

# An Abolitionist Horizon for (Police) Reform

Amna A. Akbar\*

*Since the Ferguson and Baltimore uprisings, legal scholarship has undergone a profound reckoning with police violence. The emerging structural account of police violence recognizes that it is routine, legal, takes many shapes, and targets people based on their race, class, and gender. But legal scholarship remains fixated on investing in the police to repair and relegitimize their social function without paying sufficient attention to alternate frameworks for reform. The 2020 uprisings sparked by the police killing of George Floyd mobilized demands rooted in prison abolitionist organizing that provide another way forward. In contrast to conventional reform, the calls to defund and dismantle the police confront head-on the violence, scale, and power of the police, and therefore aim to redress police violence by diminishing the scale, scope, and legitimacy of police function. These calls are an important aspect of a practical agenda aimed at eliminating prisons and police and building modes of collective care and social provision—where reform is one essential strategy.*

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\* Associate Professor of Law, The Ohio State University, Moritz College of Law. 2018-2019 Princeton University Law and Public Affairs (LAPA) Fellow. For engagement with the ideas presented here, I am grateful to Alice Ristroph, Allegra McLeod, Amy Cohen, Angela Harris, Anna Roberts, Aziz Rana, Aziza Ahmed, Ben Levin, Bennett Capers, Dara Stalovich, David Sklansky, Don Herzog, Frank Rudy Cooper, Gerald Torres, Ian Haney López, Jamelia Morgan, Jeff Selbin, Jocelyn Simonson, Joanna Schwartz, John Whitlow, K-Sue Park, Kate Andrias, Kate Levine, Kathy Abrams, Keeanga-Yamahatta Taylor, Liz Sepper, Marc Spindelman, Monica Bell, Mya Frazier, Paul Frymer, Priscilla Ocen, Rachel Harmon, Rachel Herzing, Rachel Moran, Regina Kunzel, Ruth Colker, Russell Robinson, Sa'dia Rehman, Sameer Ashar, Sasha Natapoff, Silky Shah, Sonia Katyal, Tracey Meares, Ty Alper, and the Critical Justice Workshop, LAPA, the Antipode Workshop on Policing, CrimFest 2019, the Center for Interdisciplinary Law and Policy Studies, and faculty workshops at Boston University, Berkeley, George Washington, and Cardozo law schools. For extraordinary research assistance, I am grateful to Breeana Minton, Morgan MacKay, Sara Dagher, and Sam Harton. For terrific library support, I am grateful to Kaylie Vermillion, Stephanie Ziegler, Natasha Landon, Larissa Rockoff, and Lisa Armour. Special thanks to Gus Tupper and the *California Law Review*'s editorial staff.

*In this Article, I identify a growing disjuncture between the deepening recognition of the violence at the heart of policing and the persistence of a reform agenda that advances investments in police. I argue that a structural critique of police violence demands that we take seriously an abolitionist horizon for reform projects. I unpack the implications of an abolitionist approach and identify paths forward for legal scholarship.*

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## INTRODUCTION

“We used to think that if we improved policing we could escape its violence,” Rachel Herzing began.<sup>1</sup> It was November 2014, the fall that Darren Wilson killed Michael Brown and the people of Ferguson took to the streets in rebellion. A cofounder of the prison abolitionist organization Critical Resistance, Herzing was addressing a packed room in Los Angeles on the subject of police. She began with its origins: slave patrols in the U.S. South. She explained the historic relationship between formalized policing and violence and went on to connect prisons and police as interdependent institutions. Contemporary attempts at reforming the police had failed, she argued. Despite efforts at diverse

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1. Rachel Herzing, Address to the Critical Prison Studies Caucus of the American Studies Association: Keyword Police (Nov. 8, 2014). The Critical Prison Studies Caucus of the American Studies Association is made up of scholar-activists and organizers who are committed to denaturalizing the prison and police as central tools of statecraft in the United States and around the world. See *Critical Prison Studies Caucus*, AM. STUD. ASS’N, <https://www.theasa.net/communities/caucuses/critical-prison-studies-caucus> [<https://perma.cc/P2Z9-JHSZ>].

hiring, implicit bias trainings, civilian review boards, and criminal indictments of police, violence remained a core feature of the sprawling institution. “[T]he only way to stop the violence of policing is to make the cops obsolete,” Herzing concluded.<sup>2</sup>

I was sitting in that room. It was the first time that I had heard anyone argue that reforming police would not stop the violence—that the only way to decrease police violence was to decrease the number of police. For at least a decade, scholars had debated approaches to decarceration,<sup>3</sup> but few had considered the possibility of shrinking the police. Many championed the reforms Herzing dismissed. But Herzing convinced me then that the violence and scale of police were fundamentally intertwined with that of incarceration. For those opposed to mass criminalization, Herzing’s framework left one option: to shrink both prisons and police.

For decades, law faculty have dismissed demands to divest from and dismantle the police as fringe and unworkable. Then came the 2020 uprisings following the police murder of George Floyd in Minneapolis, among the largest social movement mobilizations in U.S. history.<sup>4</sup> The nationwide protests catapulted prison and police abolition into the mainstream and, in the process, unsettled the intellectual foundations of liberal police reform efforts.<sup>5</sup>

I, too, felt unsettled when I first heard Herzing’s message. She communicated a historical account of policing and its shifting forms. She offered a bold vision, grounded in the Black freedom struggle, for a radically different world. She spoke with a searing clarity about the stakes: the lives of millions of people defined in one way or another by the violence of prisons and police. She rejected the logic and scope of familiar reforms and then offered a practical reorientation for pursuing projects that held abolition in the horizon.

The turn to abolitionist horizons among today’s left social movements and racial justice activists and organizers has emerged as one of the most significant

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2. Herzing, *supra* note 1.

3. See, e.g., MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 165 (2015) (arguing that the common focus on decarcerating the “non, non, nons”—those charged with nonviolent, non-serious, non-sex related crimes—will not reduce incarceration sufficiently).

4. See Amna A. Akbar, *How Defund and Disband Became the Demands*, N.Y. REV. BOOKS (June 15, 2020), <https://www.nybooks.com/daily/2020/06/15/how-defund-and-disband-became-the-demands/> [https://perma.cc/P7VZ-UDCK]; Larry Buchanan et al., *Black Lives Matter May be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [https://perma.cc/65G3-PVX3].

5. For one example of abolition in the mainstream, see Mariame Kaba, *Opinion, Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [https://perma.cc/E3BW-LRR3].

political developments since the Ferguson and Baltimore rebellions.<sup>6</sup> Abolitionist organizers have pointed to how the state has invested in police and

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6. Among the founders of the long-standing abolitionist organization Critical Resistance, Angela Davis, Ruth Wilson Gilmore, Dylan Rodriguez, and Rachel Herzing are central voices of abolitionist praxis; other organizers, groups, and coalitions, such as Mariame Kaba; Beth E. Richie; Tourmaline; Dean Spade; Assata's Daughters; Survived & Punished; BYP100, Mijente; Detention Watch Network; Project NIA; Black and Pink; INCITE! Women, Gender Non-Conforming, and Trans People of Color Against Violence; California Immigrant Youth Justice Alliance; Audre Lorde Project; Southerners on New Ground; Sylvia Rivera Law Project; No New SF Jail Coalition; L.A. No More Jails; and #NoNewYouthJail in Seattle have also gained prominence of late. *See, e.g.*, CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX (Eric A. Stanley & Nat Smith eds., 2d ed. 2015); ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? (2003); DEAN SPADE, NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, & THE LIMITS OF LAW (rev. ed. 2015); Micol Seigel, *Critical Prison Studies: Review of a Field*, 70 AM. Q. 123–24 (2018); *Black Liberation and the Abolition of the Prison Industrial Complex: An Interview with Rachel Herzing*, 1 PROPTER NOS 62 (2016); Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES MAG. (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html> [<https://perma.cc/YQX5-J8UF>]; Marquita K. Harris, *#WarriorWednesdays: Mariame Kaba Is Our Very Own Modern Day Abolitionist*, ESSENCE (Feb. 21, 2018), <https://www.essence.com/holidays/black-history-month/mariame-kaba-warrior-wednesday/> [<https://perma.cc/9R2S-GQC8>]; Rachel Herzing, Opinion, *Big Dreams and Bold Steps Toward a Police-Free Future*, TRUTHOUT (Sept. 16, 2015), <http://www.truth-out.org/opinion/item/32813-big-dreams-and-bold-steps-toward-a-police-free-future> [<https://perma.cc/VEB6-J37L>]; Beth E. Richie, *How Anti-Violence Activism Taught Me to Become a Prison Abolitionist*, FEMINIST WIRE (Jan. 21, 2014), <https://thefeministwire.com/2014/01/how-anti-violence-activism-taught-me-to-become-a-prison-abolitionist> [<https://perma.cc/4EEL-AHKR>]; Herzing, *supra* note 1; *Beyond Prisons: Hope Is a Discipline* feat. Mariame Kaba, PLAYER FM (Jan. 5, 2018), <https://www.beyond-prisons.com/listen> [<https://web.archive.org/web/20200424155044/https://www.beyond-prisons.com/listen>]; *Beyond Prisons: Political Education* feat. Rachel Herzing, PLAYER FM (Apr. 3, 2019), <https://www.beyond-prisons.com/listen> [<https://web.archive.org/web/20200424155044/https://www.beyond-prisons.com/listen>]; *Justice in America: Mariame Kaba and Prison Abolition*, APPEAL (Mar. 20, 2019), <https://theappeal.org/justice-in-america-episode-20-mariame-kaba-and-prison-abolition/> [<https://perma.cc/Y5KN-SVMA>]; *Why Is This Happening? with Chris Hayes: Abolishing Prisons with Mariame Kaba*, NBC NEWS (Apr. 9, 2019), <https://web.archive.org/web/20200807200122if/https://www.nbcnews.com/think/opinion/thinking-about-how-abolish-prisons-mariame-kaba-podcast-transcript-ncna992721>; CRITICAL RESISTANCE, <http://criticalresistance.org/> [<https://perma.cc/XT5J-QEH6>]; PROJECT NIA, <http://www.project-nia.org/> [<https://perma.cc/2H63-WER3>]; SURVIVED & PUNISHED, <https://survivedandpunished.org/> [<https://perma.cc/S7YN-U589>]; BLACK AND PINK, <https://www.blackandpink.org/> [<https://perma.cc/T8PZ-ER6H>]; INCITE! WOMEN, GENDER NON-CONFORMING, AND TRANS PEOPLE OF COLOR AGAINST VIOLENCE, <https://incite-national.org/> [<https://perma.cc/WY9J-2N46>]; ASSATA'S DAUGHTERS, <http://www.assatasdaughters.org/> [<https://perma.cc/KB7T-NMUF>]; CAL. YOUTH JUSTICE ALL., <https://ciyja.org/> [<https://perma.cc/2UFQ-ZF9C>]; AUDRE LORDE PROJECT, <https://alp.org/> [<https://perma.cc/5GVC-FZE5>]; SOUTHERNERS ON NEW GROUND, <http://southernersonnewground.org/> [<https://perma.cc/85Y3-ZX28>]; SYLVIA RIVERA LAW PROJECT, <https://srlp.org/> [<https://perma.cc/AP6Y-A2DB>]; BYP100, <https://byp100.org/> [<https://perma.cc/V59L-L8WZ>]; NO NEW SF JAIL COALITION, <https://nonewsfjail.org/> [<https://perma.cc/7HKA-G8YF>]; LA NO MORE JAILS, <https://lanomorejails.org/> [<https://perma.cc/7A22-JYB4>]; NO NEW YOUTH JAIL IN SEATTLE, <https://nonewyouthjail.com/> [<https://perma.cc/X5P5-L3M8>]; MIJENTE, <https://mijente.net/> [<https://perma.cc/W36W-AAS2>]; DETENTION WATCH NETWORK, <https://www.detentionwatchnetwork.org/> [<https://perma.cc/BT9T-YJZK>]. While a number of these organizations are longstanding abolitionist organizations, more of them are newer organizations, or more recent in their embrace of abolition. Other organizations and institutions working toward abolition or to

prisons over housing, health care, and school for poor, working-class, Black, and brown communities. Their campaigns offer an approach to reform rooted in hope rather than cynicism: instead of giving more to police and the carceral state, they demand that resources be withdrawn from both and redistributed elsewhere as part of a larger strategy of transforming the state and society. That abolitionist organizers are running bold campaigns at the local, state, and federal level should invite us to pay closer attention. That these campaigns are having real influence demands that we do.<sup>7</sup>

I have spent several years struggling with Herzing's remarks and the turn toward abolition. I knew Herzing was right to argue that the police reforms that occupied the field of scholarly debate had not curbed police violence. But to admit as much out loud felt like failure. And it was beyond my imagination to conjure a world that did not rely on prisons and police or to believe we could muster the sustained mass political struggle needed to build that world.

But the orientation toward transformation of state and society, rather than police reform, provides a more honest assessment than liberal legal frameworks about what it will take to fight mass criminalization and the failures of reform. The scale, power, and violence of police and prisons—rooted in histories of enslavement and conquest—have become defining pieces of architecture within our political economy. Ending our reliance on prisons and police requires a radical and capacious path focused on transforming structures of our world and our relationships to each other.

I am not alone among scholars in my reckoning with police violence.<sup>8</sup> As I explain in Part I, since Ferguson and Baltimore, legal scholars have been

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support people who are currently incarcerated include All of Us or None, Moms United Against Violence and Incarceration, California Coalition for Women Prisoners, Northwest Detention Center Resistance, Sisters Inside, Abolition Law Center, We Charge Genocide, Abolition: A Journal of Insurgent Politics, and Californians United for a Responsible Budget.

7. See Amna A. Akbar, Sameer Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. (forthcoming 2021).

8. Scholarly attention to police killings and mass criminalization has increased dramatically since Ferguson. See, e.g., FRANKLIN E. ZIMRING, *WHEN POLICE KILL* (2017). For some of the newer work, see, for example, RACHEL ELISE BARKOW, *PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION* (2019); PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017); JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017); ISSA KOHLER-HAUSMANN, *MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING* (2018); ALEXANDRA NATAPOFF, *PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL* (2018); JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION AND HOW TO ACHIEVE REAL REFORM* (2017); Sharon Dolovich & Alexandra Natapoff, *Introduction to THE NEW CRIMINAL JUSTICE THINKING* 1–2 (Sharon Dolovich & Alexandra Natapoff eds., 2017); cf. Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259 (2018) (suggesting the “consensus” on criminal justice reform obfuscates distinct understandings of the nature of the problem as mass vs. over incarceration). Some scholars prefer the moniker “hyper” to mass incarceration to connote the vulnerability of Black, brown, and poor people to carceral control. See, e.g., Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the*

developing an increasingly structural account of police violence. This work recognizes that police violence is routine, is legal, takes many shapes, and targets people based on their race and class; even that police violence reflects and reproduces our political, economic, and social order.<sup>9</sup> This framing expands the conception of violence in policing: under law's cover, police advance inequality through their distribution of violence and surveillance, death, and debt. Fundamentally, these accounts dislodge law as a reliable demarcation device for proper and improper police violence. They point to the need for new horizons against which to measure success.

In Part II, I explore how scholarship on reform remains largely fixated on investing in the police to recalibrate and relegitimize their social function despite the structural turn in conceptions of police violence.<sup>10</sup> The commitment to repairing police focuses scholarly debate on questions of how to govern policing. It obscures fundamental questions about the proper role and scale of policing in a hierarchical landscape barren of social provision and about the centrality of an institution that relies on violence to the state and its political economy.

The organizing that pushed defunding the police to the center of public discourse provides frameworks for scholars exploring a project of transformation that flows from structural critiques of police.<sup>11</sup> In Part III, I draw on contemporary organizing to deepen the critique of police and to develop an

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*Work of the Anti-Domestic Violence Movement*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 585 (2015); Frank Rudy Cooper, *Hyper-Incarceration as a Multidimensional Attack: Replying to Angela Harris Through the Wire*, 37 WASH. U. J.L. & POL'Y 67 (2011). On the identification of a particular crisis now, see, for example, Joshua Kleinfeld, *Manifesto of Democratic Criminal Justice*, 111 NW. U. L. REV. 1367, 1374–75 (2017) (“[T]he existence of the crisis is now all but a matter of consensus.”). This crisis is felt within the police, too. See, e.g., Dan Marcou, *This Is How to Respond to the Current Crisis in Policing*, POLICEONE (July 25, 2016), <https://www.policeone.com/ambush/articles/202917006-This-is-how-to-respond-to-the-current-crisis-in-policing> [<https://perma.cc/JR5T-K7HS>].

9. See *infra* Part I. On gender, sexuality, and intersectionality, Joey Mogul's and Andrea Ritchie's works are important. ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017); JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* (2011); see also Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 WM. & MARY J. WOMEN & L. 39 (2017); Josephine Ross, *What the #MeToo Campaign Teaches About Stop and Frisk*, 54 IDAHO L. REV. 543 (2018).

10. Significantly, V. Noah Gimbel, a recent law graduate, and Craig Muhammad, who has been incarcerated for over thirty-six years, wrote the first full-length law review article on the question of police abolition. V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453 (2019).

11. See, e.g., Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405 (2018) (comparing the Movement for Black Lives' policy platform, the Vision for Black Lives, with the Department of Justice's (DOJ) Baltimore and Ferguson reports, *infra* note 21, for their distinct accounts of police violence and distinct approaches for redress); K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 693–99 (2020) (demonstrating how the Movement for Black Lives' “broad diagnosis of the drivers of racial inequality” led to the creation of an expansive set of demands in the Vision for Black Lives policy platform); see also Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. (forthcoming 2021) (examining questions of police reform through a movement lens that considers whether the reform shifts power).

abolitionist horizon that reimagines and redirects reform toward the political, economic, and social transformations necessary to confront the enduring realities of police violence.<sup>12</sup> I unpack central tenets of abolitionist theory and campaigns: that police are a regressive and violent force in a historical struggle over the distribution of land, labor, and resources, and that their power has historical, material, and ideological bases. I examine abolitionist campaigns and experiments to divest from, dismantle, and delegitimize the police.

The “horizon” toward which this agenda focuses our aspirations is a society that does not depend on prisons, police, or other forms of penal control. The horizon metaphor grounds today’s efforts in our imaginations for the world we want to live in tomorrow.<sup>13</sup> Reform is one strategy toward the transformation abolition seeks. Rather than aiming to improve police through better regulation and more resources, reform rooted in an abolitionist horizon aims to contest and then to shrink the role of police, ultimately seeking to transform our political, economic, and social order to achieve broader social provision for human needs. But abolitionist organizers understand that demands on the state are insufficient to undo the carceral state. So, as they run campaigns to divest from, dismantle, and delegitimize the police, they run experiments in accountability and collective care.

In Part IV, I unpack the implications of an abolitionist approach for thinking about reform and identify paths forward for legal scholarship. Abolition situates prison and police within a history of racialized violence and exploitation, attends directly to the centrality of prisons and police in our political economy, and demands that we focus on shrinking the scale of prisons and police as we build alternatives.<sup>14</sup> Whereas other disciplines focus on charting peoples, literatures, and histories, legal scholars propose reforms based on an understanding of law and its problems. Once we better understand the structural and historical nature of the problems we study, we cannot rest on old modes of conceiving reform.<sup>15</sup>

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12. See, e.g., *Active Campaigns*, PRISON INDUS. DIVESTMENT MOVEMENT, <https://prisondivest.com/active-campaigns/> [https://perma.cc/R2U8-AXF4]; *Our Work*, FREEDOM TO THRIVE, <https://freedomtothrive.org/our-work/> [https://perma.cc/3Z4Z-HD49]; *The Platform*, FREEDOM CITIES, <http://freedomcities.org/platform/> [https://perma.cc/ASR7-RFPD].

13. For abolitionist deployments of the horizon metaphor, see Dan Berger, Mariame Kaba, & David Stein, *What Abolitionists Do*, JACOBIN (Aug. 24, 2017), <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration> [https://perma.cc/RUZ8-LBK5]; John Duda, *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*, NEXT SYS. PROJECT (Nov. 9, 2017), <https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba> [https://perma.cc/4Q4K-QXSN].

14. As Fred Moten and Stefano Harney framed “the object of abolition”: “Not so much the abolition of prisons but the abolition of a society that could have prisons, that could have slavery, that could have the wage, and therefore not abolition as the elimination of anything but abolition as the founding of a new society.” STEFANO HARNEY & FRED MOTEN, *THE UNDERCOMMONS: FUGITIVE PLANNING & BLACK STUDY* 42 (2013).

15. See Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201 (2016). Herzing often says a reform is just a change. Herzing, *supra* note 6.

Abolition challenges reform frameworks in two fundamental ways. First, it advances reform as a strategy or tactic toward transformation, rather than an end in itself. And second, it supplants state and society for police as the object of transformation. In turn, it indicates the need for a range of tactics, experiments, and projects for decarceration and depolicing, and ultimately the need to rethink the state. Reform alone will not be enough.

Abolition requires that we become more comfortable with the disruption and delegitimization of prevailing political, economic, and social relations that hold in place brutal inequality. It connects us to grassroots movements that are necessary sources of political power for decarceration and depolicing.<sup>16</sup> Abolitionist demands speak to the fundamental crises of our times, challenge our siloed expertise as legal scholars, and invite us to reconsider our commitments to the status quo.

Why have decades of police reform failed to mitigate police violence? Agendas focused on reforming and relegitimizing the police have failed to consider the footprint, power, resources, and legitimacy of police as the heart of the problem. By contending with abolitionist critique and organizing, we deepen our understanding of policing and cogenerate strategies that have the potential for political, economic, and social transformation. Such reorientations can create space for scholars to think about meaningful reform projects that transform the structures and relations of power that undergird policing and the country.

## I.

### A STRUCTURAL ACCOUNT OF POLICE VIOLENCE

Legal scholarship is undergoing a profound reckoning with the centrality of violence to policing in the United States.<sup>17</sup> This scholarship confronts anew how police, with law's imprimatur, create and constitute racialized and classed pain and death through guns and physical force, tickets and arrests, segregation and gentrification, police unions, and impunity.<sup>18</sup> This turn focuses attention on

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16. As I have written elsewhere, cogenerating ideas with mass movements and organizing from below is essential for meaningful social change projects. *E.g.*, Akbar et al., *supra* note 7; Akbar, *supra* note 11; *see also* Simonson, *supra* note 11; Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2743, 2750 (“[D]emosprudence focuses on the ways that ongoing collective action by ordinary people can permanently alter the practice of democracy by changing the people who make the law and the landscape in which that law is made.”).

17. ZIMRING, *supra* note 8, at 8–9 (documenting the absence of legal scholarship focused on police killings before 2014, and the greater attention to police killings since).

18. *See generally* Robert M. Cover, Essay, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986) (describing the foundations of the legal system as “tak[ing] place in a field of pain and death”). I don’t mean to suggest that critique of police is new in legal scholarship, but simply that the critique has intensified. There’s at least a two-decade-long tradition of robust critique of police in legal scholarship. On zero-tolerance and broken-windows policing, *see, for example*, Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457



the fundamental relationship between legal sanction, police violence, and expropriation.<sup>19</sup> It suggests how mainstream accounts of police within law and legal scholarship fail to address the experiences of communities disproportionately subjected to police violence.<sup>20</sup>

Here, I briefly lay out the structural critique of police emerging in legal scholarship. Police violence is (1) authorized by law, (2) takes various, interconnected forms, (3) that occur in routine and common place ways, that are (4) targeted along the dimensions of race, class, and gender, and (5) constitute

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(2000); Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291 (1998); Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775 (1999) [hereinafter Roberts, *Foreword*]. On poverty and class, see, for example, JONATHAN SIMON, *GOVERNING THROUGH CRIME* (2007); William J. Stuntz, *The Political Constitution of Criminal Justice*, 119 HARV. L. REV. 781 (2006); William J. Stuntz, Essay, *Race, Class, and Drugs*, 98 COLUM. L. REV. 1795 (1998). On race, see, for example, Devon W. Carbado, *(E)Racing the Fourth Amendment*, 100 MICH. L. REV. 946 (2002); Richard Delgado, Essay, *Rodrigo's Eighth Chronicle: Black Crime, White Fears—On the Social Construction of Threat*, 80 VA. L. REV. 503 (1994); Paul Butler, *(Color) Blind Faith: The Tragedy of Race, Crime, and the Law*, 111 HARV. L. REV. 1270 (1998) (book review). On collateral consequences, see, for example, Dorothy E. Roberts, *Criminal Justice and Black Families: The Collateral Damage of Over-Enforcement*, 34 U.C. DAVIS L. REV. 1005 (2001); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271 (2004). On discretion, see, for example, LAW AS PUNISHMENT / LAW AS REGULATION (Austin Sarat et al. eds., 2011); Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 FORDHAM L. REV. 13 (1998). On the gendered and sexualized nature of policing, see, for example, MOGUL ET AL., *supra* note 9; Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. REV. 1540 (2012); SPADE, *supra* note 6. For scholarship examining how police union contracts hamper accountability efforts, see Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712 (2017); Benjamin Levin, Essay, *What's Wrong with Police Unions*, 120 COLUM. L. REV. 1333 (2020); Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191 (2017) [hereinafter Rushin, *Police Union Contracts*]. For scholarship that argues against fictions that hamper our ability to appreciate police's social function—for example, the idea that there is a clear divide between public and private policing, see Ingrid V. Eagly & Joanna C. Schwartz, *Lexipol: The Privatization of Police Policymaking*, 96 TEX. L. REV. 891 (2018); Seth W. Stoughton, *The Blurred Blue Line: Reform in an Era of Public & Private Policing*, 44 AM. J. CRIM. L. 117 (2017). And, of course, for older literature on mass incarceration and race, see, for example, MICHELLE ALEXANDER, *THE NEW JIM CROW* (2010); Ian F. Haney López, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023 (2010).

19. The literature on misdemeanors reveals these linkages. See, e.g., Alexandra Natapoff, *Aggregation and Urban Misdemeanors*, 40 FORDHAM URB. L.J. 1043 (2013); Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313 (2012) [hereinafter Natapoff, *Misdemeanors*]; Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611 (2014); Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277 (2011).

20. Monica Bell's work, for example, demonstrates how legal scholarship misconceives police and police violence vis-à-vis the experiences of poor, Black communities, and in particular, Black women. See Monica Bell, Response, *Hidden Laws of the Time of Ferguson*, 132 HARV. L. REV. F. 1 (2018) [hereinafter Bell, *Hidden Laws*]; Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017) [hereinafter Bell, *Police Reform*]; Monica C. Bell, *Situational Trust: How Disadvantaged Mothers Reconceive Legal Cynicism*, 50 LAW & SOC'Y REV. 314 (2016) [hereinafter Bell, *Situational Trust*].

and produce our political, economic, and social order.<sup>21</sup> While this is in no way a comprehensive account of the field, it is synthesized from the work of scholars who chart a fundamental critique of police and its violence.

