



## TRANSCRIPT

### *Key Conversations with Phi Beta Kappa*

#### **Yale's Tracey Meares Deconstructs Our Relationship with the Police**

She's a nationally recognized expert on policing. She speaks with Fred about the need to reimagine public safety and reform, the distinct American policing experience in a global context, and what it's like trying to convince her law school students that criminal procedure is actually about constitutional law.

Fred Lawrence:

This podcast episode was generously funded by two anonymous donors. If you would like to support the podcast in similar ways, please contact Hadley Kelly at [hkelly@pbk.org](mailto:hkelly@pbk.org). Thanks for listening.

Hello and welcome to Key Conversations with Phi Beta Kappa. I'm Fred Lawrence, Secretary and CEO of the Phi Beta Kappa Society. On this podcast, we welcome leading thinkers, visionaries, and artists who shape our collective understanding of some of today's most pressing and consequential matters. Many of them are Phi Beta Kappa Visiting Scholars, who travel the country for us, visiting campuses and presenting free lectures that we invite you to attend. For the Visiting Scholars schedule, please visit [pbk.org](http://pbk.org).

Today, it's my great pleasure to welcome Professor Tracey L. Meares, the Walton Hale Hamilton Professor and a Founding Director of the Justice Collaboratory at Yale Law School. Professor Meares is a nationally recognized expert on policing in urban communities and she teaches courses on criminal procedure, criminal law, and policy, and has worked extensively with the federal government, including as part of President Obama's Task Force on 21<sup>st</sup> Century Policing.

Her research focuses on understanding how members of the public think about their relationship with police, prosecutors, judges, and other legal authorities.

Welcome, Professor Meares.

Tracey L. Meares:

I'm so happy to be here and speak with you. Please call me Tracey.

Lawrence: Tracey, it's good to have you here, and I do want to take you along your journey a little bit before we jump right into talking about the study of policing. It's so obvious now looking at your record of scholarship and your work that you would wind up studying policing, but was it always obvious to you?

Meares: I think the answer to that has got to be no, but that's largely a function of how people approach these topics in law schools. So, if you look at my early work, when I was first hired at the University of Chicago, I was very interested in understanding how the folks who weren't directly a part of a legal proceeding, that is a defendant in a criminal prosecution, or a victim, I was really interested in thinking about how what I called third party others, what role they played in terms of encouraging obedience to the law.

That took me to work of sociologists such as William Julius Wilson, Mary Pattillo, Sudhir Venkatesh, Robert Sampson, with whom I now co-edit the Annual Review of Criminology. Then, after examining the sociology of how law works or criminal law in particular works in neighborhoods, I drilled down and started to think about individual inclinations concerning compliance and engagement with the state, and it turns out if you're intensely interested in institutions of the criminal legal system, the one institution that we all have the most interaction with is police. So, that was the through line.

Lawrence: Well, let's go back even further just for a little bit. At University of Illinois, Champaign-Urbana, of all things you studied structural engineering, and I understand you considered going to medical school. I'm sure you would have made a fine doctor, but boy, the legal world sure would have been bereft of one scholar. But what was the thought behind engineering and medical school and when did the path go in a different direction?

Meares: Oh, wow. We're really getting personal here. So, interestingly, I was always a math and science kid in high school, so I was pretty sure I was going to enter some kind of science/engineering field. And then the law leap was honestly a function of me being lazy. I wasn't a particularly good student. I was a very smart student, if that distinction makes sense.

Lawrence: I think the nice term for that sometimes is late bloomer.

Meares: Well, that might be, but it was really more that I didn't really have to work very hard until I got to maybe my junior year in college. You know, I was the kid who didn't have great study habits. I realized to get the kind of job in engineering that I really wanted, I would need to get an advanced degree, and 21-year-old me was impatient and decided to do something totally different and I worked for Kodak the summer before my senior year and learned all about a fascinating patent law case between Kodak and Polaroid.

So, Polaroid sued Kodak and Kodak lost after they developed their own instant camera, and I thought, "Wow. One can actually marry law with tech and science. This sounds

fascinating.” So, I decided to go to law school to become a patent lawyer. Two other additional interesting facts: I never took intellectual property while I was in law school and never, ever practiced it. And I consider myself an engineer fundamentally still, because engineers, we study how things work, right? And I care very much about how things actually work as contrasted to a more maybe philosophical inquiry, which is to investigate more normative principles.

