

Conscious Neutrality for the U.S. Department of Justice Community Relations Service

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INTRODUCTION

A 2018 survey asked Americans: “Since the 1960’s, do you think race relations in the United States have gotten: better, stayed about the same, or worse?”¹ Forty-four percent of respondents answered that race relations have gotten better.² The 56% of respondents who answered “about the same” or “worse” is a noteworthy majority painting a negative picture of the country’s inability to progress toward multiracial harmony. More than fifty years ago, the government recognized this problem and empowered the Department of Justice Community Relations Service (CRS) to be the solution.

CRS has a distinguished track record for improving community relations. The Civil Rights Act of 1964 created the non-law enforcement agency with its purpose “to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to [the] discriminatory practices based on race, color, or national origin which impair the rights of persons in such

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1. *The Economist/YouGov Poll*, YOUGOV (Aug. 15, 2018), https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/6ote18t1hm/econTabReport.pdf [<https://perma.cc/6SH2-HRVR>].

2. *See id.*

communities.”³ Since its creation, the agency has actively assisted state officials, business leaders, community groups, and citizens. For example, CRS staff confronted anti-Black racism during the 1960s civil rights movement and the 2012 shooting of Trayvon Martin; Asian American discrimination following the 1982 murder of Vincent Chin; and backlash against Arab, Muslim, and Sikh communities following the September 11, 2001, terrorist attacks.⁴ The agency also works to resolve lesser-known conflicts around the country.⁵

Despite the many success stories, high numbers of police-related conflicts continue to consume CRS’s resources. The agency organizes its cases into three main areas: Administration of Justice (AOJ), Education, and General Community Relations.⁶ AOJ cases are “those where tension exists between law enforcement and the community.”⁷ The agency generally deals with more AOJ cases than Education or General cases. For example, in fiscal year 2017, CRS completed 198 AOJ cases, compared to 82 Education and 169 General cases.⁸ The report does not mention how many cases, if any, were rejected or unresolved. Figure 1 provides greater detail on the completed AOJ cases.⁹

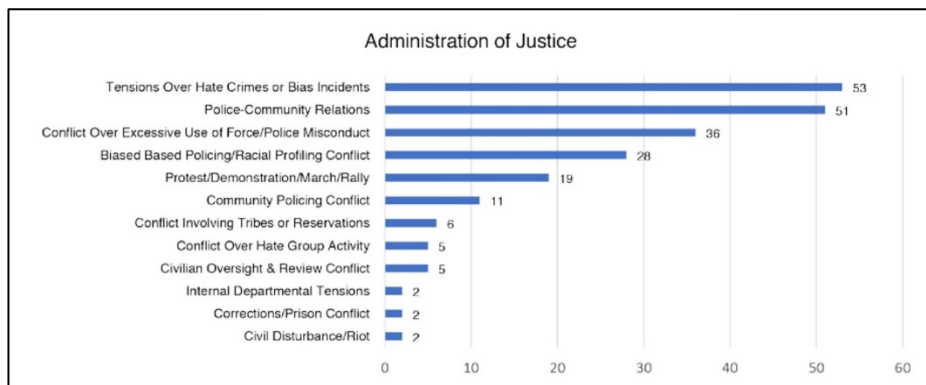


Figure 1. “Please note that CRS cases may fall into more than one of the above categories. Category totals may not reflect agency case totals.”¹⁰

Historically, AOJ cases have defined a majority of CRS work. During the mid-1970s, after the agency was first created, “[CRS] saw police violence dominating its total caseload and exacerbating racial tension nationwide.”¹¹ The nature of policing has changed since the 1970s due to technological advances,

3. Civil Rights Act of 1964, 42 U.S.C. § 2000g-1 (2018).

4. See 2013 CMTY. REL. SERV. ANN. REP. 12-13.

5. See *id.* at 34-59.

6. See 2017 CMTY. REL. SERV. ANN. REP. 18 [hereinafter 2017 REP.].

7. *Id.* at 19.

