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Blue Racing: The Racialization of Police in Hate Crime Statutes

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BLUE RACING: THE RACIALIZATION OF POLICE IN HATE CRIME STATUTES

Christopher Williams*

ABSTRACT

Content warning: this Article discusses police brutality.

The relationship between race, law, and policing is one that has been analyzed by many scholars throughout U.S. history. The vast majority of research about police has highlighted policing in relation to groups they police, focusing on areas such as policing practices, policies, or involvement in the racialization of minority groups. This scholarship has far outpaced research on actions taken by law enforcement on behalf of law enforcement—specifically, how law enforcement engages in racialization out of self-interest. A better understanding of the ways in which law enforcement engages in racialization that is not just limited to other groups would provide a new way for understanding race, law, and policing. In addition, such an understanding would provide the appropriate context for policies and laws birthed out of the police racialization process.

In this Article, I explore the racialization process of police by police (“blue racing”) in the context of hate crime legislation. I argue that the passage of hate crime legislation that included law enforcement, which I will refer to as “blue lives matter bills,” was not the result of increased violence or threats to officer safety, despite the rationale offered by the bills’ proponents. Instead, utilizing both Zakiya Luna’s “racial framing” and Michael Omi and Howard Winant’s “racial project” concepts, I argue that including law enforcement as a protected category within hate crime statutes was part of a racial project, engaged in by the countermovement blue lives matter, to prevent and criminalize protests that called attention to law enforcement abuse. Essential to this racial project was the blue racing of police. In this way, blue lives matter bill proponents used racial framing to legitimize their claims of alleged oppression. This legitimization gave both the blue lives matter bill proponents and legislatures the cover to punish and reprimand protestors of law enforcement brutality.

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INTRODUCTION

When one reflects on the 2010s, it will be hard to make the case that the visibility of police killings and the racial discourse surrounding policing was not a defining characteristic of the decade. The unarmed murders of Trayvon Martin, Michael Brown, Laquan McDonald, Alton Sterling, Freddie Gray, Eric Garner, Tanisha Anderson, Rekia Boyd, and Sandra Bland sparked protests and social discourse that spanned the decade. The 2020s are shaping up to be no different, as the recent high-profile shootings of Tony McDade, Jacob Blake, Adam Toledo, Breonna Taylor, Daunte Wright, and George Floyd have once again propelled law enforcement into the national spotlight.

Throughout U.S. history, many scholars have analyzed the relationship between race, law, and policing. The vast majority of research about policing has highlighted its relation to groups they police, focusing largely on practices, policies, or involvement in the racialization of minority groups. This scholarship has far outpaced research on self-serving actions by law enforcement—specifically, its self-interested racialization. A better grasp on the ways in which law enforcement racializes itself would provide a new lens for understanding race, law, and policing. Additionally, such an

understanding would provide the appropriate context for policies and laws that are birthed out of police racialization.

To grasp how law enforcement uses racial categorization, I explore the racializing of police by police (“blue racing”) in the context of hate crime legislation. I argue that the passage of hate crime legislation that includes law enforcement, which I will refer to as “blue lives matter bills,” was not the result of increased violence or threats to officer safety, despite the rationale put forth by bill proponents. Instead, utilizing both Zakiya Luna’s “racial framing” and Michael Omi and Howard Winant’s “racial project” concepts, I argue that the inclusion of law enforcement as a protected category within hate crime statutes was a part of a racial project, engaged in by the “blue lives matter” countermovement, to prevent and criminalize protests that called attention to law enforcement abuse. Essential to this racial project was the blue racing of police. In this way, blue lives matter bill proponents used racial framing as a way to legitimize their claims of alleged oppression. This legitimization gave both the blue lives matter movement and legislatures the authority to punish and reprimand protestors under the guise of justice.

Blue lives matter bill proponents accomplished this maneuver by engaging in a racial project that framed law enforcement as racialized victims of oppression, in contrast to the Black Lives Matter movement and victims of police brutality. In essence, by using racial framing, proponents of blue lives matter bills could claim that they were protecting an oppressed group, rather than punishing or retaliating against protestors of police brutality. Racialization proved vital for blue lives matter bill proponents in achieving additional protections for policing, while also legally restricting the ability to mobilize against police.

“Blue racing” describes the process by which blue lives matter bill proponents racialized police officers to pass hate crime legislation. To be clear, I am not suggesting that law enforcement or blue lives matter bill proponents successfully created or intended to create a long-term racial identity. Instead, I argue that blue lives matter bill proponents engaged in a process of racialization that ultimately led to the passage of blue lives matter bills. By better understanding this process, we can better understand how law enforcement engages in racialization and racial projects. In this particular context, we can also recognize the limits of hate crime legislation.

I also suggest that scholars explore more nontraditional contexts where racialization might occur. Looking in traditional places limits our understanding of how racialization is arising and, more importantly, fails to adequately capture how police racialization garners legal protections at the expense of communities of color.

I first begin by providing overviews of the relationship between policing, law, and racialization. Afterwards, I provide context for hate crime laws. Next, I describe the methodology used for this research. I then present findings on blue racing. This Section of the Article not only describes blue racing, but also analyzes the claims made by blue lives matter bill proponents. The latter is crucial to understanding the true intention behind the push for police to be included in hate crime legislation. Lastly, I conclude by discussing the implications for blue racing and what can be learned from policing engagement in racialization.

I. RACIAL PROJECTS: RACIALIZATION, POLICING, AND THE LAW

To help explain the racial project engaged in by blue lives matter bill proponents, I use sociologists Omi and Winant's and fellow race scholar Michael L. Walker's concept of "racial project."¹ Racial projects "are attempts to create meaning structures around racial categories and simultaneously organize resources according to those categories."² I also draw heavily upon sociologist Zakiya Luna's concept of racial framing, which "involves the purposeful deploying of race and racial arguments in framing processes."³ Racial framing includes multiple stages, such as recruiting, explaining why an issue matters, and describing of the community affected by the issue.⁴ In this way, racial formation can be viewed as the product of a racial project, and racial frames can best be understood as the ideology or arguments used in support of a racial project.

Common scholarship in the area of racialization and the law tends to focus on the process by which groups within the United States have engaged in racial projects to help create new racial categories.⁵ Sociologists G. Cristina Mora and Dina Okamoto and law professor Laura Gomez detail how the categories of latine⁶ and hispanic⁷

1. See MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S (2d ed. 1994); see also Michael L. Walker, *Race Making in a Penal Institution*, 121 AM. J. SOCIO. 1051, 1052 (2016).

2. Walker, *supra* note 1, at 1053.

3. Zakiya Luna, "Black Children Are an Endangered Species": Examining Racial Framing in Social Movements, 51 SOCIO. FOCUS 238, 239 (2018).

4. *Id.*

5. See, e.g., LAURA E. GÓMEZ, INVENTING LATINOS: A NEW STORY OF AMERICAN RACISM 140–50, 152–59 (2020); G. Cristina Mora & Dina Okamoto, *Boundary Articulation and Emergent Identities: Asian and Hispanic Panethnicity in Comparison 1970–1980*, 67 SOC. PROBS. 56, 60–61, 69–73 (2020) (exploring the creation of Asian and Hispanic panethnic movements).

6. Currently there is riveting debate about whether to use latinx or latine to describe a gender-neutral identity. To be clear, both do. However, within the debate there has been concern raised that the "x" in latinx doesn't gel well with traditional Spanish syntax like the "e" does in

emerged after much political mobilization from both state and community activists seeking racial recognition from the U.S. government as underrepresented, oppressed minorities in wake of the Civil Rights Movement.⁸ Mora and Okamoto help extend this logic to the asian racial category as well.⁹ Though various community actors actively advocated and engaged in racialization projects for the creation of racial categories such as latine, hispanic, and asian, it is crucial to understand that such proponents embarked on racialization projects out of necessity. In the absence of advocating for racialization, individuals now recognized as latine, hispanic, and asian ran the risk of being rendered invisible by the U.S. government's system of allocating resources based on race.

Of particular importance to this project is the research depicting how police engage in racialization. Scholarship in this area has focused primarily on actions taken by law enforcement that contribute to the racialization of other groups. Tremendous research has shown the myriad ways in which law enforcement engages in discriminatory policing practices in minority communities throughout the United States.¹⁰ These practices include illegal chokeholds, disproportionate drug enforcement arrests, stops and frisks, and vagrancy law enforcement, amongst others.¹¹ Far from coincidental, the discriminatory nature of policing is intentional. As sociologist Julian Go notes, many of the methods and police practices that shape policing today are the direct result of police officials' efforts to "manage

latine. As such, I have made the deliberate choice to use latin(e) as a descriptor throughout this Article to be as inclusive as possible. For more in-depth insight into this debate, see Catalina (Kathleen) M. de Onís, What's in an "x"? An Exchange About the Politics of "Latinx," 1 *Chiricú J.: Latina/o Literatures, Arts & Cultures* 78, 86–87 (2017).

7. I have made the deliberate political choice to place in lower case all references to race and ethnicities. I have purposely decided to break the spelling convention surrounding race and ethnicity throughout as a constant reminder of the social construction of race and ethnicity. Furthermore, this political move reinforces the fact that there is in fact no proper way to "do" race.

8. See GOMEZ, *supra* note 5; Mora & Okamoto, *supra* note 5.

9. See Mora & Okamoto, *supra* note 5.

10. See generally Devon W. Carbado, *Stop-and-Strip Violence: The Doctrinal Migrations of Reasonable Suspicion*, 55 *HARV. C.R.-C.L. L. REV.* 467, 486–89(2020) (noting the discriminatory manner in which police deploy stop and frisk); Monica C. Bell, *Anti-Segregation Policing*, 95 *N.Y.U. L. REV.* 650, 698 (2020) (highlighting how police enforce racial segregation through racist policing practices such as discriminatory vagrancy enforcement); PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 3–6 (2017) (discussing metaphoric and literal illegal uses of police chokeholds on black men); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE ERA OF COLOR BLINDNESS* 97–106 (2010) (highlighting disproportionate drug arrests of black individuals); ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* 317–23 (2016) (chronicling the War on Drugs' disparate impact on black individuals).