Lawrence: A lot of your work has been in a really interesting engagement between law and social sciences, law and psychology with your colleague, Tom Tyler. I know you work with Chris Winship, who’s a very powerful quantitative social scientist. But my understanding is that at least some of this goes back to a conversation with Randy Kennedy at Harvard Law School about... That laugh suggests that I’m onto something, regarding differences in sentencing between crack cocaine and powdered cocaine, and that this led to your interest in social science research. So, now is the time we’re all going to find out. Is this story true?

Meares: It’s true. I’m actually wondering how you could have found out about this story, but-

Lawrence: Oh, listen. Listen, I’m a former assistant U.S. Attorney, and as you know from your time in the Department of Justice, we never burn a source.

Meares: That’s really funny. Yeah, so I was on the market, and earlier in the conversation we were talking about the influence of social scientists like Mary Pattillo, and William Julius Wilson, and I was really interested and thinking about communities in which their high rates of violence persisted over time. Remember, this was in the mid ‘90s, and people today who think about policing actually don’t have as good a sense often, especially if you’re younger, at just how high rates of violence were.

A very common approach at the time was, “Well, if crime rates are high, or violence rates are high, the right strategy is more punishment.” Sort of the crack cocaine differential in sentencing, which actually no longer exists in most places, certainly not at the federal government, was a prominent strategy. And Randy Kennedy, who’s a professor at Harvard Law School, had written in a sense in favor of the distinction, basically saying something like, “One can understand why members of the Black community might desire to punish people more severely for distribution of the substance.”

Lawrence: Right.

Meares: I was interviewing at Harvard. I don’t have a job. I’m walking across the quad with Randy, whom I’d never met, and I said, “Well, you know, that’s a really interesting theory, but how do you know that this is true?” And then I said flippantly, “Did you ask anybody other than your grandmother?” And he looked at me. I think it was one of those moments where, “Okay, let me size this kid up.” He said, “No, but you should.” And I said, “Okay, I will.” And my second published piece was about an empirical investigation, attitudes of Black Americans using NORC data, which I actually had to spend a summer

at the University of Michigan teaching myself or learning how to do statistics in order to do that analysis.

Lawrence: And I want to ask you, when you think about teaching now, criminal law, criminal procedure, how do you balance teaching these as basic building block courses of law and the legal system on the one hand, and then as courses that are absolutely ripped from the headlines and could not be more topical and current?

Meares: It's much easier to do, for me anyway, in criminal procedure than criminal law, because criminal procedure has at least in the last 40 years or so developed into the way in which the institution of policing is in fact regulated. In most law schools, criminal procedure is divided into at least two courses, sometimes three, but the two basic ones are what's called investigations, which is about the constitutional law of the Fourth Amendment, Fifth Amendment, Sixth Amendment, heavily focused on policing, and then the second course is called typically adjudication or colloquially bail to jail. That's the prosecution, juries, and so on. Sometimes sentencing.

Lawrence: So, that investigative course is usually the first half of Law and Order, and then when they play that music and it goes into the courtroom, that's the adjudicative part after that.

Meares: You know, my goal is basically to get students to understand that criminal procedure is a constitutional law course, and a fundamental question is how do we reconcile the fact that what I'm teaching them is constitutional law when what they want is regulation of the police? And sometimes the constitutional law is directed at that project, but most of the time it's not, and then there's a second question about whether it should be, and I spend a lot of time trying to explain to my students why it shouldn't be, precisely because it is constitutional law.

And then we talk about, "Well, what mechanisms should you use?" On the very first day of class I give the students five problems on one page. There's an apartment in which foul smelling liquid is dripping from an upstairs apartment to a bottom apartment and the custodian of the apartment calls the police to break into the apartment above and it's filthy, and has human excrement, and there's a baby in a crib, and no one's there. And I ask the students on day one, "Explain what is problematic about what you just read." Right? Just explain what's problematic in the way that you would explain it to a fifth grader.

Lawrence: And so, you're trying to get basic moral intuition here, not trying to get them to make legal arguments yet.

Meares: Exactly. And invariably, someone will say, "It's problematic in the apartment case because there was no warrant to get into..." You know, it's like, "No, no, no, no, no. Nobody's..." I really try to get them to explain what's problematic without using legal jargon, or legal procedure, so that's point one.