8. *Id.* at 18-19.

9. See *id.*

10. *Id.* at 19.

11. BERTRAM J. LEVINE, RESOLVING RACIAL CONFLICT: THE COMMUNITY RELATIONS SERVICE AND CIVIL RIGHTS, 1964-1989 146 (2005).

increased minority political power, social views on racism, and a host of other factors. However, people of color, namely Black people, and law enforcement still have a hostile, and sometimes deadly, relationship. Describing the thousands of CRS cases in its first ten years, a former associate director concluded, “[N]o scenario was more common than this one: an unarmed young [B]lack man shot in the back by a white officer; a violent response and organized protest from the minority community; rejection of demands by the local authorities; escalation of tension and stalemate.”¹² For the modern-day Black community, the description is still broadly applicable to law enforcement’s use of deadly force.¹³ The longevity and predominance of police-related conflicts impacting the Black community mandate an interrogation of the agency’s strategy. Specifically, this Note recommends that conflict resolution specialists in CRS rethink their notion of neutrality to alleviate racial tension.

Although most Americans share a common definition of neutrality, there are numerous interpretations of the concept. A tailored approach to neutrality from a racial justice perspective should be employed to fully capture important, hidden dynamics. CRS and its AOJ cases epitomize the value of race-conscious neutrality.

I. THE HISTORY OF CRS

Before evaluating how CRS does its work, it is necessary to detail the history of its work. The mission of CRS guides the agency to accomplish its public purpose in AOJ cases. A mission statement can be a valuable shepherd for an organization’s staff and audience. According to Dr. Mark Moore, a statement of purpose helps: 1) maintain managerial focus; 2) identify key political and administrative tasks; and 3) mobilize external and internal support.¹⁴ The first benefit hones in on the importance of managing the organization for performance and value.¹⁵ The second benefit sets the agenda for the political and administrative necessities.¹⁶ Finally, the third benefit helps those within and outside of the organization aid its efforts.¹⁷ While there are no concrete or standard measures for these utilities, ineffectual statements are evident by their extreme ambiguity or specificity.

12. *Id.* at 126 (paraphrasing a CRS handbook).

13. *See, e.g.*, Josh Hafner, Police killings of black men in the U.S. and what happened to the officers, USA TODAY (Mar. 29, 2018, 5:16 PM), <https://www.usatoday.com/story/news/nation-now/2018/03/29/police-killings-black-men-us-and-what-happened-officers/469467002/> [<https://perma.cc/392Z-BAA3>] (explaining that “[a] video captured police officer Michael Slager shooting Walter Scott in the back five times as he fled” and that “Scott was unarmed”).

14. MARK MOORE, CREATING PUBLIC VALUE: STRATEGIC MANAGEMENT IN GOVERNMENT 90–92 (1995) (identifying these utilities based on research and case studies of the U.S. Environmental Protection Agency and the Massachusetts Department of Youth Services).

15. *See id.*

16. *See id.*

17. *See id.*

The mission statement of CRS, as reported to Congress, is: “The United States Department of Justice (DOJ) Community Relations Service (CRS) serves as ‘America’s Peacemaker’ for communities in conflict by mediating disputes and enhancing community capacity to independently prevent and resolve future conflicts.”¹⁸ The singular sentence does not vary widely from Moore’s points. First, CRS maintains a managerial focus by outlining specific tools—mediation and capacity building—for conflict resolution with reasonable breadth on how the tools will be utilized. Second, with regard to identifying key political and administrative tasks, the agency uses a moniker to frame its underlying purpose. The major investments, based on the mission, are mediation-trained staff members and community buy-in. Third, and finally, supporters are mobilized inside the organization by highlighting a specific skillset related to alternative dispute resolution, instead of legal remedies. Supporters outside of the organization are able to assist by reinforcing the notion that all people have access to peaceful methods of conflict resolution. Because it remains within the bounds of Moore’s three priorities, CRS’s mission statement is sufficient for guiding its efforts to reforming race-based police-related conflicts.