11. See sources cited *supra* note 10.

perceived threats to social order from racialized minority populations” during the twentieth century.¹²

Scholar Ian F. Haney López emphasizes that the state has always played an active role in constructing race and that, in essence, serves as a mechanism to reflect and solidify racial prejudice.¹³ Furthermore, scholars note that the state engages in racialization projects that create and reproduce race through law and policy.¹⁴ Historian Khalil Muhammad’s work reminds us that law enforcement has always been vital to the racialization of criminality and specifically to the association of blackness with criminality.¹⁵ Sociologists Karen Fields and Barbara Fields refer to the conflation of criminality and blackness as “racecraft,” whereby law enforcement practices help ascribe racial boundaries and meanings onto groups.¹⁶ The state in this sense does not just reflect society, but actively creates and reproduces racial categories, oftentimes using law enforcement to enforce its racialization schemes.¹⁷

Racialization can occur through law enforcement, creating racialized space and restricting movement outside that space for a particular racialized community.¹⁸ Prominent policing scholar Nikki Jones highlights how within poor, hyper-policed communities, routine law enforcement encounters follow a particularized set of race-dependent codes.¹⁹ Police harassment and contact become so commonplace in hyper-policed communities of color that residents begin to conform to a certain set of behaviors and routines in an attempt to avoid police, even when they are not engaging in illegal activity.²⁰ This is because the consequences of not conforming to the code of interaction can mean unwanted and unwarranted violent

12. Julian Go, *Imperial Origins of American Policing: Militarization and Imperial Feedback in the Early 20th Century*, 125 AM. J. SOCIO. 1193, 1197 (2020).

13. See Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 27–37 (1994).

14. See *id.*; Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1745–76 (1993); Jennifer Chacón & Susan Bibler Coutin, *Racialization Through Enforcement*, in RACE, CRIMINAL JUSTICE, AND MIGRATION CONTROL: ENFORCING THE BOUNDARIES OF BELONGING 159–74 (2018).

15. See KHALIL MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* 12, 197, 269–77 (2019).

16. See KAREN FIELDS & BARBARA FIELDS, *RACECRAFT: THE SOUL OF INEQUALITY IN AMERICAN LIFE* 26–29 (2012).

17. See Deenesh Sohoni, *Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities*, 41 L. & SOC’Y REV. 587, 612–15 (2007).

18. See RASHAD SHABAZZ, *SPATIALIZING BLACKNESS: ARCHITECTURES OF CONFINEMENT AND BLACK MASCULINITY IN CHICAGO* 98–99, 101–08 (Darlene Clark Hine & Dwight A. McBride eds., 2015).

19. See Nikki Jones, “*The Regular Routine*”: *Proactive Policing and Adolescent Development Among Young, Poor Black Men*, in *PATHWAYS TO ADULTHOOD FOR DISCONNECTED YOUNG MEN IN LOW-INCOME COMMUNITIES* 33–54 (2014).

20. See Forrest Stuart, *Becoming “Copwise”: Policing, Culture, and the Collateral Consequences of Street-Level Criminalization*, 50 L. & SOC. REV. 279, 299–300 (2016).

contact with police.²¹ Racialized law enforcement codes of interaction and surveillance of racialized minority communities convey what Professors Joe Soss and Velsa Weaver describe as lessons on who deserves fairness and justice.²² Such lessons are often taught through fines, arrests, and criminal records which prohibit racialized minority communities from escaping poverty and frequently result in having rights stripped away by the state.²³ In essence, law enforcement actions ascribe racial meaning, conveying the false notion that racial communities are criminal, need to be punished, and are undeserving of equality.

Scholars have also pointed out law enforcement's racializing impact in immigration law and in prisons. Law professors Jennifer Chacón and Susan Bibler Coutin and sociologist Tanya Golash-Boza show how immigration courts and immigration law enforcement agents have historically and contemporarily racialized immigrants both by codifying their exclusion from whiteness and by profiling on the basis of racist stereotypes.²⁴ Arrests and subsequent deportations prove extremely important in legitimizing racial categories and citizenry. Law professor Monica Bell points out that "border patrol"—Bell's term for the practice of excluding non-white people from "white spaces"—is specifically a state-organized racialization project.²⁵ Within jails, Walker highlights the active role that prison law enforcement officials play in racialization projects that reinforce segregation of inmates based on race.²⁶ The importance of enforcing racial boundaries is so great that corrections officers rely on them to conduct their job successfully.²⁷ Walker notes that corrections officers facilitate communication and discipline through leaders picked by race.²⁸ These leaders handle the affairs of their racialized group with the blessing of officers and act as mediators between fellow inmates and officers.²⁹ This arrangement reduces the workload for officers and shifts labor

21. *Id.*

22. Joe Soss & Velsa Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 579 (2017); see also I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L.L. REV. 1 (2011).

23. See Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1323–27 (2012); see also REUBEN JONATHAN MILLER, *HALFWAY HOME: RACE, PUNISHMENT, AND THE AFTERLIFE OF MASS INCARCERATION* 23–193, 237–72 (1st ed. 2021).

24. See Chacón & Bibler Coutin, *supra* note 14; Tanya Golash-Boza, *Raced and Gendered Logics of Immigration Law Enforcement in the United States*, in RACE, CRIMINAL JUSTICE, AND MIGRATION CONTROL: ENFORCING THE BOUNDARIES OF BELONGING (Mary Bosworth, Alpa Parmar & Yolanda Vázquez, eds., 2018).

25. Bell, *supra* note 10, at 697–701.

26. See Walker, *supra* note 1.

27. See *id.* at 1067–69, 1074.

28. *Id.*

29. *Id.*

responsibilities onto inmates.³⁰ Instead of resolving disputes, deputies may simply refer an inmate to their race leader.³¹

Scholarship on the racialization of law enforcement itself remains far less developed. This is because there have likely been relatively few times where the specific position of law enforcement officer has been racialized. I add to the race, law, and policing literature by departing from the focus on law enforcement's racializing of other groups and instead focusing on its self-racialization. Doing so reveals how racial recognition projects extend not only to whiteness, but also in this case to "blueness" as a way to uphold white supremacist structures of policing. This Article highlights the need to study law enforcement actions not just as militarized forces in communities of color, but as actors engaged in lobbying efforts utilizing racial projects and processes. To fully grasp law enforcement's engagement with racialization, we must also consider how it uses racialization to advance its own legal interests.

II. BLUE RACING

Blue racing can be best understood as the process that blue lives matter bill proponents undertook to racialize the employment position of police officers. The first part of the process entailed the creation of the blue lives matter movement itself. The second part entailed creating the racial framing that would rationalize depicting law enforcement as a racialized blue identity. This ordering does not suggest that one process came before the other. Rather, it delineates two separate parts of the process. In reality, the racialized blue framing and the creation of the blue lives matter movement happened in tandem with each other. In contrast, the third part of the process came well after the creation of the blue lives matter movement and its racialized framing. This third component entailed legislating the racialized frame, including introducing and successfully passing blue lives matter bills.

A. *Creating the Blue Lives Matter Movement*

Blue lives matter was founded in December 2014 by three members of law enforcement, Joseph Imperatrice, Christopher Brinkley, and Carlos Delgado, in response to the killing of Rafael Ramos and Wenjian

30. *Id.*

31. *Id.*

Liu.³² The movement was premised on a perception of increased threat to police and of public misunderstanding of what it takes to be a law enforcement officer.³³ According to blue lives matter's largest Facebook page (with over two million amassed followers), the movement's genesis is also tied to Michael Brown's death, which they refer to as the "incident in Ferguson."³⁴ This, of course, makes sense as Michael Brown's death propelled Black Lives Matter and nationwide protests of police brutality into the nationwide spotlight.³⁵

While Black Lives Matter may not have eradicated police brutality, the movement organized nationwide protests and garnered massive attention from news media.³⁶ Blue lives matter interpreted the nationwide attention and protests placing scrutiny on law enforcement not as a moment for rethinking policing but as threats and misinformation about law enforcement.³⁷ As Black Lives Matter blossomed on the national stage, blue lives matter emerged as a countermovement seeking to discredit Black Lives Matter's calls to end racist and violent police practices.

32. Christopher Berg, *Introducing the Police Tribune*, POLICE TRIB. (June 10, 2020), <https://policetribune.com/introducing-the-police-tribune/> [<https://perma.cc/685Z-ZMUG>]; *Executive Board*, BLUE LIVES MATTER N.Y.C., <https://bluelivesmatternyc.org/pages/executive-board> [<https://perma.cc/D5W6-LS23>].

33. See *History*, BLUE LIVES MATTER, <https://archive.bluelivesmatter.blue/organization/#history> [<https://perma.cc/3W4Y-NEPU>].

34. Blue Lives Matter (@bluematters), *About*, FACEBOOK, https://www.facebook.com/pg/bluematters/about?ref=page_internal (last visited Oct. 25, 2021).

35. See Josh Hafner, *How Michael Brown's Death, Two Years Ago, Pushed #BlackLivesMatter into a Movement*, USA TODAY (Aug. 8, 2016, 7:50 PM), <https://www.usatoday.com/story/news/nation-now/2016/08/08/how-michael-browns-death-two-years-ago-pushed-blacklivesmatter-into-movement/88424366/> [<https://perma.cc/BL95-X63N>].

36. See, e.g., Wesley Lowery, *Black Lives Matter: Birth of a Movement*, GUARDIAN (Jan. 17, 2017, 1:00 PM), <https://www.theguardian.com/us-news/2017/jan/17/black-lives-matter-birth-of-a-movement> [<https://perma.cc/FFH9-ADL9>]; *What Happened in Ferguson*, N.Y. TIMES (Aug. 10, 2015), <https://www.nytimes.com/interactive/2014/08/13/us/ferguson-missouri-town-under-siege-after-police-shooting.html> [<https://perma.cc/T2Y8-WUW3>]; German Lopez, *What Were the 2014 Ferguson Protests About?*, VOX (Jan. 27, 2016, 6:19 PM), <https://www.vox.com/2015/5/31/17937764/ferguson-missouri-protests-2014-michael-brown-police-shooting> [<https://perma.cc/862S-PL58>]; Rheana Murray, *People Walk out of Work, School in Ferguson Protests*, ABC NEWS (Dec. 1, 2014, 4:59 PM), <https://abcnews.go.com/US/people-walk-work-school-ferguson-protests/story?id=27288450> [<https://perma.cc/H3JC-R4VC>]; Javonte Anderson, *George Floyd Fallout: Lightfoot Lifts Chicago Curfew; Peaceful Protestors March Through South Side Police Neighborhoods; Hundreds Rally for Reform in Evanston*, CHI. TRIB. (June 7, 2020, 5:53 PM), <https://www.chicagotribune.com/news/breaking/ct-george-floyd-chicago-protests-20200606-ee4mdvafvbfhcpr7lrzfayypu-story.html> [<https://perma.cc/38H6-BP4C>]; Renee Lewis, *Protestors Demand Answers in Sandra Bland's Death in Texas Jail*, ALJAZEERA AM. (July 17, 2015 7:45 PM), <http://america.aljazeera.com/articles/2015/7/17/protesters-demand-answers-on-death-of-sandra-bland.html> [<https://perma.cc/D8FG-A763>].