And then the second day of class I ask them to come up with remedies. And invariably, the remedies to what they see as a problem more often than not have very little to do

with constitutional law. That's how I do it. You know, sort of toggling between what is the con law, where did the con law come from, and what should it be doing? And spend a lot more time thinking about, "Well, what should this regulatory structure do?" Urging them at the end of the day, if they're really interested, to take a course in the law of policing, which is an amalgamation not of just constitutional law, but employment law, statutory law, the regulations that actually organize policing agencies themselves, so it looks a lot more like administrative law, in fact.

Lawrence: Yeah. We tend to think about police regulation in terms of the Constitution on the one hand, and recently the criminal law on the other, police officers who were charged actually in the criminal law, when the fact is... I won't call them tips of the iceberg, but those are hardly the major regulations on the day in, day out the life of the average police officer on the street.

Meares: Absolutely not. And so, you can see this when you look at problems like police shootings of civilians. I wrote in a piece in the Washington Post a few years ago it would be absurd to most people to have the head of the FAA in an instance in which there was a plane crash that killed one person to say, "Well, we've investigated the pilot. The pilot didn't do anything wrong. I suppose it was a perfect storm of events." What they would expect is that every inch of the plane was investigated, they would want to know whether the pilot followed every single procedure, not just whether the pilot was blameworthy, but most importantly with respect to the way the FAA works, we just say, "Things need to change." We're less worried about who's to blame and much more worried about how do we fix the structure so that this doesn't happen?

Constitutional law clearly does not do that. Probably shouldn't do that in most cases. At least that's my view. But we need a lot more of that kind of regulation of policing.

Lawrence: But somebody better be doing that. Right. The argument-

Meares: Exactly.

Lawrence: The argument that this is as good as it gets, there's nothing we can do about it, does not seem very appealing. And we're certainly living in a moment where I think it's not acceptable to large, large numbers of people observing the situation. In 2015, you were the founding director of the Justice Collaboratory at the Yale Law School, so tell us a little bit about the work of that project.

Meares: So, we began in a collaboration through a collaboration with the Center for Policing Equity. It's run by Phillip Atiba Goff, who at the time was at UCLA, and then the National Network for Safe Communities at John Jay College, and we brought together three streams of research. The research that Tom and I do on procedural justice-

Lawrence: That's Tom Tyler, Professor of Law and Psychology at Yale, right?

Meares: Yep. The work that Phillip Atiba Goff does on bias in policing and then the work that the National Network was doing on reconciliation in communities. And we had a six-city pilot designed to implement a bunch of policies, training, and the like in these six cities,

to, you know, basically demonstrate a proof of concept. And the evaluation from the Urban Institute demonstrated that we could achieve effects, both for the agencies and effects that were detectable at the community level, which was astonishing and allowed us to pursue funding for a number of different projects. Funding from the MacArthur Foundation. We collaborated with the Mayor's Office of Criminal Justice in New York City to launch a project on understanding how members of a community articulate their assessment of what's required to make them safe, and also how legal authorities should carry that out.

And so, we've been able to build a pretty robust organization focused on science. Our motto is serious science, serious impact.

Lawrence: One of your Phi Beta Kappa Visiting Scholar lecture topics, as you're a Visiting Scholar with us, is Policing and its Reform in the 21<sup>st</sup> Century: Creating a New Narrative of Public Security. I'm sure I'm not the first person to ask you this question in the last months or year, but what does the expression defund the police mean to you and how should we be thinking about calls to defund the police?

Meares: Ted Alcorn, who's a journalist, puts it best when he says that defunding policing is a compass, not a roadmap, right? So, it gives people a sense of the direction in which we should be heading, but there's very little about the term that if you take it literally tells you how to get there. And I think the direction that the compass is pointing in is an acknowledgement that for many people who reside in what Vesla Weaver, who's a political scientist at Johns Hopkins, and Joe Soss, who I also believe is a political scientist, but I know he's at the University of Minnesota, have called race class subjugated communities. An acknowledgement that members of those communities who experience both the problems of violence and crime and also the problems associated with the state's response, which too often is government access. An acknowledgement that those folks actually contemplate a much broader conception of public safety than the state has considered.

