

# THE CONVERSATION

## A new civil rights movement may emerge in the wake of police shootings

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Recent widespread attention to shocking instances of alleged police misconduct –the killings of Michael Brown, Eric Garner, Tamir Rice, and now **Walter Scott** – have rallied voices across the country in defense of equal protection under the rule of law.

What once had been seen as local law enforcement issues are now national concerns – with every new incident gaining a national spotlight.

How did this shift occur and, most importantly, what does this signify for the civil rights movement as a whole?

As a recent, wide-ranging **academic journal** devoted to the Ferguson protests shows, scholars have so far struggled to arrive at a characterization of recent actions: Is this a movement? Will it last? Are more deliberative forms of civic engagement required?

### A new kind of civil rights movement may emerge

The present moment of protest may well transform into a new civil rights movement. In the process, the movement may turn to new and different leaders — more wonky, less expressive – with different voices and skills in mobilizing opinion.

In part, the change can be attributed to an increasingly libertarian spirit in criminal justice circles, where ratcheting up criminal liability (as criminal justice scholar **Bill Stuntz** describes) is no longer seen as a solution. Key players in the movement are the Cato Institute (**National Police Misconduct Reporting**), on the libertarian side, and the ACLU, among liberals, which champions many aspects of **criminal law reform**.

First, the “old” civil rights movement was not merely a pushback against or “negation” of established law and power.

That sort of analysis is a hangover of the thinking of the old left, which assumes that a dominant social class wields repressive power, and that other classes are innocent objects of control. Martin Luther King Jr. saw through this idea that power is negative and dangerous: “We aren’t engaged in any **negative protest** and in any negative arguments with anybody. We are saying that we are determined to be men.”

In Ferguson, MO, the Department of Justice found evidence of **racism, and evidence** that civil rights were violated in order to increase city revenues. Some city officials (including a municipal judge, the city manager, and the chief of police) resigned, but in new municipal elections the turnout was only **about 30%**.

This is an **improvement** on earlier elections, where the turnout was even lower, but continued low turnout shows that civil rights protests have not translated into direct political participation.

### **Less expressive and more ‘wonky’**

Second, and counter-intuitively, the “new” civil rights movement can and should be less expressive.

In its old mode of speaking truth to power, when black lives were disrupted by the spectacular violence of lynchings and firebombings, civil rights leaders pointed to terrible brutality simply by being visible: by freedom riding, by sitting in, by preaching, and by being photographed.

This vision of power is out of step with the times. In a largely bureaucratic system such as our own, power is not exerted through violent spectacles. Power today **encourages** people to conform rather than scaring them into doing so. This soft power is less costly to exercise, more concealed, and less objectionable. But it’s also harder to protest against this insidious soft power.

In part, the current protest rhetoric – “black lives matter,” for instance – can be adapted to hit back at sloppy police work. In the Tamir Rice case, for example, **key information** was not passed on to the responding officers.

The theatricality of the legal process — such as in high-visibility murder trials — touches a nerve that activists can exploit, but if this civil rights moment is to become a new movement, it must not focus narrowly on the state’s power over life and death, or get hung up narrowly on police discretion. Rather it should look at the totality of legal and social influences that affect our everyday lives.

### **Protests are too reliant on random events**

The change in methods of protest must occur because action-producing spectacles rely too much on accidents.

The successful spectacle demands, for instance, that we validate the imperfect personal character of the victim, calling Michael Brown a “child” or a “gentle giant.” But the broader story is about patterns of poor training and sloppy execution of the laws – what FBI Director James Comey **recently identified** as two key aims of law enforcement: “collecting and sharing better information about encounters between police and citizens” and avoiding “lazy mental shortcuts.” The most useful tools are anything that makes the patterns more visible.

Among the new tools of protest are videos that can be posted and pictures that can be tweeted. Data-driven essays are the new equivalent of the old civil rights era oration, and they can easily be passed on through social media. Examples include excellent long-form journalism on

the **drug** war, mass **incarcerations**, and **statistical accounts**. Key resources are the Bureau of Justice Statistics' **National Criminal Victimization Survey**; the FBI's **Uniform Crime Report**; and reports from the DOJ's Civil Rights Division on institutional disaster areas such as Ferguson and **Albuquerque**.

**This piece in The Atlantic Monthly** by Conor Friedersdorf is an excellent example of the voice and technique of the new civil rights leader. The author challenges the policing techniques used during a videotaped encounter, and, with the benefit of hindsight, offers two different but moderate approaches to ending the encounter between a black man and the police. It is expressive, but it is also policy-oriented, concrete, and of general application.

It may seem odd to advocate routinizing and bureaucratizing the civil rights movement, but that is what may have to be done.

Loud, symbolic protest in the streets will eventually end. What can replace this is the institutionalization of a more responsible – and resilient – understanding of power. This has its risks, for instance, replacing protests with silence.

But the reward is increased “action at a distance” — through magazine readers or law students blogging across the country — that can touch members of a broader community from the local sheriff to a large city's mayor.

The current protests may mark the beginning of the end of the long 1960s, with its spectacles of violence and resistance, and the beginning of a **more mainstream civil rights movement**, driven by data and made accessible through social media.