To further understand the agency’s purpose, it is beneficial to review its inception, enactment, and structural changes. President Lyndon B. Johnson first proposed the agency when he was a U.S. Senator in the eighty-sixth Congress between 1959 and 1960.¹⁹ He envisioned a Community Relations Service as “a race relations agency with a staff of one hundred working out of regional offices to help local communities when disagreement threatened to disrupt peaceful relations among citizens.”²⁰ Although his legislation was never reported out of committee, his idea was later an element of the Civil Rights Act of 1964 that he signed into law as President.²¹

There have been major changes to the agency since enactment. For example, President Johnson created the National Citizens Committee for Community Relations—a volunteer group of around 450 influential leaders from across the country, including the heads of trade groups, religious institutions, hotels, and other sectors²²—to support the work of CRS. The group, however, did not continue in the Nixon administration.²³ In addition, in 2009, the anti-discrimination purpose of CRS expanded from race, color, and national origin to

18. 2017 REP., *supra* note 6, at 12. In addition to the annual report version, CRS has publicized two other mission statements. In its 2016-2020 Strategic Plan, the CRS mission statement reads, “To resolve conflict by engaging America in difficult conversations through peaceful dialogue.” U.S. DEP’T OF J., CMTY. REL. SERV. STRATEGIC PLAN 2016-2020 5, <https://www.justice.gov/crs/file/826336/download> [<https://perma.cc/ST6Z-H5XX>]. *See also* Cmty. Rel. Serv., *What We Do*, U.S. DEP’T OF J. (Feb. 14, 2017), <https://www.justice.gov/crs/what-we-do> [<https://perma.cc/8PDZ-6A9X>].

19. *See* LEVINE, *supra* note 10, at 6.

20. *Id.*

21. *See* Civil Rights Act of 1964, *supra* note 3.

22. *See id.* at 17.

23. *See id.* at 17, 35.

also include religion, gender, sexual orientation, gender identity, and disability.²⁴ Most significantly, the organization adopted mediation, facilitation, and education as priorities in addition to its conciliation methods.²⁵ Mediation and facilitation have more formal procedures, including the adoption of a definition of neutrality.²⁶

II. A NEW NEUTRALITY

There are multiple ways to define neutrality, and CRS employs a traditional view of impartiality. The disadvantages of this definition have led scholars and practitioners to question its widespread utility and develop alternatives. Partiality and multipartiality are other common options. The former is biased toward one viewpoint while the latter favors all views. For CRS's race-based conflicts, conscious neutrality is the most viable substitute.

Under a traditional view of neutrality, CRS employees focus on a plain understanding of neutrality. The ordinary, dictionary meaning of the word "neutral" is "not aligned with or supporting any side or position in a controversy."²⁷ This traditional definition centers impartiality and is consistent with CRS's definitions of mediation and facilitation. In a mediation, "[c]onciliation specialists assume the role of neutral third parties" and incorporate "established and standardized [mediation] procedures."²⁸ The procedures set by the American Bar Association's Model Standards of Conduct for Mediators includes impartiality, defined as, "freedom from favoritism, bias or prejudice."²⁹ In a CRS-facilitated dialogue, the leader is impartial and does not favor one person or point of view.³⁰ This approach is in accord with the emphasis on impartiality outlined in the Statement of Values and Code of Ethics enumerated by the International Association of Facilitators, the global authority in the field.³¹ Finally, CRS clearly categorizes impartiality as an organizational value, including its description in the following statements: "We do not take sides in a conflict. We facilitate communication so that all voices are heard."³²

24. See Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, 18 U.S.C.A. § 249 (2018).

25. See 2017 REP., *supra* note 6, at 12.

26. See *Dispute Resolution Processes*, A.B.A., https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/.

27. *Neutral*, DICTIONARY.COM UNABRIDGED (2018).