(1) *Authorized by Law.* The Supreme Court's Fourth Amendment jurisprudence facilitates, rather than constrains, police violence.<sup>22</sup> Judges allow

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21. I am not the only one to so observe. *See, e.g.,* ZIMRING, *supra* note 8, at 14 (explaining that police violence is increasingly understood as “institutional” rather than “individual,” or “recurring episodes” that are “representative” rather than “a series of singular events”). Importantly, much of my composite account is reflected in the Department of Justice’s Ferguson and Baltimore reports. *See* CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 3–11 (2016), <https://www.justice.gov/crt/file/883296/download> [<https://perma.cc/7KJN-FAUV>] [hereinafter DOJ BALTIMORE POLICE REPORT]; CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 1–6 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf) [<https://perma.cc/TL5A-EEPN>] [hereinafter DOJ FERGUSON POLICE REPORT]; *see also* CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, & N. DIST. OF ILL., U.S. ATTORNEY’S OFFICE, INVESTIGATION OF THE CHICAGO POLICE DEPARTMENT (2017), <https://www.justice.gov/opa/file/925846/download> [<https://perma.cc/C7VE-UPFW>] [hereinafter DOJ CHICAGO POLICE REPORT]. Legal scholars argue that much police violence is constitutional, making law central to—rather than a limit on—the problem. *See, e.g.,* Allegra M. McLeod, *Police Violence, Constitutional Complicity, and Another Vantage*, 2016 SUP. CT. REV. 157. The DOJ constructs constitutional law as a bulwark against police violence.

22. *See* Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1505–08 (2016) [hereinafter Carbado, *Blue-on-Black Violence*] (finding that the Supreme Court’s interpretation of the Fourth Amendment “empower[s], rather than constrain[s]” the police); Devon W. Carbado, *From Stop and Frisk to Shoot and Kill: Terry v. Ohio’s Pathway to Police Violence*, 64 UCLA L. REV. 1508, 1551 (2017) (“[T]he Terry regime, and Fourth Amendment law more generally, provides police officers with an opportunity to target African Americans without violating the law.”); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 128–31, 162–63 (2017) [hereinafter Carbado, *From Stopping Black People to Killing Black People*] (documenting how the Court legitimizes race as the basis for police action by either making something not a search or seizure (so no Fourth Amendment scrutiny is triggered) or by making the intrusion reasonable (and as a result justified), thereby facilitating police contact and violence); Rachel A. Harmon, *Why Arrest?*, 115 MICH. L. REV. 307, 321–23 (2016) (describing the Court’s Fourth Amendment jurisprudence as “presum[ing] that (rather than consider[ing] whether) the government needs to arrest criminal suspects in order to control crime”); Devon W. Carbado & L. Song Richardson, *The Black Police: Policing Our Own*, 131 HARV. L. REV. 1979, 2015 (2018) (reviewing FORMAN, *supra* note 8) (the Fourth Amendment “operates more as a source of police empowerment than as a meaningful constitutional constraint” on police); *see also* Paul Butler, *The System Is Working the Way It Is Supposed To: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1424 (2016) (“It is possible for police to selectively invoke their powers against African-American residents and, at the same time, act consistently with the law.”); Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1867–75 (2015) (discussing how judicial review does not meaningfully regulate police, especially as police have become “more proactive and regulatory”); McLeod, *supra* note 21, at 161–66 (“The Supreme Court’s constitutional criminal procedure doctrine sanctions much of the policing activity that led to the deaths of Philando Castille, Sandra Bland, and Eric Garner . . .”); Alice Ristroph, *The Constitution of Police Violence*, 64 UCLA L. REV. 1182, 1189 (2017) (“The law of police force is constitutive and permissive; it is also distributive. . . . [T]hese areas of law distribute or redistribute the risks of being subjected to violence . . .”); Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261, 278 (2007) (describing how legal doctrine makes “individual acts of [police] abuse appear isolated, aberrational, and acceptable rather than part of a systematic pattern of official violence”).

police to “do mostly anything they want,”<sup>23</sup> including harassment, brutalization, killing, SWAT raids, body cavity searches, and the use of chemical weapons.<sup>24</sup> In some meaningful sense, the rules of policing are not so much “top-down” (with the law or courts governing the police) but “bottom-up” (with policing itself driving the law).<sup>25</sup> But the Fourth Amendment is not simply permissive of police violence; it amplifies the racialized “risks of being subjected to violence.”<sup>26</sup>

The police killings of Michael Brown, Freddie Gray, Eric Garner, Laquan McDonald, Tamir Rice, Rekia Boyd, Tanisha Anderson, George Floyd, Breonna Taylor, and Tony McDade—made high profile by rebellions and protests—brought greater scrutiny to how police use violence with legal impunity every day. A combined municipal-state-federal legal architecture permits routine police violence by granting police discretion over when and how to arrest or deploy force in a wide variety of settings.<sup>27</sup> This discretion allows police to target poor, Black, and brown people.<sup>28</sup> Police violence effectively becomes justified

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23. BARRY FRIEDMAN, UNWARRANTED: POLICING WITHOUT PERMISSION 73–74, 86–87 (2017) (finding that the Supreme Court is more likely to write rules about what the police can do but does not like to tell police what they cannot do). For a careful reconstruction of the rise of “police expertise” to which courts defer, see Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995 (2017).

24. See, e.g., Kara Dansky, *Another Day, Another 124 Violent Swat Raids*, ACLU (June 26, 2014), <https://www.aclu.org/blog/smart-justice/mass-incarceration/another-day-another-124-violent-swat-raids> [<https://perma.cc/JF9H-L36H>].

25. FRIEDMAN, *supra* note 23, at 64 (stating that “study after study” in the 1950s and 1960s showed that “contrary to the ‘top-down’ image of professional policing . . . , the real rules were made ‘bottom-up’ by patrol officers”); see also Inés Valdez, Mat Coleman & Amna Akbar, *Missing in Action: Practice, Paralegality, and the Nature of Immigration Enforcement*, 21 CITIZENSHIP STUD. 547, 561 (2017) (identifying a horizontal dynamic relationship between law and enforcement, as opposed to the conventional view that suggests that law is in a vertical hierarchical relationship with enforcement).

26. Ristroph, *supra* note 22, at 1184–92.

27. See, e.g., Rachel Moran, *Ending the Internal Affairs Farce*, 64 BUFF. L. REV. 837, 843–44 (2016) (critiquing internal affairs review as an “irresponsible” and “farcical method of responding to misconduct claims”); Rachel Moran, *In Police We Trust*, 62 VILL. L. REV. 953, 971–83 (2017) (documenting the various modes of deference to police judgment and power).

28. Carbado, *From Stopping Black People to Killing Black People*, *supra* note 22, at 131 (“Fourth Amendment doctrine expressly authorizes or facilitates the very social practice it ought to prevent: racial profiling.”). Rachel Harmon’s call to expand policing scholarship beyond the Constitution to more fully account for “how law and public policy can best regulate” police included a broader paradigm for understanding police harm. Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 764, 792–94 (2012) (arguing that they can be used as a way to evaluate “harm efficiency” of police practices). A great deal of work heeds her important call to expand policing scholarship. See, e.g., John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARV. L. REV. 1539, 1551–55 (2017) (examining the role police liability insurance could play in regulating the police); Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885, 936–37 (2014) (finding that police officers are virtually never financially responsible for paying damages awards in civil suits and considering the implications of this fact); Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3196–97 (2014) (examining federal underenforcement of 42 U.S.C. § 14141); Rushin, *Police Union Contracts*, *supra* note 18, at 1243 (arguing on the basis of an original dataset of 178 police union contracts that these contracts constrain police discipline and accountability).

force at various stages: when internal affairs dismisses a civilian complaint as insignificant, when a prosecutor refuses to file charges against the police, when a grand jury refuses to indict, and when the use of force is deemed reasonable and therefore justified in either a criminal or civil process.<sup>29</sup> Qualified immunity provides police an almost insurmountable defense against civil rights claims.<sup>30</sup> Police union contracts protect police power and insulate police violence from review and consequence.<sup>31</sup> Moreover, indemnification practices mean that police do not pay an actual dime of any civil damage awards—local governments do.<sup>32</sup>

(2) *Various Interconnected Forms of Violence.* The Department of Justice's (DOJ) finding that the City of Ferguson deployed the courts and police to generate revenue above all else, with police targeting Black residents for fines and fees, exposed the relationship between racialized police violence and local political economies.<sup>33</sup> Ferguson generated over \$2 million in municipal court fines for at least three years in a row, and fines comprised roughly 20 percent of the city budget in 2013—the largest stream of revenue after sales tax, and far more than the revenue generated from its property taxes.<sup>34</sup> As a growing body of

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But there is more to document and to understand: see, for example, Justin M. Feldman et al., *Police-Related Deaths and Neighborhood Economic and Racial/Ethnic Polarization, United States, 2015–2016*, 109 AM. J. PUB. HEALTH 458 (2019) (finding that police-related death rates were highest in neighborhoods with the greatest concentrations of low-income residents and residents of color); Francie Diep, *Police Are Most Likely to Use Deadly Force in Poorer, More Highly Segregated Neighborhoods*, PAC. STANDARD (Jan. 24, 2019), <https://psmag.com/news/police-are-most-likely-to-use-deadly-force-in-poorer-more-highly-segregated-neighborhoods> [<https://perma.cc/8D2A-QZTK>] (explaining the validity and limits of Feldman's research).

29. Carbado, *Blue-on-Black Violence*, *supra* note 22, at 1515–18.

30. See Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 6 (2017) (“The United States Supreme Court appears to be on a mission to curb civil rights lawsuits against law enforcement officers, and appears to believe qualified immunity is the means of achieving its goal.”).

31. Rushin, *supra* note 28, at 3202; Rushin, *Police Union Contracts*, *supra* note 18, at 1196–98; cf. Sunita Patel, *Jumping Hurdles to Sue the Police*, 104 MINN. L. REV. 2257 (2020) (describing the possibilities and hurdles of police structural reform litigation).

32. Carbado, *Blue-on-Black Violence*, *supra* note 22, at 1520–24.

33. See DOJ FERGUSON POLICE REPORT, *supra* note 21, at 2, 9–10; THOMAS HARVEY ET AL., ARCHCITY DEFS., MUNICIPAL COURTS WHITE PAPER (2014), <https://www.archcitydefenders.org/wp-content/uploads/2019/03/ArchCity-Defenders-Municipal-Courts-Whitepaper.pdf> [<https://perma.cc/5TMX-LWC7>].

34. See CITY OF FERGUSON, MO., ANNUAL OPERATING BUDGET: FISCAL YEAR 2014-2015 (2014), <http://www.fergusoncity.com/DocumentCenter/View/1701/2015-COFM-Budget-Main-Final?bidId=> [<https://perma.cc/BAT8-BJY3>]; Walter Johnson, *Ferguson's Fortune 500 Company*, ATLANTIC (Apr. 26, 2015), <https://www.theatlantic.com/politics/archive/2015/04/fergusons-fortune-500-company/390492/> [<https://perma.cc/69BE-JMF9>] (“Ferguson extracts more revenue from African American renters seeking to heat their homes in the winter . . . than it does from those who own the homes themselves. . . . The vast wealth of the city, scarcely taxed at all, is locked up in property that African Americans were prevented from buying for most of its history.”); Frances Robles, *Ferguson Sets Broad Change for City Courts*, N.Y. TIMES (Sept. 8, 2014), <https://www.nytimes.com/2014/09/09/us/ferguson-council-looks-to-improve-community-relations-with-police.html> [<https://perma.cc/C3R2-X3M2>].

research and scholarship increasingly demonstrates, Ferguson is an exemplar rather than an aberration in its targeting of poor people for fines and fees.<sup>35</sup>

In jurisdictions large and small, policing is connected “to cash flow through the courts and correctional agencies.”<sup>36</sup> Monetary penalties are a feature of every stage of the criminal process. These include bail, court costs, fines and forfeiture, pay-to-stay detention, and fees for booking and expungement as well as for calls, email, and commissary while incarcerated. These penalties are seen as a “legitimate deterrent to wrongdoing,” and a way to internalize criminal legal administration to “the criminal” rather than to “law-abiding taxpayers.”<sup>37</sup> These costs are primarily imposed on the poor.<sup>38</sup> They are enforced with further economic and carceral sanctions, creating a regime where failures to pay lead to cascading economic sanctions and additional pathways to incarceration.<sup>39</sup> The immense powers of police to stop, frisk, cite, arrest, brutalize, and shoot are

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35. See, e.g., Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 UCLA L. REV. 2, 6–8 (2018); Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1176–77, 1185–96; Matthew Shaer, *How Cities Make Money by Fining the Poor*, N.Y. TIMES (Jan. 8, 2019), <https://www.nytimes.com/2019/01/08/magazine/cities-fine-poor-jail.html> [<https://perma.cc/5HSP-SUBV>]. For additional sources documenting an extensive problem, see Elizabeth Jones, *Racism, Fines and Fees and the US Carceral State*, 59 RACE & CLASS 38 (2017) and FINES & FEES JUST. CTR., <https://finesandfeesjusticecenter.org> [<https://perma.cc/NVL3-8KR5>].

36. Jeffrey Fagan & Elliott Ash, *New Policing, New Segregation: From Ferguson to New York*, 106 GEO L.J. ONLINE 33, 42 (2017); see also Colgan, *supra* note 35, at 6–8 (explaining that “the use of economic sanctions—statutory fines, surcharges, administrative fees, and restitution—has exploded in courts around the country” for “violations as minor as jaywalking and as serious as homicide” and “range from a few dollars to millions,” with failure to pay creating disastrous consequences from public benefits cancellation to incarceration and probation to drivers’ and occupational license suspension).

37. Fagan & Ash, *supra* note 36, at 42–52, 75 (“Ferguson was cloaking its taxing power in the exercise of police power by functionally equating the power of taxation with the power to punish. . . . [B]lack citizens were disproportionately taxed through the criminal justice system to generate revenue to pay for the policing that discriminated against them.”); see also Bell, *Hidden Laws*, *supra* note 20, at 12 (“Poor towns have often turned to the carceral system to propel their economies. . . . [P]oor cities may ratchet up ostensible crime control to generate municipal revenue.”); Logan & Wright, *supra* note 35, at 1176–77, 1185–96 (cataloging various types of fees).

38. Laura I. Appleman, *Nickel and Dimed into Incarceration: Cash-Register Justice in the Criminal System*, 57 B.C. L. REV. 1483, 1485 (2016).

39. *Id.*

combined with the imperative to generate cash.<sup>40</sup> An estimated ten million people owe more than \$50 billion in criminal legal debt.<sup>41</sup>

This is more than a financial burden on the poor. The emotional, psychological, familial, and communal toll is incalculable.<sup>42</sup> Police enact a range of physical, sexual, psychological, and exploitative economic violence.<sup>43</sup> The law invests in the vast power of police to stop, frisk, arrest, cite, and issue

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40. Carbado talks about how the revenue-generation imperative in policing has expanded the potential for police violence: police stops to issue citations “can culminate in arrest, incarceration, and violence.” Devon W. Carbado, *Predatory Policing*, 83 UMKC L. REV. 545, 548–49, 564–65 (2017) (“[P]redatory policing works in conjunction with mass criminalization to facilitate not only the surveillance, social control, and economic exploitation of African Americans but also their arrest, incarceration, and exposure to police violence.”); see also FRIEDMAN, *supra* note 23, at 11–12 (“Annually, local, state, and federal police seize homes, cars, and millions of dollars in cash, much of it from innocent people.”). Carbado also talks of “‘predatory policing’—the direct targeting of vulnerable groups by way of arrests or the issuance of citations as sources of revenue for the city or the police department or to effectuate promotions and pay increases for particular officers.” Carbado, *Blue-on-Black Violence*, *supra* note 22, at 1502; see also Carbado, *From Stopping Black People to Killing Black People*, *supra* note 22, at 128; NATAPOFF, *supra* note 8, at 24–26; Wayne A. Logan, *Policing Police Access to Criminal Justice Data*, 104 IOWA L. REV. 619, 625 (2019) (documenting the expanding police power to access government databases). For an example focused on the power of prosecutors, see Andrea Roth, “*Spit and Acquit*”: Prosecutors as Surveillance Entrepreneurs, 107 CALIF. L. REV. 405 (2019).

41. LAUREN-BROOKE EISEN, BRENNAN CTR. FOR JUSTICE, CHARGING INMATES PERPETUATES MASS INCARCERATION 1 (2015), <https://www.brennancenter.org/publication/charging-inmates-perpetuates-mass-incarceration> [<https://perma.cc/46SS-3966>]; see also Appleman, *supra* note 38, at 1485 (“[A]pproximately ten million people owe more than fifty billion dollars in debt as a result of their involvement in the criminal justice system.”).

42. Logan & Wright, *supra* note 35, at 1209 (“[C]ourts defer to the legislature and enforce fines, fees, and costs that the legislature has clearly authorized.”). For a campaign to abolish juvenile fee abolition, see Jeffrey Selbin, *Juvenile Fee Abolition in California: Early Lessons and Challenges for the Debt-free Justice Movement*, 98 N.C. L. REV. 401 (2020).

43. Kimberlé Williams Crenshaw et al., Afr. Am. Policy Forum & Ctr. for Intersectionality and Soc. Policy Stud., SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN (2015) (arguing that attention to police violence against Black women has been largely absent from recent mass protest and documenting the police violence Black women face). The #SayHerName report documents how Black women are disproportionately subjected to police violence, and chronicles various forms of physical, lethal, and sexual violence they are subjected to for their race, gender, and class. In Oklahoma City, police officer Daniel Holtzclaw raped and sexually assaulted at least thirteen Black women, exposing the oft-neglected gendered and sexualized aspects of police violence. See Matt Ford, *A Guilty Verdict for Daniel Holtzclaw*, Atlantic (Dec. 11, 2015), <https://www.theatlantic.com/politics/archive/2015/12/daniel-holtzclaw-trial-guilty/420009/> [<https://perma.cc/2EWH-5YVK>]; Molly Redden, *Daniel Holtzclaw: Former Oklahoma City Police Officer Guilty of Rape*, Guardian (Dec. 10, 2015), <https://www.theguardian.com/us-news/2015/dec/11/daniel-holtzclaw-former-oklahoma-city-police-officer-guilty-rape> [<https://perma.cc/R3CZ-TRLH>]; see also Jenn Jackson, *How Did Daniel Holtzclaw Get Away with It for So Long? Because His Victims Were Thought of as Unrapeable*, Independent (Dec. 11, 2015), <https://www.independent.co.uk/voices/how-did-daniel-holtzclaw-get-away-with-it-for-so-long-because-the-women-he-abused-were-thought-of-as-a6770096.html> [<https://perma.cc/R4YB-4ZXX>]; *Oklahoma City Council Settles Excessive Force Lawsuit of Ex-Cop for \$25,000*, CBS News (Mar. 26, 2019), <https://www.cbsnews.com/news/daniel-holtzclaw-oklahoma-city-council-approves-settlement-excessive-force-lawsuit-former-officer/> [<https://perma.cc/B6XW-K2SA>].

summons for all manner of activity.<sup>44</sup> Police deploy physical force such as shootings, pepper spray, tasers, body cavity searches, and SWAT raids.<sup>45</sup> Millions of police searches take place annually.<sup>46</sup> Even if police decide to engage with a civilian for no proper reason, they are “authorized [by law] to use force, sometimes deadly force, to enforce that decision.”<sup>47</sup> As a result, violence is enmeshed in routine policing, including traffic stops.<sup>48</sup>

(3) *Routine and Commonplace*. Police violence is an everyday occurrence. It occurs in schools, cars, homes, streets, pools, and every police department.<sup>49</sup> Police violence is not a problem of “bad apples” or singular incidents,<sup>50</sup> but

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44. See generally *Utah v. Strieff*, 136 S. Ct. 2056, 2064 (2016) (“For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure.”); *id.* at 2064 (Sotomayor, J., dissenting) (“This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong.”); *Whren v. United States*, 517 U.S. 806, 810 (1996) (stating that suspicion of a civil traffic code violation is sufficient to justify a stop); *United States v. Brignoni-Ponce*, 422 U.S. 873, 885–87 (1975) (finding unconstitutional a traffic stop based only on “apparent Mexican ancestry,” but stating that “Mexican appearance” could serve as one factor among others to establish reasonable suspicion of an immigration violation).

45. FRIEDMAN, *supra* note 23, at 6–12.

46. *Id.*; Fagan & Ash, *supra* note 36, at 53–54.

47. Harmon, *supra* note 22, at 315.

48. Carbado, *From Stopping Black People to Killing Black People*, *supra* note 22, at 127–28. For examples of traffic stops gone lethal, see, for example, Nick Corasaniti, *Newark Police Officer Is Charged in Shooting Death of Fleeing Driver*, N.Y. TIMES (May 21, 2019), <https://www.nytimes.com/2019/05/21/nyregion/newark-police-officer-indicted-shooting-death.html> [<https://perma.cc/E7FX-JD2R>]; Jay Croft, *Philando Castile Shooting: Dashcam Video Shows Rapid Event*, CNN (June 20, 2017), <https://www.cnn.com/2017/06/20/us/philando-castile-shooting-dashcam/index.html> [<https://perma.cc/Y8NU-42CW>]; Tom Jackman, *Video: ‘Routine’ Traffic Stop Turns into Deadly Police Shootout in L.A.*, WASH. POST (Sept. 14, 2018), [https://www.washingtonpost.com/news/true-crime/wp/2018/09/14/video-routine-traffic-stop-turns-into-deadly-police-shootout-in-l-a/?utm\\_term=.02cd86baf90c](https://www.washingtonpost.com/news/true-crime/wp/2018/09/14/video-routine-traffic-stop-turns-into-deadly-police-shootout-in-l-a/?utm_term=.02cd86baf90c) [<https://perma.cc/A2LQ-EXFV>]; Tana Weingartner, *Campus Cop on Trial for Shooting Death During Routine Traffic Stop*, NPR (Oct. 25, 2016), <https://www.npr.org/2016/10/25/499224917/campus-cop-on-trial-for-shooting-death-during-routine-traffic-stop> [<https://perma.cc/W8X2-S82S>].

49. See, e.g., Mark Berman, *Minneapolis Police Officers Will Not Face Charges for Fatally Shooting Jamar Clark*, WASH. POST (Mar. 30, 2016), [https://www.washingtonpost.com/news/post-nation/wp/2016/03/30/prosecutor-to-announce-decision-on-charges-in-minneapolis-police-shooting-of-jamar-clark/?utm\\_term=.565198ab2017](https://www.washingtonpost.com/news/post-nation/wp/2016/03/30/prosecutor-to-announce-decision-on-charges-in-minneapolis-police-shooting-of-jamar-clark/?utm_term=.565198ab2017) [<https://perma.cc/K39L-F3JJ>] (Minneapolis, Minnesota); Ashley Fantz et al., *Texas Pool Party Chaos: ‘Out of Control’ Police Officer Resigns*, CNN (June 9, 2015), <https://www.cnn.com/2015/06/09/us/mckinney-texas-pool-party-video/index.html> [<https://perma.cc/9RL9-UV78>]; Jacey Fortin, *Police Body-Cam Video Appears to Show Willie McCoy Sleeping Before He Was Fatally Shot*, N.Y. TIMES (Mar. 31, 2019), <https://www.nytimes.com/2019/03/31/us/willie-mccoy-shooting-video.html> [<https://perma.cc/6W42-REWK>] (Vallejo, California); Sharon Otterman, *Police Shoot at a Black Couple Near Yale, Prompting a Week of Protests*, N.Y. TIMES (Apr. 26, 2019), <https://www.nytimes.com/2019/04/24/nyregion/yale-shooting-protests.html> [<https://perma.cc/4YS9-RH2S>] (New Haven, Connecticut); see also P.R. Lockhart, *The Parkland Shooting Fueled Calls for More School Police. Civil Rights Groups Want Them Removed*, VOX (Sept. 20, 2018), <https://www.vox.com/identities/2018/9/20/17856416/school-discipline-policing-black-students-report> [<https://perma.cc/Z4K8-RNDT>].

50. “One wishes things like this could be attributed solely to bad apples, but incidents like these are all too common.” FRIEDMAN, *supra* note 23 at 7–11 (referring to eight million searches annually that

central to police work.<sup>51</sup> When Darren Wilson killed Michael Brown, Malcolm X Grassroots Movement's "Every 28 Hours" campaign and "Operation Ghetto Storm" report brought attention to both the routine nature of police killings and the absence of comprehensive data about police violence.<sup>52</sup> With thousands of police jurisdictions in the country and no government-mandated reporting, the rates of these killings and violence were unavailable.<sup>53</sup> Since then, organizers, journalists, and scholars have worked to compile this information.<sup>54</sup> Although we still lack a comprehensive picture, we know police killings are routine. For every well-publicized incident of police violence, there are many, many more. Police turn to deadly violence almost three times a day<sup>55</sup> and make an arrest every three seconds—amounting to more than ten million arrests each year.<sup>56</sup>

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state and local police conduct "of pedestrians and automobiles alone," routine use of force through use of guns, pepper spray, and tasers, regular SWAT raids, vast surveillance architecture, and body cavity searches); see also Cynthia Lee, *Reforming the Law on Police Use of Deadly Force: De-Escalation, Preseizure Conduct, and Imperfect Self-Defense*, 2018 U. ILL. L. REV. 629, 636 ("This is not a matter of just a few 'bad apples' misbehaving . . ."); Carbado, *Blue-on-Black Violence*, *supra* note 22 at 1482–83 ("[P]olice violence against African-Americans [is] a structural phenomenon and not simply [a] product of rogue police officers who harbor racial animus against black people."); Carbado, *From Stop and Frisk to Shoot and Kill*, *supra* note 22 at 1515 ("[P]olice violence against African Americans is a structural phenomenon."); Devon W. Carbado & Patrick Rock, *What Exposes African Americans to Police Violence?*, 51 HARV. C.R.-C.L. L. REV. 159, 161–62 (2016) (arguing against the understanding of the problem of excessive force "as a problem that derives from rogue police officers who harbor racial animus against African Americans"); John Kelly & Mark Nichols, *We Found 85,000 Cops Who've Been Investigated for Misconduct. Now You Can Read Their Records.*, USA TODAY (Apr. 24, 2019), <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/> [<https://perma.cc/A6YT-CH2K>] ("At least 85,000 law enforcement officers across the USA have been investigated or disciplined for misconduct over the past decade.").

51. FRIEDMAN, *supra* note 23; ZIMRING, *supra* note 8.

52. See Malcolm X Grassroots Movement, Operation Ghetto Storm: 2012 Annual Report on the Extrajudicial Killings of 313 Black People by Police, Security Guards and Vigilantes (updated ed. 2014), [http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new\\_all\\_14\\_11\\_04.pdf](http://www.operationghettostorm.org/uploads/1/9/1/1/19110795/new_all_14_11_04.pdf) [<https://perma.cc/CGG5-UJ3L>]; see also Amna A. Akbar, *Law's Exposure: The Movement and the Legal Academy*, 65 J. Legal Educ. 352, 360–61 (2015) (discussing the Malcolm X Grassroots Movement campaign).

