal restrictions, a big departure from the norm of federal grants. In short, ARP is much more flexible than March 2020's CARES Act, and more discretionary than the complicated mixed bag of 2009's American Recovery and Reinvestment Act.

The upshot of all this is that the coming funds represent a bright green light for creative problem solving by states and localities. Which is how Indiana took it in developing a compelling and transferable example of one state leveraging ARP to the utmost to make a big move on a tough issue. Indiana, like dozens of states, has struggled for many years with a serious job quality challenge, and a deepening regional growth problem characterized by uneven growth across the state's communities.

As discussed in a recent Metropolitan Policy Program report, the Hoosier State needs at once to revitalize its drifting statewide advanced-industry sector and ensure that all communities around the state participate in that revitalization. Of late, many of the state's regions, often anchored by manufacturing intensive cities like Gary, South Bend, Fort Wayne, and Terra Haute, have seen their normal, slow, or negative growth flag even more during the pandemic.

So what is Indiana's highly transferable response? Basically, Indiana lawmakers are leveraging a major portion of the state's ARP funding to tackle regional inclusion at truly meaningful scale through a $500 million grant program supporting 10 regions across the state. This is really significant. With concern about the states' regions' recovery lingering and the state wanting to catalyze new growth after years of drift, the idea of the state making the investment grants cohered initially in Governor Eric Holcomb's proposal in the state of the state address for a next level regional recovery program aimed at supporting regions that collaborate to develop strategies designed to advance industry sector development, grow workforce development initiatives, and improved quality of life.

Initially, the Regional Recovery Grant program was funded at $150 million. By the time the budget deal was finalized in mid-April, a month after the relief plan, the program had been renamed the Regional Economic Acceleration and Development Initiative—READI—and it's budgeted grown to $500 million, all of it care of ARP. The result has been that the Indiana Economic Development Corporation will award up to $50 million per region to 10 regions across the state to support the implementation of strategies focused on enhancing the region's innovation ecosystems, entrepreneurship, sports talent and attraction, and development and quality of life. In short, Indiana's ready regional initiative answers impressively to the opportunity held out to states and cities by the American Rescue Plan.

By applying that flexible largesse to the rescue plan to a strong vision, the state has gone big on one of the toughest challenges states face and raised hopes for the next decade.
I hope other states and communities will follow suit and don't doubt they will.

Thanks so much for listening.

DEWS: And now, back to the interview.

Well, as has been mentioned earlier, police reform is but one of the many pieces of the criminal justice reform report that Brookings and AEI put together. So I want to turn to some other parts of this report, and Brent specifically I want to ask you about that. I know you've done a lot of work, as you mentioned earlier, in the areas of rehabilitation, prisoner reentry, and so on. And there are a number of chapters in this report that address training, education, and prisoner reentry. So what, in your view, is the most important thing listeners should know about the challenge of prisoner reentry into society?

ORRELL: Thank you very much for that question. Some of the same scholars that are involved in this volume worked with me on a volume that we published about a year and a half ago just at AEI, called "Rethinking Reentry." And that volume had a couple key insights. One is that much of what we have tried in this area over the last 20 to 30 years hasn't really delivered the kinds of results that we want to see in terms of reducing recidivism and keeping people out of prison from a reentry perspective.

And even just a little bit more concerning to me is that in these randomized control trial studies that we've done on reentry programing, we see a phenomenon in which the control groups, the people who don't receive services that we've carefully crafted and implemented, people who don't receive those services do as well and sometimes a little bit better than those who do get the services. That suggests to me that there's something fundamentally wrong with

the way that we're thinking about reentry. And what the rest of rethinking reentry volume talks about is kind of a different model for thinking about how we approach this challenge. Christy Visher, who is also an author in this Brookings-AEI volume, did a wonderful piece for us on cognitive behavioral therapy and cognitive behavioral communities within prisons that really focus on helping prisoners help people change. That's one of the areas I think we really need to focus on.