28. 2017 REP., *supra* note 6, at 14; 2015 CMTY. REL. SERV. ANN. REP. 41. See also 2014 CMTY. REL. SERV. ANN. REP. 72; 2010 CMTY. REL. SERV. ANN. REP. (first page).

29. *Model Standards of Conduct for Mediators*, A.B.A. (2005), https://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.pdf [<https://perma.cc/8MN5-BAMV>].

30. See CMTY. REL. SERV., COMMUNITY DIALOGUE GUIDE 17-20 (2003).

31. See *Statement of Values and Code of Ethics*, INTERNATIONAL ASSOCIATION OF FACILITATORS (2015), <https://www.iaf-world.org/site/professional/iaf-code-of-ethics> [<https://perma.cc/SC9A-XJVS>].

32. U.S. DEP'T OF J., CMTY. REL. SERV. STRATEGIC PLAN 2016-2020 5, <https://www.justice.gov/crs/file/826336/download> [<https://perma.cc/A52J-9M7S>].

Traditional neutrality's failure to address power imbalances between groups is a major drawback. As previously noted, impartiality treats each party to a conflict as equals.³³ But "[t]here is a rising awareness—a more visible critique of neutrality underway from *within* the mediation movement than ever before."³⁴ The reality of most situations does not include equally powerful parties, which has a serious impact on the disadvantaged group. Desmond Tutu famously said, "If you are neutral in situations of injustice, you have chosen the side of the oppressor."³⁵ An unbiased third party allows for the status quo power differentials to continue in the conflict resolution space. The potential for progress is diminished under this notion of neutrality. On a deeper level, some argue that "being completely neutral is not possible; all perspectives are biased toward one philosophy or another whether or not bias is explicitly conveyed."³⁶ This belief calls into question the very reality of neutrality. It is possible that "neutral" positions are merely dominant narratives—scripts that specify and control how some social processes are carried out and assume all people's experiences resemble the privileged groups.³⁷ Thus, traditional neutrality advantages those with power.

Alternatives to traditional neutrality can be useful for conflict resolution. For example, partiality allows individuals to draw clear preference to counternarratives and not provide time for dominant narratives.³⁸ In practice, a mediator may only allow participants with experiences unique from the perceived norm in society to express their views.³⁹ This approach benefits those who are traditionally underrepresented and oppressed. Consequently, partiality may leave a majority of parties disengaged and limit the ability to understand the entire conflict. Another option is multipartiality: "a method of leveling power within an interaction; it simultaneously identifies inequities perpetuated during discussion and raises awareness of how these inequities have an impact on the lives of people who experience privilege and oppression."⁴⁰ A facilitator may employ this method by presenting counternarratives during the dialogue to challenge a dominant narrative controlling the space, to open the space for alternative viewpoints, and to create safety for those who relate to the counternarrative to contribute.⁴¹ A disadvantage of this strategy can be the

33. See *Model*, *supra* note 29.

34. Leah Wing, *Whither Neutrality?*, in RE-CENTERING CULTURE AND KNOWLEDGE IN CONFLICT RESOLUTION PRACTICE 93, 107 (Mary Adams Trujillo et al. eds., 2008).

35. ROBERT MCAFEE BROWN, UNEXPECTED NEWS 19 (1984).

36. Robbie Routenberg, Elizabeth Thompson & Rhian Waterberg, *When Neutrality is Not Enough*, in THE ART OF EFFECTIVE FACILITATION: REFLECTIONS FROM SOCIAL JUSTICE EDUCATORS 173, 174 (Landreman ed., 2013)

37. See *id.*

38. See *id.* at 175.

39. See *id.*

40. See *id.*

41. See *id.*

insertion of irrelevant views to the conflict, but a benefit is the acknowledgement and greater understanding of hypothetical dynamics at play.