53. ZIMRING, *supra* note 8, at 9–11, 23–40.

54. See, e.g., ZIMRING, *supra* note 8, at 23–73; *The Counted: People Killed by Police in the US*, GUARDIAN, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database> [[https://web.archive.org/web/20200926011144if\\_/https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database](https://web.archive.org/web/20200926011144if_/https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database)]; *Fatal Force 2019*, WASH. POST (June 7, 2019), [https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019/?utm\\_term=.e2c0ea4c8546](https://www.washingtonpost.com/graphics/2019/national/police-shootings-2019/?utm_term=.e2c0ea4c8546) [<https://perma.cc/N9PG-CRSJ>]; *Police Violence Map*, MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> [<https://perma.cc/3RWJ-XCMY>].

55. See *Fatal Force: Police Shootings 2017 Database*, WASH. POST, <https://www.washingtonpost.com/graphics/national/police-shootings-2017/> [<https://perma.cc/XS2H-LPFG>] (reporting that 986 people were shot by police in 2017).

56. REBECCA NEUSTETER & MEGAN O'TOOLE, VERA INST. OF JUSTICE, EVERY THREE SECONDS: UNLOCKING POLICE DATA ON ARRESTS 5 (2019), [https://www.vera.org/publication\\_downloads/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds.pdf](https://www.vera.org/publication_downloads/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds.pdf) [<https://perma.cc/A3HX-AWDZ>].



(4) *Targeted by Race and Class*. Policing is not impartial.<sup>57</sup> The policing of poor people and poverty has been the subject of a wide range of scholarly work, including work focused on questions of race and criminalization.<sup>58</sup> A significant body of work analyzes police targeting of Black people in particular. Conduits for disproportionate anti-Black police violence include “broken-windows” policing, legal sanction, mass surveillance and criminalization, racial stereotypes, racial segregation and gentrification, and police culture and training.<sup>59</sup>

Police are a conduit of segregation, gentrification, and displacement, creating and maintaining spatially and racially concentrated inequality.<sup>60</sup> The “daily practices” of policing reproduce residential segregation in cities across the country.<sup>61</sup> Police move people “and economic resources in and out of places,

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57. E.g., Kleinfeld, *supra* note 8, at 1370–71. There are also works focused on the targeting of immigrants and the conflation of criminal and immigration law: “crimmigration.” See, e.g., CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *CRIMMIGRATION LAW* (2015); César Cuauhtémoc García Hernández, *Deconstructing Crimmigration*, 52 U.C. DAVIS L. REV. 197 (2018); César Cuauhtémoc García Hernández, *The Life of Crimmigration Law*, 92 DENV. U. L. REV. 697 (2015); César Cuauhtémoc García Hernández, *Creating Crimmigration*, 2013 BYU L. REV. 1457 (2014); Allegra M. McLeod, *The U.S. Criminal-Immigration Convergence and Its Possible Undoing*, 49 AM. CRIM. L. REV. 105 (2012).

58. See, e.g., Bell, *Hidden Laws*, *supra* note 20; Monica Bell et al., *Toward a Demosprudence of Poverty*, 69 DUKE L.J. 1473 (2020); Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643 (2009).

59. See, e.g., NEUSTETER & O'TOOLE, *supra* note 56, at 8–9 (stating that Black people are subject to 28 percent of arrests, despite comprising only 12 percent of the population); Carbado, *Blue-on-Black Violence*, *supra* note 22, at 1483–95 (arguing that legal doctrine protects police violence by translating it into justifiable police force, and insulating police from liability or damages payments); Frank Rudy Cooper, *A Genealogy of Programmatic Stop and Frisk: The Discourse-to-Practice Circuit*, 73 U. MIAMI L. REV. 1 (2018) (providing a “programmatic” account of stop and frisk); see also BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *CONTACTS BETWEEN POLICE AND THE PUBLIC*, 2015 at 4, 9 (2018), <https://www.bjs.gov/content/pub/pdf/cpp15.pdf> [<https://perma.cc/2E7C-HDWJ>] (showing disproportionate traffic stops of Black people, and a higher percentage of Black people than white people “experienced police-initiated contact during their most recent contact”); cf. Sonja B. Starr, *Testing Racial Profiling: Empirical Assessment of Disparate Treatment by Police*, 2016 U. CHI. LEGAL F. 485, 486 (exploring the difficulty of “measuring disparate-treatment discrimination by police” on the basis of race).

60. See Jason Hackworth & Neil Smith, *The Changing State of Gentrification*, 92 TIJDSCHRIFT VOOR ECONOMISCHE EN SOCIALE GEOGRAFIE [TIJDSCHR. ECON. SOC. GEOGR.] 464, 475 (2001) (Neth.) (documenting “how, [starting around 1993] in an environment of privatisation, the state has become more direct in its encouragement [and involvement] of gentrification”); see also Bell, *Hidden Laws*, *supra* note 20, at 11–18 (urging more study of the way that race, “poverty and punishment are inextricably linked,” with fines and fees as being only part of the picture); Carbado, *Blue-on-Black Violence*, *supra* note 22, at 1495 (“[The] public/private mobilization of broken windows policing makes blacks out of place in, and facilitates their displacement from, areas on route to becoming new white communities.”); Fagan & Ash, *supra* note 36, at 84–87 (“The durable links between race and place in New York reflect that the policing experiences of black and Latino citizens are deeply woven into the social ecologies of black and Latino neighborhoods.”).

61. Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655 (2020) (providing a rich sociological account of the “mutually constitutive” relationship between policing and residential segregation). The DOJ Baltimore report pointed to the spatialized aspects of racialized policing within Baltimore. DOJ BALTIMORE POLICE REPORT, *supra* note 21, at 6–7, 26 (noting that stops were

enact[] borders . . . and reconfigure[] opportunities and various social structures (housing, schools, public transportation, parks) in ways that reproduce racial inequality.”<sup>62</sup>

In addition to race, class, and space, growing work documents how gender, sexuality, and disability structure policing in intersectional ways.<sup>63</sup> Policing

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concentrated geographically “in two small, predominantly African-American districts that contain[ed] only 11 percent of the City’s population”).

62. Carbado, *Blue-on-Black Violence*, *supra* note 22, at 1494. Police “perform a kind of brush-clearing of inner city areas to enable whites to traverse the neighborhood unencumbered by signs of disorder (read: public black presence, particularly in the form of adolescence, homelessness, and gender non-conformity).” *Id.* at 1493 (arguing that police respond reactively to, e.g., phone calls, and proactively to “‘protect and serve’ [white people, who] they might perceive to be particularly vulnerable to black crime”). For a deep account of the various ways police contribute to racial segregation and gentrification, see Bell, *supra* note 61.

63. See, e.g., Nnennaya Amuchie, “*The Forgotten Victims*” *How Racialized Gender Stereotypes Lead to Police Violence Against Black Women and Girls: Incorporating an Analysis of Police Violence into Feminist Jurisprudence and Community Activism*, 14 SEATTLE J. SOC. JUST. 617 (2016) (drawing on #SayHerName to argue that police violence against Black women must be understood through the lens of Black women, and advocating a number of reforms); Angela Irvine, *You Can’t Run from the Police: Developing a Feminist Criminology that Incorporates Black Transgender Women*, 44 SW. L. REV. 553 (2015) (analyzing police violence through a lens that incorporates victims’ gender identity, gender expression, and race, and providing statistics that show that queer and trans people of color are disproportionately the victims of police harassment, disrespect, and dismissal); Jacobs, *supra* note 9 (conceptualizing the history of state violence against Black women as rooted in enslavement, and arguing that contemporary iterations of such violence, including through police, are ignored and underreported); Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017 (2017) (arguing that police violence against Black women reconstructs Black women as simultaneously invisible and aggressive); Anna Lvovsky, *Cruising in Plain View: Clandestine Surveillance and the Unique Insights of Antihomosexual Policing*, 46 J. URB. HIST. 980 (2020) (arguing that police do not understand gay culture and have targeted and criminalized gay men for nonviolent activities); Teri A. McMurty-Chubb, #SayHerName #BlackWomensLivesMatter: State Violence in Policing the Black Female Body, 67 MERCER L. REV. 651 (2016) (arguing that state violence against Black women originated in the era of slavery, and will not cease so long as there is a prison and police system tainted by the legacy of slavery, and calling for reforms including research, training, and rethinking “sensitivity” and implicit bias trainings); Josephine Ross, *What the #MeToo Campaign Teaches About Stop and Frisk*, 54 IDAHO L. REV. 543, 551 (2018) (analyzing police violence through the lens of victims, identifying sexual abuse as the “second most common civilian complaint” against police, and calling for the end of the consent doctrine and *Terry v. Ohio*); Jasmine Sankofa, *Mapping the Blank: Centering Black Women’s Vulnerability to Police Sexual Violence to Upend Mainstream Police Reform*, 59 HOWARD L.J. 651 (2016) (identifying police violence as a structural issue that affects Black women, arguing that mainstream efforts to fight police violence ignore this reality, and advocating for a decreased presence of police in communities and a support system for survivors of police sexual violence and their families); Michael D. Braunstein, Note, *The Five Stages of LGBTQ Discrimination and Its Effects on Mass Incarceration*, 7 U. MIAMI RACE & SOC. JUST. L. REV. 217 (2017) (explaining how despite landmark civil rights victories for the LGBTQ+ community, the police still target them for “vice” crimes, and arguing for reforms including “diversity” and “tolerance” trainings); Molly “Delaney” Nevius, Note, *The First Pride Was a Riot: How Queer Activism Has Partnered with Police to Hurt the Community’s Most Vulnerable*, 29 HASTINGS WOMEN’S L.J. 125 (2018) (pointing to the historical roots of the “First Pride” as a riot in response to police brutality against the LGBTQ+ community, but noting that modern Pride events ignore police violence against queer people of color); Arnetta Rogers, Note, *How Police Brutality Harms Mothers: Linking Police Violence to the*

focuses considerable physical, emotional, sexual, and economic violence on Black men and women, and transgender and gender nonbinary people.<sup>64</sup> More broadly, policing over time has targeted queer, trans, and disabled people, especially those of color.<sup>65</sup>

(5) *Constitutive of Political, Economic, and Social Order.* A growing number of legal scholars see police and prisons as constitutive of the larger political, economic, and social order.<sup>66</sup> Police have operated as a conduit to broader structures of race, class, and gender: white supremacy, capitalism, colonialism, and patriarchy. They reflect the undemocratic status quo. In these accounts, policing is a problem of our system of laws and the state in which it functions—not a departure therefrom.

The carceral state “has always functioned . . . to subordinate black people.”<sup>67</sup> “Cops routinely hurt and humiliate black people because that is what

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*Reproductive Justice Movement*, 12 HASTINGS RACE & POVERTY L.J. 205, 206 (2015) (arguing that police violence can be framed as a reproductive justice issue because it “restricts [a woman’s] right to bear and raise children safely, free from an oppressive sense of peril that their offspring will be victimized or even killed prematurely at the hands of law enforcement”); see also Eric J. Miller, *Police Encounters with Race and Gender*, 5 U.C. IRVINE L. REV. 735, 736 (2015) (identifying “ways in which [police] encounters predictably implicate race, class, and gender”).

64. See *supra* note 43; see also BUTLER, *supra* note 8.

65. MOGUL ET AL., *supra* note 9; RITCHIE, *supra* note 9; Jamelia N. Morgan, *Policing Under Disability Law*, 73 STAN. L. REV. (forthcoming 2021). According to one study, from 1980 to 2014, women accounted for 27 percent of all arrests, up from 16 percent. NEUSTETER & O’TOOLE, *supra* note 56, at 9.

66. See, e.g., Butler, *supra* note 22, at 1427–39; Angélica Cházaro, *Beyond Respectability: Dismantling the Harms of “Illegality,”* 52 HARV. J. LEGIS. 355, 356–61 (2015); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015); Symposium, *Developments in the Law—Prison Abolition*, 132 HARV. L. REV. 1567 (2019); Roberts, *supra* note 22; Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 NW. U. L. REV. 1597, 1599–1600 (2017); cf. Tracey L. Meares, *Synthesizing Narratives of Policing and Making a Case for Policing as a Public Good*, 63 ST. LOUIS U. L.J. 553 (2019) [hereinafter Meares, *Synthesizing Narratives of Policing*]; *A Political and Literary Podcast: Abolish the Police?*, BOS. REV. (Aug. 1, 2017), <http://bostonreview.net/podcast-law-justice/tracey-l-meares-vesla-m-weaver-abolish-police> [https://perma.cc/K2T4-UNKL]; Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOS. REV. (Aug. 1, 2017), <https://bostonreview.net/law-justice/tracey-l-meares-policing-public-good-gone-bad> [https://perma.cc/T2WX-NWXS]. For a classic work on the relationship between policing and social, political, and economic crises, see STUART HALL ET AL., *POLICING THE CRISIS: MUGGING, THE STATE, AND LAW AND ORDER* (2d ed. 2013).

67. Roberts, *supra* note 22, at 262. The carceral state prevents Black people’s political power: it “isolate[s] them in prisons, den[ies] them the right to vote, and damag[es] broader social and political relationships necessary for collective action,” and “reinforces the myth of blacks’ propensity for criminality” which in turn justifies further curtailments on Black citizenship. *Id.* at 266; see also Bell, *Police Reform*, *supra* note 20; Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1617 (2019) (pointing to the carceral state’s inefficacy in producing the outcomes it purports to seek, its fundamental violence, and its long history as a force of racial subordination). For more on how the carceral state subordinates based on gender and sexuality, see RITCHIE, *supra* note 9; MOGUL ET AL., *supra* note 9. For race and class, white supremacy, and capitalism, see generally Akbar, *supra* note 11.

they are paid to do.”<sup>68</sup> But suffering is not the limit of what is productive about police violence. Enslaved African Americans “buil[t] the wealth of white elites,” and now “[d]iscriminatory law enforcement practices” are central to the racialized stratification of our political economy.<sup>69</sup>

Understanding the criminal legal system as a historical and persistent force for violence, expropriation, and exclusion that defines our system of laws raises deep questions about whether and how the criminal legal system can be fixed.<sup>70</sup> Some scholars who document the structures of police violence do not advance any mode of reform.<sup>71</sup> Others chart more transformative paths.<sup>72</sup> Dorothy Roberts recently wrote a sweeping essay calling for abolition constitutionalism.<sup>73</sup> Paul Butler calls for abolition and a Third Reconstruction.<sup>74</sup> Allegra McLeod advances a project of “substituting a constellation of other regulatory and social projects for criminal law enforcement,”<sup>75</sup> and “attempting to achieve peace,

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68. BUTLER, *supra* note 8, at 2; *see also id.* at 3 (“The work of police is to preserve law and order, including the racial order.”). Butler advances the metaphor of the chokehold to describe the carceral state’s subjugation of Black men. *Id.* at 17–18 (describing the “social and legal construction” of Black men as “criminal or potential[ly] criminal” and then the “legal and policy response to contain the threat,” including, centrally, the carceral state).

69. BUTLER, *supra* note 8, at 6; *see also id.* at 12 (explaining that law enforcement practices work as “an employment stimulus plan for working-class white people, who don’t have to compete for jobs with all the black men who are locked up, or who are underground because they have outstanding arrest warrants, or who have criminal records that make obtaining legal employment exceedingly difficult”). Dean Spade cites Angela Davis’s genealogy of how prisons and police arose from the formal end of enslavement to describe how criminalization is a force for racialization and gendering. Dean Spade, *The Only Way to End Racialized Gender Violence in Prisons is to End Prisons: A Response to Russell Robinson’s “Masculinity as Prison,”* 3 CALIF. L. REV. CIR. 184, 186–90 (2012). Angélica Cházaro points to the role of deportation in naturalizing the border, erasing ongoing indigenous struggles for self-determination, and solidifying U.S. power around the world. Angélica Cházaro, *The End of Deportation*, 67 UCLA L. REV. (forthcoming 2021). Mijente’s policy platform also calls for abolition of immigration and border enforcement. MIJENTE, FREE OUR FUTURE: AN IMMIGRATION POLICY PLATFORM FOR BEYOND THE TRUMP ERA (2018), [https://mijente.net/wp-content/uploads/2018/06/Mijente-Immigration-Policy-Platform\\_0628.pdf](https://mijente.net/wp-content/uploads/2018/06/Mijente-Immigration-Policy-Platform_0628.pdf) [<https://perma.cc/UZ6M-RHHW>]; *see also* K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878 (2019) (explaining how Indian removal policies inform today’s deportation and removal regimes and their connection to questions of land and labor).

70. For a close examination of fundamental problems with how the L.A. County Men’s Jail segregates gay and transgender people, purportedly a reform to mitigate the violence within the jail, *see* Russell K. Robinson, *Masculinity as Prison: Sexual Identity, Race, and Incarceration*, 99 CALIF. L. REV. 1309 (2011).

71. *See, e.g.,* Carbado, *Blue-on-Black Violence*, *supra* note 22.

72. *See generally* *Developments in the Law—Prison Abolition*, *supra* note 66.

73. Dorothy E. Roberts, *The Supreme Court 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1 (2019); *see also* Roberts, *supra* note 22, at 263 (arguing for the abolition of “criminal justice institutions with direct lineage to slavery and Jim Crow,” particularly mass incarceration, policing, and capital punishment).

74. BUTLER, *supra* note 8, at 229–34 (advocating for a Third Reconstruction and abolition, in particular by setting caps for maximum prison sentences, decriminalizing low-level offenses, and diverting money from police to health care); Butler, *supra* note 22, at 1474–78 (advocating for a Third Reconstruction).

75. McLeod, *supra* note 66, at 1161.

make amends, and distribute resources more equitably.”<sup>76</sup> Dean Spade champions abolitionist frameworks for enacting transformative change beyond traditional law reform strategies, including, centrally, mutual aid.<sup>77</sup> Jocelyn Simonson pushes us to adopt a “power lens” in considering reforms, with a focus on shifting power to those “most harmed by mass criminalization.”<sup>78</sup> Monica Bell calls for a mix of reforms, including those that invest in police and those that shrink its footprint, alongside “more fundamental shifts in economic distribution and eradication of racial discrimination.”<sup>79</sup>

Thinking with anti-carceral and abolitionist organizers, these scholars frame their projects as focused on broad and deep transformation.<sup>80</sup> They

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76. McLeod, *supra* note 67, at 1615. McLeod powerfully explains the intertwined relationship between the positive and negative dimensions of abolition. Allegra M. McLeod, *Beyond the Carceral State*, 95 TEX. L. REV. 651, 684 (2017) (reviewing GOTTSCHALK, *supra* note 3) (“Greater access to money [and legal work] in neighborhoods with concentrated poverty and crime would considerably reduce the violence associated with the underground economy, the fallout from which accounts for a large proportion of homicides.”). She outlines steps for serious decarceration efforts, including decreasing sentence lengths; incarcerating fewer people; reducing criminal filings; restricting police and prosecutorial discretion; and investing more in other social projects. *See generally id.*

77. *See, e.g.,* Morgan Bassichis, Alexander Lee & Dean Spade, *Building an Abolitionist Trans and Queer Movement with Everything We’ve Got*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX (Eric A. Stanley & Nat Smith eds., 2d ed. 2015); Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, 38 SOC. TEXT, no. 1, Mar. 2020. Cházaro calls for the abolition of deportation and detention. Cházaro, *supra* note 69; *see also* César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245, 257–60 (2017).

78. Simonson, *Police Reform*, *supra* note 11; *see also* Sunita Patel, *Toward Democratic Police Reform: A Vision for “Community Engagement” Provisions in DOJ Consent Decrees*, 51 WAKE FOREST L. REV. 793, 796–800 (2016) (examining community participation in reforms of police departments driven by DOJ consent decrees for their capacity to contest and “shift power between the police and the communities they serve”).

79. Bell, *Police Reform*, *supra* note 20, at 2126–49 (proposing reforms like DOJ pattern and practice investigations; better pay for police; consolidating smaller police departments; democratizing policing; and, very briefly, shrinking and refining the footprint of the police). For another mixed approach, *see* Carbado & Richardson, *supra* note 22, at 1980–81 (“[R]acial diversity without meaningful reallocations or redistributions of power might not only limit the possibilities for social transformation but also potentially reproduce and legitimize the very forms of inequality the pursuit of racial diversity was intended to address.”).

80. These scholars write about movement demands and policy platforms. *See, e.g.,* Akbar, *supra* note 11 (considering the Movement for Black Lives’ policy platform “A Vision for Black Lives: Policy Demands for Black Power, Freedom, and Justice”); Cházaro, *supra* note 69 (discussing Mjiente’s policy platform “Free Our Future”). They also write about cop- and court-watching, participatory defense, and community bail funds; campaigns to end gang injunctions and gang databases; organizing for reparations and transformative justice approaches to interpersonal harm; and more. *See, e.g.,* McLeod, *supra* note 67, at 1623–28, 1631–33; Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 393, 406 (2016) [hereinafter Simonson, *Copwatching*]; Jocelyn Simonson, *Democratizing Criminal Justice through Contestation and Resistance*, 111 NW. U. L. REV. 1609, 1617–19 (2017) Dean Spade, *Intersectional Resistance and Law Reform*, 38 SIGNS 1031, 1047–48 (2013). This approach draws on Mari Matsuda’s long-standing implorations to “look[] to the bottom,” i.e., “adopt[] the perspective of those who have seen and felt the falsity of the liberal promise,” Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987), and for “outsider jurisprudence,” i.e., “jurisprudence derived from considering stories from the bottom,” Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2322 (1989); *see also* Akbar et al., *supra* note 7.

confront the contradictions of attempting to reform a system that is central to maintaining a racially and economically stratified society.<sup>81</sup> This scholarship was already moving with some force prior to the 2020 uprisings; now, it will certainly continue to grow in influence. But before we turn in earnest to the organizing and experimentation with which much of the nascent abolitionist scholarship is in conversation, we must situate it in the context of the persistent framework for reform.

## II.

### THE PERSISTENCE OF REPAIR, REFORM, RELEGITIMIZE

Even as more legal scholars examine the structural nature of police violence, the prevailing frame for thinking about solutions remains focused on reforming the police. Police are taken as a necessary social good: they ensure our safety, maintain law and order, protect us from violence and anarchy, and prevent and punish crime in socially valuable ways.<sup>82</sup> Scholars locate the problem with police violence as a problem for regulation.

These scholars argue that police violence can be recalibrated if police are simply governed, trained, or equipped better. Although no legal scholar suggests the answers will be singular or easy, scholars often ask: What can we give police to rightly attune their attention to crime and their deployment of violence, or to relegitimize them in the eyes of the public? But this approach assumes policing is a social good and ignores questions of scale. It mires us in debates about what investments will improve policing while obscuring the fundamental role of violence in policing and the immense power at the core of their impunity.<sup>83</sup> As a result, legal scholars cede to police the primary role of governing large swaths of our most vulnerable publics. But there is no way to redress police violence without acknowledging the centrality of violence to their function or the scale, history, and power of the institution.

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81. Spade, for example, has analyzed feminist and antiracist organizing campaigns that reject liberal equality and rights strategies because they would contribute to carceral exclusionary logics, opting instead for redistribution of resources and shrinking the role of the state in communities of color. Spade, *supra* note 80.

82. See, e.g., FRIEDMAN, *supra* note 23, at 5 (“Possession of these powers — of force and surveillance — is what defines policing, what sets it apart. Officials are granted these powers because policing is vital: Society cannot function in the absence of basic order.”); Otis S. Johnson, *Two Worlds: A Historical Perspective on the Dichotomous Relations Between Police and Black and White Communities*, 42 HUM. RTS. 6, 7 (2016) (“Police power includes the legitimized use of force. This legitimized use of force is to maintain law and order, keep the peace, and serve and protect the members of the society.”). Jocelyn Simonson provides a helpful explication of this standard view in her article *The Place of “The People” in Criminal Procedure*, 119 COLUM. L. REV. 249, 262 (2019) (“This is the backbone of a particular conception of the rule of law, in which procedural rules and criminal laws are defined by democratically elected legislatures, and judges and other courtroom actors then enforce those rules in a neutral and uniform way.”).

83. See MICOL SIEGEL, *VIOLENCE WORK: STATE POWER AND THE LIMITS OF POLICE* 9–23 (2018) (theorizing police as a form of violence work, akin to the military).

In this Section, I sketch four emblematic modes of argument that particular investments in police will improve their function: more democracy, more bureaucracy, more procedural justice and training, and more tools and technology. These sketches are not exhaustive, but rather illustrate the basic contours of the investment arguments and their limits.

*More Democracy.* A number of scholars see the problem of the criminal legal system and police violence as the result of bureaucratic criminal legal institutions divorced from adequate democratic governance.<sup>84</sup> A subset of these scholars push for more democracy within policing, with an emphasis on increasing public participation in criminal law enforcement.<sup>85</sup> Their reforms often take the form of rule of law innovations or community policing and civilian review.<sup>86</sup>

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84. A white paper coauthored by symposium participants introduced the democratizing frame and the bureaucratizing frame as the two primary frames for criminal law reform. Joshua Kleinfeld et al., *White Paper of Democratic Criminal Justice*, 111 NW. U. L. REV. 1693, 1694 (2017) (describing the democratizing frame, which sees the problem of the criminal legal system as rooted in “a set of bureaucratic attitudes, structures, and incentives divorced from the American public’s concerns and sense of justice”); see also Stephanos Bibas, *Restoring Democratic Moral Judgment Within Bureaucratic Criminal Justice*, 111 NW. U. L. REV. 1677, 1679 (2017) (“[T]he bureaucratic reality neglects the public’s ideals.”). See generally *Democratizing Criminal Justice Symposium*, 111 NW. U. L. REV. 1367 (2016); see also WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* (2011) (critiquing the rise of professionalism and expertise and calling for more democratic and local control of carceral function). For a careful critique of the democratizers, see John Rappaport, *Some Doubts About “Democratizing” Criminal Justice*, 87 U. CHI. L. REV. 711 (2020).

85. Richard A. Bierschbach, *Fragmentation and Democracy in the Constitutional Law of Punishment*, 111 NW. U. L. REV. 1437, 1451–53 (2017) (arguing we should “do more to ensure that multiple voices are heard” within the criminal legal system); Kleinfeld, *supra* note 8, at 1394 (arguing for democratizers to include an emphasis against overreliance on bureaucracy and for deliberation, participation, and individual liberty); Joshua Kleinfeld, *Three Principles of Democratic Criminal Justice*, 111 NW. U. L. REV. 1455, 1457 (2017) (“[T]he administration and enforcement of criminal law should be so structured that lay citizens take part in it . . . .”); cf. ALEX S. VITALE, *THE END OF POLICING* 20–22 (2017) (evaluating federal intervention, including consent decrees, as a reform); Butler, *supra* note 22 (examining the limits of DOJ pattern and practice investigations); Janet Moore, *Democracy Enhancement in Criminal Law and Criminal Procedure*, 2014 UTAH L. REV. 543, 543 (“[D]irect-action by low-income people and people of color [is] a vital component of a more broadly democratic foundation for criminal law and procedure.”); Patel, *supra* note 78 (examining the contested process of community engagement with DOJ consent decrees); Simonson, *Copwatching*, *supra* note 80 (theorizing cop-watching as an agonistic form of public participation in policing).

