

Hoodies on the Floor

Exploring Black Members' Legislative Response to Police Brutality

ABSTRACT This paper examines how black members of Congress (MCs) have recognized police brutality as an issue on the congressional agenda from 1973 to 2016. Using a dataset of every bill introduced by black members of Congress during the period of study, I show that, in general, police brutality has not been an important component of black MCs' legislative portfolios. Instead, it is an occasional focus of bill sponsorship in response to discrete, highly salient incidents of brutality and murder. These findings are contextualized through a broader discussion of black representation as a tactic for black liberation and the similarities between the history of anti-lynching legislation and the contemporary fight against police brutality. **KEYWORDS** police brutality, bill sponsorship, black representation

INTRODUCTION

On March 28, 2012, Rep. Bobby Rush was escorted from the floor of the House of Representatives for delivering a speech while wearing a hoodie. Rush was wearing the hoodie in solidarity with nationwide protests around the murder of Trayvon Martin. On December 2, 2014, several members of the Congressional Black Caucus adopted the “Hand’s up, don’t shoot” mantra that animated many of the protests following the murder of Michael Brown in Ferguson, Missouri. These two incidents illustrate one of the core elements of symbolic representation that black members of Congress (MCs hereafter) provide to their local constituents and black Americans collectively. The purpose of this paper is to explore whether these symbolic displays translated into legislative proposals. Why do black MCs introduce bills on the subject of police brutality?

The simple answer is that black MCs have virtually nothing to say (legislatively speaking) about police brutality. Given the prominence and persistence of police brutality as a problem facing black people, it is surprising how few bills were introduced between 1973 and 2016. Using data on every police brutality bill introduced during that time period, I find that black MCs engage in limited responsiveness. MCs are responsive in that the peaks in bill sponsorship seem to align with high-profile incidents of police brutality like Rodney King, Amadou Diallo, and the many incidents that gave rise to Black Lives Matter. The response is limited because very few MCs introduced very few bills. MCs *only* seek to address the problem during periods of extreme salience, and that attention is not sustained.

I argue that this pattern reflects a deeper truth: Black representation is no longer special.¹ Black MCs do not behave in extraordinary ways that cannot be accounted for by existing theories of legislative behavior. Black representatives—like all other elected officials—are rational pursuers of electoral and legislative goals who are confronted by the constraints of institutional rules and procedures (Mayhew 1974; Fenno 1978).

Recent research on police brutality has focused on how it shapes political knowledge and behavior (Cohen and Luttig n.d.) and spurs protest activity (Williamson, Trump, and Einstein 2018). There has also been work on the managerial causes of police misconduct (Mummolo 2018). The most important work in this area has focused on police brutality as a purposeful tool of race-based oppression (Isoke 2015). Rather than thinking about the problem of police violence as the aberrant acts of isolated bad actors, this literature demonstrates how state-sanctioned violence is used to reinforce black Americans' subordinate economic, political, and social positions. However, there have not been any studies that focus on the legislative response to police brutality at the congressional level. In that sense, this research makes a valuable contribution to the academic discourse on police brutality and state terror.

The broader implications of the study are relevant for the literatures of black politics and race and representation. More specifically, the lack of a strong legislative response to police brutality is in tension with prior studies that have emphasized the intrinsic and/or unique racial motivations of black legislators (Baker and Cook 2005; Gamble 2007, 2011; Minta 2009; Preuhs and Hero 2011). These studies argue that black MCs provide a level of attention to black issues that cannot be sufficiently explained by standard drivers of legislative behavior such as district composition, constituency pressure, or electoral considerations. To be clear, the findings presented here do not contradict that prior research. Instead, I use the limited responsiveness on police brutality to sketch an alternative vision of a more mundane black representation.

This paper proceeds in three sections. First, I briefly describe the data on police brutality. The second section explores that data to demonstrate that black MCs do not treat police brutality as a high-priority issue. I conclude with a discussion of what the distinct legislative responses to lynching and police brutality may reveal about the role of representation as a tool for black agenda setting.