For many people, policing and public safety are a coincident, and if you think about that, it doesn't make sense. Because if safety and security is a public good and you ask people what it takes for them to feel safe, they're going to say a lot of things. You know, of course they're going to say protection from private violence, but they're also going to say I want to be free from government overreach, and they're going to say, especially in the moment of COVID pandemic, I want access to clean water. Do people in Flint, Michigan feel safe, when they can't have access to clean water and can't wash their hands? I'm guessing the answer is no.

So, do I have any thoughts on the roadmap? Yes, but, you know, we're building this plane as we're flying it. So, Tom Tyler, Phillip Atiba Goff and I had a piece in NBC Think where we talk about what defunding actually could mean. You know, reducing the footprint of armed first responders. It could also actually mean expanding policing agencies while also ensuring that they are highly specialized, so that you only send a specially trained group of people to particular problems that don't necessarily include folks who are

armed. It could also mean that the state needs to fundamentally rethink how it delivers services of housing, and education, and the like, but when people think of it just as, you know, restricting the budgets of policing agencies as we know it, I think they are not actually understanding the call.

Lawrence: So, I want to broaden the lens even further and ask you how much is this an American issue and how much is this now a global issue? I'm thinking of the work of scholars like Ben Bowling at King's College London in the U.K., and others who've worked on this as a global issue. Is that part of your thinking, as well? Or is this more an American question for now?

Meares: So, I've had the opportunity to do work in other countries, so it's definitely a global issue. One huge difference, of course, between the United States and other countries is the fact that number one, we have a history of chattel slavery within our country for a much longer period of time compared to some of the countries in which the most advanced research on this topic is being done, although Brazil looks a lot more like us and I've done a lot of work with folks in Brazil. But a second really important difference between the United States and other countries is the fact that we have a federalist system, which means that there is no national control over policing, and that's a huge, huge difference. The limitations we have on the regulatory side here because there's no national system.

But what I think that means, then, is that individual states have seriously dropped the ball. States could do a great deal more to regulate policing agencies within their borders, actually persuading them to do that kind of work is a project The New Justice Collaboratory Clinic on Policing, Policy and Law has just undertaken.

Lawrence: This is a time when a lot of people are trying to think about how to think about policing issues, so do you have a couple of recommendations, one, two, maybe even three books that are good points of entry for people without a lot of background in the field, but with a deep and growing sense of interest?

Meares: So, in terms of books, I would recommend Patrick Sharkey's book, *Uneasy Peace*, in which Sharkey describes the role that law enforcement institutions very well could and did play in the massive crime decline that we're experiencing even today. I know that doesn't accord with what many people read on the news, but it's still true. But also, the importance of what non-governmental entities can do, community organizations, to play an incredibly important role in quelling violence and what they could do if we could actually scale up.

And then, here's a really maybe perhaps out there suggestion, but I would highly recommend to folks... Tommie Shelby is a philosopher at Harvard, and he's written a book called *Dark Ghettos: Injustice, Dissent and Reform*, and it is a fascinating philosophical analysis of what the state owes to its most disadvantaged citizens, but also an account of those citizens' agency in this moment. I highly recommend Tommie's book.

Lawrence: We are so delighted that you'll be a Visiting Scholar during the academic year 2020-2021. I'm sorry that some of that will be virtual, not in person. On the other hand, it means that more people will be able to tune in and hear your public lectures and get them online, so we're delighted to have you as part of the Phi Beta Kappa family with us this year, and thanks so much for coming in and joining me on Key Conversations.

Meares: Thanks so much for having me.

Lawrence: This podcast is produced by Lantigua Williams & Co. Cedric Wilson is lead producer. Virginia Lora is our managing producer and Hadley Kelly is the Phi Beta Kappa producer on the show. Our theme song is "Back to Back" by Yan Perchuk. To learn more about the work of the Phi Beta Kappa Society and our Visiting Scholar program, please visit [pbk.org](http://pbk.org). Thanks for listening. I'm Fred Lawrence. Until next time.

**CITATION:**

Lawrence, Fred, host. "Yale's Tracey Meares Deconstructs Our Relationship with the Police." *Key Conversations with Phi Beta Kappa*, The Phi Beta Kappa Society, September 24, 2021. [www.pbk.org](http://www.pbk.org).

Produced by:

