Q. & A.

BRYAN STEVENSON ON THE FRUSTRATION BEHIND THE GEORGE FLOYD PROTESTS

By Isaac Chotiner

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"Changing the way we police, prosecute, judge, and punish is the essence of criminal-justice reform," the civil-rights lawyer Bryan Stevenson says. Photograph by Alex Wong / Getty

The past weekend saw the start of an uprising in dozens of American cities, with tens of thousands of people taking to the streets for peaceful protests and violent encounters with the police. The proximate cause was the killing of George Floyd, an unarmed, handcuffed African-American man, by a Minneapolis police officer, Derek Chauvin. In Minneapolis and other cities, police in riot gear have responded aggressively to protests and looting, pushing and shoving protesters and using an arsenal of crowd-control weaponry. In Louisville, a black restaurant owner was shot dead, under circumstances that remain unclear; in Brooklyn, social media captured an incident in which police officers drove into a crowd of protesters.

On Sunday, I spoke by phone with Bryan Stevenson, a civil-rights lawyer and the founder of the Equal Justice Initiative, a human-rights organization that challenges convictions, advocates for criminal-justice reform and racial justice, and created the National Memorial for Peace and Justice, in Montgomery, Alabama, which honors the victims of lynching and other forms of racial terror during the Jim Crow era. Stevenson, who was the subject of a Profile, by Jeffrey Toobin, in 2016, is also the author of a memoir, "Just Mercy," which was made into a feature film last year. During our conversation, which has been edited for length and clarity, Stevenson and I discussed the roots of police violence in both slavery and Jim Crow, how to change the culture of policing, and the frustration and despair behind this week's protests.

What has been your biggest takeaway from the past week?

We need to reckon with our history of racial injustice. I think everything we are seeing is a symptom of a larger disease. We have never honestly addressed all the damage that was done during the two and a half centuries that we enslaved black people. The great evil of American slavery wasn't the involuntary servitude; it was the fiction that black people aren't as good as white people, and aren't the equals of white people, and are less evolved, less human, less capable, less worthy, less deserving than white people.

That ideology of white supremacy was necessary to justify enslavement, and it is the legacy of slavery that we haven't acknowledged. This is why I have argued that slavery didn't end in 1865; it evolved. Next month will be the hundred and fifty-fifth anniversary of when black people gathered to celebrate the end of slavery: Juneteenth. They believed they would receive the vote, and the protection of the

law, and land, and opportunity, and have a chance to be full Americans. They were denied all of those things because this ideology of white supremacy would not allow Southern whites to accept them, to value them and to protect them, and so, immediately after 1865 and the Thirteenth Amendment, violence broke out. We are going to be releasing a report next month on the horrendous violence that took place during Reconstruction, which blocked all of the progress.

So, for me, you can't understand these present-day issues without understanding the persistent refusal to view black people as equals. It has changed, but that history of violence, where we used terror and intimidation and lynching and then Jim Crow laws and then the police, created this presumption of dangerousness and guilt. It doesn't matter how hard you try, how educated you are, where you go in this country—if you are black, or you are brown, you are going to have to navigate that presumption, and that makes encounters with the police just rife with the potential for these specific outcomes which we have seen.

How do you think our current era of criminal justice and policing is a continuation of that past?

I think the police have been the face of oppression in many ways. Even before the Civil War, law enforcement was complicit in sustaining enslavement. It was the police who were tasked with tracking down fugitive slaves from 1850 onwards in the north. After emancipation, it was law enforcement that stepped back and allowed black communities to be terrorized and victimized. We had an overthrow of government during Reconstruction, and law enforcement facilitated that. Then, throughout the first half of the twentieth century, it was law enforcement and police and our justice system that allowed people to be lynched by white mobs, sometimes literally on the courthouse lawn, and allowed the perpetrators of that terror and violence to engage in these acts of murder with impunity. They were even complicit in it. And, as courageous black people began to advocate for civil rights in the nineteen-fifties and nineteen-sixties, when these older, nonviolent black Americans would literally be on their knees, praying, they were battered and bloodied by uniformed police officers. That identity of violence and oppression is not something we can ignore. We have to address it. But, rather than address it, since the nineteen-sixties, we have been trying to distract ourselves from it and not acknowledge it, and not own up to it, and all of our efforts have been compromised by this refusal to recognize that we need to radically change the culture of police.

Now, the police are an extension of our larger society, and, when we try to disconnect them from the justice system and the lawmakers and the policymakers, we don't accurately get at it. The history of this country, when it comes to racial justice and social justice, unlike what we do in other areas, is, like, O.K., it's 1865, we won't enslave you and traffic you anymore, and they were forced to make that agreement. And then, after a half century of mob lynching, it's, like, O.K., we won't allow the mobs to pull you out of the jail and lynch you anymore. And that came after pressure. And then it was, O.K., we won't legally block you from voting, and legally prevent you from going into restaurants and public accommodations.