POLICE BRUTALITY AND BILL SPONSORSHIP

I collected data from the govtrack API² for all bills under the search term “police” from the 93rd to 114th Congresses. Each of those bills was then coded as dealing with police brutality or not.³ These police brutality bills were then merged with a larger dataset for all bills introduced by black MCs over the same time period. These bills have been coded for whether they address black issues (Platt 2015a, 2017).

Table 1 provides the number of (1) all police-related bills, (2) police brutality bills, (3) police-related bills by black MCs, and (4) police brutality bills by black MCs.⁴ The immediate conclusion is that there are not many police brutality bills introduced; police

TABLE 1: The Number of Police Brutality Bills Introduced

Congress	all	brutal	allblack	blackbrutal
93	119	1	11	0
94	68	0	5	0
95	59	0	2	0
96	42	0	4	0
97	36	0	3	0
98	42	0	2	0
99	51	0	1	0
100	51	0	3	0
101	82	0	4	0
102	82	9	11	4
103	285	7	19	2
104	231	0	8	0
105	323	0	15	0
106	365	5	23	4
107	359	0	24	0
108	429	0	40	0
109	447	4	40	3
110	482	2	63	1
111	436	1	50	1
112	306	1	33	1
113	297	1	45	1
114	387	22	72	15

brutality bills are a small proportion of all police-related bills; and black MCs account for a disproportionate share of police brutality bills.

A visualization of the data is found in Figure 1. As stated in the introduction, there is limited responsiveness to police brutality. There are four peaks of activity over this forty-year period. First, the peak of the 102nd and 103rd Congresses was in response to the beating of Rodney King, the subsequent not guilty verdict, and the riots in response to that verdict. The response spans two congresses because the legislation is ultimately combined into President Clinton’s crime bill, which becomes law in 1994. Second, there is a peak in the 106th Congress in response to the murder of Amadou Diallo. Our third peak contains two seemingly unrelated elements: a response to reports of the Gretna police department violently preventing black citizens from crossing a bridge in the aftermath of Hurricane Katrina; and an interest in stopping racial profiling. Finally, the jump in the 115th Congress is a reaction to the highly publicized police killings that launched the Black Lives Matter movement.

Congressional bill sponsorship around police brutality follows a pattern that is aligned with the conventional wisdom. Scholars view bill introductions as a form of

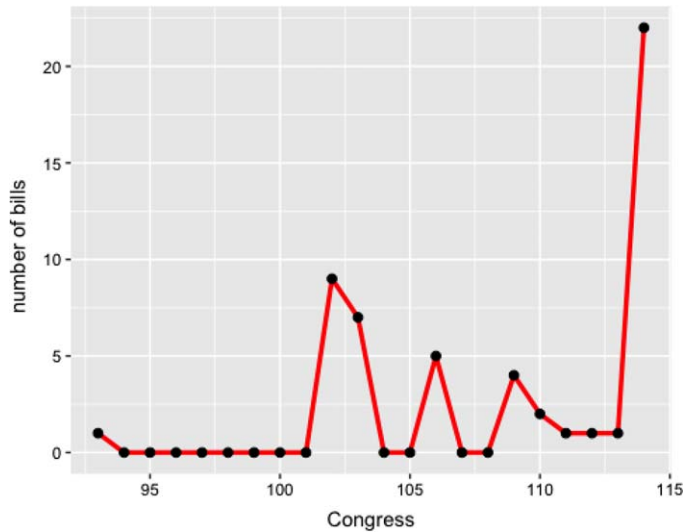


FIGURE 1: Police brutality bills are in response to major incidents.

position-taking (Mayhew 1974; Schiller 1995). Those positions can then be used for multiple purposes: as an inoculation against future electoral challenges (Sulkin 2005); as a signal to interest groups about loyalty/opposition (Gelman 2017); and as a generalized reputation as a problem-solver (Adler and Wilkinson 2013). Figure 1 shows MCs staking out positions on the major problem of the day, and the scale of the position-taking appears to vary by the scale of the perceived problem.