When it comes to racial justice, impartiality, partiality, and multipartiality all fall short. Each of these frameworks is unable to empower facilitators to categorically denounce oppression and simultaneously make room for progress. For example, imagine a mediation between a Black resident and a white police officer who repeatedly calls the resident “boy.” The impartiality approach would fail to recognize the power imbalances between the two and thus assist in perpetuating the status quo. The partiality method would highlight the experiences of the resident, but it would likely dissuade the officer from engaging and voluntarily relinquishing some of their power. Finally, multipartiality would seek to explore the differences in power that exist during the conflict and the conflict resolution process while uplifting the resident’s voice. However, it would be a “very emotional experience, requiring empathy, patience, and heart,” mostly on the part of the resident, and possibly the mediator.⁴² This type of emotional labor can cause further damage, especially if the counternarrative is nevertheless ignored. There is a need for a tailored racial justice approach for conflict resolution.

Conscious neutrality with a racial justice perspective is a potential strategy to resolve interracial conflicts. Essentially, a conscious neutrality approach is a collective recognition that racism exists. An applicable and multi-faceted definition of racism is that it “involves one group having the power to carry out systematic discrimination through the institutional policies and practices of the society and by shaping the cultural beliefs and values that support those racist policies and practices.”⁴³ At once, this approach broadens the conversation beyond immediate acceptance of dominant narratives while simultaneously narrowing the conversation to exclude race-based apathy. Although a conflict resolution specialist will influence the dialogue by specifically highlighting the possibility of racism, neutrality is still present. The specific conflict is not automatically classified as racist, and mediation and facilitation skills must still be exercised to explore the case from the parties’ unique perspectives. In practice, all parties enter a conflict resolution with some baseline assumptions, and a conscious neutrality approach ensures the potential role of racism is one of the shared assumptions. Further, with this approach, mediators and facilitators are empowered to identify, name, and denounce instances of racial injustice in the process to the benefit of all parties.

This potential solution will likely face objections from the ideological left and right. The left will likely argue against any notion of neutrality for CRS. For example, Professor Francisco Valdes believe that “[n]eutrality and objectivity are not just unattainable ideals; they are harmful fictions that obscure the

42. *See id.* at 189.

43. *Racism Defined*, Dismantling Racism Works (July 2018), <http://www.dismantlingracism.org/racism-defined.html>.

normative supremacy of whiteness in American law and society.”⁴⁴ This critique advocates for the abandonment of neutrality. However, community-level conflicts are not easily defined by macro-level assumptions of the impact of race. Thus, staff must maintain some degree of neutrality to understand the depths of individual cases. And on the right, critics will likely claim that this approach is close to partiality because it puts the law enforcement party in AOJ cases at a disadvantage.

On the contrary, conscious neutrality merely places racism front and center to be acknowledged and confronted. It does not automatically attribute the conflict to racism. Further, notwithstanding its name, it recognizes that racism can occur subconsciously through systems, laws, and habits that are not in the direct control of the law enforcement party. There are likely many other objections to a conscious neutrality approach in the same manner that there are many objections to a traditional neutrality approach. Both theories of neutrality will be analyzed in context of the responsibilities of CRS.

III. ANALYZING TRADITIONAL NEUTRALITY

With respect to the traditional neutrality approach, CRS is best understood as a moderate tool for improving police relationships with racial minorities. Moore enumerated three equally important elements for assessing the goals of public sector organizations: 1) substantively valuable; 2) legitimate and politically sustainable; and 3) operationally and administratively feasible.⁴⁵ Because impartiality is conceptually embedded in the CRS mission, it will be the focus of the tripartite analysis.

First, the strategy must produce something of value to the overseers, clients, and beneficiaries at a low cost.⁴⁶ Second, the organization has to be able to attract authority and money from the political authorizing environment to which it is accountable.⁴⁷ Finally, the activities must actually be accomplishable by the entity and partners.⁴⁸ When the triad is properly aligned:

[U]se of the concept encourages public sector managers to: scan their authorizing environments for potential changes in the collective, political aspirations that guide their operations; search their substantive task environments for emergent problems to which their organizations might contribute some part of the solution; and review the operations of their own and other organizations in search of new programs or technologies that their organizations could use to improve performance in existing (or conceivably new) missions.⁴⁹

44. FRANCISCO VALDES, *CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 1* (2002).

45. MOORE, *supra* note 13, at 71.

46. *See id.*

47. *See id.*

48. *See id.*

49. *See id.* at 72.