86. For an earlier work defining the police democracy-reform inquiry, see David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1700–02 (2005) (arguing that democratic policing can mean a variety of things: “procedural regularity and the ‘rule of law’”; “certain substantive rights”; “popular participation in policing” through civilian review or community policing or control; or “service-style” policing); see also DAVID ALAN SKLANSKY, *DEMOCRACY AND THE POLICE* 3–4 (2008) (similar discussion); Stephanos Bibas, *Transparency and Participation in Criminal Procedure*, 81 N.Y.U. L. REV. 911, 959 (2006) (exploring modes of greater participation for the public in criminal punishment); Erik Luna, *Race, Crime and Institutional Design*, 66 LAW & CONTEMP. PROBS. 183, 192 (2003) (examining institutional design questions for more democratic police); Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1120–21 (2000) (arguing that greater transparency would make policing “more democratic and trustworthy”). There are also calls for constitutional policing. See, e.g., Samuel Walker, *Governing the American Police: Wrestling with the Problems of Democracy*, 2016 U. CHI. LEGAL F. 615, 617.

Calls for democratic inputs on the theory that new laws and regulations will better regulate police discretion sidestep deeper questions of racialized ordering and the central role of police and prisons in maintaining the raced and classed status quo.<sup>87</sup> Powerful segments of the populace have consented to a democratic system that empowers police to punish poor, Black, and brown people.<sup>88</sup> Fundamentally, our democratic institutions produce police violence, however shallow, captured, raced, and classed our democracy may be.<sup>89</sup>

Calls for community policing and civilian review overlook critiques and inconclusive evidence over whether either curbs police violence or power.<sup>90</sup> Many accounts—in disciplines like sociology, history, political science, and American and Black studies—frame community policing as central to government attempts to relegitimize police amidst the rebellions of the 1960s.<sup>91</sup> Rather than directly address concerns about police violence and economic inequality, the state invested in community policing in an attempt to reestablish

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87. See, e.g., FRIEDMAN, *supra* note 23, at xii, 16 (stating that policing is out of sync with “the rest of government,” where “*democratic governance* is paramount”). The “typical enabling statute of a policing agency” authorizes the agency “to enforce criminal law—but says little or nothing about *how* to do so.” *Id.* at 16. Friedman’s book is filled with compelling vignettes of police power gone awry, and he goes to great lengths to demonstrate that these stories are mundane rather than exceptional. See *id.* at 7–11. For a similar call to subject policing to greater democratic inputs, see Friedman & Ponomarenko, *supra* note 22. His solution is “rules that are written *before* officials act, rules that are *public*, rules that are written with *public participation*.” FRIEDMAN, *supra* note 23, at 20–21. On how the carceral state locks people out of formal democratic participation, see, for example, ALEXANDER, *supra* note 18; Beth A. Colgan, *Wealth-Based Penal Disenfranchisement*, 72 VAND. L. REV. 55 (2019) (examining how inability to pay economic sanctions associated with criminal process may prevent people from voting in forty-eight states that authorize the practice); Anna Roberts, *Casual Ostracism: Jury Exclusion on the Basis of Criminal Convictions*, 98 MINN. L. REV. 592 (2013).

88. In the final chapter of his book, Friedman briefly turns to this contradiction, observing: “[M]any of the ills of policing today are the product of democracy itself. . . . The potential problem with democratic governance of policing is that policing does not fall equally on all parts of society.” FRIEDMAN, *supra* note 23, at 317.

89. Friedman points to the power of police and prosecutors as outsized in relation to others weighing in on criminal legal process. Law enforcement—through police chiefs but particularly police unions—is an organized and strategic “potent force” which mounts resistance to any regulation of police power that can be difficult to “overcome.” FRIEDMAN, *supra* note 23, at 61–62, 103 (“When laws are proposed that affect policing, [police and prosecutors] jump into action . . . . Their goal in lobbying is to be left alone to do their jobs: more power and less regulation. . . . On the other hand, the people affected by policing aren’t usually as organized—or organized at all.”).

90. See, e.g., Harcourt, *supra* note 18; *Mission Failure: Civilian Review of Policing in New York City--Summary of Findings*, N.Y. C.L. UNION, <https://www.nyclu.org/en/mission-failure-civilian-review-policing-new-york-city-summary-findings> [<https://perma.cc/X6JK-QYCC>].

91. See, e.g., ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 113–14, 187–91 (2016); Christina Heatherton, *The Broken Windows of Rosa Ramos: Neoliberal Policing Regimes of Imminent Violability*, in FEMINISTS RETHINK THE NEOLIBERAL STATE 165, 177 (Leela Fernandes ed. 2018); see also MAYA SCHENWAR & VICTORIA LAW, PRISON BY ANY OTHER NAME: THE HARMFUL CONSEQUENCES OF POPULAR REFORMS 148–54 (2020); KRISTIAN WILLIAMS, OUR ENEMIES IN BLUE 330–42 (2015).



control.<sup>92</sup> Indeed, community policing started as a reform, and is now seen as central to the growth of policing.<sup>93</sup>

Fundamentally, the “more democracy” frame fails to account for the anti-democratic nature of the carceral state.<sup>94</sup> Police and prisons lock people out of formal political channels. Incarceration removes a person from their family and community and undermines their ability to engage in civic and social life. Governments deploy arrests and criminal records to deny people the right to vote, to participate in a jury, to find legal work, or to receive government benefits; arrests and criminal records can further create grounds for eviction, deportation, license suspension, and the loss of custodial rights.<sup>95</sup> Mass criminalization creates such “extraordinary rates of contact” between criminal legal institutions and the citizenry that prisons and police become central in shaping notions of citizenship and expectations of the state among “custodial citizens.”<sup>96</sup> For so many people, contact with the criminal system is a demobilizing force that leads to their “absence, rather than their presence, in mainstream political life.”<sup>97</sup> To call for the democratization of policing without grappling with the carceral state’s central role in denying primarily Black, brown, and poor people participation in formal democratic channels and civic and community life—let alone determining the conditions of their lives and engagement with their communities—is a contradiction in terms.<sup>98</sup> And of course, this is just the tip of the iceberg, given the central role of money in politics, and central role of criminalization in maintaining economic stratification.<sup>99</sup>

*More Bureaucracy.* Other scholars call for greater bureaucratic and expert input, linking the problem with criminal law to the public’s punitive impulses;

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92. HINTON, *supra* note 91, at 113–14, 187–91; Heatherton, *supra* note 91, at 177.

93. Herzing, *supra* note 6; SCHENWAR & LAW, *supra* note 91, at 149.

94. See Simonson, *supra* note 80, at 1610 (describing multiple anti-democratic currents within the carceral state). In focusing on contestation and resistance to the carceral state, Simonson charts a distinct path from the conventional democracy reform frame. *Id.* at 1612.

95. See, e.g., AMY E. LERMAN & VESLA M. WEAVER, ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL 7 (2014); Eisha Jain, *Arrests as Regulation*, 67 STAN. L. REV. 809 (2015); Roberts, *supra* note 87; Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race–Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 580 (2017).

96. LERMAN & WEAVER, *supra* note 95, at 8–12.

97. TRACI BURCH, TRADING DEMOCRACY FOR JUSTICE: CRIMINAL CONVICTIONS AND THE DECLINE OF NEIGHBORHOOD POLITICAL PARTICIPATION 1–2 (2013); see also Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449, 1449 (2005) (arguing that the criminal legal system’s silencing of defendants is a “massive democratic and human failure”).

98. See BURCH, *supra* note 97, at 1–2 (stating that police and other aspects of the criminal system “have been used flagrantly to prevent political mobilization by certain groups or individuals”).

99. See Bell, *Hidden Laws*, *supra* note 20, at 8–15 (unpacking the relationship between criminalization, poverty, and the criminalization of poverty); Michael Klarman, *The Supreme Court 2019 Term—Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1 (2020) (documenting how wealth dominates U.S. law and politics); see also McLeod, *supra* note 67, at 1635–37 (explaining how abolitionist organizers take on the connections between “criminal process to economic justice and democratic political economy reform”).

these impulses, they argue, do not align with optimal social outcomes.<sup>100</sup> These scholars claim that top-down, data-focused, and expert-driven institutions, processes, and policies will restrain police discretion and curb incarceration.<sup>101</sup> Bureaucratic control will bring greater rationality to a system they characterize as rife with irrational outcomes.<sup>102</sup> In this argument, politics and the public are forces of punitive irrationality, whereas experts and data represent rationality. Expert reason and rationality, in turn, represent the public's true best interests.

But this argument sets politics and reason against each other. It obscures the political, economic, and social contexts in which politics are defined and contested.<sup>103</sup> These realms are not distinct. Politics has a reason, and what is considered reasonable and rational is political. Moreover, powerful elites have played a central role in building the pathways to police violence and incarceration. Bureaucracy and democracy—experts, the public, politics, and data—got us into the mess of mass criminalization in the first place.<sup>104</sup> It will take an upheaval of our conceptions of crime, punishment, and expertise to undo mass criminalization and stop police violence.<sup>105</sup>

*More Procedural Justice.* Procedural justice is a framework concerned with police legitimacy and authority.<sup>106</sup> Procedural justice centers around two

100. See, e.g., BARKOW, *supra* note 8, at 4–5 (“Laypeople will always have a visceral reaction to particular high-profile crimes that will prompt them to support an ever-more-punitive response without sufficient attention to details. Politicians . . . will consistently seek to gain electoral advantage by catering to those instincts and pandering to public anxiety and institutions with ever-more-severe policies instead of pursuing policies that would be more effective at maximizing public safety.”); John Rappaport, *Second-Order Regulation of Law Enforcement*, 103 CALIF. L. REV. 205 (2015); cf. Lauren M. Ouziel, *Democracy, Bureaucracy and Criminal Justice Reform*, 61 B.C. L. REV. 523 (2020) (referring to our “blended” system of democracy and bureaucracy); Christopher Slobogin, *Policing as Administration*, 165 U. PA. L. REV. 91 (2016) (calling for notice and comment agency procedures for certain forms of police surveillance as a way to ensure public input).

101. See, e.g., BARKOW, *supra* note 8, at 1–12 (rejecting “policies designed to appeal to the emotions of voters who lack basic information about crime” in favor of “an institutional structure that creates a space for experts who look at facts and data to set policies that will improve public safety”). The problem, according to the “bureaucratizers,” is that criminal law “is set largely based on emotions and the gut reactions of lay-people,” and the solution therefore is more expert, professional, and data-driven solutions. See BARKOW, *supra* note 8, at 1; see also Kleinfeld, *supra* note 8, at 1367 (characterizing advocates of bureaucracy as “favor[ing] formal rule compliance and/or technical expertise . . . that regards criminal law and administration as properly a tool of instrumentally rational social management”).

102. BARKOW, *supra* note 8, at 5, 22–34, 38–53.

103. *Id.* at 6–9. For a helpful review of Barkow’s book and the democracy/bureaucracy debate, see generally Benjamin Levin, *De-Democratizing Criminal Law*, 39 CRIM. JUST. ETHICS 74 (2020) (reviewing BARKOW, *supra* note 8).

104. See Lynn Adelman, *What the Sentencing Commission Ought To Be Doing: Reducing Mass Incarceration*, 18 MICH. J. RACE & L. 295 (2013).

105. On reconceiving expertise as located in poor, Black, and brown people, those who most frequently interact with police, see Simonson, *supra* note 11.

106. Procedural justice has a pride of place in police reform scholarship and efforts. Bell, *Police Reform*, *supra* note 20, at 2058–62. The Obama era President’s Task Force on 21st Century Policing, for example, centered procedural justice as its normative framework in its Final Report. PRESIDENT’S TASK

arguments. First, people obey and assist the police when they perceive police as legitimate.<sup>107</sup> Second, people perceive the police as legitimate when the police treat them in a procedurally just manner: with dignity, neutrality, and the provision of an opportunity to be heard.<sup>108</sup> Advocates of procedural justice encourage police to foster the perception of fairness to produce legitimacy, which, in turn, is said to encourage public compliance.<sup>109</sup>

Scholars in law and beyond have demonstrated the limits of procedural justice to redress serious concerns about police violence and its concentration in poor, Black, and brown communities.<sup>110</sup> Citizens' views of a particular encounter are influenced by their own histories of interactions with government agencies through emergency responders or jail staff, and by the police department's

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FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 12 (2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) [<https://perma.cc/72N7-NVBP>] (stating that transparency and accountability are important "in order to build public trust and legitimacy"). The concern is that, while crime rates have gone down, popular legitimacy in police has not increased. And Black and other people of color express considerably lower opinions of police than do white people. See Tom R. Tyler, *From Harm Reduction to Community Engagement: Redefining the Goals of American Policing in the Twenty-First Century*, 111 NW. U. L. REV. 1537, 1542 (2017) [hereinafter Tyler, *From Harm Reduction to Community Engagement*]. This crisis translates into "the public's unwillingness to defer to police authority in specific incidents in which public defiance and anger have fueled escalations of force." *Id.* In particular, "minority group members are more likely to resist police orders and the minority community is more likely to be critical of police conduct." *Id.*; see also Tom R. Tyler et al., *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, 11 J. EMPIRICAL LEGAL STUD. 751 (2014) (arguing that young men subject to frequent police stops question the reasonableness of police behavior and therefore may view police as less legitimate).

107. See Jeffrey Fagan et al., *Street Stops and Police Legitimacy in New York*, in *COMPARING THE DEMOCRATIC GOVERNANCE OF POLICE INTELLIGENCE* 203, 217 (Thierry Delpeuch & Jacqueline E. Ross eds., 2016) (observing that when police treat individuals in a procedurally just way, they are more likely to obey the law, and less likely to believe that they have been profiled or mistreated).

108. See PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 106, at 9–10 ("[P]eople are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to tell them what to do. But the public confers legitimacy only on those that they believe are acting in procedurally just ways."); Fagan et al., *supra* note 107, at 203, 212–13 ("When we use the term 'legitimacy' we mean a property that a rule or an authority has when others feel obligated to voluntarily defer to that rule or authority. A legitimate authority is one that is regarded by people as entitled to have its rules and decisions accepted and followed by others."); Aziz Z. Huq et al., *Why Does the Public Cooperate with Law Enforcement? The Influence of the Purposes and Targets of Policing*, 17 PSYCHOL. PUB. POL'Y & L. 419, 432 (2011) (extending the procedural justice model as applicable to Muslim populations in the context of counter-terrorism policing); see also Bell, *Police Reform*, *supra* note 20, at 2073–76.

109. PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 106, at 12 (recommending transparency and accountability as important for "build[ing] public trust and legitimacy"). Moreover, procedural justice "may encourage more democratic participation in government." Tracey Meares, *Policing and Procedural Justice: Shaping Citizens' Identities to Increase Democratic Participation*, 111 NW. U. L. REV. 1525 (2017).

110. Bell, *Police Reform*, *supra* note 20, at 2100–26; see also Bell, *Hidden Laws*, *supra* note 20; Bell, *Situational Trust*, *supra* note 20; Monica C. Bell, *Safety, Friendship, and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703 (2019).

reputation and record of discrimination.<sup>111</sup> Moreover, police departments do not measure or hold police accountable for how “procedurally just” they are.<sup>112</sup>

Nonetheless, adherents advocate for procedural justice trainings for police.<sup>113</sup> But training is part of the problem.<sup>114</sup> Trainings gear police up “to treat every individual they interact with as an armed threat and every situation as a deadly force encounter in the making.”<sup>115</sup> Training gave rise to the idea that police develop particular crime-fighting expertise, a sort of institutional competence to which courts should defer—thus growing their power and their domain in another way.<sup>116</sup>

Beyond training, some argue that police should shift to a procedural justice model focused on building “social control, solidarity and cohesion.”<sup>117</sup> But it is absolutely unclear how the police can build social cohesion in the Black, brown, and poor communities where the police have the least trust and legitimacy but the most impunity to act. It is equally opaque how an entity whose primary tools are force, violence, incarceration, and pecuniary consequence can become a vehicle for such cohesion.<sup>118</sup> Arguments that the police become forces for social

111. See Robert E. Worden & Sarah J. McLean, *Mirage of Police Reform: Procedural Justice and Police Legitimacy* 185 (2017); Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093 (2008).

112. Worden & McLean, *supra* note 111, at 8. Moreover, what is perceived as just, or biased, is fundamentally shaped by our raced and gendered experiences. See Robinson, *supra* note 111.

113. See, e.g., PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 106, at 11 (suggesting that training should include material on implicit bias); Bell, *Police Reform*, *supra* note 20, at 2061–62; Tyler, *From Harm Reduction to Community Engagement*, *supra* note 106, at 1555–56.

114. Police already receive plenty of training, and that training encourages, rather than discourages, violence. Carbado, *Blue-on-Black Violence*, *supra* note 22, at 1513–17; see also VITALE, *supra* note 85, at 8–11.

115. Seth Stoughton, *Law Enforcement’s “Warrior” Problem*, 128 HARV. L. REV. F. 225, 228 (2015). These trainings are central to the “emphasis on the use of deadly force.” VITALE, *supra* note 85, at 8–11. There are no “standards or metrics to measure the effectiveness” of these trainings. Al Baker, *Confronting Implicit Bias in the New York Police Department*, N.Y. TIMES (July 15, 2018), <https://www.nytimes.com/2018/07/15/nyregion/bias-training-police.html> [<https://perma.cc/A7XB-UCCD>]; see also Tom Bartlett, *Can We Really Measure Implicit Bias? Maybe Not*, CHRON. HIGHER EDUC. (Jan. 5, 2017), <https://www.chronicle.com/article/can-we-really-measure-implicit-bias-maybe-not/> [<https://web.archive.org/web/20200821200456/https://www.chronicle.com/article/can-we-really-measure-implicit-bias-maybe-not/>] (raising questions about the relationship between “implicit bias and discriminatory behavior”).

116. Lvovsky, *supra* note 23, at 2006–08.

117. Tyler, *From Harm Reduction to Community Engagement*, *supra* note 106, at 1554. This echoes the idea of shifting from a warrior cop to a guardian officer. See, e.g., MEGAN QUATTLEBAUM ET AL., JUSTICE COLLABORATORY, YALE LAW SCHOOL, PRINCIPLES OF PROCEDURALLY JUST POLICING 6, 29–30 (2018), [https://law.yale.edu/sites/default/files/area/center/justice/principles\\_of\\_procedurally\\_just\\_policing\\_report.pdf](https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf) [<https://perma.cc/9SW8-88LK>] (encouraging officers to act as guardians to ensure procedurally just policing); Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 612 (2016) (“[T]he core principles of policing need to be adjusted to change how officers view their job and their relationship with the community.”).

118. The idea that police can build social cohesion recalls the debates over broken-windows and community policing decades ago. For a recap of those debates, see Amna Akbar, *National Security’s*

cohesion do not address the fundamental power and function of police to arrest, cite, incarcerate, and kill. They do not consider seriously diminishing police power or investing in alternative modes of social provision.

Perhaps most troublingly, procedural justice centers police legitimacy and citizen compliance with police as the goals of reform. Legitimacy and compliance are no lode stars for shrinking police power or questioning the larger social contract in which police operate—arguably they are the opposite.

*More Tools & Technology.* Pushes for more tools and technology are common, reflecting the belief that police would do the job right or better with more gadgets or information.<sup>119</sup> Even where legal scholars worry about police access to big data, they default to developing rules that govern access rather than limiting it altogether.<sup>120</sup> Some legal scholars have even argued that providing police more technology will curtail police discretion and allow police to focus energy on real criminals, reducing or eliminating the influence of “implicit

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*Broken Windows*, 62 UCLA L. REV. 833, 871–75 (2015), as well as Tom Tyler, *What are Legitimacy and Procedural Justice in Policing? And Why Are They Becoming Key Elements of Police Leadership?*, in POLICE EXEC. RESEARCH FORUM, U.S. DEP’T OF JUSTICE, LEGITIMACY AND PROCEDURAL JUSTICE: A NEW ELEMENT OF POLICE LEADERSHIP 6, 7–8 (Craig Fischer ed., 2014) (advocating for an “extension of the ideas that have defined . . . ‘community policing’ for the past several decades”).

119. For a series of largely supportive takes on body cameras, with some caveats, see, for example, Anthony A. Braga et al., *The Effects of Body-Worn Cameras on Police Activity and Police-Citizen Encounters: A Randomized Controlled Trial*, 108 J. CRIM. L. & CRIMINOLOGY 511, 513 (2018) (recognizing that body cameras have been implemented in a “low-information environment” where their impact and effects on the public and police are uncertain); Roseanna Sommers, *Will Putting Cameras on Police Reduce Polarization?*, 125 YALE L.J. 1304, 1353 (2016) (encouraging more research on body cameras to yield “empirical evidence that cameras represent an improvement over the status quo”); Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. REV. 1363, 1423 (2018) (calling for “appropriate policies, procedures, training, and supervision” in implementing body cameras to maximize their benefits and minimize their limitations); Howard M. Wasserman, *Moral Panic and Body Cameras*, 92 WASH. U. L. REV. 831 (2015) (acknowledging the pros and cons of body cameras, but arguing that support could be in response to the moral panic arising out of Ferguson); Michael D. White & Henry F. Fradella, *The Intersection of Law, Policy, and Police Body-Worn Cameras: An Exploration of Critical Issues*, 96 N.C. L. REV. 1579 (2018) (arguing for body cameras so long as the programs adhere to DOJ guidelines, but noting that the technology cannot solve the systemic issues of police misconduct); Iesha S. Nunes, Note, *“Hands Up, Don’t Shoot”: Police Misconduct and the Need for Body Cameras*, 67 FLA. L. REV. 1811 (2015) (claiming that equipping officers with body cameras will decrease force, while increasing accountability and public trust). For pre-Ferguson/Baltimore takes that also support and qualify the use of body cameras, see Ronald J. Bacigal, *Watching the Watchers*, 82 MISS. L.J. 821, 821 (2013) (cautioning that technologies such as body cameras are a “double-edged sword” since they can “protect as well as invade privacy”); David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357, 371 (2010) (supporting body cameras, but arguing that the technology will not “solve deep-seated problems of police abuse or misconduct”).

120. See, e.g., Stephen E. Henderson, *A Few Criminal Justice Big Data Rules*, 15 OHIO ST. J. CRIM. L. 527 (2018); Christopher Slobogin, *Principles of Risk Assessment: Sentencing and Policing*, 15 OHIO STATE J. CRIM. L. 583 (2018). For the broader literature on the turn to algorithmic data in making decisions in the criminal legal system, see, for example, Jessica M. Eaglin, *Predictive Analytics’ Punishment Mismatch*, 14 I/S 87 (2017); Sean Allan Hill II, *Bail Reform & the (False) Racial Promise of Algorithmic Risk Assessment*, 68 UCLA L. REV. (forthcoming 2021); Sandra G. Mayson, *Bias In, Bias Out*, 128 YALE L.J. 2218 (2019); Sandra G. Mayson, *Dangerous Defendants*, 127 YALE L.J. 490 (2018).

biases” and “unconscious racism.”<sup>121</sup> Technology—in the form of cameras, facial recognition software, and weapons scanners—can, according to these scholars, “improve policing so that looks, encounters, stops, and frisks turn on actual reasonable suspicion of criminality rather than the proxy of race.”<sup>122</sup>

Arguments to develop greater tools of predictive policing belie twin realities: that police already have at their disposal a profound array of powerful technology, and that existing racial bias is replicated rather than alleviated within data and technology systems.<sup>123</sup> From StingRays and Tasers to surveillance drones and facial recognition software, the number and variety of police tools are central to police power.<sup>124</sup> Calls for more technology ignore the immense discretion that shapes the relationship of police to their technology. Consider body cameras, the paradigmatic example of technology posed as a solution to police violence.<sup>125</sup> Body cameras retain power, perspective, and control in the

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121. I. Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241, 1271–77 [hereinafter Capers, *Race, Policing, and Technology*]; see also I. Bennett Capers, *Techno-Policing*, 15 OHIO ST. J. CRIM. L. 495, 499 (2018) (discussing what “technological innovations might further” goals of “making policing more transparent, accountable, and egalitarian”); cf. I. Bennett Capers, Essay, *Criminal Procedure and the Good Citizen*, 118 COLUM. L. REV. 653, 699–700 (2018) (documenting the racialized citizenship talk of Supreme Court criminal procedure doctrine, which “insists that good citizens should welcome the presence of police officers and consider it their duty to assist them, even if it means informing on neighbors, family, and friends”). For another version of the call for greater technology, see Harmon, *supra* note 22.

122. Capers, *Race, Policing, and Technology*, *supra* note 121, at 1276–77; see also *id.* at 1279 (“Scanners, for example, could immediately tell officers that a suspect is unarmed, often enough to obviate the need for deadly force. Big Data could also tell officers whether a suspect has a history of violence or resisting arrest.”); Kiel Brennan-Marquez, *Big Data Policing and the Redistribution of Anxiety*, 15 OHIO ST. J. CRIM. L. 487, 489–90 (2018) (“[D]ata can discourage police from relying on bias, conscious or unconscious, to guide their decisions.”); Mary D. Fan, *Body Cameras, Big Data, and Police Accountability*, 43 LAW & SOC. INQUIRY 1236, 1240–41 (2018) (arguing that technology like body cameras can “shed light on formerly opaque practices” and thereby help to identify and redress problematic patterns).

123. See Eaglin, *supra* note 120 at 103 (“[P]redicting risk of arrest can replicate biases already existing in the system that do not correlate with public safety.”); Aziz Z. Huq, *Racial Equity in Algorithmic Criminal Justice*, 68 DUKE L.J. 1043 (2019). There is a fast-growing literature on how technology and data exacerbate rather than redress racial inequalities. See, e.g., RUHA BENJAMIN, *RACE AFTER TECHNOLOGY* (2019); VIRGINIA EUBANKS, *AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR* (2018); Chaz Arnett, *From Decarceration to E-Carceration*, 41 CARDOZO L. REV. 641 (2019); Chaz Arnett, *Race, Surveillance, Resistance*, 82 OHIO ST. L.J. (forthcoming 2021); Hill, *Bail Reform*, *supra* note 120; Mayson, *Dangerous Defendants*, *supra* note 120; Mayson, *Bias In, Bias Out*, *supra* note 120; Michelle Alexander, *The Newest Jim Crow*, N.Y. TIMES (Nov. 8, 2018), <https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html> [<https://perma.cc/7FU6-5QR9>].

124. See, e.g., JUSTICE POLICY INST., *RETHINKING THE BLUES: HOW WE POLICE IN THE U.S. AND AT WHAT COST* 2–4, 11–15 (2012), [http://www.justicepolicy.org/uploads/justicepolicy/documents/rethinkingtheblues\\_final.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/rethinkingtheblues_final.pdf) [<https://perma.cc/TL5X-8AS3>]; Wayne A. Logan, *supra* note 40, at 625 (documenting the growing volume of government databases to which police have authority and capacity to access and search); see also Roth, *supra* note 40.