We can accept that interpretation and still characterize black MCs’ legislative production on police brutality as inadequate. Viewing Figure 1 only in terms of responsiveness treats police brutality as though it were a random, exogenous shock to an otherwise well-functioning justice system. Instead, we know that police violence is an intentional reification of America’s racial hierarchy (Isoke 2015). The literature on race and representation posits that black MCs are necessary and strong advocates for black policy positions because of their sense of linked fate (Baker and Cook 2005; Gamble 2007; Minta 2009). Relations between black people and law enforcement is a constant problem of black American life, so why does that issue lack a constant presence on the agenda? In order to understand this apparent failure of black representation, I turn toward a discussion of the role of black MCs in the congressional response to police brutality.

WHO CARES ABOUT POLICE BRUTALITY?

Table 2 provides key characteristics for all of the black MCs who introduced at least one bill on police brutality during the period of study.⁵ “Count” is the number of police brutality bills; “Committee” shows whether the MC is a member of the Judiciary Committee; “ideology” is the MC’s NOMINATE score; “black” is the mean number of black issue bills an MC sponsors; and “bills” is the mean number of total bills an MC sponsors.

TABLE 2: Few Black MCs Introduced Police Brutality Bills

Names	count	Committee	ideology	black	bills
Brown, Corrine	1	No	-0.429	1.000000	7.00000
Clay, William L., Jr.	1	No	-0.480	1.000000	6.00000
Conyers, John, Jr.	8	Yes	-0.658	4.714286	15.28571
Lewis, John R.	1	No	-0.590	3.000000	10.00000
McKinney, Cynthia A.	2	No	-0.533	4.000000	8.50000
Mfume, Kweisi	1	No	-0.446	2.000000	3.00000
Moore, Gwen	1	No	-0.530	2.000000	5.00000
Scott, Tim	1	No	0.649	3.000000	9.00000
Veasey, Marc	2	No	-0.405	6.000000	18.00000
Washington, Craig	1	Yes	-0.766	1.000000	6.00000
Wilson, Frederica	1	No	-0.474	1.000000	1.00000

The overwhelming majority of black MCs are shirking their responsibilities on this issue. John Conyers accounts for 40 percent of police brutality legislation by himself. Seven of the eleven MCs represent Southern districts;⁶ only two of the members serve on the Judiciary Committee (which is where these bills are referred); and those who are more active in sponsoring black issue bills in general are also the leaders in sponsoring police brutality bills. Figure 2 is a visual representation of Table 2. There is not an obvious relationship between ideology and sponsoring police brutality bills; John Conyers's status as an outlier is emphasized; and it is clear that those MCs who are most active in sponsoring black issue bills overall (Conyers, McKinney, and Veasey) are also the most active in sponsoring police brutality bills.

Table 3 presents the results of a logit model of the odds of introducing at least one police brutality bill in a given year.⁷ We can see that the insights from the discussion above (in reference to Table 2 and Figure 2) are born out in the regression analysis. Members of the Judiciary Committee and those who introduce more black issue bills overall are more likely to introduce police brutality bills. Ideology, freshman status, being a representative from the South, and being a woman did not have any impact on the odds of introducing at least one police brutality bill.⁸

POLICE BRUTALITY, NORMALIZATION, AND SHIRKING

Overall, black MCs have not been engaged with the legislative response to police brutality. Even those members who mirrored the actions and slogans of protesters did not translate those demands into legislative language. There are a few possible explanations. First, Democrats were in the minority during the rise of Black Lives Matter, so their legislative efforts would have ultimately been fruitless. Black MCs rationally chose to invest in the symbolism of floor speeches rather than symbolic bill sponsorship. The response after the Rodney King beating is a potentially instructive comparison. In that instance, black MCs