The strategic triangle is useful for organizations because it allows for a multidimensional perspective. Moore explained that “the concept focuses managerial attention *outward*, to the value of the organization’s production, *upward*, toward the political definition of value, and *downward* and *inward*, to the organization’s current performance.”⁵⁰ Figure 2 visualizes this dynamic in a CRS context.

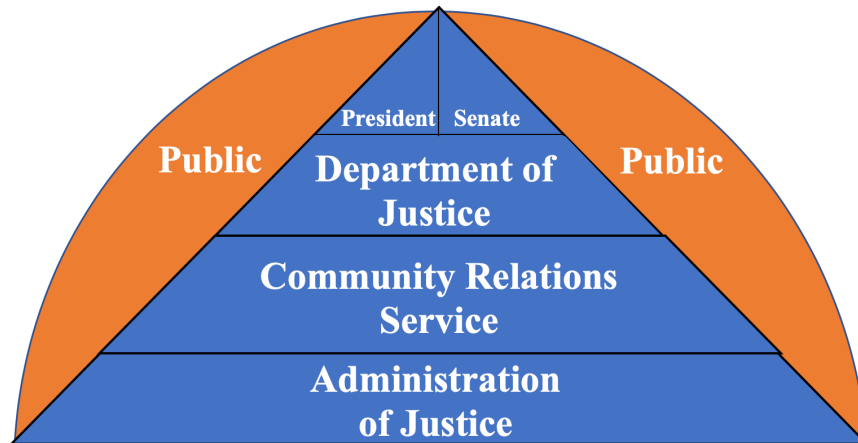


Figure 2. The multidimensional perspective of the strategic triangle applied to CRS.

The three parts of the strategic triangle demonstrate that reforming relations between law enforcement and racial minorities is modest under a traditional neutrality approach. First, the substantive value of reducing conflicts between the groups is a worthwhile endeavor. CRS is a low-cost alternative to litigation and is a better option than doing nothing to address community discord. Notably, the CRS website expressly mentions law enforcement and government officials, but ignores racial minority community groups, civic associations, and citizens who experience conflict with them.⁵¹ The agency notes that “[p]olice chiefs, Governors, Mayors, school superintendents, and others praise CRS for its effectiveness.”⁵² This may signal dissatisfaction or ineffective review processes—or something else.

Second, the authorizing environment for legitimacy and political sustainability requires broad approval. As an impartial third party, CRS is in accord with conventional wisdom and longstanding ethics related to mediation and facilitation. The approach balances liberal and conservative, or Democratic and Republican, views in Congress and the White House. Traditional neutrality does not challenge the general public’s notion of fairness, leaving CRS as uncontroversial as it was in 1964. The agency has maintained the support of

50. *Id.* at 73.

51. *See* 2004 CMTY. REL. SERV. ANN. REP. 63.

52. *Id.*

Congressman John Lewis, but it failed to gain other significant political allies.⁵³ It is still fairly unknown to the public.⁵⁴

Finally, the traditional neutrality approach is, on its face, organizationally feasible. While the consistent use of the same method calls into question the flexibility of CRS, the agency has talented staff across the country and benefits from a confidentiality mandate, prohibiting information sharing with other divisions of the Department of Justice.⁵⁵ Examples of CRS accomplishments include the lack of arrests during Trayvon Martin rallies in Sanford, Florida, and willingness to join in facilitations by residents and law enforcement in Ferguson, Missouri.⁵⁶ Traditional neutrality likely brought discordant parties together to participate in a process of understanding. However, the available research does not reveal a complete picture of other factors encouraging parties to engage CRS or of parties who chose not to engage at all.