125. Akbar, *supra* note 11, at 465–66.

police.<sup>126</sup> A recent study was unable to find that body cameras had “any statistically significant effects” on “documented uses of force and civilian complaints.”<sup>127</sup>

Or consider CompStat, a data analysis and management tool embraced by the NYPD in the 1990s. Proponents alleged that CompStat fine-tuned policing by precinct to better deploy police forces toward crime.<sup>128</sup> CompStat is now widely viewed as having incentivized the rise of stop and frisk in New York City.<sup>129</sup> It is a technology reform that expanded, rather than contracted, police power—and reproduced, rather than eliminated, racism and bias.

Throughout this literature on reform, scholars excuse police violence as a departure from liberal norms or a discrete failure of governance rather than acknowledge it as a reflection of a structural, historically rooted problem.<sup>130</sup> Because these accounts do not contextualize our liberal norms within the history of their development, these scholars do not engage with what Aziz Rana has

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126. Questions abound regarding how the body camera’s line of sight, starting with the police officer’s upper body, embeds the police’s point of view; the rules and realities around when police turn on and off the cameras and to what end; who maintains the footage; and the privacy implications for those filmed. See Jeffrey Bellin & Shevarma Pemberton, *Policing the Admissibility of Body Camera Evidence*, 87 *FORDHAM L. REV.* 1425, 1425 (2019) (warning that body camera evidence could “more commonly be used to prosecute civilians that to document abuse” because of officers’ ability to narrate and manipulate the footage); Jocelyn Simonson, *Beyond Body Cameras: Defending a Robust Right to Record the Police*, 104 *GEO. L.J.* 1559, 1566–69 (2016) (identifying the central importance of “who holds the camera, records the footage, and controls access to the footage”); see also Mya Frazier, *A Camera on Every Cop: Taser International Cashes in on Police Misconduct*, *HARPER’S MAG.*, Aug. 2015, at 62 (providing a brief history of Taser and body camera adoption after the Ferguson uprising); Justin Hansford, *Body Cameras Won’t Stop Police Brutality. Eric Garner is Only One of Several Reasons Why.*, *WASH. POST* (Dec. 4, 2014), <https://www.washingtonpost.com/posteverything/wp/2014/12/04/body-cameras-wont-stop-police-brutality-eric-garner-is-only-one-of-several-reasons-why/> [<https://perma.cc/92B3-6M4Z>]; Nia-Malika Henderson, *With Eric Garner, Obama’s Body Camera Argument Just Took a Big Hit*, *WASH. POST: THE FIX* (Dec. 3, 2014), <https://www.washingtonpost.com/news/the-fix/wp/2014/12/03/obamas-body-camera-argument-just-took-a-big-hit/> [<https://perma.cc/87T9-QLNW>]; Elliott C. McLaughlin, *After Eric Garner: What’s Point of Police Body Cameras?*, *CNN* (Dec. 4, 2014), <http://www.cnn.com/2014/12/04/us/eric-garner-ferguson-body-cameras-debate/index.html> [<https://perma.cc/QPD3-WTC3>].

127. DAVID YOKUM ET AL., *LAB @ DC ET AL., EVALUATING THE EFFECTS OF POLICE BODY-WORN CAMERAS: A RANDOMIZED CONTROLLED TRIAL* 22 (2017), [https://bwc.thelab.dc.gov/TheLabDC\\_MPD\\_BWC\\_Working\\_Paper\\_10.20.17.pdf](https://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf) [<https://perma.cc/GV3W-69BX>]; see also Timothy Williams et al., *Police Body Cameras, What Do You See?*, *N.Y. TIMES* (Apr. 1, 2016), <https://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html> [<https://perma.cc/8SFK-5WWT>] (demonstrating the subjectivity of interpretation of body camera footage); *supra* note 119 and accompanying text.

128. See, e.g., Vincent E. Henry, *Compstat The Emerging Model of Police Management*, in *CRITICAL ISSUES IN CRIME AND JUSTICE* 117, 119 (Albert R. Roberts ed., 2d ed. 2003); William F. Walsh, *Compstat: An Analysis of an Emerging Police Managerial Paradigm*, 24 *POLICING* 347 (2001).

129. See, e.g., Herzing, *supra* note 6; Rachel Herzing, *Unraveling the Fraying Edges of Zero Tolerance*, *COUNTERPUNCH* (Jan. 14, 2013), <https://www.counterpunch.org/2013/01/14/unraveling-the-fraying-edges-of-zero-tolerance/> [<https://perma.cc/7XK9-FD7U>].

130. See, e.g., BARKOW, *supra* note 9 at 3 (articulating a “need to push for a model of criminal justice decision-making that looks more like the way we make policy in other regulatory areas where expertise plays a more significant role”).

called the “two faces” of American freedom.<sup>131</sup> The structures of our colonial slaveholding society have long created freedom for whites on the backs and lands of Indigenous and Black people.<sup>132</sup> Racial violence is a central and persistent feature of U.S. history.

But legal scholarship tends toward contemporary accounts of police.<sup>133</sup> These accounts root police in the nineteenth century with the establishment of metropolitan police departments in London and Boston.<sup>134</sup> The typical history runs through the twentieth century like this: police corruption was met with professionalization—an attempt to separate police from the corrupting force of politics.<sup>135</sup> Professionalization went too far in insulating the police from public censure; finally, community policing attempted to narrow the gap between the police and the public.<sup>136</sup>

In its focus on the twentieth century, this account ignores the longer arc of enslavement, Jim Crow, and settler colonialism that shaped the institution of policing.<sup>137</sup> But even with regard to the twentieth century, it glosses over

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131. See AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* (2010); see also Soss & Weaver, *Police are Our Government*, *supra* note 95, at 565 (bringing attention to the “second face” of the state in how it interfaces with “race-class subjugated communities” through police and the larger criminal legal system).

132. See generally RANA, *supra* note 131; KELLY LYTLE HERNÁNDEZ, *CITY OF INMATES* (2017) (exploring the rise of incarceration and policing in Los Angeles, starting with colonial settlement).

133. There are exceptions, of course. *E.g.*, McLeod, *supra* note 66, at 1185–99 (situating police and prison violence in a longer history); Roberts, *Foreword*, *supra* note 18 (discussing the history of vagrancy connected to contemporary anti-loitering criminalization).

134. Alex Vitale’s recent survey notes the origin story of the London Metropolitan Department—often touted as the police department in whose shadow northern U.S. cities fashioned their departments—is actually rooted in Britain’s colonial occupation of Ireland and a desire to protect against worker uprisings. VITALE, *supra* note 85, at 34–37; see also Micol Seigel, *The Dilemma of ‘Racial Profiling’: An Abolitionist Police History*, 20 CONTEMP. JUST. REV. 474, 477–79 (2017) (critiquing “liberal histories of the US police” for sanitized origin stories).

135. FRIEDMAN, *supra* note 23, at 17–18, 35–45 (“[S]oon after the advent of large metropolitan police departments, the police became entwined in the sort of municipal graft and corruption that was all too common at the turn of the twentieth century. . . . [I]n order to address that problem, we decided that policing should be separated from politics, and professionalized.”); Friedman & Ponomarenko, *supra* note 22, at 1859–60 (telling a similar story about the rise of professionalism); see also Bibas, *supra* note 84, at 1683–86 (documenting costs of professionalization).

136. *E.g.*, Sklansky, *supra* note 86, at 1778–80.

137. See, *e.g.*, FRIEDMAN, *supra* note 23, at 35–36, 130–31. At the end of his book, Friedman briefly grapples with the uglier past of policing. *Id.* at 317–18 (“Whether it was plantation slave patrols, or union-busting Pinkertons, or Jim Crow police forces, policing often has been the tool of the ruling class. . . . [P]olicing can be an instrument of oppression [or] the brunt of [it] land on the less well off, the disadvantaged, the marginalized, and racial minorities.”). There is growing engagement with a longer history. See, *e.g.*, Capers, *Race, Policing, and Technology*, *supra* note 121, at 1288–89 (discussing how enslaved people were constantly monitored, including by slave patrols); Carbado & Richardson, *supra* note 22, at 2024 (referring to the modern police’s roots in slave patrols); Fagan & Ash, *supra* note 36, at 82 (“Colonial New Yorkers formed militias in the 1700s to enforce criminal codes against slaves, . . . [and] Civil War era draft riots in New York exposed the depth of the animus between white and black New Yorkers, with the policing siding with the largely white rioters who feared a Negro ‘invasion’ following a Northern Union victory in the Civil War.”); Jonathan Simon, *Racing Abnormality*,



defining developments, including the federal government's massive investments in the carceral state as part of its law-and-order reaction against the long civil rights movement.<sup>138</sup> Amidst movements and rebellions, the federal wars on crime and poverty contributed to the exponential growth of policing and incarceration.<sup>139</sup> Even community policing was central to a project of relegitimization after rebellion.<sup>140</sup>

Scholars advocating for repair fail to deal with the centrality of police violence and the larger social, economic, and political contexts in which police have exercised that violence over time. The repair agenda implies the problem of policing is tertiary rather than fundamental, about governance rather than scale, and a departure rather than routine. Most scholarship narrowly focuses on how to restore policing, without expanding the frame to consider alternate ways to respond to the very social problems policing and prisons purportedly address. It questions the modes of policing—who and how we police—rather than its ends. It leaves in place assumptions about the purpose and function of police in society, without exploring alternate modes of organizing collective life. In sum, the scholarship fails to reckon with the actual problems: that violence is the central tool police use against poor people of color; that violence is centrally defined by the scale and power of police; and that policing has become a defining institution of U.S. life and governance.

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*Normalizing Race: The Origins of America's Peculiar Carceral State and Its Prospects for Democratic Transformation Today*, 111 NW. U. L. REV. 1625, 1626–30 (2017) (situating the development of the carceral state within the history of enslavement and colonialism); Hubert Williams & Patrick V. Murphy, *The Evolving Strategy of Police: A Minority View*, PERSP. ON POLICING, Jan. 1990, at 1 (arguing that mainstream police histories fail “to take account of how slavery, segregation, discrimination, and racism have affected the development of American police departments”).

138. See generally HINTON, *supra* note 91 (charting massive expenditures in policing and criminalization from the Johnson Administration onward); SHELLEY HYLAND, U.S. DEP'T OF JUSTICE, FULL-TIME EMPLOYEES IN LAW ENFORCEMENT AGENCIES, 1997-2016 1-2 (2018), <https://www.bjs.gov/content/pub/pdf/ftelea9716.pdf> [<https://perma.cc/VS3E-CEWP>] (documenting the rise of full-time state and local police officers since 1997).

139. Elizabeth Hinton explains that “the expansion of the carceral state should be understood as the federal government’s response to the demographic transformation of the nation at the mid-century [through the Great Migration], the gains of the African American civil rights movement, and the persistent threat of urban rebellion.” HINTON, *supra* note 91, at 333; see also Soss & Weaver, *supra* note 95, at 569–73 (2017) (documenting the growth of police between the 1968 Kerner Commission report and the 2015 DOJ Ferguson Police Report). Similarly, Naomi Murakawa argues that from the start of the long civil rights movement in the 1940s onward, the United States “did not face a crime problem that was racialized; it faced a race problem that was criminalized.” NAOMI MURAKAWA, *THE FIRST CIVIL RIGHT* 3 (2014); see also *id.* at 11 (“[L]iberal law-and-order agendas flowed from an underlying assumption of racism: racism was an individual whim, an irrationality, and therefore racism could be corrected with “state-building” in the Weberian sense—that is, the replacement of personalized power of government officials with codified, standardized, and formalized authority.”); JORDAN T. CAMP, *INCARCERATING THE CRISIS* 5 (2016) (“[N]eoliberal racial and security regimes . . . are the outgrowth of a long counterinsurgency against the Black freedom, labor, and socialist alliance that took shape in the struggle to abolish Jim Crow racial regimes.”).

140. See *supra* note 91.

But the danger of the conventional reform agenda is not simply that it advances ineffectual solutions to police violence. It invites investments in police and, therefore, builds the power and legitimacy of police, including their discretion for violence.

Scholars who advance such reforms may acknowledge that police are not a fundamental social good. They may pursue police reform because they see police as an inevitable fixture of the state.<sup>141</sup> Many may adopt conciliatory modes of engagement to maintain their influence as they consult with police or ad hoc bodies that advise the state on reforms. Scholars may truly believe investments in police are the most likely road to mitigating police violence. I suspect an aspect of the persistence of repair agendas stems from both the difficulty of seeing alternatives and some path dependency within the scholarship and our professional pathways to the academy.<sup>142</sup> But as the failures of conventional reform become increasingly clear, the current moment creates urgency and space to explore alternative frameworks for ending police violence.

### III.

#### ABOLITION

The George Floyd uprisings triggered by police violence mobilized demands that tore open debates on police reform. But demands to defund and dismantle the police did not come from nowhere. They came out of decades of prison abolitionist organizing and its growing influence on racial justice organizing since the Ferguson and Baltimore rebellions.<sup>143</sup> The organizing offers an approach rooted in an abolitionist horizon and focused on redressing the scale, violence, and power of policing in the United States today. Now, communities, cities, universities, and school districts around the country are exploring options for cutting police contracts and budgets and disbanding and divesting from their police departments.<sup>144</sup> But even before 2020, a growing number of abolitionist

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141. These arguments are not stated explicitly—but some scholars have shared these concerns with me.

142. Shaun Ossei-Owusu, *The New Penal Bureaucrats* (Sept. 12, 2020) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3691671](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3691671) [<https://perma.cc/HHV9-NA8H>].

143. Akbar, *supra* note 4; see also Meghan G. McDowell & Luis A. Fernandez, *'Disband, Disempower, and Disarm': Amplifying the Theory and Practice of Police Abolition*, 26 CRITICAL CRIMINOLOGY 373, 373 (2018) (referring to campaigns to disarm, disempower, defund, and divest from police, as well as disruptive direct actions).

144. See, e.g., Daniel Beekman, *Seattle City Council Homes in on Police Department Cuts as Defunding Proponents and Skeptics Mobilize*, SEATTLE TIMES (July 18, 2020), <https://www.seattletimes.com/seattle-news/politics/seattle-city-council-homes-in-on-police-department-cuts-as-defunding-proponents-and-opponents-mobilize/> [<https://perma.cc/RDW8-27LU>]; Rebecca Ellis, *Portland City Council Approves Budget Cutting Additional \$15M from Police*, OR. PUB. BROAD. (June 17, 2020), <https://www.opb.org/news/article/portland-police-budget-15-million-defund-cannabis-council-vote/> [<https://perma.cc/FDK3-N2LD>]; *LAPD Funding Slashed by \$150M, Reducing Number of Officers*, ASSOCIATED PRESS (July 1, 2020),

campaigns calling for divestment from carceral control and investment in social provision had won concrete changes and redefined criminal law reform debates from decarceration to abolition, from police reform to divestment.<sup>145</sup>

In this Section, I provide a schematic account of contemporary abolitionist organizing and experimentation. I begin with abolitionist critique. Then, I explore abolitionist campaigns and experiments that have aspired toward the building of alternate modes of collective provision and care, and the transformation of the economic, political, and social systems that form the state and our relationships to each other and the commons.<sup>146</sup>

### A. Critique

The contemporary call for abolition typically encompasses the prison industrial complex (PIC). Critical Resistance defines the PIC as “the intersecting interests of government and industry that employ surveillance, policing, the judiciary, and imprisonment as solutions to what the state identifies as social problems (i.e., poverty, homelessness, ‘social deviance,’ political dissent).”<sup>147</sup> The focus on the PIC reveals a concern not simply with a conventional account of state power, but with how the state and the market together produce a mode of governing for poor, Black, and brown people.<sup>148</sup> As a fundamental building

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<https://apnews.com/3ad962eb78e30975354f6036c6451022>

[<https://web.archive.org/web/20200906005632/https://apnews.com/3ad962eb78e30975354f6036c6451022>]; *Minneapolis City Council Members Taking First Step Toward Disbanding City's Police Department*, CBS NEWS (June 26, 2020), <https://www.cbsnews.com/news/minneapolis-city-council-members-taking-first-step-toward-disbanding-citys-police-department/> [https://perma.cc/MWA5-ZJTH]; *infra* notes 203–204 (discussing divestment campaigns in school districts).

145. E.g., Press Release, JusticeLA, *Another Historic Win for Justice LA as LA County Board of Supervisors Vote to Cancel the McCarthy Contract - Stopping a Massive Downtown Jail* (Aug. 13, 2019), <http://justicelanow.org/wp-content/uploads/2017/08/JLA-0813-PRESS-RELEASE.pdf> [https://perma.cc/J7XT-HDF9].

146. As Charlene Carruthers of BYP100 puts it, “We are participating in various projects of abolition—abolition of prison, abolition of capitalism, and abolition of patriarchal violence.” CHARLENE A. CARRUTHERS, UNAPOLOGETIC 18 (2018). Carruthers signals the broader politics of abolition in its commitments to ending white supremacy, patriarchy, and capitalism, systems in which the prison and police are deeply embedded. At the same time, she points to the organizing project at the heart of abolitionist praxis: not simply changing hearts and minds, but building “abolition democracy.” *Id.*

147. Rachel Herzing & Isaac Ontiveros, *Building an International Movement to Abolish the Prison Industrial Complex*, CRIM. JUST. MATTERS, June 2011, at 42, 42; *see also* DAVIS, *supra* note 6, at 84–104 (providing an account of the prison industrial complex). More and more, the child protective and foster care systems are being identified as part of the PIC and another target for abolitionist organizing. The Movement for Family Power, for example, aims to end the foster care system. MOVEMENT FOR FAM. POWER, <https://www.movementforfamilypower.org/> [https://perma.cc/FKX8-5V5P]. The Red Nation includes child protective services and Border Patrol within its call to defund police. THE RED NATION, THE RED DEAL, PART ONE: END THE OCCUPATION 19–21 (2020), [http://therednation.org/wp-content/uploads/2020/04/Red-Deal\\_Part-I\\_End-The-Occupation-1.pdf](http://therednation.org/wp-content/uploads/2020/04/Red-Deal_Part-I_End-The-Occupation-1.pdf) [https://perma.cc/24YV-ER9M].

148. *See* CRITICAL RESISTANCE, THE CR ABOLITION ORGANIZING TOOLKIT 3–11 (2004), <http://criticalresistance.org/wp-content/uploads/2012/06/CR-Abolitionist-Toolkit-online.pdf>

block of the PIC, policing perpetuates a system of “violence and control” designed “to maintain [the] status quo, to keep poor people of color and poor people in check.”<sup>149</sup> Police abolition challenges the existence of police as “an inevitable fixture in society.”<sup>150</sup>

In abolitionist thinking, policing and incarceration are contingent, rather than necessary, forms of violence, constitutive of the terrain of inequality and maldistribution.<sup>151</sup> Rather than addressing directly the underlying social, economic, and political problems of inequality and maldistribution—unemployment, substandard wages, inadequate health care, evictions, addiction, mental health, and intimate violence—we police and cage the people who struggle through them. We fail to discern the particularity of distinct, if interconnected, social problems, and, in turn, displace responsibility from the collective onto the individual. By turning to the tools of policing and prisons to address all manner of social problems, we propagate state-backed violence as the one-size-fits-all solution.<sup>152</sup>

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[<https://perma.cc/9DHS-KU4G>] [hereinafter CRITICAL RESISTANCE, THE CR ABOLITION ORGANIZING TOOLKIT]; Hans Bennett, *Organizing to Abolish the Prison-Industrial Complex*, DISSIDENT VOICE (July 11, 2008), <https://dissidentvoice.org/2008/07/organizing-to-abolish-the-prison-industrial-complex/> [<https://perma.cc/NE3F-AN7G>]; *What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/not-so-common-language/> [<https://perma.cc/J79K-BWSQ>]; *Why Is This Happening? with Chris Hayes*, *supra* note 6. Mike Davis is originally credited with the term. Mike Davis, *Hell Factories in the Field*, NATION, Feb. 20, 1995, at 229. For scholars pushing for a more expansive view of the carceral state, see Dolovich & Natapoff, *supra* note 8, at 1–2; Katherine Beckett & Naomi Murakawa, *Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment*, 16 THEORETICAL CRIMINOLOGY 221 (2012).

149. CRITICAL RESISTANCE, ABOLITION OF POLICING WORKSHOP, <http://criticalresistance.org/wp-content/uploads/2017/08/CR-Abolition-of-Policing-Full-Workshop-and-Materials.zip> [<https://perma.cc/RK8T-WNXE>] (download zip file and then open “1 - Facilitator Agenda.pdf”) (“It is not about individual cops. The entire system is predicated on violence and control.”); *see also* Ruairi Arrieta-Kenna, ‘Abolish Prisons’ Is the New ‘Abolish ICE’, POLITICO MAG. (Aug. 15, 2018), <https://www.politico.com/magazine/story/2018/08/15/abolish-prisons-is-the-new-abolish-ice-219361> [<https://perma.cc/8LM3-M9L3>] (quoting abolitionist Maya Schenwar as referring to prison as upholding capitalism and white supremacy).

150. McDowell & Fernandez, *supra* note 143, at 374; *see also* DAVIS, *supra* note 6, at 9–10 (“The prison is considered so ‘natural’ that it is extremely hard to imagine life without it.”).

151. *See, e.g.*, Victoria Law, *Against Carceral Feminism*, JACOBIN (Oct. 17, 2014), <https://www.jacobinmag.com/2014/10/against-carceral-feminism/> [<https://perma.cc/4GXT-2PQD>] (“[P]olice are often purveyors of violence and . . . prisons are always sites of violence.”). For legal scholarship examining the violence of prison, *see* McLeod, *supra* note 66, at 1173–84; Brenda V. Smith, *Boys, Rape, and Masculinity: Reclaiming Boys’ Narratives of Sexual Violence in Custody*, 93 N.C. L. REV. 1559 (2015); Brenda V. Smith, *Sexual Abuse of Women in United States Prisons: A Modern Corollary of Slavery*, 33 FORDHAM URB. L.J. 571 (2006); Brenda V. Smith, *Uncomfortable Places, Close Spaces: Female Correctional Workers’ Sexual Interactions with Men and Boys in Custody*, 59 UCLA L. REV. 1690 (2012).

152. In the last two decades, David Garland and Jonathan Simon have had profound scholarly impact, demonstrating that the second half of the twentieth century saw the rise of carceral governance as the frame for a growing number of social problems associated with poor and dispossessed Black and brown people, with widespread implications for governance more broadly. DAVID GARLAND, *THE CULTURE OF CONTROL* (2001) (linking renewed emphasis on crime control to free market ideology and

Abolitionist critique attempts to understand the historical, material, and ideological dimensions of how policing shapes the material infrastructure of our political, social, and economic relationships.<sup>153</sup> Here, I provide the basic contours of these critiques. These critiques, presented incompletely here, are essential to understanding abolitionist projects.

### 1. Historical

Abolitionist organizers locate the history of policing in slave and border patrols.<sup>154</sup> Scholars in other disciplines have investigated the emergence of police within the history of enslavement and settler colonialism.<sup>155</sup> The roots of modern

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anti-welfare politics); JONATHAN SIMON, *GOVERNING THROUGH CRIME* 18 (2007) (“No doubt we do govern the poor through crime, but they are far from the only subjects of this practice. Crime . . . actively reshapes how power is exercised throughout hierarchies of class, race, ethnicity, and gender.”); JONATHAN SIMON, *POOR DISCIPLINE* (1993) (discussing penalty as a means of regulating the socially marginalized, with a particular focus on parole); Malcolm M. Feeley & Jonathan Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 *CRIMINOLOGY* 449, 455 (1992) (“The new penology is neither about punishing nor about rehabilitating individuals. It is about identifying and managing unruly groups.”); see also KATHERINE BECKETT & STEVE HERBERT, *BANISHED* (2010) (discussing how strategies to criminalize the presence of the socially marginalized in public spaces act as a form of modern-day “banishment”); BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* 1–4 (2006) (describing punitive criminal justice policies as, in part, a reaction to the upheaval in American race relations of the 1960s and the collapse of unskilled labor markets for unskilled men in the 1970s).

153. Antonio Gramsci, the Italian Marxist philosopher, theorized the central role of ideology in the ruling class’s efforts to maintain hegemony. ANTONIO GRAMSCI, *SELECTIONS FROM THE PRISON NOTEBOOKS* 3–4 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971); see also Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331, 1350–51 (1988) (engaging with Gramsci’s accounts of hegemony and ideology, and highlighting his importance to critical legal theory).

154. The policing timeline for Critical Resistance’s Abolition of Police workshop begins with “brutal militia force [as] a routine part of land-grabbing” from Indigenous peoples in 1492 onward, and the establishment of informal and formal slave patrols in the South starting with South Carolina in the late 1600s. CRITICAL RESISTANCE, *POLICING IN THE UNITED STATES 1845-PRESENT*, <http://criticalresistance.org/wp-content/uploads/2017/08/CR-Abolition-of-Policing-Full-Workshop-and-Materials.zip> [<https://perma.cc/RK8T-WNXE>] (download zip file and then open “3a - Policing Timeline Text.pdf”); see also RITCHIE, *supra* note 9, at xv (“The origin story of modern American policing is slave patrols and union busting.”); Christina Heatherton, *#BlackLivesMatter and Global Visions of Abolition: An Interview with Patrisse Cullors*, in *POLICING THE PLANET: WHY THE POLICING CRISIS LED TO BLACK LIVES MATTER* 35, 36 (Jordan T. Camp & Christina Heatherton eds., 2016) (“[The police’s] original task was to patrol slaves . . . [and] the first sheriff’s departments patrolled the US-Mexico border.”); Maya Dukmasova, *Abolish the Police? Organizers Say It’s Less Crazy than It Sounds*, *CHI. READER* (Aug. 25, 2016), <https://www.chicagoreader.com/chicago/police-abolitionist-movement-alternatives-cops-chicago/Content?oid=23289710> [<https://perma.cc/W5ED-L6PR>] (quoting organizer Jessica Disu rooting police in slave patrols).

155. See, e.g., ALEXANDER, *supra* note 18 (connecting slavery with mass incarceration); HERNÁNDEZ, *supra* note 132 (2017) (exploring the entangled histories of colonialism, policing, and criminalization in Los Angeles); DAVIS, *supra* note 6, at 22–25 (identifying enslavement, segregation, and lynching as antecedents to the prison). Police are the “afterlife” of slavery—Saidiya Hartman’s phrase refusing the periodization of slavery, insisting on the continuing hold of enslavement on Black life in the United States: “If slavery persists as an issue in the political life of black America, it is . . .

police can be traced to slave patrols, the Ku Klux Klan, militias, and early police forces.<sup>156</sup> These policing efforts sought to monitor, control, suppress, and kill Black and Indigenous people: to exploit labor, life, and land.<sup>157</sup>

Runaway slaves were among “the greatest problems of slave government,” and slave revolts were “the most fear-invoking” for slaveowners.<sup>158</sup> From 1704 to the mid-1860s, almost all Southern colonies and states developed slave patrols.<sup>159</sup> Early slave patrols often drew patrollers from preexisting militias that settlers created “almost as soon as the first settlers’ ships touched land” to fight Indigenous people and competing colonial powers.<sup>160</sup> Slave patrols across the

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because black lives are still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago. This is the afterlife of slavery—skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment.” SAIDIYA HARTMAN, *LOSE YOUR MOTHER: A JOURNEY ALONG THE ATLANTIC SLAVE ROUTE* 6 (2007); *see also* SAIDIYA V. HARTMAN, *SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA* 12-13 (1997) (documenting how law obscures the persistence of enslavement and its structures).