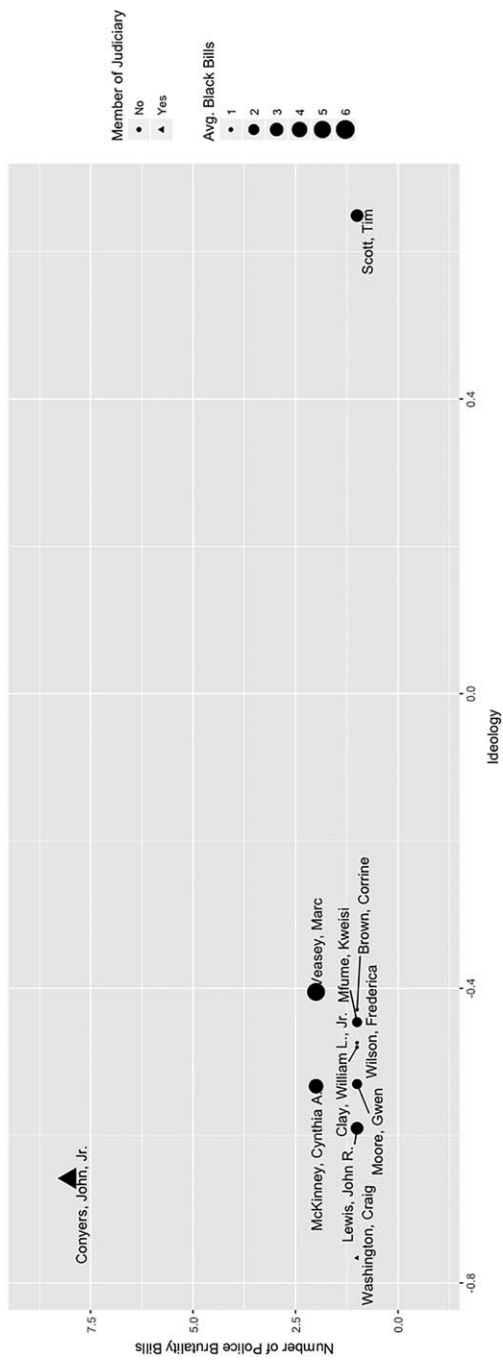


FIGURE 2: Ideology is not driving the introduction of police brutality bills.

TABLE 3: Committee Membership and Black Bill Sponsorship Drive Police Brutality Bills

Dependent Variable	
Ideology	0.406 (1.845)
Freshman	-0.648 (1.062)
Southern	0.363 (0.541)
Female	-0.036 (0.562)
Judiciary committee	1.297** (0.539)
Black bill sponsorship	0.290*** (0.076)
Constant	-5.075*** (1,046)
Observations	1,344
Log Likelihood	-83.618
Akaike Inf. Crit.	181.237

Note: *p<0.1; **p<0.05; ***p<0.01

were part of the majority party, so their concerns about police brutality were incorporated into one of the Democrats' major legislative priorities—the Clinton crime bill. By 2015 Democrats had lost control of both chambers of Congress, so a repeat of 1994 was not feasible. It also bears mentioning that the black, Democratic president, Barack Obama, did not put forward any legislative proposals in response to highly publicized police killings of that time period. The utter reasonableness of black MCs' lack of action is an indication of the institutional constraints that limit black representation's utility as a means of black liberation.