The strategic triangle factors explain why CRS has employed the traditional neutrality approach for more than five decades. It allows the agency to move toward its goal and sustain political viability without major organizational upheavals. In sum, traditional neutrality is a safe, but humble, strategy for improving the relationship between law enforcement and racial minorities.

IV. ANALYZING CONSCIOUS NEUTRALITY

In AOJ cases, CRS should approach neutrality from a racial justice perspective to accomplish its mission. This perspective is congruent with the radical nature and goals of the agency. A strategic triangle analysis illustrates CRS can significantly improve police relationships with racial minorities using conscious neutrality.

A federal agency's use of a racial justice perspective is a radical idea. The United States of America has prioritized anti-Black racism since its founding. Along with its endorsement of slavery, Black people were deemed "three fifths of all other Persons."⁵⁷ After the abolition of slavery and the ratification of several constitutional amendments, Black Codes and Jim Crow policies still limited the freedom of the recently enfranchised.⁵⁸ The years before the creation of CRS display how white people adamantly opposed Black empowerment:

Racial conflict born of resistance to the Negro thrust for social and economic equity had been searing the American consciousness for a full ten years. It started with the Supreme Court's landmark school

53. See Anonymous Interview 1 (Nov. 2018). While conducting research, I spoke with three current and former staff members of the Department of Justice Community Relations Service who made themselves available for interviews. The interviews are anonymous and randomly numbered.

54. See Anonymous Interview 2 (Nov. 2018).

55. See Anonymous Interview 3 (Oct. 2018).

56. See Anonymous Interview 2 (Nov. 2018).

57. U.S. CONST. art. I, § 2.

58. See LEVINE, *supra* note 10, at 4.

desegregation decision in May 1954, which was followed two months later by the formation in Mississippi of the first fortress of opposition, the White Citizens Council. Similar organizations then mushroomed throughout the South. Massive resistance to school desegregation followed. This was marked by violence, intimidation, school closings, and confrontations between blacks and whites, between federal law enforcement agents and local communities.⁵⁹

The resistance was not limited to people in the South. Dr. Martin Luther King, Jr., for example, said, “I have never seen, even in Mississippi and Alabama, mobs as hateful as I’ve seen here in Chicago.”⁶⁰ Despite the social and political advances, the nation still disproportionately harms the Black community. As Michelle Alexander explained, “Today mass incarceration defines the meaning of blackness in America: black people, especially black men, are criminals. This is what it means to be black.”⁶¹ A racial justice perspective directly challenges some of the historic and current elements that define the United States.

CRS is also a radical idea. Its mission, jurisdiction, and methods are unique and deviate meaningfully from what is expected of a federal agency within the Department of Justice. “[E]nhancing community capacity to independently prevent and resolve future conflicts” is an ironic undertaking.⁶² CRS aims to teach people to do exactly what CRS is responsible for doing. If the agency is successful, it will diminish its own utility and render itself obsolete. Further, the national agency is primarily concerned with community conflicts. Most government departments maintain a macro-level focus, but the jurisdiction of CRS departs from conventional understandings of federal parameters. Finally, and most importantly, CRS use of mediation and facilitation differs greatly from the work of its umbrella organization, the DOJ.⁶³ In the legal profession, the agency’s tools are in the field of *alternative* dispute resolution.⁶⁴ Thus, its defining traits are widely considered uncommon. The agency is also unusual within the DOJ. The first clause of the DOJ mission statement begins, “To enforce the law. . . .”⁶⁵ This purpose contrasts directly with CRS, which “does not have any law enforcement authority.”⁶⁶ In light of these characteristics, the traditional neutrality approach is paradoxical to the untraditional nature of CRS.

59. *Id.*

60. Matt Pearce, *When Martin Luther King Jr. took his fight into the North, and saw a new level of hatred*, L.A. TIMES (Jan. 18, 2016, 4:00 AM), <https://www.latimes.com/nation/la-na-mlk-chicago-20160118-story.html> [<https://perma.cc/W6FP-3F6W>].

61. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 197 (2012)

62. 2017 REP., *supra* note 6, at 12.

63. *See About DOJ*, U.S. DEP’T OF J., <https://www.justice.gov/about> [<https://perma.cc/TDF8-EF6T>].

64. *See Dispute Resolution Processes*, A.B.A., https://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses/.

65. *Id.*

66. 2017 REP., *supra* note 6, at 40.

The strategic triangle shows that a conscious neutrality approach can significantly reform the relationship between law enforcement and racial minorities. First, the affirmative acknowledgement of racism is substantively valuable for reducing discrimination. CRS staff are able to begin at a starting point that reflects a more advanced understanding of society instead of using the same baseline from the 1960s. This will likely also lead to cost-efficiency benefits by resolving conflicts with greater comprehension by all parties in a shorter time period. Additionally, this approach may better satisfy racial minority community groups, civic associations, and citizens who experience conflict with law enforcement. The value of CRS dramatically increases when the conflict resolution includes a robust understanding of racism's multiple dimensions.

Second, the approach will increase the legitimacy and political sustainability of CRS. Using conscious neutrality redraws the dividing line for the authorizing environment. The typical conservative versus liberal dichotomy is replaced with a racism versus anti-racism dichotomy. By choosing a more aggressive strategy, CRS and its goals gain publicity. This has the positive effect of shifting the authorizing environment from government officials to the general public. CRS can be seen as a utility for local communities across the nation. Although Congress and the White House still maintain significant control, their power base will be an ally of CRS. With respect to government leaders, most will fall into two categories. The first group is composed of politicians who are comfortable talking about race and will increase their support for the agency. The other group is composed of politicians who are uncomfortable talking about race and will continue to ignore CRS. For the few who are comfortable talking about race and will challenge the agency, their lack of technical expertise will curtail their influence. Therefore, a conscious neutrality approach has more benefits than disadvantages for legitimizing the agency compared to the status quo.

Last, the operational capacity is likely to see few major changes under a conscious neutrality approach. This is mainly because CRS staff are not allowed to discriminate, or to further discrimination.⁶⁷ Employees have already recognized the role of racism and mentioned white privilege in the field.⁶⁸ However, the approach can benefit the emotional wellbeing of staff, especially staff of color who must refrain from commenting on racist opinions. This approach is unique from the status quo because staff members will have a baseline assumption on racism to reference when identifying, naming, and denouncing racism in mediation and facilitation processes.

In summary, the strategic triangle analysis of a conscious neutrality approach reveals clear benefits. The public value is enhanced by a greater comprehension of racism, the authorizing environment shifts to the direct

67. See Anonymous Interview 2 (Nov. 2018).

68. See Ryan Lovelace, *The Department of Social Justice*, NATIONAL REVIEW (Dec. 8, 2014, 9:00 AM), <https://www.nationalreview.com/2014/12/department-social-justice-ryan-lovelace/> [<https://perma.cc/F7LK-7MM3>].

beneficiaries and triggers stronger allies, and the organizational capacity is protected on a more intimate level. Altogether, the approach can significantly improve how AOJ cases are resolved by CRS.

CONCLUSION

For CRS to meaningfully advance its mission of improving relations between police and racial minority groups, it must change its strategy in resolving their conflicts. Neutrality in AOJ cases should use a racial justice perspective because traditional notions of neutrality is a barrier to significant reform.

Racial justice scholars and practitioners would likely agree that the use of a racial justice perspective for neutrality is an uncertain enterprise for CRS. The strategic triangle shows its positive potential, but it must materialize in practice. Moore explained, “[I]f the manager adopts a strategy that challenges the existing politics, rests on a novel idea of what is substantively valuable, and depends on significant changes in the operating capabilities of his or her organization, then there is a great deal of risk.”⁶⁹ However, risk is not an inherently bad thing. The pathway to a multiracial harmony is paved with risks.

69. MOORE, *supra* note 13, at 102.