37. See BLUE LIVES MATTER, *supra* note 33; Berg, *supra* note 32.

B. *The Blue Frame: Co-opting Black Lives Matter*

The creation of the “blue” frame proved essential to the eventual codification of police officers as a protected group under hate crime statutes. Scholar David Snow defines “frames” as interpretive lenses that help individuals categorize and perceive experiences within their life and space in the world.³⁸ Frames “render events or occurrences meaningful and thereby function to organize experience and guide action.”³⁹ Opposing groups, such as a social movement and its countermovement, can utilize the same frame yet deploy different ideologies.⁴⁰

Since its inception, Black Lives Matter has embraced a frame that emphasizes law enforcement and police in the U.S. as racist institutions which target black americans.⁴¹ Combining Snow and Luna’s framing concepts, we can understand the “blue” frame as a co-optation of Black Lives Matter’s use of race as a powerful frame to explain oppression and violence at the hands of law enforcement.⁴² Blue lives matter did this by constructing and using “blue” as a stand in racialized identity akin to the usage of “black” for Black Lives Matter. For blue lives matter, “blue” signifies the identity of a person who is a police officer.⁴³ The blue frame undermines the validity of Black Lives Matter’s claim that black citizens are victims of systemic racism and violence at the hands of the police. Through this lens, blue victims appear to be the true victims of societal oppression, not black citizens.

Though a voluntary employment choice, “police officer” amounts to a racial identity under the blue frame. The most apparent evidence is that some within the movement have adopted the term “*blue racism*.”⁴⁴ Blue racism as defined by the Sergeants Benevolent Association (a New York City sergeants’ union) is a “‘strange form of racism’ that ‘continues to engulf the country,’” whereby police officers are seen through a more

38. Robert D. Benford & David A. Snow, *Framing Processes and Social Movement: An Overview and Assessments*, 26 ANN. REV. SOCIO. 611, 614 (2000).

39. *Id.*

40. Luna, *supra* note 3 (illustrating that the social movement here would be Black Lives Matter and the countermovement would be blue lives matter).

41. See *8 Years Strong*, BLACK LIVES MATTER (July 13, 2021), <https://blacklivesmatter.com/six-years-strong/> [<https://perma.cc/842R-EX25>].

42. See Luna, *supra* note 3; Benford & Snow, *supra* note 38.

43. See Sarah Jorgensen, *NYPD Sergeants’ Union Calls out ‘Blue Racism’ in Controversial Video*, CNN (Aug. 23, 2017, 7:55 AM), <https://www.cnn.com/2017/08/22/us/nypd-union-blue-racism-video> [<https://perma.cc/4JCL-8APG>] (noting the Sergeants Benevolent Association president Ed Mullins’ comments to CNN where he references police officers as having literal blue skin).

44. *Id.*; NYPD Sergeants Benevolent Association, *Blue Racism*, YOUTUBE (Aug. 20, 2017), <https://www.youtube.com/watch?v=8IjdBfW0> [<https://perma.cc/P8NF-AN6B>]; Alan Feuer, *Police Union Complains of ‘Blue Racism,’ Then Regrets Word Choice*, N.Y. TIMES (Aug. 22, 2017), <https://www.nytimes.com/2017/08/22/nyregion/nypd-union-video-discrimination.html> [<https://perma.cc/GU4S-AFSG>].

racist lens than individuals who are black, latine, asian, or white.⁴⁵ In this way, blue racism positions officers as a racialized minority, or a subordinate status group, which transcends the officer's own race yet still encapsulates them in a new socially constructed racial category: "blue."

Whereas Black Lives Matter's race frame characterized Michael Brown's death as an unwarranted killing of an unarmed black teenager, blue lives matter's blue frame posited the same event as a necessary action undertaken by officer Darren Wilson to protect himself.⁴⁶ Further, blue lives matter's blue frame characterizes Black Lives Matter as agitators and liars who disseminate distortions about Darren Wilson and all other officers, rather than as protestors and activists who advocate for police reform and the end of racialized police violence.⁴⁷

For blue lives matter, Black Lives Matter and other protestors fail to consider personal accountability and instead seek to blame the government and police.⁴⁸ These claims are intended to minimize and obfuscate the problem of racist policing while simultaneously attempting to undermine concerns about police reform raised directly by Black Lives Matter.

In the wake of Black Lives Matter calling for reform, blues lives matter supporters have called such demands unwarranted as part of a general war on cops.⁴⁹ Specifically, accusations of institutional racism and misconduct are said to make policing unsafe for officers.⁵⁰ Blue lives matter's national spokesman explicitly articulated this position:

"But when the entire profession gets painted with a broad brush of accusations of institutionalized racism, brutality, and widespread misconduct, it destroys the morale and causes much added physical, emotional, and psychological danger to an already dangerous profession."⁵¹

45. Feuer, *supra* note 44.

46. See Christopher Berg, *About Blue Lives Matter*, POLICE TRIB. (June 6, 2018), <https://policetribune.com/?s=about+blue+lives+matter> [<https://perma.cc/6URD-3WK6>].

47. *Id.*

48. *Id.*

49. See HEATHER MAC DONALD, *THE WAR ON COPS: HOW THE NEW ATTACK ON LAW AND ORDER MAKES EVERYONE LESS SAFE*, 1-4 (2016); Fox News, *Disturbing New Video Shows War on Cops Is Real*, YOUTUBE (Oct. 7, 2015), <https://www.youtube.com/watch?v=EeHzZ561CFc> [<https://perma.cc/G6Y4-5KNE>]; Fox News, *Newt Gingrich: There's a War on Cops Nobody Wants to Talk About*, YOUTUBE (Apr. 14, 2021), <https://www.youtube.com/watch?v=grAe7q2wgg> [<https://perma.cc/6FVR-6S27>]; Fox Business, *Sheriff Arpaio: This Is a War on Cops*, YOUTUBE (July 11, 2016), https://www.youtube.com/watch?v=_CcU__utAI [<https://perma.cc/95S7-AFUT>]; Fox News, *Tomi Lahren: The War on Cops Is Real, It's Not Over*, YOUTUBE (Apr. 20, 2018), <https://www.youtube.com/watch?v=hXVTWFJ5GGs> [<https://perma.cc/2PQV-GWZD>].

50. See sources cited *supra* note 49.

51. See Berg, *supra* note 46.

Another application of this blue frame can be seen in the movement's name. The movement replaced black with blue to signal solidarity with police, who were targets of critique from Black Lives Matter. The move to replace black with blue isn't trivial. The black in Black Lives Matter was intentionally selected by its founders to call attention to the plight faced specifically by black americans at the hands of police.⁵² The importance and intentionality of the black-raced identity can be found in Black Lives Matter's founding narrative:

#BlackLivesMatter was founded in 2013 in response to the acquittal of Trayvon Martin's murderer. Black Lives Matter Global Network Foundation, Inc. is a global organization in the US, UK, and Canada, whose mission is to eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes. By combating and countering acts of violence, creating space for Black imagination and innovation, and centering Black joy, we are winning immediate improvements in our lives.⁵³

In this way, the "black" in Black Lives Matter is inextricably tied to and anchored in a racial framework. This renders any co-optation of this framing as inseparable from a racialized framework.

I posit that adopting this racial framing allowed blue lives matter and its proponents to recognize both their movement and blue lives matter bills through a familiar lens, not that movement leaders actually believed blue was a racial identity. Using blue as a racial frame, then, can be best understood as a disposable tool by the movement. Unlike other groups that have moved to create a consolidated racial category, such as hispanic or asian, by advocating for inclusion on the census or mobilizing political campaigns for recognition,⁵⁴ blue lives matter has shown little interest in legitimately institutionalizing "blue" as a racial identity outside of its attempts to discredit any claims made by Black Lives Matter.

Through this oppositional race frame, legislatures birthed bills incorporating officers into hate crime statutes. By co-opting Black Lives Matter's racial framing, blue lives matter posits officers, or the "blue"

52. See *8 Years Strong*, *supra* note 41; Jelani Cobb, *The Matter of Black Lives*, NEW YORKER (Mar. 6, 2016), <https://www.newyorker.com/magazine/2016/03/14/where-is-black-lives-matter-headed> [https://perma.cc/K3VW-4Q7N].

53. *About*, BLACK LIVES MATTER, <https://blacklivesmatter.com/about/> [https://perma.cc/X4U3-TB4K].

54. See G. CRISTINA MORA, MAKING HISPANICS: HOW ACTIVISTS, BUREAUCRATS, AND MEDIA CONSTRUCTED A NEW AMERICAN 83–119 (2014); see also ERIKA LEE, THE MAKING OF ASIAN AMERICA: A HISTORY 283–313 (2015).

identity, as oppressed victims of targeted discrimination, prejudice, and violence in need of protection.

III. LEGISLATING THE BLUE-ING OF HATE CRIMES

A. *Understanding Hate Crime Statutes*

The primary purpose of hate crime statutes in the United States is to prevent bias-motivated crimes against designated groups.⁵⁵ The first modern hate crime statute was introduced as part of the Civil Rights Act of 1968.⁵⁶ Statutes prohibiting bias-motivated crimes or actions existed beforehand, but none are akin to the modern hate crime statutes in place today.⁵⁷ The 1968 statute was specifically designed to enable the federal government to combat racially-motivated crimes that inhibited the exercise of civil rights by other U.S. citizens.⁵⁸ In particular, the law focused on those crimes perpetrated against racialized minorities. Race was a key category that Congress wanted to protect.⁵⁹ But in thinking about race, the U.S. Senate envisioned not only black americans, but also white americans who were victimized by bias-motivated crimes as a result of aiding black americans in the Civil Rights Era.⁶⁰ While Congress did not envision limiting statutory protections to black americans, it is clear that the impetus to create the 1968 statute was to curb violent attacks that targeted black americans.⁶¹

To bring a claim under the 1968 statute, the victim must show that the offender chose the victim because of their membership in one of the protected classes under the statute *and* because of the victim's engagement in a protected activity.⁶² The 1968 statute classifies victims as all individuals targeted based on "race, color, religion, or national origin."⁶³ "Victims" is defined broadly, such that no one racial or religious group is excluded.⁶⁴ "Federally protected activities" under the statute include enjoying any benefit or service administered by any state, participating in jury duty, attending public school or college,

55. *Hate Crime Laws*, DEP'T OF JUST. (Mar. 7, 2019), <https://www.justice.gov/crt/hate-crime-laws> [<https://perma.cc/ZDW9-LEYS>] [hereinafter *Hate Crime Laws*].