Second, Minta and Sinclair-Chapman (2013) show that a lack of competitive elections reduces the incentives for black MCs to establish the problem-solving reputations that might drive the behavior of MCs with more tenuous holds on their seats (see also Griffin and Keane 2011). In other words, black MCs do not offer a broad legislative response to police brutality because they lack the necessary electoral incentives. This explanation runs counter to Baker and Cook (2005), who argue that there is some set of intrinsic motivations behind black representatives' behavior. At least for the case of police brutality, the evidence for intrinsic, nonelectoral incentives appears weak. Figure 1 illustrates that black MCs only introduce police brutality bills in response to high-salience events. That implies that police brutality is not an entrenched component of any black MC's list of legislative priorities. Again, the driver of black legislative behavior is more mundane

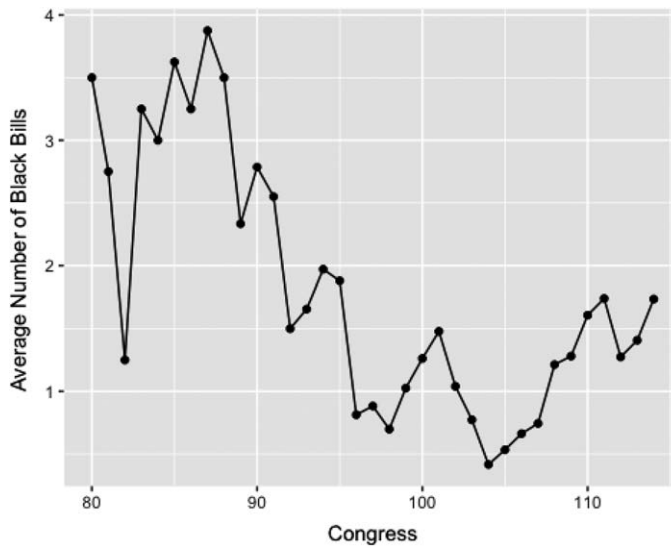


FIGURE 3: Black MCs introduce fewer black bills per capita compared to the 1950s and 1960s.

than extraordinary: black MCs care about police brutality when it is politically expedient to care about police brutality.

Third, the results of this exploration of police brutality bills is indicative of a larger trend in black legislative shirking. As the number of black MCs has expanded, each individual member has become more empowered to do less. Figure 3 illustrates this trend by plotting the average number of black bills introduced by blacks MCs from the 80th to the 114th Congress.

Adam Clayton Powell Jr. and William Dawson had to truly act as representatives for all black people when they were the only black MCs in 1947. We see the average number of black bills start to decline around the same time that the Congressional Black Caucus was founded (91st Congress). The steady expansion of black representation depicted in Figure 4 allows MCs to behave more as the congressman from their own district, not as the congressman from blackness.

On one hand, this could be viewed as a kind of freedom for black MCs—individual members can pursue policy interests that are not related to black issues without necessarily negatively impacting the congressional black issue agenda. On the other hand, as the case of police brutality demonstrates, the increase in black representation may not lead to the expected levels of consistent, widespread attention to some black issues.

The picture of black representation that emerges from this discussion is striking in its banality.

FROM ANTI-LYNCHING TO BODY CAMERAS

The last explanation for why black MCs have not prioritized police brutality as an issue is federalism. Police brutality is primarily an issue of local law enforcement, so it is not clear

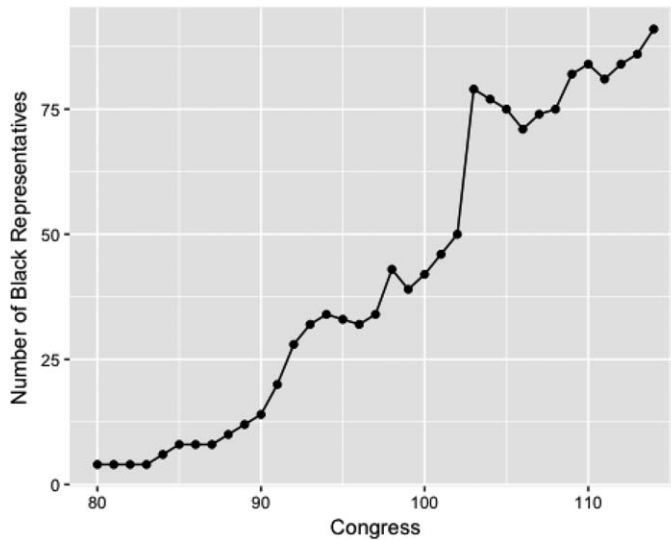


FIGURE 4: The number of black people in Congress has steadily increased over time.