156. BRYAN WAGNER, *DISTURBING THE PEACE: BLACK CULTURE AND THE POLICE POWER AFTER SLAVERY* 6-7 (2009). For a longer discussion of these connections, see Inés Valdez, Mat Coleman & Amna Akbar, *Law, Police Violence, and Race: Grounding and Embodying the State of Exception*, 23 *THEORY & EVENT* 902 (2020).

157. *See, e.g.*, K. B. Turner et al., *Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts*, 17 *J. CRIM. JUST. EDUC.* 181, 185 (2006) (“[T]he slave patrol has been argued by some scholars to be the precursor to the modern American system of policing.”); Victor E. Kappeler, *A Brief History of Slavery and the Origins of American Policing*, E. KY. U. (Jan. 7, 2014), <http://plsonline.eku.edu/insidelook/brief-history-slavery-and-origins-american-policing> [<https://perma.cc/FFR8-GNTV>]; Darryl Pinckney, *Black Lives and the Police*, N.Y. REV. BOOKS (Aug. 18, 2016), <http://www.nybooks.com/articles/2016/08/18/black-lives-and-the-police/> [<https://perma.cc/DSB5-S95S>] (describing seventeenth century slave patrols made up largely of poor whites, and noting that “[t]o stop, harass, whip, injure, or kill black people was both their duty and their reward” and that “their real purpose was to monitor and suppress the capacity for slave rebellion”); Gary Potter, *The History of Policing in the United States, Part 1*, E. KY. U. (June 25, 2013), <https://plsonline.eku.edu/insidelook/history-policing-united-states-part-1> [<https://perma.cc/7A4N-T5P9>]; Olivia B. Waxman, *How the U.S. Got Its Police Force*, TIME (May 18, 2017), <http://time.com/4779112/police-history-origins/> [<https://perma.cc/QH5P-Q9RQ>].

158. SALLY E. HADDEN, *SLAVE PATROLS* (2001); Philip L. Reichel, *Southern Slave Patrols as a Transitional Police Type*, 7 *AM. J. POLICE* 51, 55 (1988) [hereinafter Reichel, *Transitional Police Type*]; Philip L. Reichel, *The Misplaced Emphasis on Urbanization in Police Development*, 3 *POLICING & SOC’Y* 1, 4 (1992).

159. Decades ago, sociologist Philip Reichel called out the skewed attention to police in the North, to the almost total exclusion of the development of the police in the South, musing that “[a]s a forerunner to the police, it would seem that slave patrols should have become a well-researched example in our attempt to better understand the development of American law enforcement.” Reichel, *Transitional Police Type*, *supra* note 158, at 51.

160. HADDEN, *supra* note 158, at 27; WILLIAMS, *supra* note 91, at 51-87. After the Civil War, the slave codes became the heavily enforced short-lived Black Codes in the South, designed specifically to criminalize and control the movements of newly freed Black people and their labor between 1865 and 1866. DAVID W. OSHINSKY, “WORSE THAN SLAVERY” 20-23 (1996); RITCHIE, *supra* note 9, at 29. These Codes “proscribed a range of actions—such as vagrancy, absence from work, breach of job contracts, the possession of firearms, and insulting gestures or acts—that were criminalized only when the person was black.” DAVIS, *supra* note 6, at 28. It was during this time that southern prison and jail populations transformed from largely white to Black in population. OSHINSKY, *supra*, at 20-34;

South were empowered to “break into Black people’s homes” and to “punish [whip and kidnap] enslaved people or runaways,” including those who “challenged their authority,” were “suspected of a crime,” or were “found outside their master’s domain without a pass.”<sup>161</sup> Similarly, criminalization, incarceration, and policing were central to Indigenous dispossession.<sup>162</sup>

The power and authority of the police are fundamental to the modernization of anti-Black violence. The violence of the slave owner, the slave patrol, and the Klan became the violence of the police.<sup>163</sup> Naming this resonance, scholar activist Andrea Ritchie argues that the long history of violence against Indigenous and Black people and people of color “deeply informs present-day interactions with police.”<sup>164</sup>

## 2. Material

In *Golden Gulag*, Ruth Wilson Gilmore, a Marxist geographer and cofounder of Critical Resistance, traced California’s twentieth-century prison boom to crises in capitalism rather than to rising crime rates.<sup>165</sup> The state invested

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McLeod, *supra* note 66, at 1188–89. In the late nineteenth and early twentieth centuries, drawing from English vagrancy laws aimed at the poor, virtually all southern states criminalized vagrancy, investing great powers in police to return newly freed people to the same plantations from which they were freed. RISA GOLUBOFF, VAGRANT NATION 15, 116 (2016) (discussing how vagrancy laws “regulated African American morality and social interactions with whites” and “were used to return black Americans to a state as close to slavery as legally and practicably possible”); OSHINSKY, *supra*, at 20–34; Gary Stewart, Note, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L.J. 2249, 2260–62 (1998) (“[Vagrancy] laws defined the crime of vagrancy in painstaking detail, and yet, paradoxically, they were even broader and vaguer than before” (quoting William Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, in 4 RACE, LAW AND AMERICAN HISTORY, 1700-1990, at 30 (Paul Finkelman ed., 1992))). Whereas during enslavement, plantations and slaveowners were considered a law unto themselves, now, Black people were subjected to violence of different sorts of laws. OSHINSKY, *supra*, at 6 (quoting a slaveholder as saying “[e]ach plantation was a law unto itself”). Ida Wells-Barnett wrote of “lynch law.” Ida Wells-Barnett, *Lynch Law in America*, in WORDS OF FIRE 70 (Beverly Guy-Sheftall ed., 1995).

161. RITCHIE, *supra* note 9, at 28.

162. HERNÁNDEZ, *supra* note 57, 34–36; KELLY LYTLER HERNÁNDEZ, MIGRA! A HISTORY OF THE U.S. BORDER PATROL (2010); see also Jennifer M. Chacón, *Unsettling History*, 131 HARV. L. REV. 1078 (2018) (reviewing HERNÁNDEZ, *supra* note 132). For a historical tracing of the rise of border enforcement with the end of colonialism and the free movement of brown and Black people to white settler nations, see Sherally Munshi, *Immigration, Imperialism, and the Legacies of Indian Exclusion*, 28 YALE J. L. & HUMAN. 51, 55–57 (2016).

163. Barnor Hesse, *White Sovereignty* (. . .), *Black Life Politics: “The N\*\*\*\*r They Couldn’t Kill,”* 116 S. ATLANTIC Q. 581, 587 (2017) (discussing how police embody the “material colonial settler practices of whites territorializing, capturing, enslaving, segregating, disciplining, regulating, terrorizing, intimidating, patrolling, surveying, profiling, and violating non-whites”); Minkah Makalani, *Black Lives Matter and the Limits of Formal Black Politics*, 116 S. ATLANTIC Q. 529, 543 (2017).

164. RITCHIE, *supra* note 9, at 40–42. For more activist and organizing materials that discuss policing related to gender and sexuality, see, for example, INCITE! WOMEN OF COLOR AGAINST VIOLENCE, LAW ENFORCEMENT VIOLENCE AGAINST WOMEN OF COLOR & TRANS PEOPLE OF COLOR 55–78 (2018); INCITE! WOMEN, GENDER NON-CONFORMING, AND TRANS PEOPLE OF COLOR AGAINST VIOLENCE, *supra* note 6.

165. RUTH WILSON GILMORE, GOLDEN GULAG (2007). *Golden Gulag* is a central text of abolitionist critique, and Gilmore is a key figure in the abolitionist movement. Kushner, *supra* note 6.

in prisons to absorb “the labor and land rendered surplus by deindustrialization and globalization of capital,” and relied upon police to maintain order in the face of “actual or imagined antisocial behaviors among idled workers or disenchanting youth.”<sup>166</sup> Prisons and police became “partial geographical solutions to political economic crises”—and their work was particularly focused on Black and brown people.<sup>167</sup>

The 2017 *Freedom to Thrive* report, authored by Black Youth Project 100 (BYP100), Law for Black Lives, and the Center for Popular Democracy, built out Gilmore’s analysis for local contexts across the country.<sup>168</sup> The report finds that over the past thirty years, elected officials have “pour[ed] money into police forces” and cut “investments in basic infrastructure and . . . social safety net programs,” including “mental health services, housing subsidies, youth programs, and food benefits programs.”<sup>169</sup> At the top of the list of twelve municipalities, Oakland spent 41.2 percent of its general fund expenditures on the police department.<sup>170</sup> For every dollar Oakland spent on the police department from 2015 to 2017, it spent only eight cents on housing and community development.<sup>171</sup> The report argues that rather than policing, what makes communities safer is “a living wage, access to holistic health services and treatment, educational opportunity, and stable housing.”<sup>172</sup>

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166. GILMORE, *supra* note 165, at 54–55, 64; *see also* BRETT STORY, PRISON LAND 18–19 (2019) (deploying Gilmore’s analysis to think beyond California). As to surplus land, capitalists in the 1980s and 1990s sold “the worst” “otherwise . . . idle” land to the state, which in turn built prisons on this land. GILMORE, *supra* note 165, at 106. Surplus labor was comprised of “workers at the extreme edges, or completely outside, of restricted labor markets, stranded in urban and rural communities.” GILMORE, *supra* note 165, at 70–72; *see also* CAMP, *supra* note 139, at 10 (“[G]lobal capitalism rendered the labor of deindustrialized sectors of the urban working class—disproportionately Black and Latino workers—redundant in the political economy at the very moment that radical antiracist and anticapitalistic social movements were crushed.”).

167. GILMORE, *supra* note 165, at 12–14, 26, 91–92.

168. *See* KATE HAMAJI ET AL., CTR. FOR POPULAR DEMOCRACY ET AL., FREEDOM TO THRIVE: REIMAGINING SAFETY & SECURITY IN OUR COMMUNITIES (2017), <https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf> [<https://perma.cc/SR9D-PDZW>].

169. *Id.* at 3.

170. *Id.* at 63–64. Oakland’s expenditures were followed by Chicago at 38.6 percent, Minneapolis at 35.8 percent, and Houston at 35.0 percent. *Id.* at 2.

171. *Id.* at 64, 70.

172. *Id.* at 3. A good deal of data does show that raising the minimum wage and access to more job and educational opportunities, housing, health care, and treatment leads to a reduction in crime rates. *See, e.g.,* DOUG MCVAY ET AL., JUST. POL’Y INST., TREATMENT OR INCARCERATION? (2004), [http://www.justicepolicy.org/uploads/justicepolicy/documents/04-01\\_rep\\_mdtreatmentorincarceration\\_ac-dp.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/04-01_rep_mdtreatmentorincarceration_ac-dp.pdf) [<https://perma.cc/WXG9-GQ5G>]; AMANDA PETTERUTI ET AL., JUST. POL’Y INST., HOUSING AND PUBLIC SAFETY (2007), [http://www.justicepolicy.org/images/upload/07-11\\_rep\\_housingpublicsafety\\_ac-ps.pdf](http://www.justicepolicy.org/images/upload/07-11_rep_housingpublicsafety_ac-ps.pdf) [<https://perma.cc/9DRW-ASHY>]; RYAN S. KING ET AL., SENTENCING PROJECT, INCARCERATION AND CRIME: A COMPLEX RELATIONSHIP 4 (2005), <https://www.sentencingproject.org/wp-content/uploads/2016/01/Incarceration-and-Crime-A-Complex-Relationship.pdf> [<https://perma.cc/P4CA-TPDZ>]; Lance Lochner & Enrico Moretti, *The Effect of Education on Crime:*



Policing and incarceration have become fundamental tools for neoliberal state management.<sup>173</sup> As the state has deregulated markets, privatized services, cut welfare, and divested from public infrastructure like transportation and housing, it has invested in police and prisons.<sup>174</sup> The state has built through policing “a monopoly over emergency response, dealing with crisis, resolving interpersonal conflicts and much more.”<sup>175</sup> Policing and imprisonment have become the state’s responses to social problems like homelessness, mental health crises, drug use, and unemployment, from which the state has otherwise divested.<sup>176</sup>

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*Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155, 158 (2004); Juleyka Lantigua-Williams, *Raise the Minimum Wage, Reduce Crime?*, ATLANTIC (May 3, 2016), <https://www.theatlantic.com/politics/archive/2016/05/raise-the-minimum-wage-reduce-crime/480912/> [<https://perma.cc/G578-FYBJ>]; *Higher Youth Wages Mean Lower Crime Rates*, NAT’L BUREAU ECON. RES., <https://www.nber.org/digest/nov97/w5983.html> [<https://perma.cc/D7BJ-8DYW>]; see also Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> [<https://perma.cc/JU9Q-ZLZ9>] (documenting the persistence of homelessness among the formerly incarcerated and calling for housing as a priority); Steven Hawkins, *Education vs. Incarceration*, AM. PROSPECT (Dec. 6, 2010), <https://prospect.org/article/education-vs-incarceration> [<https://perma.cc/7ELT-A3J4>] (calling for greater investments in education in highly policed neighborhoods as a way to decrease rates of incarceration); *Illegal to Be Homeless 2004 Report*, NAT’L COAL. FOR HOMELESS, <https://www.nationalhomeless.org/publications/crimreport/problem.html> [<https://perma.cc/B5JS-W4RF>] (documenting the relationship between inadequate housing and cuts to social welfare and criminalization and incarceration).

173. See DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 2 (2005) (stating that the primary role of the state is to “set up those military, defense, police, and legal structures” required for the stability of private property, free trade, and markets); David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 LAW & CONTEMP. PROBS. 1, 6–8 (2014) (discussing neoliberalism’s key precepts, including “the view that strong property rights and private contracting rights are the best means to increase overall welfare”).

174. Heatherton, *supra* note 154, at 165, 175.

175. CRITICAL RESISTANCE, *supra* note 149, at 3–4. The criminal apparatus is further and further integrated into the welfare state itself, from public housing to public benefits. See Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J.L. & FEMINISM 317 (2014); Aya Gruber et al., *Penal Welfare and the New Human Trafficking Intervention Courts*, 68 FLA. L. REV. 1333 (2016); *Prisons and Class Warfare: Interview with Ruth Wilson Gilmore*, HIST. MATERIALISM, <http://www.historicalmaterialism.org/interviews/prisons-and-class-warfare> [<https://perma.cc/WQ99-J7AE>].

176. Gilmore, *supra* note 165, at 2; see also Ctr. for Popular Democracy & PolicyLink, *Building Momentum from the Ground Up: A Toolkit for Promoting Justice in Policing* 4–5 (2015), <https://populardemocracy.org/sites/default/files/JusticeInPolicing-webfinal.pdf> [<https://perma.cc/J6BG-N8AN>] (“Police and prisons have become the government’s answer to nearly every social problem in low income communities of color.”); Jordan T. Camp & Christina Heatherton, *Broken Windows, Surveillance, and the New Urban Counterinsurgency: An Interview with Hamid Khan*, in *Policing the Planet*, *supra* note 154, 151, 151 (Jordan T. Camp & Christina Heatherton eds., 2016) (stating that the “goal” of broken-windows theory and the Safer Cities Initiative in Los Angeles is “to get rid of ‘undesirables’”); Lester Spence, *Policing Class*, JACOBIN (Aug. 16, 2016), <https://www.jacobinmag.com/2016/08/baltimore-police-department-of-justice-freddie-gray> [<https://perma.cc/Q8NG-A5CW>] (stating that policing is about “garnering municipal revenue, or policing populations left out of the ‘new economy’ and uncovered by the safety net”); cf. *Prisons and Class Warfare*, *supra* note 175 (“[C]ertain types of social welfare agencies, like education, or income

Police and prisons are a primary mode of the state's presence, especially in the lives of poor and working-class people of color. As Critical Resistance puts it, police and prisons "get[] in the way of people's safety and basic needs."<sup>177</sup> We criminalize the houseless rather than build and guarantee housing.<sup>178</sup> We criminalize access to public benefits and public housing.<sup>179</sup> Arrests and incarceration create barriers to housing, work, and benefits, creating yet another contradiction between prisons and basic needs.<sup>180</sup>

A central critique of police is that their core mission is not to provide safety, but rather to hold in place racialized and capitalist social relations.<sup>181</sup> Police protect property over people, and the capitalist class over labor. When abolitionist organizers say *the police were never meant to protect us*,<sup>182</sup> they are drawing on the history of police in slave and border patrols, as well as their early history of crushing labor strikes in the North.<sup>183</sup> The function of police to repress riots, revolts, and social change is central in abolitionist accounts.

The material critique shifts us away from questions of intent and asks us to look squarely at police and prisons within our political economy and how these institutions shape the daily lives of millions of people. It also focuses our attention on, and provides explanation for, the explosion of municipal spending on police and prison infrastructure over the last several decades. It raises questions about the relative underfunding or even complete absence of alternatives: housing, health care, jobs, schools. It centers questions of race and

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support, or social housing, have absorbed some of the surveillance and punishment missions of the police and the prison system.").

177. GENERATIONFIVE, ENDING CHILD SEXUAL ABUSE: A TRANSFORMATIVE JUSTICE HANDBOOK 30 (2017), <http://www.generationfive.org/wp-content/uploads/2017/06/Transformative-Justice-Handbook.pdf> [<https://perma.cc/68C6-5QRF>].

178. *See id.*

179. *See id.* at 11; *see also* Gustafson, *supra* note 58.

180. NATAPOFF, *supra* note 8; Eisha Jain, *Proportionality and Other Misdemeanor Myths*, 98 B.U. L. REV. 953 (2018); Natapoff, *Misdemeanors*, *supra* note 19. *See generally* ALEXANDER, *supra* note 18; TRISTIA BAUMAN ET AL., NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2014), [https://nlchp.org/wp-content/uploads/2019/02/No\\_Safe\\_Place.pdf](https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf) [<https://perma.cc/5EWA-R46A>] (documenting how cities have turned to criminalization rather than provision of housing to respond to the housing crisis).

181. Abolitionist organizers understand policing as constitutive of and central to maintaining "the property of the capitalist class [and] stable conditions for capital accumulation." McDowell & Fernandez, *supra* note 143, at 379–80; *see also* Alicia Garza, *Foreword* to WHO DO YOU SERVE, WHO DO YOU PROTECT? vii, vii–ix (Maya Schenwar et al. eds., 2016) (discussing policing with "origins in the slave economy" and as constitutive of a racial and economic regime).

182. *E.g.*, DREAM DEFENDERS, DEFUND POLICE, REBUILD OUR COMMUNITIES 3 (2020), <https://drive.google.com/file/d/1OV9Zx6NT9IVdHHdF3EtOJPe9RYMZUMxA/view?usp=sharing> [<https://perma.cc/45NW-Z76M>] ("Police were never meant to protect and serve me and you, they were never meant to provide safety for us. . . . They're here to protect the interests of the people who run this country, protect property, keep prison cells full, to use as their outlet for rage and to keep change from happening.").

183. *See The History of Police in Creating Social Order in the U.S.*, NPR (June 5, 2020), <https://www.npr.org/2020/06/05/871083599/the-history-of-police-in-creating-social-order-in-the-u-s> [<https://perma.cc/9ZYW-EKVZ>] (interview with Professor Chenjerai Kumanyika).

distribution. It tells a story about how police maintain and produce our hierarchical political, economic, and social order. As a result, the material critique inverts traditional conceptions of police violence where the problem is the departure from, rather than the norm of, routine policing, and the departure is a puzzle to be solved, rather than an expression of status quo social relations.

### 3. *Ideological*

Abolitionists seek to counter an ideological framework that is central to police power and legitimacy: that criminalization is for the collective good, and police are agents of public safety. From an abolitionist perspective, police do not provide public safety.<sup>184</sup> To the contrary, police detract from the social provision of human needs. They sustain large-scale suffering and inequality through their violence and the broader structural violence that their violence enables.

In a video series prepared with the Sylvia Rivera Law Project, Dean Spade speaks to Tourmaline, an organizer and artist who worked with Critical Resistance and Queers for Economic Justice.<sup>185</sup> Tourmaline explains how the carceral state constitutes binaries—between innocent and guilty, good and bad people, criminal and law-abiding people—that, in turn, sustain the legitimacy of our larger political, economic, and social order.<sup>186</sup> Policing and prisons mark people outside of that order and as undeserving of social provision or care.

Poverty becomes the fault of the individual stealing from Walmart or jumping the turnstile, rather than that of the political, economic, and social order that does not guarantee food, transportation, or a living wage.<sup>187</sup> The problem is the unhoused person living in an encampment and urinating in public, rather than unemployment, skyrocketing rents, insufficient affordable housing, and the social contract that does not guarantee housing. Criminal law enforcement—of the houseless person, the corner drug dealer, the panhandler, or the battering husband—shifts the realm of concern from the structural plane to the individual body.<sup>188</sup> At the same time, because the carceral state targets Black, brown, poor, queer, trans, and gender nonbinary people, the criminal process aggregates guilt

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184. *E.g.*, DREAM DEFENDERS, *supra* note 182; DURHAM BEYOND POLICING COAL., PROPOSAL FOR A COMMUNITY-LED SAFETY AND WELLNESS TASK FORCE 16 (2019), <https://durhambeyondpolicing.org/wp-content/uploads/2019/07/Durham-Beyond-Policing-Budget-Proposal-2019-2020.pdf> [<https://perma.cc/LLT3-KLBG>].

185. *No One is Disposable: Everyday Practices of Prison Abolition*, BARNARD CTR. FOR RES. ON WOMEN, <http://bcrw.barnard.edu/event/no-one-is-disposable-everyday-practices-of-prison-abolition/> [<https://perma.cc/W8N7-ZJBD>].

186. *Id.* at “Part 3: What About the Dangerous People?”; *see also* Aya Gruber, *A Distributive Theory of Criminal Law*, 52 WM. & MARY L. REV. 1, 65 (2010) (discussing how “[w]ar-on-crime discourse” has “cemented the characterization of defendants as evil, fully responsible enemies” and victims “as ultimately innocent”). For an argument that U.S. criminal punishment is fueled by a moral vision distinct from European visions in how it views offenders as “deformed” people, *see* Joshua Kleinfeld, *Two Cultures of Punishment*, 68 STAN. L. REV. 933 (2016).

187. *See* GILMORE, *supra* note 165, at 24–28; *Prisons and Class Warfare*, *supra* note 175.

188. GILMORE, *supra* note 165, at 24–25.

in racialized, gendered, and classed ways.<sup>189</sup> The blame is placed on individuals and groups, but never structures; the social, economic, and political landscape that renders particular identities as criminal is never implicated.

Criminalization at the level of discourse and material reality—who gets policed, how, and with what frequency; and who is behind bars, for what reason, and for how long—marks people of color, poor people, and queer and trans people as undeserving and unworthy of social benefits.<sup>190</sup> The criminal system leaves wealthy white people alone, marking them as good, law-abiding citizens rightly deserving of plentitude.<sup>191</sup> Some people “will never be responsible for doing harm: the people who are running Blackwater, or running the military, or Obama, or the chief of police of NYPD.”<sup>192</sup>

Criminal law enforcement, then, distracts from the structural sources of harm and inequality. It naturalizes the state and the status quo, and marks those who benefit most from it as righteous. Those at the receiving end of state violence become justified targets through criminalization. In not taking on corporations or corporate interests, criminal law renders invisible the role of corporate power in defining exploitation and inequality in the United States.<sup>193</sup>

Together, the historical, material, and ideological critiques create a framework for understanding the fundamental problems of policing. They suggest policing is not broken, but working in ways that reflect and extend the

189. There’s a large body of academic work that speaks to the racialization of criminality, or the criminalization of race. Historian Khalil Gibran Muhammad’s important work documents the rise of a framework of criminality and fear fundamentally racialized as Black, and dated as a post-emancipation late-nineteenth and early twentieth century response to white anxiety about newly freed Black people joining the body politic and the workforce. KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010); *see also* Bell, *Hidden Laws*, *supra* note 20, at 18 (“In terms of social meaning: race means income; race means class; race means perception as criminal; race means status before legal institutions. And, in each case, the reverse is often true.”); Shatema Threadcraft, *North American Necropolitics and Gender: On #BlackLivesMatter and Black Femicide*, 116 S. ATLANTIC Q. 553, 558 (2017) (drawing a historical parallel between how the state attached the mark of the rapist to Black men who were lynched, and how the state now attaches the mark of the thug to the dead Black body when killed by police).

190. CRITICAL RESISTANCE, *THE CR ABOLITION ORGANIZING TOOLKIT*, *supra* note 148, at 21 (“Discussions of crime often take place without discussion about system-wide forms of oppression such as racism, capitalism, ableism, heterosexism, and sexism. As a result, talk of crime happens . . . without understanding of the social forces and economic conditions surrounding them.”).

191. This point was illustrated during the #CrimingWhileWhite thread on Twitter after a New York City grand jury declined to indict Daniel Pantaleo for his killing of Eric Garner. Zachary A. Goldfarb, *#Crimingwhilewhite: White People Are Confessing on Twitter to Crimes They Got Away With*, WASH. POST (Dec. 3, 2014), [https://www.washingtonpost.com/news/wonk/wp/2014/12/04/crimingwhilewhite-white-people-are-confessing-on-twitter-to-crimes-they-got-away-with/?utm\\_term=.8cb465423e11](https://www.washingtonpost.com/news/wonk/wp/2014/12/04/crimingwhilewhite-white-people-are-confessing-on-twitter-to-crimes-they-got-away-with/?utm_term=.8cb465423e11) [<https://perma.cc/4X6P-YWQT>].

192. *No One is Disposable*, *supra* note 185, at “Part 3: What About the Dangerous People?”; *see also* Vickie Law, *Resisting Gender Violence Without Cops or Prisons*, YOUTUBE (Nov. 24, 2011), <https://www.youtube.com/watch?v=Qlozk7G-JYo> [<https://perma.cc/2XYZ-GCH5>] (explaining that the criminal legal system often does not act against people with power).

193. *E.g.*, Kate Levine, *Discipline and Policing*, 68 DUKE L.J. 839 (2019); Kate Levine, *How We Prosecute the Police*, 104 GEO. L.J. 745 (2016).

status quo social relations. They give context for why abolitionist campaigns focus not on fixing and relegitimizing the police, but on defunding, dismantling, and delegitimizing it.

### B. Campaigns to Defund, Dismantle, and Delegitimize

Abolitionists are working for a world without police—and so they are making demands and running experiments that decrease the power, footprint, and legitimacy of police while building alternative modes of responding to collective needs and interpersonal harm.<sup>194</sup> These efforts are designed to minimize contact with the police, undermine the idea that police produce public safety, build modes of collective care and social provision, and work toward the political, economic, and social transformations that abolition requires.<sup>195</sup>

As Angela Davis put it in her classic work *Are Prisons Obsolete?*, we will not “discover one single alternative” to prisons and police.<sup>196</sup> Theft as a response to poverty, participation in the illegal drug economy due to lack of access to adequately paid work, and intimate partner violence present distinct issues meriting a variety of responses. At present, they all trigger the same response—prisons and police—that draws down societal resources and supplants alternatives. In response, abolitionist organizers are demanding and building alternative responses to common social problems.<sup>197</sup>

The power of abolition is its combination of a deep critique and hopeful horizon, and its insistence on multiple strategies and tactics to move us toward that horizon. While there is inevitably a range of ways abolitionist strategies and tactics could be schematized, I delineate three approaches: (1) demands, typically of the state; (2) modes of accountability for harm; and (3) community-based responses to human need. This framework is a far cry from a comprehensive picture in a rapidly evolving field. Some projects may be properly described as utilizing more than one approach. Through this scheme, I

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194. See, e.g., Andrea J. Ritchie, Mariame Kaba and Woods Ervin, Interrupting Criminalization Initiative, #DefundthePolice #FundthePeople #DefendBlackLives: Concrete Steps Toward Divestment from Policing & Investment in Community Safety (2020), <https://filtermag.org/wp-content/uploads/2020/06/Defund-Toolkit.pdf> [<https://perma.cc/N5HM-J96G>].

195. See CARE NOT COPS, BUILDING CARE: PORTLAND COMMUNITIES RESPOND TO THE VIOLENCE OF POLICING 2 (2019), [https://static1.squarespace.com/static/5a06663f0abd0473f4bc9610/t/5c61af4aeb393107fe18c440/1549905764664/CNC\\_BuildingCare\\_CommunityReport\\_Volume1\\_Winter2019.pdf](https://static1.squarespace.com/static/5a06663f0abd0473f4bc9610/t/5c61af4aeb393107fe18c440/1549905764664/CNC_BuildingCare_CommunityReport_Volume1_Winter2019.pdf) [<https://perma.cc/AX98-38E9>] (defining care as “finding and creating solutions to meet people’s needs,” including “[h]ousing, food, transportation, transformative justice, health care, and programs for education”).

196. DAVIS, *supra* note 6, at 106–08.

197. CRITICAL RESISTANCE, THE CR ABOLITION ORGANIZING TOOLKIT, *supra* note 148, at 31 (“[W]e don’t believe that we can just say ‘never call the police’ and people will be safer. But we do need to think about what happens when the police get called, why they get called, and how we can set up our own plans to replace the police.”).

provide one way of understanding the strands of abolitionist organizing to open up the circumscribed field of scholarly inquiry for reform.

### 1. Demands

Critical Resistance recently provided metrics for considering whether a police reform proposal is a “reformist reform[]” that “expand[s] the reach of policing” or abolitionist change.<sup>198</sup> Will the proposal reduce funding, tools, tactics, technology, the scale of the police, or “challenge the notion that police increase safety?”<sup>199</sup> Proposals that reduce the scale of the police, or the money and tools at their disposal, pass muster, as do those that challenge the notion that police provide safety. Through these metrics, Critical Resistance signals the importance of both the material and ideological footprint of police. Abolitionist steps include suspending the use of paid administrative leave for police under investigation; withholding pensions and refusing to rehire police involved in the use of excessive force; making police liable for misconduct settlements; limiting and withdrawing from participation in police militarization programs; prioritizing spending on community health, education, and affordable housing; and reducing the size of police forces.<sup>200</sup> In contrast, common police reforms like training, body cameras, and community policing increase funding, resources, and, possibly, scale.<sup>201</sup>

This metric is but one example of how abolitionist organizers are thinking about contesting the scale and power of police and reconceiving modes of collective life. From #FreeThemAll campaigns to empty jails in the face of COVID-19 to campaigns to defund the police, there are a range of campaigns aimed at shrinking the material footprint of police and prisons.<sup>202</sup> In the wake of

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198. CRITICAL RESISTANCE, REFORMIST REFORMS VS. ABOLITIONIST STEPS IN POLICING, [https://static1.squarespace.com/static/59ead8f9692ebec25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR\\_NoCops\\_reform\\_vs\\_abolition\\_CRside.pdf](https://static1.squarespace.com/static/59ead8f9692ebec25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf) [<https://perma.cc/B8UL-7PFP>].

199. *Id.* Similarly, Mariame Kaba urged people to oppose police reforms that allocate more money to the police, that advocate for more policing of any kind, or that are “primarily technology-focused.” Mariame Kaba, Opinion, *Police “Reforms” You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014), <https://truthout.org/articles/police-reforms-you-should-always-oppose/> [<https://perma.cc/R294-88YU>]. Technology-focused reforms in particular should be opposed because otherwise, more money will be allocated to police, the technology will more likely be used against the public, and “[p]olice violence won’t end through technological advances.” *Id.*; see also Rachel Herzing, *Let’s Reduce, Not Reform, Policing in America*, OPEN SOC’Y FOUNDS. (Oct. 6, 2016), <https://www.opensocietyfoundations.org/voices/let-s-reduce-not-reform-policing-america> [<https://perma.cc/76QD-JGT5>] (arguing that rather than improving policing we should focus our efforts on reducing their role in our lives).

200. CRITICAL RESISTANCE, *supra* note 198.

201. *Id.* (“[S]ome advocate for police to be trained on how to respond to mental health crises, furthering the idea that police are the go to for every kind of problem.”).

202. Disarm NYPD is another example: among its goals include disarmament of the police. Ashoka Jegroo, *Meet the New Group That Wants to Disarm and Displace the NYPD*, WAGING NONVIOLENCE (Mar. 26, 2015), <https://wagingnonviolence.org/2015/03/meet-new-group-wants-disarm-displace-nypd/> [<https://perma.cc/3ACE-3VAN>]; see also McDowell & Fernandez, *supra* note 143, at 379–81.

the George Floyd uprisings, a growing number of campaigns are demanding that cities cut their police budgets, and that school districts and universities cut their ties with police departments—undermining the school-to-prison pipeline by removing police in schools.<sup>203</sup> These campaigns are having some success, leading to city councils exploring budget cuts, and school districts and universities allowing their contracts with local police to expire and others diminishing police within schools and exploring additional investments in counselors.<sup>204</sup>

Abolitionist demands are often focused on divesting, dismantling, and delegitimizing the infrastructure of criminalization.<sup>205</sup> Chicago's #NoCopAcademy campaign is a prominent example of a campaign focused on shrinking police infrastructure.<sup>206</sup> After the DOJ found a pattern and practice of unconstitutional violence within the Chicago Police Department in the wake of the police killing of Laquan McDonald, former Chicago Mayor Rahm Emanuel announced his intentions to spend \$95 million to build a second police training facility.<sup>207</sup> Emanuel positioned the infrastructure project—which included

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203. See DIGNITY IN SCHOOLS CAMPAIGN, WHY COUNSELORS, NOT COPS? (2018), <http://dignityinschools.org/wp-content/uploads/2018/10/WhyCounselorsNotCops.pdf> [<https://perma.cc/99G9-PUUH>]; Angela Helm, *Counselors, Not Cops: New Yorkers Protest Millions Proposed for School Safety Budget, Saying Money Fuels School-to-Prison Pipeline*, ROOT (Mar. 21, 2019), <https://www.theroot.com/counselors-not-cops-new-yorkers-protest-millions-prop-1833464478> [<https://perma.cc/U3T4-HXXX>]; *We Came to Learn: A Call to Action for Police-Free Schools*, ADVANCEMENT PROJECT, <https://advancementproject.org/wecametolearn/> [<https://perma.cc/5M4S-VVTR>].

204. Matthew Guerry, *UMN Cuts Ties with Minneapolis Police in Light of George Floyd Case* (May 28, 2020), <https://www.twincities.com/2020/05/28/umn-cuts-ties-with-minneapolis-police-in-light-of-george-floyd-case/> [<https://web.archive.org/web/20200929165749/https://www.twincities.com/2020/05/28/umn-cuts-ties-with-minneapolis-police-in-light-of-george-floyd-case/>]; Alissa Widman Neese, *Columbus City Schools to Reevaluate Police Resource Officers*, COLUMBUS DISPATCH (June 16, 2020), <https://www.dispatch.com/news/20200616/columbus-city-schools-to-reevaluate-police-resource-officers> [<https://perma.cc/XY5K-A6AM>]; Katie Reilly, *Oakland Is Disbanding Its School Police Force as George Floyd's Death Drives the Push for Police-Free Schools*, TIME (June 25, 2020), <https://time.com/5859452/oakland-school-police/> [<https://perma.cc/7ANH-2DCT>].

205. Decriminalization is an important strategy too, given that the sheer number of criminal laws empower police in relation to virtually all aspects of life. *E.g.*, Niloofar Golkar, *A Roundtable on Sex Work Politics and Prison Abolition*, UPPING THE ANTI (June 28, 2016), <https://uppingtheanti.org/journal/article/18-sexworker> [<https://perma.cc/7GTW-ENQ3>] (exploring decriminalization and criminalization of sex work in Canada).

206. For another example, see DURHAM BEYOND POLICING COAL., *supra* note 184 (documenting how the campaign came together to oppose a \$71 million expenditure on a new police headquarters).

207. See DOJ CHICAGO POLICE REPORT, *supra* note 21, at 1–3; #NOCOPACADEMY, #NOCOPACADEMY THE REPORT 4–6, 26 (2020), <https://nocopacademy.com/wp-content/uploads/2020/06/NCAReportFinal2018.pdf> [<https://perma.cc/67JG-864Q>]; Debbie Southorn & Erin Glasco, *Chicago's Youth Push Back Against Mayor's Proposed "Cop Academy," Demand More Investment in Communities*, TRUTHOUT (Feb. 22, 2018), <https://truthout.org/articles/chicago-s-youth-push-back-against-mayor-s-proposed-cop-academy-demand-more-investment-in-communities/> [<https://perma.cc/4W35-CF6S>] (noting that the City looked at shuttered Chicago Public Schools

features like a pool, an outdoor shooting range, and a mock apartment building—as central to the City’s response to the DOJ’s recommendations.<sup>208</sup> In contrast, organizers and community members saw the announcement as an effort to avoid meaningful reform.<sup>209</sup>

The #NoCopAcademy campaign argued that a police training facility cannot “address the structural violence of policing.”<sup>210</sup> The campaign contrasted Chicago’s daily spending of \$4 million on police and \$642 million on police misconduct settlements over twelve years with Emanuel’s 2012 closure of six mental health clinics—which required \$2.2 million to remain open—and the 2013 closure of fifty-four majority Black schools.<sup>211</sup> #NoCopAcademy rejected the idea that increased police spending reduces harm, and argued that “investing in things like mental health, education, jobs, housing” are the sorts of

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facilities for placement of the new police training facility); Josmar Trujillo, *Starving the Beast: Chicago’s Fight Against Police Expansion Is Everyone’s Fight*, APPEAL (Nov. 30, 2017), <https://theappeal.org/starving-the-beast-chicagos-fight-against-police-expansion-is-everyone-s-fight-b66035be5163/> [https://perma.cc/PF4S-P9EN].

208. See Brandon E. Patterson, *A \$95 Million, State-of-the-Art Police Academy Is Chicago’s Latest Political Battleground*, MOTHER JONES (Dec. 1, 2017), <https://www.motherjones.com/crime-justice/2017/12/chicago-political-battleground-95-million-police-training-academy-rahm-emanuel-chance-rapper/#> [https://perma.cc/NCJ6-DH2H]; Rebecca Burns, *Investigation: The Troubled History of the Fund Tapped for Rahm’s Controversial Cop Academy*, IN THESE TIMES (Feb. 20, 2018), <http://inthesetimes.com/article/20932/tif-tapped-f> [https://perma.cc/XB78-Q2GD]; Trujillo, *supra* note 207.

209. Burns, *supra* note 208; Patterson, *supra* note 208; #NOCOPACADEMY, *supra* note 207, at 23; Monica Davey & Mitch Smith, *Chicago’s Mayor Demands Sweeping Police Reform*, N.Y. TIMES (Dec. 9, 2015), <https://www.nytimes.com/2015/12/10/us/chicagos-mayor-rahm-emanuel-demands-sweeping-police-reform.html> [https://perma.cc/U9VL-CAS6].

210. #NOCOPACADEMY, *supra* note 207, at 25; see also Southorn & Glasco, *supra* note 207 (“[T]he #NoCopAcademy campaign has been wildly successful in turning what would otherwise have been a mundane city maneuver into a national controversy, by demanding that rather than expand CPD training capabilities with a \$95 million new cop academy, Chicago invest in young people instead.”). Community organizers ran dozens of actions in Chicago and around the country against the cop academy and the equation of policing with safety. #NOCOPACADEMY, *supra* note 207, at 26, 28 (discussing community support in the #NoCopAcademy campaign, including endorsing organizations Assata’s Daughters, BLM Chicago, BYP100 Chicago, Arab American Action Network, Chicago Dyke March Collective, Chicago Desi Youth Rising, Jewish Voice for Peace, Chicago Latino Union, NLG Chicago, NLG TUPOCC Chicago, War Resisters League); see also Lucy Diavolo, *#NoCopAcademy Protesters Share How It Felt to Occupy Chicago’s City Hall*, TEEN VOGUE (Mar. 29, 2018), <https://www.teenvogue.com/story/nocopacademy-protesters-occupy-chicago-city-hall> [https://perma.cc/NU3C-BUC4] (describing how the campaign solicited input from almost 900 members of the community, and how local residents did not want funding for the police academy); Katie Mitchell, *Chance the Rapper Protests Chicago’s “Cop Academy,” Asking Why \$95 Million Isn’t Being Invested in Schools*, BUSTLE (Nov. 9, 2017), <https://www.bustle.com/p/chance-the-rapper-protests-chicagos-cop-academy-asking-why-95-million-isnt-being-invested-in-schools-3262518> [https://perma.cc/RAU4-2E2J] (discussing Chance the Rapper’s support for the campaign through testifying at a Chicago City Council hearing with #NoCopAcademy organizers); Juanita Tennyson, *#NoCopAcademy Wants Chicago Leadership to Prioritize Schools over Police*, TEEN VOGUE (Mar. 16, 2018), <https://www.teenvogue.com/story/nocopacademy-wants-chicago-leadership-to-prioritize-schools-over-police> [https://perma.cc/A83F-ZUXP] (discussing “train takeovers”).

211. #NOCOPACADEMY, *supra* note 207, at 6; cf. Southorn & Glasco, *supra* note 207 (discussing Emanuel’s overseeing the closure of forty-nine public schools in 2013).



investments “that can actually cut back on the trauma, poverty, and pain that often leads to violence in our communities.”<sup>212</sup> Chicago still plans to build the police academy.<sup>213</sup>

#NoCopAcademy was a campaign against a city’s plan to acquire land and allocate \$95 million in response to a police legitimacy crisis. The campaign and its failure to prevent the building of the facility reflect both the power and the limits of nascent abolitionist organizing around the country. The campaign changed the conversation around the training facility from one about police reform for an infamously corrupt police department, to one about the underlying structural realities of divestment from Black communities on Chicago’s West Side.<sup>214</sup> That the campaign was defensive—taking aim at appropriations and infrastructure—makes it no less a campaign aimed at transformative reform.

Alongside campaigns focused on police infrastructure, there are campaigns across the country against jail infrastructure.<sup>215</sup> Some of these campaigns point to the interconnected nature of policing and incarceration. Consider the battle over Rikers Island in New York City, where the city decided to close the notorious jail and build four new jails with significantly fewer beds than Rikers.<sup>216</sup> No New Jails NYC and Critical Resistance NYC vocally opposed the city’s plan to spend an estimated \$8.7 billion to build new jails.<sup>217</sup> Both

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212. #NOCOPACADEMY, *supra* note 207, at 2; see also *A Love Letter to the #NoCopAcademy Organizers from Those of Us on the Freedom Side*, PRISON CULTURE (Mar. 13, 2019), <http://www.usprisonculture.com/blog/2019/03/13/a-love-letter-to-the-nocopacademy-organizers-from-those-of-us-on-the-freedom-side/> [<https://perma.cc/A44P-CNAV>] (“You told a story about policing as an inherently violent and death-making institution that WILL NOT be ‘reformed’ by training cops ‘better’ or in fancier digs.”).

213. Trujillo, *supra* note 207. In February 2019, “[t]he Zoning Committee approved the land use changes for the 30-acre police academy parcel,” and the Chicago City Council voted in support of the plan to move forward, with six no votes. John Byrne, *Mayor Rahm Emanuel’s Plan for New Chicago Police Academy Heads to Full City Council*, CHI. TRIB. (Mar. 12, 2019), <https://www.chicagotribune.com/politics/ct-met-police-academy-zoning-advances-20190312-story.html> [<https://perma.cc/6AS8-MU37>].

214. See Burns, *supra* note 208 (discussing residents’ seeking funding for “schools, affordable housing, health care and good jobs available to neighborhood residents”).

215. See, e.g., CLOSE THE WORKHOUSE, CLOSE THE WORKHOUSE: A PLAN TO CLOSE THE WORKHOUSE & PROMOTE A NEW VISION FOR ST. LOUIS 7 (2018), [https://archcitydefenders.org/wp-content/uploads/2019/03/CloseTheWorkhousePlan\\_Rev110112018-1.pdf](https://archcitydefenders.org/wp-content/uploads/2019/03/CloseTheWorkhousePlan_Rev110112018-1.pdf) [<https://perma.cc/S2A3-UN57>]; Press Release, Close the Workhouse, As St. Louis City Finalizes the Budget, Population in Workhouse Jail Drops to Record Low, and Majority of St. Louis Board of Aldermen Support Permanently Closing the Workhouse (June 16, 2020), <https://static1.squarespace.com/static/5ada6072372b96dbb234ee99/t/5ee8eb3897d2423426d2c0c4/1592322872864/CtW+Press+Release+Draft+%28for+June+16%29.pdf> [<https://perma.cc/5SFR-WA4Y>].

216. See Matthew Haag, *N.Y.C. Votes to Close Rikers. Now Comes the Hard Part*, N.Y. TIMES (Oct. 17, 2019), <https://www.nytimes.com/2019/10/17/nyregion/rikers-island-closing-vote.html> [<https://perma.cc/C7ZU-36WT>]; *The Plan*, CITY OF N.Y.: A ROADMAP TO CLOSING RIKERS, <https://rikers.cityofnewyork.us/> [<https://perma.cc/D3RR-7H49>].

217. See Noah Goldberg, *Who Is No New Jails NYC?*, BROOKLYN DAILY EAGLE (May 14, 2019), <https://brooklyneagle.com/articles/2019/05/14/no-new-jails-nyc/> [<https://perma.cc/A7W5-D7YD>]; Adam H. Johnson, *The Appeal Podcast Episode 4: How Prison Reform Was Co-Opted to Sell*

organizations advocated that the best course for alleviating the need for the new jails would be for “the NYPD to reduce its use of arrest.”<sup>218</sup>

Demands to divest from police and prisons are often accompanied by demands to invest in social provision and collective care: for example, housing, health care, and education.<sup>219</sup> By demanding investments, these campaigns suggest alternate modes that the state can take to respond to all manner of currently criminalized social problems. L.A. for Youth made one of the earlier invest-divest demands in a campaign calling for Los Angeles to redirect one to five percent of its multibillion dollar annual law enforcement budget to create a youth development department.<sup>220</sup> The department would include a youth leadership board, a network of youth centers with youth services, 15,000 jobs and paid internships for youth, and jobs for 350 community-based peacebuilders and interventionists.<sup>221</sup>

Whereas some invest-style demands focus on state programs—the Dream Defenders, for example, make a call for universal basic income, a guaranteed jobs program, and universal health care<sup>222</sup>—others ask the state to invest within

*More Prisons*, APPEAL (June 15, 2018), <https://theappeal.org/the-appeal-podcast-episode-4-how-prison-reform-was-co-opted-to-sell-more-prisons/> [<https://perma.cc/F5JS-EN6S>]; @nonewjails\_nyc, TWITTER (July 15, 2019, 9:37 AM), [https://twitter.com/nonewjails\\_nyc/status/1150806675667980291](https://twitter.com/nonewjails_nyc/status/1150806675667980291) [<https://perma.cc/29LF-LJXJ>] (soliciting opposition to Mayor Bill de Blasio’s jail expansion plan); *No New Jails NYC Legal Staff Letter*, NO NEW JAILS (June 17, 2019), <https://sites.google.com/view/nnjattorneysletter> [<https://perma.cc/42NB-WMUL>]; *Oppose NYC Jail Construction: Turn Out to City Hearings and Email Your Council Members*, CRITICAL RESISTANCE, <https://mailchi.mp/criticalresistance/stop-neighborhood-jail-expansion-211873?e=dd3840815b> [<https://perma.cc/FLL5-EP5B>].

218. Jonathan Ben-Menachem, *Incarceration is Always a Policy Failure*, APPEAL (May 15, 2019), <https://theappeal.org/incarceration-is-always-a-policy-failure/> [<https://perma.cc/A56P-FQG2>]; see also *Oppose NYC Jail Construction*, *supra* note 217; Matthew Haag, *4 Jails in 5 Boroughs: The \$8.7 Billion Puzzle over How to Close Rikers*, N.Y. TIMES (Sept. 4, 2019), <https://www.nytimes.com/2019/09/04/nyregion/rikers-island-jail-closing.html> [<https://perma.cc/FGG6-9R9L>] (noting that advocates are opposing “any new replacement jails, arguing that they would perpetuate widespread incarceration without addressing the underlying factors that cause people to be arrested and jailed”).

219. The Movement for Black Lives 2016 policy platform, Vision for Black Lives, popularized “invest-divest” style demands when it featured “invest-divest” as one of its six major demands. *Invest-Divest*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/invest-divest/> [<https://perma.cc/U98U-FEX4>]. The Center for Popular Democracy, Law for Black Lives, and other organizations worked to support such campaigns around the country. See, e.g., HAMAJI ET AL., *supra* note 168.

220. L.A. FOR YOUTH, <http://www.laforyouth.org/> [<https://perma.cc/LPP8-G9LD>]; *LA for Youth – 1% Campaign*, YOUTH JUST. COAL., <https://web.archive.org/web/20130325062612/http://www.youth4justice.org/take-action/la-for-youth-1-campaign>. The campaign started in 2012. Another L.A. campaign, Share the Wealth, by the Los Angeles Community Action Network, calls for no displacement and more affordable housing; an end to broken-windows policing; greater job opportunities; increased green space, parks, community gardens, and transportation; and formal and informal decision-making processes more accessible to all Angelenos. L.A. CMTY. ACTION NETWORK, *SHARE THE WEALTH PLATFORM*, <https://cangress.files.wordpress.com/2012/11/share-the-wealth.pdf> [<https://perma.cc/V3HF-3SSV>].

221. *LA for Youth – 1% Campaign*, *supra* note 220.

222. DREAM DEFENDERS, *supra* note 182, at 5.

the leadership of directly impacted communities. The Durham Beyond Policing Coalition, for example, demands \$200,000 from the city for “a community-led safety and wellness taskforce.”<sup>223</sup> Reclaim the Block is campaigning for an amendment to the Minneapolis City Charter that would eliminate the Charter’s requirement for a police department and replace it with a Department of Community Safety and Violence Prevention that would employ “a holistic, public health-oriented approach.”<sup>224</sup>

These demands aim to reshape the material infrastructure of our cities. They do so in part by raising questions about the role of police in public life and the state, its uneven modes of provision, and its failures. The Movement for Black Lives pairs “defund police” with “defend Black Lives.”<sup>225</sup> Dream Defenders combines “defund police” with “rebuild our communities.”<sup>226</sup> These demands call into question the premise that policing produces safety and bring into sharp relief the role of police in devastating Black communities. In this way, these demands seek to delegitimize the police and their role in our polity in order to undermine police power and create space for new modes of redressing and responding to social, political, and economic problems, including interpersonal harm and state violence.

## 2. *Modes of Accountability*

Abolitionists experiment with modes of accountability for state violence and interpersonal harm that do not rely on prisons and police.<sup>227</sup> A central

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223. DURHAM BEYOND POLICING COAL., *supra* note 184, at 7. Similarly, Black Youth Project 100’s (BYP100) new She Safe, We Safe campaign calls for divestment from police and investments in “community-determined programs that address gender-based violence in Black communities.” SHE SAFE, WE SAFE, <https://www.shesafewesafe.org/> [<https://perma.cc/ZE48-FTTE>]; *see also* Sherronda J. Brown, *Black Youth Project 100 Launches Campaign Against Gender-Based Violence*, WEAR YOUR VOICE (Apr. 15, 2019), <https://wearyourvoicemag.com/race/black-youth-project-100-she-safe-we-safe> [<https://perma.cc/88MV-5B6U>]; Tom Wray, *BYP100 Launches She Safe, We Safe Campaign*, ILL. EAGLE (Apr. 18, 2019), <https://illinoiseagle.com/2019/04/18/byp100-launches-she-safe-we-safe-campaign/> [<https://perma.cc/WL59-6LDM>].

224. Liz Navratil & Miguel Otárola, *Minneapolis Charter Commission Blocks Controversial Policing Proposal from November Ballot*, STARTRIBUNE (Aug. 6, 2020), <https://www.startribune.com/charter-commission-blocks-plan-to-remake-police-from-ballot/572016392/> [<https://perma.cc/L7PN-H886>]; @reclaimtheblock, TWITTER (July 1, 2020, 2:05 PM), <https://twitter.com/reclaimtheblock/status/1278434744234115078> [<https://web.archive.org/web/20200701211457/https://twitter.com/reclaimtheblock/status/1278434574306066433>].

225. *M4BL x ESSENCE Discuss What it Means to Defund Police, Defend Black Lives*, ESSENCE (June 6, 2020), <https://www.essence.com/news/in-defense-of-black-lives/m4bl-essence-defund-police-defend-black-life/> [<https://perma.cc/CJ46-XHNN>].

226. *E.g.*, DREAM DEFENDERS, *supra* note 182.

227. *See, e.g.*, BEYOND SURVIVAL (Ejeris Dixon & Leah Lakshmi Piepzna-Samarasinha eds., 2020); Mimi E. Kim, *Moving Beyond Critique: Creative Interventions and Reconstructions of Community Accountability*, SOC. JUST., 2011–2012, at 14, 31–32 (speaking of Creative Interventions’ work as “part of a larger social movement project to challenge the persistence of heteropatriarchy and white supremacy”); JUST PRAC., <https://just-practice.org/just-practice-collaborative> [<https://perma.cc/AQ9A-98RM>] (discussing Just Practice Collaborative).

challenge is how to think about accountability for police violence. Indictments do not offer any real redress to victims of police violence. Moreover, indictments do not “highlight the systemic nature of repression and genocide of black communities” and instead “exceptionalise th[e] situation as the result of one bad cop.”<sup>228</sup>

Consider the successful reparations campaign for the two-decades-long torture program controlled by Jon Burge, a former police commander in the Chicago Police Department.<sup>229</sup> After failed efforts to indict Burge for torturing approximately 120 Black men and women in the 1970s and 1980s,<sup>230</sup> other modes of thinking about justice and redress emerged. Organizers with Project NIA, We Charge Genocide, and Chicago Torture Justice Memorials—with support from the People’s Law Office—fought for reparations for the victims.<sup>231</sup> The successful reparations package adopted by the Chicago City Council included a public memorial, a \$5.5 million reparations fund, free junior college tuition, and counseling services for survivors and their families, as well as changes to the public school curriculum to include the history of police violence.<sup>232</sup>

Abolitionist intellectual and organizer Mariame Kaba framed the campaign as expanding the “potential vision of what justice could look like when people are harmed.”<sup>233</sup> The reparations package created a mode of accountability that reflected long-standing calls for reparations from the Black freedom struggle. It displaced and undermined criminal prosecution as the only form of justice and accountability. It fueled abolitionist organizing in Chicago and around the

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228. See Rachel Herzing & Isaac Ontiveros, *Responding to Police Killing: Questions and Challenges for Abolitionists*, CRIM. JUST. MATTERS, Dec. 2010, at 38, 39; see also CARRUTHERS, *supra* note 146, at 132 (“Imprisoning cops won’t end policing or violence.”); Kate Levine, *Police Prosecutions and Punitive Instincts*, 98 WASH. U. L. REV. (forthcoming 2021) (questioning the utility of prosecuting individual police officers).