But at no point was there an acknowledgement that we were wrong and we are sorry. It was always compelled, by the Union Army, by international pressure, by the federal courts, and that dynamic has meant that there is no more remorse or regret or consciousness of wrongdoing. The police don't think they did anything wrong over the past fifty or sixty years. And so, in that respect, we have created a culture that allows our police departments to see themselves as agents of control, and that culture has to shift. And this goes beyond the dynamics of race. We have created a culture where police officers think of themselves as warriors, not guardians.

Do you think this situation with the policy today has a specific purpose, and what is it?

It does. But the purpose was possible because of our unwillingness to recognize the wrongfulness of this racial hierarchy. Even the abolitionists, many of whom fought to end slavery, didn't believe in racial equality. So, if you embrace white supremacy, then you are going to use black people and exploit black people and deny black people opportunities, because it advances that purpose. And a lot of white supremacy wasn't even "purposeful." What was the purpose of banning interracial marriage? What was the purpose of banning black people from coming into restaurants? It was about maintaining racial hierarchy, and that presumption or narrative that black people are dangerous, that black people can't be trusted, that black people have to be controlled. And if it didn't have an economic value, that didn't mean that it wasn't purposeful. The purpose was to sustain that hierarchy.

So you take a history like that, and then you combine it with a culture like the culture of policing that we have created, where people are taught to fight and to shoot like soldiers. When the government equips police departments like they're equipping the military, we undermine healthy relationships between the police and the community. We don't train them to deëscalate, or deal with people

suffering from mental illness or the complexities and anger and frustrations of poverty. And then we bring them in, often to places where they don't live. We view the police as an occupying military force. That kind of culture gives rise to the violence that we see.

It is possible to create a police department where people think of themselves as guardians. Their commitment is to protect and serve even the people they are arresting. The best police officers will tell you that their job is to make sure that the person who may have just committed a crime is safely encountered, that they keep that person safe, but that is not the way most police officers are trained. And we facilitate it by protecting the whole institution, so no one in this country can tell you how many people were killed by the police last year, because we don't require that data. People have been trying for two decades to mandate the disclosure of that kind of information, and there is this institutional resistance. And that's a larger problem—the way we have insulated these institutions from reform.

Should the protests be oriented toward a specific agenda, and, if so, what should that agenda be?

I don't think it would be fair to ask protesters to solve the problems created by this long history. In many ways, protests are a reaction of frustration and anger to the unwillingness of elected officials to engage in the kind of reforms that need to happen. The protests are a symbol of frustration and despair. I think the answers have to come from elected officials. We can change the culture of institutions in this country. We have done it time and time again. In the nineteen-seventies and nineteen-eighties, if you look at the laws, there was hardly any punishment for people convicted of driving while drunk. We tolerated it. Even though it was catastrophic, it wasn't something we saw as a priority. Then Mothers Against Drunk Driving began lifting up new narratives, and all of a sudden the political will shifted. We created a new culture, and we now take stronger steps.

Regardless of the wealth or affluence of the offender, we do more. That is a cultural shift that has made death from drunk driving much less frequent than it was fifty years ago.

With domestic violence, it is the same story. In the nineteen-sixties, a woman who called the police could not expect that her spouse would be arrested. The police would come and pull him outside and tell jokes. There was a sympathy for the frustration that led to violence. And then we began changing that narrative. Women and victims of domestic violence started lifting their voices, and the political

will changed. And today we have a radically different view of people who engage in domestic violence. Even our most prominent athletes and celebrities, if accused credibly, are going to be held accountable in ways that weren't true even ten years ago. That is a cultural shift. And we are in the midst of a cultural shift about sexual harassment in the workplace. There is a different tolerance level. In New York, people need to take tests to make sure they can recognize sexual harassment.

We have not engaged in that kind of cultural transformation when it comes to policing. Now, we have the tools. We know how to do it. I spent several months on President Obama's task force on policing, in 2015, after we had a period of riots. We have forty pages of recommendations. That can change the culture of policing. It begins with training. It begins with procedural justice, and policies, and changing the way police officers are viewed and opening up communities.

Do you think the Obama Administration did enough on this issue, especially before 2015?

No one has done enough. But this is not a federal problem alone. I am critical of the current Administration shelving all of those recommendations, withdrawing from lawsuits where police departments had been sued, and signalling that we do not care about this anymore. But I also don't believe that excuses what mayors and governors and local officials have failed to do. You don't need a White House to engage in culture change at your police department. That can be done in cities and communities and states. These reforms need to happen locally. The federal government can and should be playing a bigger role in incentivizing these changes. But anyone looking to the White House and the Presidency exclusively is not going to get it. I also think that, if we allow another five years to go by with no meaningful reform, then we have to stop talking about Washington. Every mayor and governor in this country has a blueprint for changing culture in policing and making things better. Whether they do it or not is the harder question.