Underneath that and related to it is just a question of helping people who have been involved in the criminal justice system develop a greater sense of agency in their own lives. We intervene a lot in the lives of people who wind up in the criminal justice system, and after they get out, while they're in the criminal justice system; obviously being in prison is like the most agency-depriving experience that any of us could ever have. No choices, only rules. And there's a need, I think, to step back from that kind of model to a different kind of model that uses CBT and that encourages the development of different ways of thinking on the parts of prisoners—that's what the CBT is for—and then helping them to develop the habits of decision-making that they need in order to be successful.

So, that's what I would say is the thing that I would really like people to focus on is how do we step back from a system that is really focused on intervention and instead try to move toward a system that's really about developing, rehabilitating agency and decision-making among people who are involved in the system.

DEWS: And one thing that really struck me, and I think it was in a chapter you just referenced by Christy Visher with John Eason, is that a lot of the people who've become involved in the criminal justice system do so at a fairly young age before they have actually had a chance to develop the kind of adult life skills that are needed to maintain steady employment,

to maintain good relationships, that get taken into this criminal justice system. And then three, four years later, they're put back out into the civilian world, never having had developed those essential skills. And then so many of them are unable to hold jobs and many of them reoffend and go back into the system.

ORRELL: Yeah, the system is very, very sticky for people who get involved in it. It's hard once you're in it to kind of flip yourself from it because it affects every aspect of your lives. So, I don't think we should be surprised by that phenomenon of people going back into prison. It's almost like it's set up to sort of recapture people and bring them back again.

But I also think that these systems are, like I said they need a shifting away from this interventionist stance in the lives of people. I always say to people when I'm talking on the subject, if you could see the lives of the people who are in prison, like you could see a movie of their life, your question would probably not be, How did you get here? I think the question would probably be, What took you so long to get here? Because of the kinds of adverse experiences beginning in childhood that then add up to the kind of negative externalizing behavior that becomes criminal behavior over time.

So, you mentioned people not having the opportunity to develop kind of adult decision-making skills. I would take it back further and say that life experiences and trauma have preempted that, preempted the capacity for those adult decision-making skills. And until we figure out ways of unwinding that trauma that people experience, which is another function of the CBT, helping people develop workarounds for all the triggers that wind them back in criminal behavior, I think that much of our effort is kind of like trying to build scaffolding around a building rather than going inside the building and dealing with the structural problems that need to be addressed. So, that's my take on it.

DEWS: And to kind of follow up on that, maybe put a point on it, the authors of another chapter in the report on training and employment for these populations, they call the employability of returning citizens a, quote, "moral imperative." So to both of you, why would they call it a moral imperative?

RAY: Well, I think part of what it is, is that we know over the past 30 to 40 years or so that we've incarcerated millions of people, and also millions of people cycled in and out of jails every single day. And it's become a point what we know from research that a person who has a criminal record, that it hinders their ability to get equitable employment. It also hinders their ability to gain access to certain types of social services or even to be able to go to school.

So, as we think about these barriers and the number of people, the sheer percentage of the population that's impacted by the criminal justice system—not only the people who have the charge or the conviction themselves, but also their families and other individuals who they associate with—that it is a moral imperative for us to address these concerns, particularly because there have been huge shifts policy-wise around some of the reasons why these people were incarcerated, like for drugs, for mental health issues. So, it becomes a moral imperative for all of us to understand this and play a role in helping people to reintegrate back into society, particularly as we think about what happens around recidivism, that within the first two to three years, a lot of people are going to reenter prison, not just because they're prone to commit crime, but because it's been difficult for them trying to find employment and make a living.

ORRELL: I'm always happy to talk about morality issues because I think that morality lies really at the heart of the challenge. How do we view the human person? Do we view the human person as a, in the words of the Declaration of Independence, as people who have

inherent rights, inherent dignity? We only honor that idea to the extent that we apply it absolutely as broadly as possible, I think, as a country.