that there are viable policy solutions at the national level. Given the scarcity of congressional attention, black MCs may choose to divert their energy to problems that fit more comfortably within the scope of federal power. According to this view, there should not be anything surprising or normatively interesting about black MCs’ limited responsiveness to police brutality. We should not draw any particular conclusions from the case of police brutality because it falls outside of any reasonable construction of Congress’s jurisdiction.

Furthermore, the literature on black agenda setting at the state level all points toward the vital role played by black state legislators. Brown and Banks (2014) show that black women introduced more bills that addressed intersectional interests of race and gender (as police brutality does) than either black men or white women. Haynie (2001) finds that black legislators sponsor more black issue bills than their white counterparts, and King-Meadows and Schaller (2006) demonstrate the kind of power that black representatives wield in favor of black interests at the state level. Indeed, on August 19, 2019, California responded to the police killing of Stephon Clark by redefining what constitutes an appropriate use of force by law enforcement. That bill was introduced by Shirley Weber, a black woman (Chabria 2019).

I concede that a more comprehensive examination of the legislative response to police brutality would include state legislatures. However, I reject the idea that national black representation cannot be held accountable for limited responsiveness to state and local issues. The entire strategy of black liberation struggles in the United States has been to seek national remedies for state and local problems—from segregated lunch counters to voting rights to education. In that regard, this exploration of police brutality bills is an interesting echo of efforts to pass anti-lynching legislation. Like police brutality, lynching was fundamentally a problem of local law enforcement, so there were valid concerns

about the efficacy of the proposed national solution. However, the anti-lynching bills were characterized by bipartisan, majority support against the institutional power of an entrenched minority (Platt 2015b). That has not been the case for police brutality—there is not majority support; the support is partisan; and the opposition had institutional control for most of the periods of activity. A similarity between lynching and police brutality is that both issues suffered from only having nominal presidential support. The Obama Justice Department was active in using its existing powers to intervene when there were patterns and practices of misconduct; however, the president himself was not willing to expend any political energy on this type of legislation.

Finally, the failure to pass anti-lynching legislation and the relatively inert response to police brutality both demonstrate the inherent weakness of representation as a strategy for enacting a black issue agenda. Through different mechanisms these issues convey the same institutional message: the structure of American government is heavily biased toward the status quo, so black issues—which by necessity make large-scale changes to the status quo—can only be successful under extraordinary circumstances (Allen 2016). The—at that time—rare video evidence of the beating of Rodney King, hugely destructive riots, and a newly elected Democratic president’s desire to demonstrate his toughness on crime (and the actual high rates of crime) all had to coincide for anti-police brutality policies to be enacted, and that policy was substantially watered down from what was initially proposed. Those provisions of the Clinton crime bill are the only legislative response to police brutality over the past forty years. Perhaps instead of hoodies on the floor, there should be more bills in the hopper. ■

NOTES

1. It is possible that it was never special, but that question is beyond the scope of this research.
2. Govtrack has subsequently stopped using that API.
3. Coding was based on the text of the legislation. It relied on the presence of terms like “misconduct,” “police brutality,” and “excessive force.” More recent bills were also coded based on the context of publicized policy demands stemming from Black Lives Matter protests.
4. For this data, the term “bill” includes resolutions.
5. For this data, resolutions are not included within the definition of “bill.”
6. Brown, Lewis, McKinney, Scott, Veasy, Washington, and Wilson.
7. This is a multilevel model that allows the intercept to vary by year.
8. However, see Platt (2015a) for the factors that are generally associated with whether or not a member introduces any black issue bills. Those individual-level factors are being wiped out in this analysis by controlling for the number of black issue bills introduced.

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