56. *Id.*; 18 U.S.C. § 245.

57. See Kami Chavis Simmons, *Subverting Symbolism: The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act and Cooperative Federalism*, 49 AM. CRIM. L. REV. 1863, 1876–78 (2012).

58. *Id.* at 1878.

59. *Id.*

60. See *id.*

61. *Id.*

62. *Id.* at 1878; § 245(b)(2).

63. § 245(b)(2).

64. Simmons, *supra* note 57, at 1878; § 245(b)(2).

applying for or enjoying employment, traveling, and engaging in commerce.⁶⁵

The act itself has glaring flaws. While it protected categories like race and religion, it did not protect categories like gender, disability, or sexual orientation.⁶⁶ This meant that if an individual targeted a woman or someone based on their sexual orientation, their conduct would not constitute a hate crime motivated by bias under the statute.⁶⁷ Likewise, only activities listed under the statute were protected. If someone targeted a black individual because they were black and committed a crime against them that was not listed in the statute, it would not qualify as a hate crime. This has led critics of the statute, like former Attorney General of the United States Eric Holder, to comment that the jurisdictional requirements are too onerous for prosecution.⁶⁸ In light of the many unprotected groups who are likely to be victims of hate crimes, and the many ways in which one can carry out a bias-motivated attack without being in violation of the law, the law seemed to fall short of actually capturing and preventing bias-motivated attacks.

The next federal action addressing hate crime statutes was the Hate Crime Statistics Act of 1990,⁶⁹ which primarily served to collect statistics related to hate crimes.⁷⁰ Just four years later, Congress passed the Hate Crimes Sentencing Enhancement Act, providing for increased punishment of hate crimes when “the defendant intentionally selects a victim . . . because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.”⁷¹ While this act added increased penalties for hate crimes, it still didn’t solve the onerous jurisdictional requirements, nor did it expand the protected categories from the underlying 1968 statute.⁷² Therefore, the statistics and enhancements still fell short of capturing bias-motivated attacks.

The most recent enactment of hate crime legislation on the federal level came in 2009 with the Shepard and Byrd Hate Crime Prevention

65. § 245(b)(2).

66. *See id.*

67. *See Hate Crime Laws*, *supra* note 55 (noting that gender and sexuality were not protected under Hate Crime statutes until the Shepard and Byrd Hate Crimes Act).

68. Simmons, *supra* note 57, at 1879; *see also* Sara Sun Beale, *Federalizing Hate Crimes: Symbolic Politics, Expressive Law, or Tool for Criminal Enforcement?*, 80 B.U. L. REV. 1227, 1238–42 (2000).

69. 28 U.S.C. § 534.

70. Simmons, *supra* note 57, at 1880.

71. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 280003(a), 108 Stat. 2096 (1994); Sara K. Rankin, *Invidious Deliberation: The Problem of Congressional Bias in Federal Hate Crime Legislation*, 66 RUTGERS L. REV. 563, 571 n.28 (2014).

72. *See* Violent Crime Control and Law Enforcement Act § 280003; Simmons, *supra* note 57, at 1881 (“[I]f a victim was attacked because of her sexual orientation, gender, or disability, § 245 did not apply, and there was no penalty enhancement available for a defendant who chose her victim based on sexual orientation or gender identity.”).

Act.⁷³ This act sought to remedy the shortcomings of the 1968 statute by expanding the category of protected groups to include gender, disability, and sexual orientation.⁷⁴ Furthermore, it removes the onerous requirement that individuals themselves must have been engaging in a particular type of activity to get protection under the act. The act does not, however, allow the federal government to simply exercise unfettered jurisdiction. Instead, the Shepard and Byrd Hate Crime Prevention Act allows the federal government to exercise jurisdiction only when (1) a hate crime has occurred in a state without a hate crime statute, (2) a state asks for federal intervention, (3) a federal interest is still present after a state prosecution, or (4) federal prosecution is in the public interest and necessary to secure substantial justice.⁷⁵

In short, the hate crime legislative landscape is complicated. While initially birthed to protect black americans, and to some degree white americans who fought for black americans' civil rights, the 1968 statute's shortcomings outweighed its utility. By failing to protect gender, disability, or sexual orientation, the act left out many victims of bias-motivated crimes from protection at the federal level, particularly given the statute's already-onerous jurisdictional requirements for prosecution. While much has changed, and hate crime categories have expanded to become more inclusive, hate crime legislation has not protected vulnerable groups comprehensively at the federal level.

States can include or exclude whichever categories they see fit, and determine whatever jurisdictional requirements must be satisfied for hate crimes within their jurisdiction.⁷⁶ Moreover, a state may simply choose not to have a hate crime statute.⁷⁷ This is, however, a minority approach, as forty-seven states have hate crime statutes independent of the federal government.⁷⁸

Independence from the federal government gives states broad latitude in choosing whom to include and exclude from their own hate crime statutes. As a result, who is protected or excluded is completely up to the state legislature's discretion. For example, of the forty-seven states that have hate crime statutes, all include race and religion as a

73. 18 U.S.C. § 249.

74. Simmons, *supra* note 57, at 1882.

75. *Id.*

76. Beale, *supra* note 68, at 1230–32.

77. *Id.*

78. See Rachel Sandler, *Georgia Passes Hate Crime Law, Leaving Only Three States Without One*, FORBES (June, 26, 2020, 6:28 PM), <https://www.forbes.com/sites/rachelsandler/2020/06/26/georgia-passes-hate-crime-law-leaving-only-three-states-without-one/?sh=aebad5a49095> [<https://perma.cc/JLB9-ZDYY>].

protected category, while only thirty-one include sexual orientation, and twenty-two include gender as protected categories.⁷⁹

B. Approaching Hate Crimes

State legislatures' decisions on whom to include and exclude from hate crime statutes have garnered broad attention and critique from scholars. These critiques have typically centered around the federal government's potential violation of federalism principles, the utility or usefulness of new hate crime legislation, or the appropriateness of the restriction or expansion of state hate crime statutes.⁸⁰ Less has been written, however, about the inclusion of law enforcement officers in hate crime statutes. Scholarship in this area has either focused on one particular state in its analysis, such as Louisiana, or has focused on police inclusion at a theoretical level, noting why it is inappropriately broad to include law enforcement officers in hate crime statutes.⁸¹ Very little scholarship in this area has considered the implications or the possibility of an occupation utilizing racialization. This Article moves away from focusing solely on whether a hate crime statute was appropriately used or misused, to an approach that analyzes the context in which particular statutes were passed along with the substantive laws themselves.

I do this for multiple reasons. The first is because the misuse and appropriateness frameworks presume that particular laws are not acting in accordance with a particular design.⁸² As Paul Butler suggests, laws and policies that were ostensibly intended to protect minorities have oftentimes worked to protect and serve interests counter to their imagined purposes.⁸³ The second reason is that an approach that

79. See *State Hate Crime Statutes*, BRENNAN CTR. FOR JUST. (July 2, 2020) <https://www.brennancenter.org/our-work/analysis-opinion/state-hate-crimes-statutes> [<https://perma.cc/QP3N-BJBS>].

80. See Simmons, *supra* note 57, at 1892 (arguing that there needs to be more federal-state collaboration in the prosecution of hate crimes); Beale, *supra* note 68, at 1269 (critiquing unconstrained federal exercise of hate crime authority); James Jacobs & Kimberly Potter, *Hate Crimes: A Critical Perspective*, 22 CRIME & JUST. 1, 19–40 (1997) (arguing that both federal and state legal mechanisms are inadequate to address actual prejudice-motivated crime).

81. See Lisa M. Olson, *Blue Lives Have Always Mattered: The Usurping of Hate Crime Laws for an Unintended and Unnecessary Purpose*, 20 SCHOLAR 13, (2017); see also Savannah Walker, *Policing Hate: The Problematic Expansion of Louisiana's Hate Crime Statute to Include Police Officers*, 78 LA. L. REV. 1413 (2018).

82. Here, when referring to misuse or appropriateness frameworks, I am talking about understandings that presume laws that result in inequality are somehow being misused or used inappropriately. These understandings presume that the law is incompatible with inequality and that decisionmakers' motives do not intend to create unequal outcomes.

83. See Paul Butler, *The System Is Working the Way It's Supposed to: The Limits of Criminal Justice Reform*, 2019 FREEDOM CTR. J. 75, 81–83 (2020).

analyzes context and substance helps illuminate how hate crime statutes protect those whom governments deem as worthy of protections rather than those who are actually at risk.

C. *The Blue-ing of Hate Crime Statutes*

Since 2016, five states have enacted laws that provide hate crime protection to law enforcement officers: Louisiana, Utah, Mississippi, Texas, and Kentucky.⁸⁴ The first to enact such legislation was Louisiana.⁸⁵ In Louisiana, “blue lives matter” legislation altered the state’s hate crime statute to include a broad characterization of law enforcement.⁸⁶ Louisiana’s statute is a sentencing enhancement hate crime statute.⁸⁷ The addition of law enforcement here as a protected category increases the penalty for crimes committed against a law enforcement officer whereby the offender targeted law enforcement and committed an enumerated felony or misdemeanor.⁸⁸

Under the statute, the law enforcement category includes individuals who are targeted because of their actual or perceived status as a member of law enforcement.⁸⁹ This means that an individual need not necessarily be a law enforcement official, but the offender just needs to perceive them to be a law enforcement official. The law enforcement category therefore nets a wide range of individuals, even those who may not actually be law enforcement officials.

84. LA. STAT. ANN. § 14:107.2 (2016); UTAH CODE ANN. § 76-3-203.14 (West 2019); MISS. CODE ANN. § 99-19-305 (2018); TEX. CODE CRIM. PROC. ANN. art. 42.014 (West 2017); KY. REV. STAT. ANN. § 532.031 (West 2017).

85. § 14:107.2; Walker, *supra* note 81, at 1415.

86. § 14:107.2. Under section E(3),

Law enforcement officer means any active or retired city, parish, or state law enforcement officer, peace officer, sheriff, deputy sheriff, probation or parole officer, marshal, deputy, wildlife enforcement agent, state correctional officer, or commissioned agent of the Department of Public Safety and Corrections, as well as any federal law enforcement officer or employee, whose permanent duties include making arrests, performing search and seizures, execution of criminal arrest warrants, execution of civil seizure warrants, any civil functions performed by sheriffs or deputy sheriffs, enforcement of penal or traffic laws, or the care, custody, control, or supervision of inmates.

Id. This definition covers both active and retired officers, the latter of which may not be partaking in police duties. Additionally, the repetitive usage of the word “any” casts a wide net of inclusion per the rest of the statute’s designation.

87. MICHAEL SHIVELY, NAT’L INST. OF JUST., *STUDY OF LITERATURE AND LEGISLATION ON HATE CRIME IN AMERICA* 1, 26–27 (2005).

88. *Id.*

89. § 14:107.2(A).

The statutes in Texas, Utah, and Mississippi mirror the framework in Louisiana.⁹⁰ They add law enforcement as a protected category while providing sentence enhancement as a penalty for specified crimes against law enforcement.⁹¹ Utah and Mississippi also adopted the same broad definition of law enforcement, encompassing both actual and perceived status as a law enforcement official.⁹² Furthermore, the Utah and Mississippi statutes provide sentencing enhancements regardless of whether actual or perceived law enforcement officials are targeted because of their actual or perceived status when an enumerated felony or misdemeanor crime is committed.⁹³

While inspired by Louisiana, Kentucky's enactment varies slightly. Kentucky's framework allows judges to assess and weigh evidence presented at trial.⁹⁴ If by a preponderance of evidence the judge determines that a hate crime was the primary motivation for the commission of an enumerated offense, then the judge enters the finding into the record.⁹⁵ Once in the record, a sentencing judge can use this finding "as the sole factor for denial of probation, shock probation, conditional discharge, or other form of non-imposition of a sentence of incarceration."⁹⁶ Additionally, a parole board can use such a finding to deny or delay probation.⁹⁷

Among states, there is slight variation with regard to what offenses qualify as a hate crime offense. For example, in Mississippi and Utah, the statute applies to any felony or misdemeanor.⁹⁸ In Louisiana and Kentucky, though, only specified offenses fall under the statute.⁹⁹ This means that in Mississippi and Utah, the hate crime statute can apply for any offense, whereas in Louisiana and Kentucky the statute applies only to enumerated offenses.¹⁰⁰

The blue frame became highly influential to legislators and proponents of bills where law enforcement officers were ultimately included in state hate crime statutory schemes. Legislators and proponents applied this frame when specifically appealing to the racialized "blue" identity. Louisiana state representative Lance Harris's

90. See UTAH CODE ANN. § 76-3-203.14 (West 2019); MISS. CODE ANN. § 99-19-305 (2018); TEX. CODE CRIM. PROC. ANN. art. 42.014 (West 2017).

91. § 76-3-203.14; § 99-19-305.

92. § 76-3-203.14; § 99-19-305.

93. § 76-3-203.14; § 99-19-305.

94. KY. REV. STAT. ANN. § 532.031(2) (West 2017).

95. *Id.*

96. *Id.* at § 532.031(3).

97. *Id.* at § 532.031(4).

98. § 76-3-203.14; § 99-19-305.

99. LA. STAT. ANN. § 14:107.2 (2016); § 532.031.

100. LA. STAT. ANN. § 14:107.2 (2016); § 532.031.

comments to the media after his blue lives matter bill passed best illustrates the blue frame:

“In the news, you see a lot of people terrorizing and threatening police officers on social media just due to the fact that they are policemen. Now, this (new law) protects police and first-responders under the hate-crime law,” Harris said, adding that he considers legislative action necessary because the crime is “done strictly out of hate for the officer and his uniform.”¹⁰¹

Speaking further, Harris stated that “[t]here is a concerted effort in some areas to terrorize and attack police and I think this will go forward and stop that.”¹⁰²

Randy Sutton, a spokesman for blues lives matter, echoed this sentiment. Sutton stated that blue lives matter laws are necessary because police officers are akin to a minority group in need of protection.¹⁰³ During an NPR interview, Chuck Canterbury, then president of the Fraternal Order of Police, invoked the “blue” race frame when stating that the primary reason for the push to include officers in hate crime laws is that officers are “ambushed merely for the *color* of their uniform.”¹⁰⁴ Notedly, Canterbury wrote the first memo imploring legislatures to incorporate law enforcement into hate crime statutes.¹⁰⁵ Speaking elsewhere, Canterbury stated:

Well for instance, in the Dallas case, it’s obvious that it fits within the umbrella because the individual has made statements to police that he wanted to kill white policemen. Therefore, it’s race-based—and that’s why we’ve asked for a change in the federal hate crime law. This case is specially . . . to include law enforcement.¹⁰⁶

101. John Newsome & Carma Hassan, ‘Blue Lives Matter’ Bill Set for Louisiana Governor’s Signature, CNN (May 20, 2016, 3:43 PM), <https://www.cnn.com/2016/05/20/us/louisiana-blue-lives-matter-legislation/index.html> [https://perma.cc/JSW5-WBEU].

102. Kate Irby, *Should Attacking Cops Be a Hate Crime?*, TRI-CITY HERALD (May 24, 2016, 11:37 AM), <https://www.tri-cityherald.com/news/nation-world/national/article79544922.html>.

103. See Kevin Conlin, *Louisiana Governor Signs ‘Blue Lives Matter’ Bill*, CNN (May 27, 2016, 11:22 AM), <https://www.cnn.com/2016/05/26/us/louisiana-blue-lives-matter-law/index.html> [https://perma.cc/L73G-5FQM].

104. *Fraternal Order of Police President Calls Targeting of Officers a Hate Crime, Heard on All Things Considered*, NPR (July 8, 2016, 4:34 PM) [hereinafter *All Things Considered*] (emphasis added), <https://www.npr.org/2016/07/08/485281280/fraternal-order-of-police-president-calls-targeting-of-officers-a-hate-crime> [https://perma.cc/BE3N-U85M].

105. Letter from Chuck Canterbury, Nat’l Fraternal Order of Police President, to Barack H. Obama II, President of the U.S. (Feb. 12, 2016), <https://fop lodge4.org/letter-from-national-fop-president-canterbury-to-president-obama/> [https://perma.cc/2GKN-5UNB].

106. *All Things Considered*, *supra* note 104.

When Canterbury refers to race, he invokes the imagined racial category of “blue.” It is not the white officers’ actual status as white individuals that he refers to but to their status as “blue” officers. This is the case because federal legislation already would have protected an officer’s white racial identity.¹⁰⁷ Thus, there would be no need for new legislation.

In this way, actions against officers are attacks against raced blue lives, not just individuals in police uniforms. The movement and its advocacy for these laws equate crimes against officers with crimes against black individuals while simultaneously denying the legitimacy of crimes against black individuals, especially those perpetrated by police.

Proponents and legislatures also apply the blue framing of law enforcement officers as oppressed, targeted victims. Legislators Phillip Moran and Sean Tindell used this narrative to justify their introduction of blue lives matter legislation:

“We want to send a message to everyone in America and the whole world that if you come to Mississippi and you intentionally assault, you try and kill or you unfortunately kill an officer, you will receive the maximum penalty that we can possibly issue to you.”¹⁰⁸

The Governor of Texas, Greg Abbot, relied on this frame in characterizing the need to extend hate crime protections to law enforcement in the state of Texas:

“At a time when law enforcement officers increasingly come under assault simply because of the job they hold, Texas must send a resolute message that the State will stand by the men and women who serve and protect our communities.”¹⁰⁹

In his State of the State address, the Governor of Mississippi made clear his support for blue lives matter and the notion of the oppressed, victimized officer:

107. See 18 U.S.C. § 249(a)(1). An officer’s white racial identity would have been protected under the statute as race is a statutorily-protected category. Therefore, if someone targeted an officer based on their white racial identity, it would have a statutory home.

108. *Mississippi Leaders Co-Author Police Hate Crime Bill*, WLOX (July 30, 2016, 9:38 PM), <https://www.wlox.com/story/32579767/mississippi-leaders-co-author-police-hate-crime-bill> [<https://perma.cc/T9BG-4BJJ>].

109. Press Release, Off. of the Tex. Governor, Governor Abbott Announces Police Protection Act (July 18, 2016) https://gov.texas.gov/news/post/governor_abbott_announces_police_protection_act [<https://perma.cc/K8VU-B2DV>].

The first and most important responsibility of any governor is public safety, and across our nation, law enforcement is under attack. Here in Mississippi, most of our citizens continue to support and respect the men and women who wear the badge and protect and serve. I appreciate the legislation you [lawmakers] have introduced to protect law enforcement and show the nation that here in Mississippi, blue lives matter.¹¹⁰

Legislatures and proponents alike relied specifically on blue lives matter's blue frame, unmistakably evidenced by the way that the frame next manifested itself. With the exception of Utah, the bills were either named blue lives matter bills or blue lives matter was invoked in reference to legislation by legislators and proponents.¹¹¹ In Mississippi, Kentucky, and Louisiana, the bills were expressly named or referred to as *blue lives matter bills*.¹¹² In Texas, blue lives matter was invoked in the introduction of the act that would ultimately lead to the expansion of the hate crime law to include law enforcement.¹¹³

Perhaps most important, labeling the bills *blue lives matter bills* anchored them within the blue frame even when legislatures attempted to distance themselves from what they perceived to be the explicit invocation of race or racial politics. Kevin Bratcher, the sponsor of the Kentucky's blue lives matter bill, attempted this distancing when challenged by members of Black Lives Matter, who opposed the bill: "This certainly has nothing to do with race, this is simply telling people don't attack our first responders for being first on a scene."¹¹⁴

Legislatures themselves need not explicitly use race to reflect back to the blue frame. Merely labeling or referring to the bills as *blue lives matter bills* engages with and endorses blue lives matters racial framing that subverts and replaces black with blue. Invoking blue lives matter in

110. Arielle Dreher, *Gov. Bryant: 'Blue Lives Matter' and 'Sacred Cows' Need to Go*, JACKSON FREE PRESS (Jan. 19, 2017, 1:00 PM), <https://www.jacksonfreepress.com/news/2017/jan/19/gov-bryant-blue-lives-matter-and-sacred-cows-need-/#h120078-p3> [<https://perma.cc/X8SH-RJ4G>].

111. See Jimmie Gate, *Mississippi Senate Committee Passes Blue Lives Matter Bill*, CLARION-LEDGER (Jan. 25, 2017, 12:05 PM), <https://www.clarionledger.com/story/news/politics/2017/01/24/mississippi-blue-lives-matter-bill/96987900/> [<https://perma.cc/UU28-V3KS>]; Ryland Barton, *House Panel Approves 'Blue Lives Matter Bill'*, 89.3 WFPL NEWS LOUISVILLE (Feb. 8, 2017), <https://wfpl.org/house-panel-approves-blue-lives-matter-bill/> [<https://perma.cc/H5FE-ERTN>]; Greg Hilburn, *Louisiana Governor Signs 'Blue Lives Matter' Law*, USA TODAY (May 26, 2016, 4:49 PM), <https://www.usatoday.com/story/news/nation-now/2016/05/26/louisiana-governor-signs-blue-lives-matter-law/84993144/> [<https://perma.cc/K2PS-T57N>]; see also TEX. CODE CRIM. PROC. ANN. art. 42.014 (West 2017); MISS. CODE ANN. § 99-19-305 (2018); UTAH CODE ANN. § 76-3-203.14 (West 2019).

112. Gate, *supra* note 111; Barton, *supra* note 111; Hilburn, *supra* note 111.

113. CRIM. PROC. art. 42.014.

114. Tabnie Dozier, *Rally Planned Opposing 'Blue Lives Matter Bill'*, WHAS11 (Feb. 7, 2017, 6:23 PM), <https://www.whas11.com/article/news/local/rally-planned-opposing-proposed-blue-lives-matter-bill/417-402754579> [<https://perma.cc/VG2V-28PG>].

a title or in reference to the bill necessarily engages with the racialized blue frame, as blue itself is a direct creation of the racialized frame.

IV. ASSESSING THE “BLUE” CLAIM

Distilling the quotes from proponents and legislators mentioned thus far, the main purpose of including officers in hate crime statutes can be boiled down to this rationale: Ensuring officer safety and protecting officers from alleged increased violence directed at the racialized officer. This begs the question: Are the claims emanating from proponents of this racialized blue lives matter project warranted? If they are, we should expect there to be evidence that it is unsafe to be an officer and that officers face increased deadly violence when compared to other occupations. My research and analysis find that such evidence is overstated.

A. Methodology

To assess the blue lives matter bills proponents’ racialization project, I analyzed data from the FBI Law Enforcement Officers Killed and Assaulted (LEOKA) database, which tracks deaths and assaults of on-line duty officers.¹¹⁵ I also analyzed data from the FBI’s Uniform Crime Report (UCR).¹¹⁶ I utilized national hate crime data collected by the FBI to approximate the prevalence of hate crimes. With regard to hate crimes, I limited the data to focus specifically on victimization among black americans, as blue lives matter bills were launched in response to black americans’ calls for police reform. I additionally used the UCR to extract law enforcement employment statistics, as well as national homicide statistics covering the period from 2010–2019 for purposes of longitudinal comparative analysis. The last source of data I used comes from the Bureau of Labor Statistics, which collects data on fatal occupational injury rates per occupation.¹¹⁷

With this data, I constructed three proxy measures. The first is the fatal occupational injury rate, as reported by the Bureau of Labor Statistics. This rate is equal to the total number of fatal injuries for a given occupation and divided by the total number of hours worked by

115. See *Law Enforcement Officers Killed and Assaulted (LEOKA) Program*, FBI, <https://www.fbi.gov/services/cjis/ucr/leoka> [<https://perma.cc/E3RM-6Z48>].

116. See *Hate Crime Statistics*, FBI, <https://www.fbi.gov/services/cjis/ucr/hate-crime> [<https://perma.cc/HJ6L-3VWU>].

117. See *Census of Fatal Occupational Injuries (CFOI) - Current*, U.S. BUREAU OF LAB. STAT.: INJURIES, ILLNESSES, AND FATALITIES, <https://www.bls.gov/iif/oshcfoi.htm> [<https://perma.cc/PLV2-BVQ8>].

all employees during the calendar year.¹¹⁸ Using these rates, the relative risk of fatal injury on the job for any occupation can be used for comparative analysis. The second measure I used is the murder rate for black americans and for law enforcement officers. To compute these rates, I divided the number of homicides among a particular group by the group population size and then multiplied by 100,000. The third measure I used is the hate crime victimization rate for black americans and law enforcement officers. To compute the hate crime victimization rates, I divided the number of hate crime victims in a particular group by the total population at risk in this group and then multiplied by 100,000.

1. Dangerousness Amongst Occupations

The fatal injury rates indicate that law enforcement is not among the most dangerous professions in the U.S., despite the rationale given for blue lives matter laws. Between the period of 2010 to 2019, law enforcement consistently ranked outside of the ten most dangerous professions for a given year.¹¹⁹ During this same period, logging and farming occupations have proven considerably more dangerous than law enforcement.¹²⁰ In fact, since 2010, the fatal injury rate for law enforcement officials has steadily declined, indicating that it has become safer to be a law enforcement officer in the past decade.¹²¹ Moreover, in just the three years leading up to the enactment of the first blue lives matter bill in 2016, the fatal injury rate for law enforcement had been lower than in previous years, which is inconsistent with claims by state legislatures and proponents that officer safety was under threat during this period.¹²²

Although occupational injury rates give us some insight as to the safety of different professions, it does not provide a complete picture. While loggers or farmers may have a higher fatal injury rate than officers, it seems fair to presume that law enforcement perhaps still

118. *Census of Fatal Occupational Injuries – Hours-Based Rates*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/iif/oshnotice10.htm> [<https://perma.cc/UGY4-8R5Q>].

119. *Id.* (under the “Fatal Injury Rates” heading, select the spreadsheets labeled “Hours-based fatal injury rates by industry, occupation, and selected demographic characteristics” for years 2018 and 2019); *Census of Fatal Occupational Injuries (CFOI) – Archived Data*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/iif/oshfoiarchive.htm#RATES> [<https://perma.cc/D7WZ-4M9S>] (expand the “Fatal Injury Rates” tab and select the spreadsheets labeled “Hours-based fatal injury rates by industry, occupation, and selected demographic characteristics” for years 2010–2017).

120. *Id.*

121. *Id.*

122. *Id.* See generally *Handbook of Methods, Census of Fatal Occupational Injuries: Calculation*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/opub/hom/cfoi/calculation.htm> [<https://perma.cc/XTC8-TC7A>] (explaining calculation and methodology of fatal injury rate).

may encounter more danger in their day-to-day interactions. Additionally, it would seem that the nature of these dangers is also different. For example, the dangers that loggers and farmers encounter likely come from equipment and machinery accidents. When state legislatures and blue lives matter activists emphasize threats to the safety of officers, they likely have in mind bias-motivated, targeted crimes such as homicide, which seems an unlikely occupational risk in most other professions, even if they are otherwise dangerous.¹²³

2. Likelihood of Being Murdered

The next inquiry I made into law enforcement safety was to determine the relative risk of being murdered. As noted above, key to blue lives matter messaging was the idea that it is far more dangerous to be a law enforcement officer than it is to be a black american.¹²⁴ One way to test this claim is to determine the relative risk to each group of becoming the victim of homicide. Figures 1 and 2 display the relative risk of homicide for law enforcement and black americans in the population. These figures show a starkly different story from the large increase in murders of officers claimed by blue lives matter spokesman Randy Sutton.¹²⁵ In 2015, law enforcement recorded the safest year on record for the occupation.¹²⁶

The data complicate the notion, at least as it pertains to homicide, that being an officer is more dangerous than merely being black in america. Across all years considered here, the homicide rate for black americans far outpaces the homicide rate for law enforcement officers. It is remarkable that, despite having no professional responsibility to be proximate to violence, black americans as a whole suffer a higher risk of being the victim of a homicide than police. In essence, it is safer in the United States to be a law enforcement officer than it is to be a black american.

123. See *supra* notes 101, 105, 109.

124. See sources cited *supra* note 49.

125. Elizabeth Llorente, *Blue Lives Lost: Dramatic Rise in Police Officers Gunned down in Line of Duty in 2016*, FOX NEWS (Dec. 23, 2016), <https://www.foxnews.com/us/blue-lives-lost-dramatic-rise-in-police-officers-gunned-down-in-line-of-duty-in-2016> [<https://perma.cc/WXS3-HEYD>].

126. Matt Ferner, *FBI Confirms 2015 Was One of the Safest Years Ever for Cops*, HUFFINGTON POST (May 17, 2016, 6:26 PM), https://www.huffpost.com/entry/fbi-police-deaths_n_573b53aae4b0646cbeebo2b8 [<https://perma.cc/H9ND-MEE6>]; German Lopez, *Killings of Police Officers on Duty Are near Record Lows*, VOX (Nov. 14, 2018, 4:11 PM), <https://www.vox.com/identities/2016/8/13/17938238/police-officer-on-duty-deaths-killings> [<https://perma.cc/KE8L-FJF2>]. As of this writing, 2018 is the most recent year for which data is available.

FIGURE 1. COMPARING OFFICER HOMICIDE VICTIM RATES (SEE INFRA TABLE 1) WITH BLACK HOMICIDE VICTIM RATES (SEE INFRA TABLE 2)

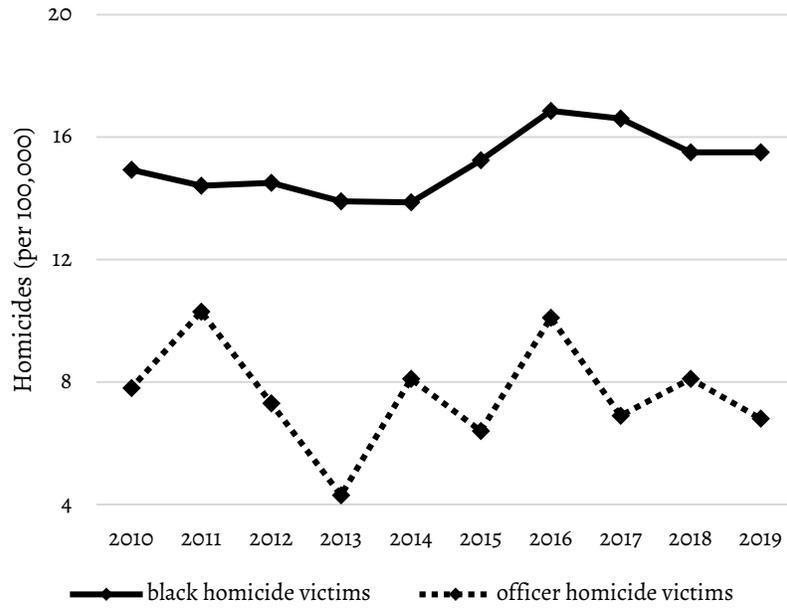


TABLE 1. LAW ENFORCEMENT ON-DUTY HOMICIDE VICTIMIZATION RATE

Year	Victimization Count ¹²⁷	Officer Population	Rate (Per 100,000)
2010 ¹²⁸	55	705,009	7.8
2011 ¹²⁹	72	698,460	10.3
2012 ¹³⁰	49	670,439	7.3
2013 ¹³¹	27	626,942	4.3
2014 ¹³²	51	627,949	8.1
2015 ¹³³	41	635,781	6.4
2016 ¹³⁴	66	652,936	10.1
2017 ¹³⁵	46	670,279	6.9
2018 ¹³⁶	56	686,665	8.1
2019 ¹³⁷	48	697,195	6.8

127. *Law Enforcement Officers Feloniously Killed, Race, Ethnicity, and Sex of Victim Officer, 2010–2019*, FBI, tbl.15, <https://ucr.fbi.gov/leoka/2019/topic-pages/tables/table-15.xls> [<https://perma.cc/W8U9-LZEZ>].

128. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2010*, FBI, tbl.74, <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl74.xls/view> [<https://perma.cc/YGQ6-6PXW>].

129. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2011*, FBI, tbl.74, https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table_74_full-time-law_enforcement_employees_by_population_group_percent_male_and_female_2011.xls [<https://perma.cc/69D6-E2FQ>].

130. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2012*, FBI, tbl.74, https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/74tabledataoverviewpdfs/table_74_full_time-law_enforcement_employees_by_population_group_percent_male_and_female_2012.xls [<https://perma.cc/63HJ-H54T>].

131. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2013*, FBI, tbl.74, https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-74/table_74_full_time-law_enforcement_employees_by_population_group_percent_male_and_female_2013.xls [<https://perma.cc/C7WU-S5UE>].

132. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2014*, FBI, tbl.74, <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-74> [<https://perma.cc/2EFJ-KDWZ>].

133. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2015*, FBI, tbl.74, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-74> [<https://perma.cc/Y3XZ-M926>].

134. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2016*, FBI, tbl.74, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/topic-pages/tables/table-25/> [<https://perma.cc/MG4W-MGVR>].

135. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2017*, FBI, tbl.74, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/table-74> [<https://perma.cc/53A7-GJTS>].

136. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2018*, FBI, tbl.74, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/table-74> [<https://perma.cc/XW6K-WQM3>].

137. *Full-Time Law Enforcement Employees by Population Group, Percent Male and Female, 2019*, FBI, tbl.74, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-74> [<https://perma.cc/4KYJ-PMEH>].

TABLE 2. TOTAL BLACK HOMICIDE VICTIMIZATION RATE

Year	Victimization Count	black Population ¹³⁸	Rate (Per 100,000)
2010 ¹³⁹	6,470	43,347,645	14.93
2011 ¹⁴⁰	6,329	43,898,857	14.41
2012 ¹⁴¹	6,454	44,464,891	14.51
2013 ¹⁴²	6,261	45,017,720	13.90
2014 ¹⁴³	6,095	45,586,479	13.87
2015 ¹⁴⁴	7,039	46,162,127	15.25
2016 ¹⁴⁵	7,881	46,733,758	16.86
2017 ¹⁴⁶	7,851	47,268,586	16.61
2018 ¹⁴⁷	7,407	47,754,210	15.51
2019 ¹⁴⁸	7,484	48,221,139	15.51

3. Are Officers Targeted for Being Officers?

The traditional purpose of hate crime statutes has been to prevent and penalize crime that singles out and targets individuals based on their membership in a particular subgroup of the population such as

138. *Annual Estimates of the Resident Population by Sex, Age, Race Alone or in Combination, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2019 (NC-EST2019-ASR5H)*, CENSUS BUREAU, POPULATION DIV. (June 2020), <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/national/asrh/nc-est2019-asr5h.xlsx> [hereinafter *Annual Estimates of the Resident Population*].

139. *Murder Victims by Race and Sex, 2010*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10shrtb01.xls> [<https://perma.cc/H7AF-3ZUU>].

140. *Murder Victims by Race and Sex, 2011*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/expanded-homicide-data-table-1> [<https://perma.cc/X4Y5-4KA5>].

141. *Murder Victims by Race and Sex, 2012*, FBI, https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_1_murder_victims_by_race_and_sex_2012.xls [<https://perma.cc/C74Q-4ZZR>].

142. *Murder Victims by Race and Sex, 2013*, FBI, https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_1_murder_victims_by_race_and_sex_2013.xls [<https://perma.cc/Y78V-E8JJ>].

143. *Murder Victims by Race, Ethnicity, and Sex, 2014*, FBI, https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_1_murder_victims_by_race_ethnicity_and_sex_2014.xls [<https://perma.cc/HZ3H-SJBR>].

144. *Murder Victims by Race, Ethnicity, and Sex, 2015*, FBI, https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/expanded_homicide_data_table_1_murder_victims_by_race_ethnicity_and_sex_2015.xls [<https://perma.cc/U8R4-9KTC>].

145. *Murder Victims by Race, Ethnicity, and Sex, 2016*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/expanded-homicide-data-table-1.xls> [<https://perma.cc/JP62-6G69>].

146. *Murder Victims by Race, Ethnicity, and Sex, 2017*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/expanded-homicide-data-table-1.xls> [<https://perma.cc/LSF7-R7M3>].

147. *Murder Victims by Race, Ethnicity, and Sex, 2018*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/topic-pages/tables/expanded-homicide-data-table-1.xls> [<https://perma.cc/F8RJ-V98K>].

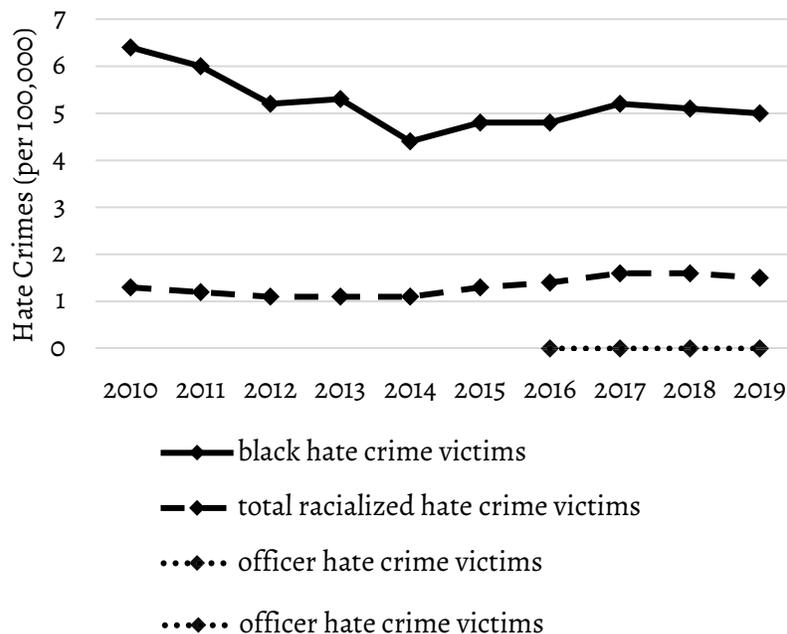
148. *Murder Victims by Race, Ethnicity, and Sex, 2019*, FBI, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/expanded-homicide-data-table-1.xls> [<https://perma.cc/TE57-QJZP>].

race, religion, sexuality, and so on.¹⁴⁹ A key justification for the move to include law enforcement within hate crime statutes was that officers were increasingly targeted based on their membership in law enforcement, much like how a black person might be targeted because they are part of a subordinate racial group.

Based on this claim, we might expect that the inclusion of law enforcement officers in hate crime statutes would yield similar, or perhaps even higher, rates of offenses against this group when compared with already-protected categories.

Table 3 shows the risk of hate crime victimization for black individuals between 2010–2019. Table 4 shows the risk of victimization for all raced individuals over the same time period. Because law enforcement was included in hate crimes statutes beginning in 2016, the only applicable period for comparison is 2016–2019. Table 5 shows the hate crime victimization rates among law enforcement for the period 2016–2019 in the states where such statutes were enacted.

FIGURE 2. COMPARISON OF HATE CRIME VICTIMIZATION RATES FOR BLACK INDIVIDUALS (SEE *INFRA* TABLE 3), ALL RACIALIZED INDIVIDUALS (SEE *INFRA* TABLE 4), AND OFFICERS (SEE *INFRA* TABLE 5)



149. See Simmons, *supra* note 57.

TABLE 3. BLACK HATE CRIME VICTIMIZATION RATE¹⁵⁰

Year	Victimization Count	Total Population ¹⁵¹	Rate (Per 100,000)
2010 ¹⁵²	2,765	43,347,645	6.4
2011 ¹⁵³	2,619	43,898,857	6
2012 ¹⁵⁴	2,295	44,464,891	5.2
2013 ¹⁵⁵	2,371	45,017,720	5.3
2014 ¹⁵⁶	2,022	45,586,479	4.4
2015 ¹⁵⁷	2,201	46,162,127	4.8
2016 ¹⁵⁸	2,220	46,733,758	4.8
2017 ¹⁵⁹	2,458	47,268,586	5.2
2018 ¹⁶⁰	2,426	47,754,210	5.1
2019 ¹⁶¹	2,391	48,221,139	5

150. See *supra* Section IV.A (discussing methodology for compilation of UCR data).

151. *Annual Estimates of the Resident Population*, *supra* note 138.

152. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2010*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2010/tables/table-1-incidents-offenses-victims-and-known-offenders-by-bias-motivation-2010.xls> [<https://perma.cc/5DLC-PL6L>].

153. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2011*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2011/tables/table-1> [<https://perma.cc/FNS7-CRXQ>].

154. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2012*, FBI, tbl.1, https://ucr.fbi.gov/hate-crime/2012/tables-and-data-declarations/itabledatadecpdf/table_1_incidents_offenses_victims_and_known_offenders_by_bias_motivation_2012.xls [<https://perma.cc/7AUG-25R5>].

155. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2013*, FBI, tbl.1, https://ucr.fbi.gov/hate-crime/2013/tables/itabledatadecpdf/table_1_incidents_offenses_victims_and_known_offenders_by_bias_motivation_2013.xls [<https://perma.cc/R8KM-KXR9>].

156. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2014*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2014/tables/table-1> [<https://perma.cc/C3UR-VVCB>].

157. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2015*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2015/tables-and-data-declarations/itabledatadecpdf> [<https://perma.cc/WH4J-P4BM>].

158. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2016*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2016/tables/table-1> [<https://perma.cc/WNH5-8TRD>].

159. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2017*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2017/topic-pages/tables/table-1.xls> [<https://perma.cc/TL4L-N94D>].

160. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2018*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/tables/table-1.xls> [<https://perma.cc/88BJ-2YLE>].

161. *Incidents, Offenses, Victims, and Known Offenders by Bias Motivation, 2019*, FBI, tbl.1, <https://ucr.fbi.gov/hate-crime/2019/topic-pages/tables/table-1.xls> [<https://perma.cc/YH5J-L8RK>].

TABLE 4. TOTAL RACIAL HATE CRIME VICTIMIZATION RATE¹⁶²

Year	Racial Hate Crime Victimization Count ¹⁶³	Total Population ¹⁶⁴	Victimization Rate (Per 100,000)
2010	3,949	309,321,666	1.3
2011	3,645	311,556,874	1.2
2012	3,467	313,830,990	1.1
2013	3,563	315,993,715	1.1
2014	3,227	318,301,008	1.1
2015	4,216	320,635,163	1.3
2016	4,426	322,941,311	1.4
2017	5,060	324,985,539	1.6
2018	5,155	326,687,501	1.6
2019	4,930	328,239,523	1.5

TABLE 5. OFFICER HATE CRIME VICTIMIZATION RATE¹⁶⁵

Year	Officer Hate Crime Victimization Count ¹⁶⁶	Total Officer Population ¹⁶⁷	Victimization Rate
2016	0	652,936	0
2017	0	670,279	0
2018	0	686,665	0
2019	0	697,195	0

As of yet, there have been no prosecutions or recordings of hate crimes committed against law enforcement since the passage of blue lives matter laws or since law enforcement has been protected under hate crime statutes. Thus, to claim the laws are about safety or protection puts law enforcement and blue lives matter proponents in a precarious position. Not enforcing the law indicates two potential explanations: First, there are no hate crimes committed against officers, in which case, one would have to question the purpose of

162. See *supra* Section IV.A (discussing methodology for compilation of UCR data).

163. See sources cited *supra* notes 152–61.

164. *Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2019 (NC-EST2019-SR11H)*, U.S. CENSUS BUREAU, POPULATION DIV. (June 2020), <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/national/asrh/nc-est2019-sr11h.xlsx>.

165. See *supra* Section IV.A (discussing methodology for compilation of UCR data).

166. Victimization counts correspond to zero because no reported incidents have occurred. This data is not even included in the current UCR reports.

167. See sources cited *supra* notes 134–37.

including law enforcement in such laws in the first place. Second, including law enforcement under hate crime statutes doesn't appear to recognize any tangible threat to the extent that alleged offenders are committing hate crimes against officers. The most defensible conclusion is that lawmakers incorporated law enforcement officers under hate crime statutes not because officers were frequently targets of bias-motivated crimes, as were other protected categories, but as a symbolic change meant to show political support to officers and the blue lives matter movement, while at the same time indicating opposition to Black Lives Matter.

B. Discussion

Hate crime statutes have come a long way from being constructed primarily to protect black americans from the intense violence they faced from law enforcement and hostile parties during the Civil Rights Era. Today, at least in five states, law enforcement officers are now included in the same statutes that were meant to protect against law enforcement's abuse of power. As shown above, these laws are rooted in false racialized narratives about officer safety. In fact, these data reflect that perhaps more resources and effort need to be put into protecting the lives of black americans. With so much of blue lives matter's own messaging about Black Lives Matter focused on denying the importance of race, it is peculiar that blue lives matter itself relies very heavily on a racial logic in its attempt to construct officers as a status group in need of protection. The co-optation of oppressed racialized status by law enforcement indicates that non-racialized groups are willing to adopt racialized identities to both deflect and garner legal and political support.

Though I have argued that there are insufficient data to support the conclusion that officers have faced increased danger, I acknowledge that alternative explanations might explain the void of data. It could very well be the case that such offenses that would fall under the jurisdiction of hate crimes are being prosecuted under one of many overlapping laws, or that prosecutors are confused about which law to bring charges under. Alternatively, if it is the case that offenses are being prosecuted under preexisting law, it would then support the conclusion that protecting law enforcement under hate crime laws serves no substantive purpose.

I posit that these laws should be viewed as attempting to punish Black Lives Matter, protestors of law enforcement, and for that matter, anyone who interacts with police. As a result of this codification, actions taken during protests against police brutality now carry with

them harsher penalties which can be exercised legally whenever the state deems fit. For example, in Louisiana, disturbing the peace is a misdemeanor and is within the scope of the state's hate crime statute.¹⁶⁸ Examples of disturbing the peace including blocking access to public buildings, engaging in tumultuous activity by any three persons, appearing (not actually being) intoxicated, holding an unlawful assembly, and using offensive, derisive, or annoying words directed at someone in public.¹⁶⁹ It is not difficult to imagine how popular protest actions such as die-ins or spirited chants directed at law enforcement could fall within the scope of misdemeanors. Furthermore, charges of unlawful assemblies are already a tactic used by law enforcement to disperse protests.¹⁷⁰ Showing up to a protest against police brutality in Louisiana that gets declared an unlawful assembly essentially assures that one is committing a hate crime under the state's statute.

It is alarming that powerful state actors can harness narratives of the oppressed and effectuate change that serves to give more power to police. This will only further stifle actual victims of inequity at the hands of law enforcement. Though dormant now, there should not be comfort knowing that the laws have not been used. It should be unsettling that speaking out and taking action during protests against police brutality now carry harsher penalties, which can be exercised legally whenever the state deems fit. Legislation that was birthed in a context that meant to protect black americans from violence, some of which they faced at the hands of police during the Civil Rights movement, has evolved to provide the very same protections to police. As this Article shows, the move to include law enforcement in hate crime statutes was not about a need to protect law enforcement but rather was a response to increased calls for the end of racist policing practices. As such, there is no need for law enforcement to be protected under hate crime statutes, and they should be removed from hate crime statutes as protected victims.

I find most persuasive the idea that blue lives matter laws were never about officer safety and were always intended to be gestures of support for law enforcement. These laws represent legislatures' agreement that officers are indeed under attack, and black lives are not, despite data to the contrary. The codification of these laws is not simply just about the passage of a law—it is a move that ideologically aligns legal mechanisms with particularized discourses that privilege law enforcement to the detriment of racialized minorities who seek to hold

168. LA STAT. ANN. § 14:103 (2017).

169. *Id.* at § 14:103A(2) – (4).

170. See Andrew Selsky, *Police 'Unlawful Assembly' Powers Come Under Fire in Oregon*, ASSOCIATED PRESS (Feb. 9, 2021), <https://apnews.com/article/race-and-ethnicity-law-enforcement-agencies-oregon-racial-injustice-portland-2ce8379ec07e812e74e055e4be1c3ad5> [<https://perma.cc/38QQ-92UG>].

law enforcement accountable. Moreover, these laws show that it did not matter whether law enforcement was actually under attack or if laws could protect them; rather, what mattered more to legislatures was signaling their support for law enforcement.

There is perhaps a silver lining for race scholars and those who mobilize movements around race. Blue lives matter's usage of a racial frame highlights how legislators and law enforcement are not opposed to racial framings and unwilling to deal with race. Rather, the move to include law enforcement under hate crime statutes actually shows a willingness and a capacity to accept and engage with racial concepts. There was no fragility or attempt by law enforcement or legislators to distance themselves from the blue frame because of the "race card" or its focus on widespread accusations of oppression at the hands of others. This shows that the decision of when to recognize racial oppression by legislators and law enforcement is selective, contingent, and intentional. Race and racial framings in this way remain a powerful and persuasive way to spark change. Perhaps this moment teaches us that the lack of progress toward dismantling race and racism in the U.S. is not about scholars and movements focusing on race, but simply put, racism itself.

For legal scholars, and specifically hate crime scholars, the inclusion of law enforcement under hate crime statutes signals that hate crime statutes are perhaps less potent without boundaries. Specifically, hate crime laws need to be reserved to protect those most vulnerable and oppressed in society. The malleable applicability within hate crime statutes makes it possible for law enforcement to be included as a category despite not being amongst the envisioned group of individuals to be protected by initial or subsequent hate crime enactments. Wide latitude at both the state and federal level allows protected categories to expand, not based on need, but whenever legislatures deem it appropriate. For states specifically, the lack of restriction means that states are not limited or constrained to protecting only categories or groups that inspired the need for hate crime legislation, or groups that experience high incidences of targeted victimization based on a group they belong to. In essence, there is no threshold for inclusion or exclusion as a protected category that states must follow. There is a disservice done to those who face very real religious, racial, gendered, and homophobic persecution when entities like law enforcement are included in hate crime statutes despite facing relatively little, if any persecution. It is a disservice to the asians targeted based on their race throughout the COVID-19 pandemic, to the LGBTQ folx who are murdered every year based on their gender identities and sexualities, to the immigrants targeted because they are from the "wrong place," to the Muslim americans who had their places

of worship burned down, to the many black americians who have died from white supremacist violence simply because they were black. All whom have a demonstrable need rooted in actual oppression.

Lastly, the move by blue lives matter bill proponents to racialize an occupation shows us that we need to explore nontraditional contexts where racialization might be occurring. As shown here, racialization proved a vital tool for proponents, despite most commentary surrounding such bills failing to mention race or racialization as strategy used by proponents. In the long run, the move to expand hate crime statutes to include law enforcement hurts officer and community relations. The many marginalized groups who have been demonstrably oppressed and who lack legal protections could understandably feel slighted that law enforcement, with no demonstrable oppression, is protected at a legal level above or equivalent to them. It might be even more frustrating, given the deployment of racialized narratives, that suddenly the efforts that law enforcement make to garner legal protections are embraced, but categorically dismissed when used by actually oppressed groups. It certainly could be possible to advocate for law enforcement change or call attention to problems officers face without pitting blue racing against credible calls to action for vulnerable groups. Doing so pits already constrained law enforcement actors against the very communities they are supposed to be serving. To the extent that policy makers and law enforcement officials who see policing as an integral part of society and want to promote better community relations, perhaps a better advocacy strategy to adopt is one that does not see police accountability and critique as a zero-sum to police quality.

CONCLUSION

Throughout this Article, I show that the emergence of blue lives matter bills occurred as a result of blue racing—the process of racializing law enforcement. The racialized “blue frame” arose out of a context which sought to displace and replace law enforcement critics’, specifically Black Lives Matter’s, claims of abuse and victimization. Increased scrutiny and accusations of racism from Black Lives Matter and protestors have seemingly made blue lives matter and law enforcement adopt a reactive strategy that characterizes officers as racialized victims, instead of engaging with Black Lives Matter claims in a productive way. Contrary to the blue frame, data reflect that law enforcement has not actually experienced increased violence and victimization, despite the central claims of proponents’ racialization project.

What has resulted is a statutory framework that can be wielded against protestors of police brutality at protests and has strengthened protections for law enforcement. The real-life implications of expanding hate crime statutes to include law enforcement can prove to be quite devastating. Intentional or not, the result of the move to include law enforcement under hate crime legislation has produced a regime where almost any interaction with law enforcement could be considered a hate crime. Hate crime laws are so broad that innocuous actions taken during a protest for police reform, those which Black Lives Matter is popular for, where police are present, could now be considered a hate crime.