One of the areas that it is most in question is around our treatment of people who have been involved in the criminal justice system. It really feels to me at times that we're never really done punishing people for having committed crimes. That at least on an abstract level, when it's our brother, our sister, our father, our friend, or family member, it's a mistake. They made a mistake. And when it's an abstract question, it's lock them up, throw away the key. And if you do let them out, watch them really closely. There is the sense that we as Americans are punitive in the abstract, we're very forgiving in the particular, but punitive in the abstract. And we need to have a different moral frame around us. Some people can't be helped. Some people are going to be chronic offenders. They'll need to be isolated for the sake of the rest of society. But that can't be two million people. That's not possible in my mind, that two million people need that degree of intervention and isolation from society. We've got work to do to do a better job of triaging our population with multiple barriers and anti-social and other bad behaviors in ways that makes sense. This doesn't make sense to me.

And I'll just conclude with this. We want people to be self-sufficient as a society. We want them to take advantage of the opportunities American society affords. We don't want to spend what one estimate—I think it was University of Washington, St. Louise said—we're spending, when you add it all up on what we spend on the system and what we lose in terms of productivity and what we incur in terms of broader social costs, we're spending a trillion dollars a year or more on the criminal justice system. That's a trillion dollars that could really be better spent somewhere else. And that means that we've all got not just a moral stake in this, but we've got an economic stake in it as well.

So, that's the moral frame that I would put around this. It's an important issue for all of us, and not just people who are in prison and their families and the communities they come from.

DEWS: I'm going to go back to something that, Rashawn, you've already mentioned in this interview, and it's something that you both wrote in the concluding chapter for the report, and that has to do with how overall over the last 50 years or so, violent crime is down. There was a spike in 2020. But as you approach comprehensive criminal justice reform and police reform, how do you balance the concerns—and again, Rashawn, you mentioned this earlier—with the "abolish the police" view on one extreme and a total "support the blue" perspective on the other. Have do you balance those?

RAY: Well, I think for us, I think we follow the research and there are a couple of important things. Not only are there a series of efforts, police reforms, that have bipartisan support that similar to other topics that we could talk about—whether they'd be dealing with health care, the difference between the Affordable Care Act versus Obamacare, that if you have the same writing, but you use Obamacare versus the Affordable Care Act, it changes how people perceive and support them. Then when you actually get past the narratives, you hear people making similar claims. And Brent highlighted it well with the former chief of police of Baltimore, that we have to be realistic, that bad apples come from somewhere. They don't simply pop up. I mean, they come from what I call rotten trees in policing. And one thing I know about good apples, those good apples in law enforcement don't simply replace the bad apples or even overcome them. At times they succumb to them. Either they become poison themselves or they definitely become stain ed. And the way I think about that is they become pushed out and pushed down, that these are the people in policing that we want to see lead. But there is something about

the culture of policing mixed with the structure of policing that leads to some of these outcomes that we see.

And so when we think about these polar opposites, the "support the blue" or "abolish the police," overwhelmingly Americans want law enforcement. Overwhelmingly, they want safe communities. And instead, what we're caught up with is some kind of way these polar opposites, like a majority of people, even people who might use those slogans, actually want the same exact thing. And what we aim to do in our chapter and throughout the report is to balance those attitudes with the research and with bipartisan reforms that make sense to move us toward a pathway that we think is important.

ORRELL: One of the things we talk about in the conclusion on this is that we're at this moment in criminal justice reform in which I think it can tip either way. We can tip back into a system in which we rely on force and coercion as the primary tools for controlling crime. We've had this spike in crime during 2020. And what we say is, okay, let's not overreact to this. Let's bear in mind that we're still at a 50-year low of criminal activity, even with these increases that we've seen in 2020. Let's figure out what's actually driving that. Is that an effect of the pandemic? Is it bad communication, public communication, to police forces that they should pull back from policing? Is it a failure on the prosecution side? What's going on? We don't actually know. And we think we'll be surprised once we collect that data and can get a better handle on what's actually going on here.