You are saying this can't come from the top alone—but, having someone at the top of the system who talks about shooting people and tells police to get tough, how much does that worry you about the future, even knowing how bad the past has been?

Yeah, I think any time we reinforce this idea that police officers are there to control and dominate and menace, that they should be unapologetic and feared and ready for battle, we are reinforcing the culture and the dynamic that has given rise to so much distrust. It's not good for public safety. It is not

even good for officer safety, and it is certainly not good for creating the kinds of healthy communities that most of us want to live in. It's the wrong model. It's like someone coming along and saying, "Doctors don't need to care for their patients, or talk to their patients, or be polite, or be respectful, or show any interest. They have skills and knowledge, and their job is to treat, and anybody who is asking for more than that is too much." That mind-set will cause a lot of people to die. They will not get the health care that they need, and doctors will not be successful because it's the wrong culture for helping people get the cure and treatment that they need.

The same is true for public safety. You can go to other places in the world and see evidence of this everywhere. And we have even done it here. There are police departments in this country that have radically changed their relationship to the community. Camden, New Jersey, fifty years ago, was just a boiling pot, and things would blow up all the time, and relationships between police and community leaders were fraught with tension and conflict. And that has changed radically because of leadership and engagement.

Many of these protests this week have had more white people than the protests five years ago. How do you think that is or is not likely to change the movement?

To be honest, it's not that hard to protest. It's not that hard to go someplace. And it doesn't mean that it's not important. It doesn't mean that it's not critical. But that's not the hard thing we need from people who care about these issues. We need people to vote, we need people to engage in policy reform and political reform, we need people to not tolerate the rhetoric of fear and anger that so many of our elected officials use to sustain power. We need the cultural environments in the workplace to shift.

Black people in this country have to live this very complex existence when they live and go to work and go to school in these spaces which are largely controlled by white people. They can't really be their authentic selves. That means that there is this tension and there is this challenge, and at some point you get overwhelmed by that. And when these incidents of police violence take place, and people are killed, literally, on video, right in front of you, and the perpetrators are staring at you, you get angry and you want to express that anger.

It's not just anger over what happened to George Floyd or Breonna Taylor or Ahmaud Arbery. It is anger about continuing to live in a world where there is this presumption of dangerousness and guilt wherever you go. I'm sixty years old and have been practicing law for thirty-five years. I have a lot of honorary degrees and went to Harvard. And I still go places where I am presumed dangerous. I have been told to leave courtrooms because the presumption was that I was the defendant and not the lawyer. I have been pulled out of my car by police who pointed a gun on me. And I can just tell you that, when you have to navigate this presumption of guilt, day in and day out, and when the burden is on you to make the people around you see you as fully human and equal, you get exhausted. You are tired. And I would argue that the black people in the streets are expressing their fatigue, their anger, and their frustration at having to live this menaced life in America. And that is not the same thing for white people who are supporting them. It doesn't mean that white people shouldn't be supporting them, but I don't think it's the proper focus of what many of us are trying to give voice to.

Criminal-justice reform has become a bipartisan issue, but it often seems to be spoken of as being distinct from police brutality and police reform. How important is it to bring police reform into the broader context of criminal-justice reform?

I think, for many of us, it has always been at the center of it. Changing the way we police, prosecute, judge, and punish is the essence of criminal-justice reform.

I think people use the phrase "criminal-justice reform" in a pretty lazy way. Modifying the federal sentencing parameters at the edges, so a very small percentage of people in federal prisons might get reduced sentences, is not meaningful criminal-justice reform. Ninety per cent of the prisoners in the United States are in the state system. That is not impacted by what the White House or any President has done. [*The Obama Administration amended federal sentencing guidelines in order to reduce the sentences of people convicted of nonviolent drug crimes. In 2017, Jeff Sessions, who was then the Attorney General, overturned those reforms.*] The real meaningful reform would have been implementing the task force's recommendations, changing the way we think about police and prosecutorial accountability, mandating the data disclosure that would allow us to evaluate the nature of this problem. And, when you don't do those things, everything else you do is going to be compromised.

We had the so-called War on Drugs that was carried out against black and brown people, because the law-enforcement agents that were the people carrying out that war saw black and brown people

differently. That's a policing and prosecutorial problem. The immunity we have created to shield people from accountability is a barrier to shield people from any effective reform. That includes sentencing and all these others things, because, if prosecutors can withhold evidence and wrongly convict people, and police can abuse people and coerce confessions, then nothing else we do at the sentencing or policy level is going to be effective. And that has to change.

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Isaac Chotiner is a staff writer at The New Yorker, where he is the principal contributor to Q. & A., a series of interviews with major public figures in politics, media, books, business, technology, and more.

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