So, I think that's part of the solution is that we need to be judicious, we need to stay focused on the data and not allow ourselves to be drawn back into these polls, this polarizing tendency that we have right now and brought into bad policy as a result. Defunding or abolishing the police is a fundamentally bad idea. I don't even think the people who use that phrase really

mean that. They're exaggerating for effect for the most part. I don't think that people who say "we support the police" mean to say "we support anything the police do." That is not an American idea, that is not in our tradition of granting unlimited license to anybody who's been granted authority by the public to exercise force. We can't do that. That's not how we operate a society. There are always boundaries. So, getting those boundaries right is extremely important.

So, that's how I see this, that we're at this moment. We can continue to push into trying to create something new, a more humane, a more just criminal justice system. Or we can tip back. And the central purpose of this report is to say we need to keep working at this. We need trying to develop a better, more just, more humane system for managing our public safety challenges and not just follow a counsel of despair that says we're just going to set the police loose and we're going to let them do whatever they have to do; or we're going to live in this kind of cloud cuckoo land in which we can just do without police. Neither of those reflect reality, and they especially are not useful for the communities that need the policing the most.

DEWS: I'd like to end this really important conversation by asking you both to reflect on and comment on this question, which is, ultimately at the end of the day, what should be the goal of America's criminal justice system?

RAY: I mean, I think when it comes to the goal of our criminal justice system, it should be to treat everyone equitably once they come in contact with it. That includes from a traffic stop to a 9-1-1 response, to a person who goes to court and has a pretrial hearing. It should go for a person who has a court hearing. It should go to a person who ends up being convicted and incarcerated, that their conditions—there are opportunities for rehabilitation. There are opportunities for education and learning. And then there are opportunities once they leave prison to be able to gain employment and to be able to regain some sort of similarity to a life that once

was. or a better life—should all be equitable across different divides, I think, particularly when it comes to race and social class. And currently our system is not set up that way. And I think that's something that should unnerve us all.

ORRELL: I'll revert back to what I said earlier about delivering on the fundamental promises of America to support, to vindicate, to protect the dignity of the human person. And that has many different elements to it. It has an element, as Rashawn just really eloquently laid out, treating people equally within the criminal justice system, equally and with equity within that system. So, that's part of it. The other part of it is the maintenance of public safety, because human dignity can be eroded and defaced by unacceptably high levels of crime and violence.

So, again, we have to hold those objectives together. It's not one or the other. It's not an "or" proposition. It's an "and" proposition. And so, that's how I would frame this as to what our overarching objective should be is this vindication of the human person. And that has implications for policies from inside the criminal justice system, outside the criminal justice system, and should really be at the heart of our policy efforts across the board.

We're going to disagree on the balance. And I would just say this in conclusion: there are some problems in life and some problems in public policy that you never solve completely. You just manage some of these problems and challenges. And what we're trying to say here is, let's find that balance that can give us the most of the best of the world that we can get. And recognizing that it's an imperfect place and we're never actually going to fully solve the challenge. But we can do a lot better, I think, than what we're doing right now.

DEWS: Well, Brent Orrell, Rashawn Ray, I want to thank you both for sharing your time and expertise with us today and also thank you both for leading this very important collaboration between Brookings and the American Enterprise Institute.

ORRELL: Well, thanks so much for having me. I really appreciate it, a very stimulating discussion. I always enjoy talking with Rashawn.

RAY: Likewise, likewise. And thanks for having us on, Fred, we really appreciate it.

DEWS: The report is "A better path forward for criminal justice: A report by the Brookings-AEI Working Group on Criminal Justice Reform." You can find it on the Brookings website, brookings.edu. And in that report, there's also much more that we didn't have time to cover today in areas such as reimagining pretrial sentencing, police in schools, and much more. And also you can find more research from Brent Orrell at aei.org.

DEWS: A team of amazing colleagues helps make the Brookings Cafeteria possible. My thanks to audio engineer Gaston Reboredo; to Bill Finan, Director of the Brookings Institution Press who does the book interviews; to my communications colleagues Marie Wilken, Adrianna Pita, and Chris McKenna for their collaboration. And finally, to Camilo Ramirez and Andrea Risotto for their guidance and support.

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Until next time, I'm Fred Dews.