229. See Natalie Y. Moore, *Payback*, MARSHALL PROJECT (Oct. 30, 2018), <https://www.themarshallproject.org/2018/10/30/payback> [<https://perma.cc/CGP9-HKSB>]; see also FLINT TAYLOR, *THE TORTURE MACHINE: RACISM AND POLICE VIOLENCE IN CHICAGO* (2019).

230. See MOVEMENT FOR BLACK LIVES, *supra* note 229, at 69; *About*, CHICAGO TORTURE JUSTICE MEMORIALS, <https://chicagotorture.org/about/> [<https://perma.cc/RB63-XKZG>].

231. Akbar, *supra* note 4.

232. See Chi., Ill., *Reparations for Burge Torture Victims Ordinance* (May 6, 2015); Peter C. Baker, *In Chicago, Reparations Aren’t Just an Idea. They’re the Law*, GUARDIAN (Mar. 8, 2019), <https://www.theguardian.com/news/2019/mar/08/chicago-reparations-won-police-torture-school-curriculum> [<https://perma.cc/NCC6-HK9U>]; Sandhya Somashekhar, *Why Chicago Used the Word “Reparations,”* WASH. POST (May 8, 2015), [https://www.washingtonpost.com/news/post-nation/wp/2015/05/08/why-chicago-used-the-word-reparations/?utm\\_term=.00a7a8b8cd38c5](https://www.washingtonpost.com/news/post-nation/wp/2015/05/08/why-chicago-used-the-word-reparations/?utm_term=.00a7a8b8cd38c5) [<https://perma.cc/M2HW-D5TM>]; *The Reparations Ordinance*, CHI. TORTURE JUST. MEMORIALS, [https://www.chicagotorture.org/?page\\_id=63](https://www.chicagotorture.org/?page_id=63) [<https://perma.cc/GR3M-MBFG>].

233. Noah Berlatsky, *Reimagining Justice: An Interview with Mariame Kaba*, URB. FAITH (Mar. 2015), <https://urbanfaith.com/2015/03/reimagining-justice-an-interview-with-mariame-kaba.html/> [<https://perma.cc/MZ24-3FZK>]; see also Dan Sloan, *A World Without Prisons: A Conversation with Mariame Kaba*, LUMPEN MAG., Winter 2016, at 26.

country.<sup>234</sup> The Movement for Black Lives has since released a toolkit advancing reparations as an abolitionist strategy.<sup>235</sup>

Interpersonal and intimate harm—rape, sexual assault, child sexual abuse—are another central concern for abolitionist work, much of it embedded in Black and women of color feminist praxis.<sup>236</sup> Police are unlikely to offer any real resources or opportunities for healing. They are likely to make arrests and exercise additional violence in response to calls from Black and brown people, arresting and escalating rather than deescalating the violence against both victims/survivors and people who caused the harm.<sup>237</sup>

Take, for example, generationFIVE, an abolitionist organization that aims to end child sexual abuse within five generations.<sup>238</sup> The organization’s *Ending Child Sexual Abuse* handbook reframes childhood sexual abuse from a crime committed by an isolated few into a systemic and predictable form of violence that emanates from the values and structures of our society.<sup>239</sup> Policing and prison cannot “solve” childhood sexual abuse because the problem’s “reality and scope . . . is just too big.”<sup>240</sup> Moreover, policing people fails to “prevent[] abuse, chang[e] behavior, or mak[e] restitution”; instead, it “creates further harm to

234. For example, it led to the #NoCopAcademy campaign discussed in Part III.B.1, *supra*.

235. MOVEMENT FOR BLACK LIVES, REPARATIONS NOW TOOLKIT 66–72 (2019), <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf> [<https://perma.cc/VLR5-VE8T>]; see also Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 HARV. L. REV. 1684, 1686–87 (2019) (calling reparations “abolition in action”).

236. See, e.g., BETH E. RICHIE, ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA’S PRISON NATION (2012); Arrieta-Kenna, *supra* note 149; Kim, *supra* note 227, at 15–18 (providing a brief original story for Critical Resistance, Incite! Women of Color Against Violence, Generation Five, and Creative Interventions); Beth E. Richie, *Foreword*, SOC. JUST., 2011–2012, at 12, 12 (observing that “feminist scholars and antiviolence activists, particularly those who identify as women of color” favor “community-based responses to community violence” that do not rely on “police/prisons”); see also LEIGH GOODMARK, DECRIMINALIZING DOMESTIC VIOLENCE (2018) (advocating wide-scale decriminalization of domestic violence).

237. On carceral feminism, see Elizabeth Whalley & Colleen Hackett, *Carceral Feminisms: The Abolitionist Project and Undoing Dominant Feminisms*, 20 CONTEMP. JUST. REV. 456 (2017); Law, *supra* note 151. For legal scholarship that develops some of these ideas, see, for example, AYA GRUBER, THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN’S LIBERATION IN MASS INCARCERATION (2020); Donna Coker, *Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review*, 4 BUFF. CRIM. L. REV. 801, 806–07, 851–52 (2001); Donna Coker, *Shifting Power for Battered Women: Law, Material Resources and Poor Women of Color*, 33 U.C. DAVIS L. REV. 1009, 1034–35, 1047–48 (2000); Aya Gruber, *Equal Protection Under the Carceral State*, 112 NW. U. L. REV. 1337 (2018); Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741 (2007); Aya Gruber, *Neofeminism*, 50 HOUS. L. REV. 1325, 1372–82 (2013).

238. *About Us*, GENERATIONFIVE, <http://www.generationfive.org/about-us/> [<https://perma.cc/2TDS-8SDH>].

239. GENERATIONFIVE, *supra* note 177, at 6–9 (stating that not only do most of us “know someone who has been sexually abused,” but that “whether we are aware of it or not, most of us know someone who has sexually abused children”).

240. *Id.* at 28–32.

individuals, families, communities, and society.”<sup>241</sup> According to generationFIVE, “intervening in and preventing” child sexual abuse is our “collective responsibility.”<sup>242</sup> The handbook provides examples of how processes can “seek concrete accountability” and provide support for survivors. This includes support circles for those leaving prison for sex crimes to ensure the person’s basic needs are met and to challenge behaviors associated with childhood sex abuse.<sup>243</sup> By doing so, generationFIVE builds a picture of the collective work that redressing and preventing child sexual abuse would take and highlights the absolute failure of the criminal legal system in so doing.

Abolitionist experiments like these bring attention to the failures of policing and punishment to provide meaningful redress to systemic forms of harm. They build new modes of accountability as they aim to loosen the grip of carceral control on our imaginations. They build power and capacity within local communities to engage in projects of self-determination.

### 3. *Community-Based Projects and Experiments*

Abolitionists are committed to building community capacity to respond to crises and interpersonal harm.<sup>244</sup> This is as much a commitment to strengthening bonds of solidarity within communities as it is about undoing the hold of embracing carceral modes of response to all manners of social problems.

An abolitionist organizing refrain, *everyday abolition* suggests that practices of abolition are already available.<sup>245</sup> The refrain calls our attention to the frequency with which we respond to social problems and interpersonal conflict without the police.<sup>246</sup> It frames the abolitionist project as something that we practice and understand and that is therefore within our reach to expand. Framing abolition in this way is an organizing tactic so important that an entire project has been designed to further it. The abolitionist organization Creative Interventions started the StoryTelling & Organizing Project (STOP) to collect stories of communities coming together to end interpersonal violence “through

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241. *Id.* More broadly, because most often children are abused by people in their familiar and community orbit, most incidents never enter the system, and when they do, they are rarely prosecuted. *Id.*

242. *Id.* at 37, 39 (laying out five dimensions of a transformative, abolitionist approach: social analysis and critique of systemic oppression, community education on the dynamics of violence, understanding of trauma and healing, community-based interventions, and community organizing).

243. *Id.* at 50–54 (observing that “there is no existing support [in the United States] . . . for treating people with pedophilic urges,” but that there is a program in Germany from which we can learn).

244. *See, e.g., Who We Are, CARE NOT COPS*, <https://www.carenotcops.org/about> [<https://perma.cc/8CCS-7PAU>] (“[Care Not Cops] works to . . . address harm and build strong, thriving communities.”).

245. *See Kim, supra* note 227, at 18 (“[C]ommunity accountability . . . reflects everyday ways of thinking and doing that have been practiced within communities for generations.”).

246. For an examination of “past and present models of women’s community self-defense” without reliance on police, see Vikki Law, *Where Abolition Meets Action: Women Organizing Against Gender Violence*, 14 CONTEMP. JUST. REV. 85 (2011).

collective, community-based alternatives” without calling the police.<sup>247</sup> Similarly, Kaba points to places where communities deal with social conflict without recourse to police, including in affluent neighborhoods and schools.<sup>248</sup> For another example, Tourmaline speaks of offering to drive a drunk friend home rather than calling the police.<sup>249</sup> For the people with whom we are in relationship, we already know that policing and punishment do not “solve our problems.”<sup>250</sup>

But abolitionist organizers understand the reasons why people call the police are complex, especially in an environment without obvious alternatives.<sup>251</sup> That is why even as organizers demand abolition and shrinkage, they build—and experiment with modes of building—experiments and projects, including forms of mutual aid, to meet collective needs.<sup>252</sup>

In 2015, Critical Resistance Oakland started the Oakland Power Projects (OPP), an initiative to develop “practices, relationships, and resources that build

247. *StoryTelling and Organizing Project (STOP)*, CREATIVE INTERVENTIONS, <https://www.creative-interventions.org/about/ci-projects/storytelling-organizing-project-stop/> [<https://perma.cc/738K-ARCT>]; STORYTELLING AND ORGANIZING PROJECT, <http://www.stopviolenceeveryday.org/> [<https://perma.cc/4N28-97JU>]. “By sharing stories in which everyday people have intervened in situations of violence without relying on the state or social services, we begin to add to a toolbox of shared resources that enable us to respond to violence as community organizers with a focus on long-term change and shorter-term intermediate steps, collective rather than individual action, self-evaluation and assessments with goals of improving strategy and tactics, and shifting power away from the state and toward our own self-determination.” Rachel Herzing & Isaac Ontiveros, *Making Our Stories Matter: The StoryTelling & Organizing Project (STOP)*, in *THE REVOLUTION STARTS AT HOME* 207, 208 (Ching-In Chen et al. eds., 2011). For an example of abolitionist praxis in response to sexual assault, see Kim, *supra* note 227, at 15 (describing a community accountability process that included an apology, feminist therapy sessions for the individual who committed the assault, and sexual assault awareness trainings for the membership of the organization to which he belonged). Chain Reaction is another such project, based in Chicago, designed to foster and support conversations in communities “about alternatives to calling police on young people.” CHAIN REACTION: ALTERNATIVES TO CALLING POLICE, <http://www.alternativestopolicing.com/> [<https://perma.cc/BP94-AN7F>]. For resources developed by Chain Reaction, Project NIA, and the Chicago Prison Industrial Complex (PIC) Teaching Collective, see THE PIC IS..., <http://www.thepicis.org/> [<https://perma.cc/4B49-7R8W>].

248. Dukmasova, *supra* note 154 (quoting Kaba); cf. Tamara K. Nopper, *Abolition Is Not a Suburb*, *THE NEW INQUIRY* (July 16, 2020), <https://thenewinquiry.com/abolition-is-not-a-suburb/> [<https://perma.cc/6DF3-27TE>] (raising questions about the utility of such a comparison).

249. *No One is Disposable*, *supra* note 185, at “Part 2: Practicing Prison Abolition Everyday.” Atlanta police killed Rayshard Brooks after they awoke him in a car and administered a breathalyzer test. Malachy Browne et al., *How Rayshard Brooks Was Fatally Shot by the Atlanta Police*, N.Y. TIMES (June 14, 2020), <https://www.nytimes.com/2020/06/14/us/videos-rayshard-brooks-shooting-atlanta-police.html> [<https://perma.cc/5CUV-A3NG>].

250. *No One is Disposable*, *supra* note 185, at “Part 1: Prison Abolition + Prefiguring the World You Want to Live In.”

251. For an account of how Black women turn to police despite generalized mistrust, see Bell, *Situational Trust*, *supra* note 20.

252. See, e.g., Spade, *supra* note 77, at 131, 131–33; Jia Tolentino, *What Mutual Aid Can Do During a Pandemic*, NEW YORKER (May 11, 2020), <https://www.newyorker.com/magazine/2020/05/18/what-mutual-aid-can-do-during-a-pandemic> [<https://perma.cc/9F42-NGHQ>] (quoting Kaba).

community power and wellbeing . . . without relying on the cops.”<sup>253</sup> A survey of the local community revealed that 911 calls commonly triggered police interference with health emergencies.<sup>254</sup> The survey also revealed a community desire for health care provision without police involvement.<sup>255</sup> As a result, OPP started an “Anti-Policing Health Workers Cohort” of various health care practitioners that went through an intensive series of workshops “to build a strong understanding of the prison industrial complex, analyze its intersecting relationship with health care, and understand abolition as both a strategy and long-term vision.”<sup>256</sup> Cohort members developed “no call” plans for their

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253. *The Oakland POWER Projects*, Abolitionist, Spring 2017, at 7; see also Oakland Power Projects, Decoupling Policing from Health Services: Empowering Healthworkers as Anti-Policing Organizers, [https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b6ab5f7352f535083505c5a/1533720057821/TheOakPowerProj\\_HEALTHreport.pdf](https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b6ab5f7352f535083505c5a/1533720057821/TheOakPowerProj_HEALTHreport.pdf) [<https://perma.cc/832K-NSCM>] [hereinafter Oakland Power Projects, Decoupling policing]; Oakland Power Projects, Oakland Power Projects #1: The Anti-Policing Health Worker Cohort: An Interview with Ruben Leal, <http://criticalresistance.org/wp-content/uploads/2016/06/RubenInterviewFlier2016.pdf> [<https://perma.cc/8ZMM-TBGH>]; Candice Bernd, *Community Groups Work to Provide Emergency Medical Alternatives, Separate from Police*, Truthout (Sept. 14, 2015), <https://truthout.org/articles/community-groups-work-to-provide-emergency-medical-alternatives-separate-from-police/> [<https://perma.cc/SKS8-VG4D>].

254. See CRITICAL RESISTANCE, THE OAKLAND POWER PROJECTS (2015), [https://criticalresistance.org/wp-content/uploads/2015/03/TheOakPowerProj\\_rept\\_target1\\_v3WEB.pdf](https://criticalresistance.org/wp-content/uploads/2015/03/TheOakPowerProj_rept_target1_v3WEB.pdf) [<https://perma.cc/8SBK-QYET>] [hereinafter CRITICAL RESISTANCE, THE OAKLAND POWER PROJECTS]; *Oakland Power Projects – Health Resources*, CRITICAL RESISTANCE, <http://criticalresistance.org/opphealthresources/> [<https://perma.cc/KX3D-RA9B>] [hereinafter *Oakland Power Projects – Health Resources*].

255. CRITICAL RESISTANCE, THE OAKLAND POWER PROJECTS, *supra* note 254; see also Bernd, *supra* note 253 (discussing survey results). Oakland is not alone. See Bernd, *supra* note 253 (stating that police are also dispatched on emergency calls in Texas).

256. OAKLAND POWER PROJECTS, DECOUPLING POLICING, *supra* note 253. The Cohort “aims to increase resistance to the every-day violence of policing, strengthen people’s skills to respond to community health needs in ways that minimize police contact, and ultimately decouple access to health care from policing.” *Oakland Power Projects – Health Resources*, *supra* note 254. Other examples of alternative responses to harm include the Harm Free Zone project in Durham, North Carolina, which is “building community knowledge and power to enable community members rather than the police to be called upon as first responders”; and the Audre Lorde Project’s Safe OUTside the System’s Safe Neighborhood Campaign, which “focuses on reducing harm to lesbian, gay, bisexual, two spirit, trans and gender-nonconforming people of color by working with local businesses and community spaces to provide safe haven for people in need without contacting the police” and “trains campaign partners on combating homophobia and transphobia and developing strategies for addressing violence without calling the police.” Herzing, *supra* note 6; see also CRITICAL RESISTANCE, HARM FREE ZONE PROJECT: GENERAL FRAMEWORK (2014), <http://criticalresistance.org/wp-content/uploads/2014/05/HFZ-NY.pdf> [<https://perma.cc/2D4M-JMVE>]; *Safe OUTside the System (SOS)*, AUDRE LORDE PROJECT, <https://alp.org/programs/sos/> [<https://perma.cc/N69K-7SYD>]; *The Harm Free Zone*, SPIRITHOUSE, <https://www.spirithouse-nc.org/harm-free-zone> [<https://perma.cc/N5AB-PPN8>]; Jaweed Kaleem, *A California Church Flirts with an Unusual Social Experiment: To Never Call Police Again*, L.A. TIMES (May 30, 2018), <https://www.latimes.com/nation/la-na-dont-call-police-church-20180530-story.html> [<https://perma.cc/A7UZ-AV5P>] (reporting “a white church volunteer” as saying “We can no longer tolerate the trauma inflicted on our communities by policing”); Mike Ludwig, Opinion, *A New Year’s Resolution: Don’t Call the Police*, TRUTHOUT (Dec. 26, 2014), <https://truthout.org/articles/a-new->



organizations and communities” and “Know Your Options” workshops that “empower[ed] people to deescalate emergency situations” and reduced calls to the police for health care needs.<sup>257</sup> These workshops include basic training on how to respond to common health care issues like high blood pressure and more advanced “skills, such as CPR and treating gun shot or stabbing wounds.”<sup>258</sup> The project creates alternatives to calling the police while simultaneously questioning the logic of police involvement in medical crises in the first place.<sup>259</sup>

Considering the OPP Cohort as an abolitionist experiment from which to glean insights about reform is not altogether straightforward. Like many abolitionist experiments, it is localized and focused on building community resilience and capacity to decrease reliance on the police for emergency health situations. This emphasis on the local presents a challenge for legal scholarship, which tends to focus on the federal and the constitutional.<sup>260</sup> The push for particularized alternatives asks us to pay attention to communities and their needs, and the shape of the state under neoliberalism—with little social safety net or social services, and immense carceral infrastructure. These experiments underline the grassroots desires for alternatives to the police and the possibilities of building a meaningful array of non-carceral responses to a range of political, economic, and social problems. They challenge us to rethink reform.

#### IV.

##### BEYOND REFORM

The Ferguson and Baltimore rebellions forced a reckoning with police violence, clarifying that rather than neutral arbiters of public safety, police are a force for routine violence and exploitation. The 2020 uprisings demand we confront the material infrastructure that sustains police: upwards of \$100 billion

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years-resolution-don-t-call-the-police/ [https://perma.cc/D2ED-5A59] (suggesting that individuals resolve not to call the cops, instead choosing alternative means of dispute resolution).

257. OAKLAND POWER PROJECTS, DECOUPLING POLICING, *supra* note 253; OAKLAND POWER PROJECTS, <https://oaklandpowerprojects.org/> [https://perma.cc/LY39-E5SL].

258. Bernd, *supra* note 253. The Cohort also aims to distribute medical kits that can be used in medical emergencies. *Id.*

259. *The Oakland POWER Projects*, *supra* note 253, at 7 (“Cops are the antithesis of care providers.”). For another example, consider Crisis Assistance Helping Out on the Streets (CAHOOTS), a 24/7 “mobile crisis intervention service” that is integrated into and funded by the public safety services in the City of Eugene, Oregon. Bernd, *supra* note 253; *CAHOOTS: Crisis Assistance Helping Out on the Streets*, WHITE BIRD CLINIC, <https://whitebirdclinic.org/cahoots/> [https://perma.cc/BZ8G-6XTE]; CRISIS ASSISTANCE HELPING OUT ON THE STREETS: WHITE BIRD CLINIC’S MOBILE CRISIS INTERVENTION PROGRAM, [https://truthout.org/wp-content/uploads/legacy/documents/starting\\_a\\_MCIP.pdf](https://truthout.org/wp-content/uploads/legacy/documents/starting_a_MCIP.pdf) [https://perma.cc/3HZF-MYSS]; see also Brian Bull, *CAHOOTS Services Would Expand Under Proposed City of Eugene Budget*, KLCC (Apr. 18, 2019), <https://www.klcc.org/post/cahoots-services-would-expand-under-proposed-city-eugene-budget?fbclid=IwAR1dZR1xLnKEU-SQ-zGgFHGeKMEvRj111bioV0M0adXT73eNpXdqZHqg5gA> [https://perma.cc/5X58-KECX].

260. See Harmon, *supra* note 22 (criticizing the myopic focus of courts and scholars to focus on federal law and constitutional questions when it comes to regulating police violence).

in public money that might otherwise transform housing, schools, and other forms of social programs.<sup>261</sup> We can continue to advance a reform agenda that treats the police as an aberrant institution—an exception, rather than a feature, of how we govern—and therefore continue to debate how to invest in police to more effectively deploy their violence. Or, we can face the enormity of undoing the carceral state as a product of our history and a feature of our political economy. We can embrace the collective labor of building a society not of punishment but of social provision and collective care.

In this Section, I lay out how reckoning with an abolitionist horizon would reconfigure scholarly work on police and reform. I argue that adopting an abolitionist horizon would enrich legal scholarship and transform the reform projects in which we are invested. Abolition requires us to grapple with the long history of race and policing in the United States and the central role of police in our political economy. It pushes us to reconceive reform not as an end goal, but as a strategy for broader transformation. In an abolitionist horizon, policing is an obstacle to—not a tool for—achieving a just society. Thus, abolitionist thinking reorients reform projects away from improving the police to limiting police power and the space in which it operates. And where police power is pushed to retreat, abolition envisages the opening up of space for other modes of collective governance to flourish.

#### A. *The Long History of Race and Policing*

Abolitionist critique is rooted in the long history of policing, which often goes unnamed in legal discourse. An abolitionist history reveals police to be centrally concerned with violent control of the movement, labor, land, and resistance of Black and Indigenous people and more.<sup>262</sup> It brings into focus the material dimensions of historical and contemporary processes of racialization.<sup>263</sup> When abolitionist organizers identify the lineage of police in slave patrols, border patrols, and militias, they point to a long and layered history of racialization through violence.<sup>264</sup> But the violence of enslavement and colonialism was not violence for its own sake: that violence accompanied and facilitated enslavement, theft, exploitation, and expropriation on a profound

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261. See Vaidya Gullapalli, *Spending Billions on Policing, Then Millions on Police Misconduct*, APPEAL (Aug. 2, 2019), <https://theappeal.org/spending-billions-on-policing-then-millions-on-police-misconduct/> [<https://perma.cc/FF2V-VVXS>].

262. For an example of a scholar reconsidering criminal procedure in view of abolitionist legal history, see Alexandra Natapoff, *Atwater and the Misdemeanor Carceral State*, 133 HARV. L. REV. F. 147 (2020).

263. GILMORE, *supra* note 165, at 28 (“Racism, specifically, is the state-sanctioned or extralegal production and exploitation of ground-differentiated vulnerability to premature death.”); see also PATRICK WOLFE, *TRACES OF HISTORY: ELEMENTARY STRUCTURES OF RACE* (2016) (identifying the particular material historical processes that undergird processes of racialization).

264. See, e.g., HERNÁNDEZ, *supra* note 132; HERNÁNDEZ, *supra* note 162.

scale. Thus, police are central not only to racialization but to capitalism, and capitalism's dependence on racialization and violence.<sup>265</sup>

Contending with the persistence of racialized violence across time disrupts the narrative of linear progress central to liberal legalism and denies the police their privileged status as neutral arbiters of public safety. Mass incarceration and broken-windows policing are only decades-old phenomena, while racialized modes of exploitation, dispossession, and confinement have existed since at least the dawn of colonialism and enslavement. Recognizing this long history deepens our understanding of policing and its central role in the racialized political economy of the United States. Rather than a departure from some norm, targeted and structural racialized police violence is revealed to be an enduring feature. As such, police violence has no quick fix. At a minimum, it should be clear that additional investments will not meaningfully redress the structural and historically rooted problem of police violence.

We must rethink what it means to reform or transform institutions that are simultaneously new and old.<sup>266</sup> Kimberlé Crenshaw and Reva Siegel have brought our attention to cycles of reform and retrenchment, and preservation-through-transformation, in the context of race and gender justice struggles.<sup>267</sup>

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265. In this way, conversations about abolition are interconnected with conversations about racial capitalism. Organizing materials make reference to this frame. *See, e.g.*, DREAM DEFENDERS, *supra* note 182, at 4 (providing definitions for abolition and racial capitalism). For scholarly works on racial capitalism, *see, for example*, GARGI BHATTACHARYYA, *RETHINKING RACIAL CAPITALISM* (2018); ANDY CLARNO, *NEOLIBERAL APARTHEID* 8 (2017); CEDRIC J. ROBINSON, *BLACK MARXISM* (1983); JACKIE WANG, *CARCERAL CAPITALISM* (2018); 1 BOS. REV. F., Spring 2017 (issue titled "Race Capitalism Justice"); Jodi A. Byrd et al., *Predatory Value: Economies of Dispossession and Disturbed Relationalities*, 36 SOC. TEXT, no. 2, June 2018, at 1; K-Sue Park, *Money, Mortgages, and the Conquest of America*, 41 L. & SOC. INQUIRY 1006 (2016); Jordan T. Camp et al., *A Response to Nancy Fraser*, POL./LETTERS (May 20, 2019), <http://quarterly.politicsslashletters.org/a-response-to-nancy-fraser/> [<https://perma.cc/W9QU-HFLW>]; Mark Golub, *Racial Capitalism and the Rule of Law*, ITEMS (Feb. 19, 2019), <https://items.ssrc.org/race-capitalism/racial-capitalism-and-the-rule-of-law/> [<https://perma.cc/WQ65-ACYL>]; Walter Johnson, *To Remake the World: Slavery, Racial Capitalism, and Justice*, BOS. REV. (Feb. 20, 2018), <http://bostonreview.net/race/walter-johnson-slavery-human-rights-racial-capitalism> [<https://perma.cc/33GD-D86A>]; Robin D. G. Kelley, *What Did Cedric Robinson Mean by Racial Capitalism?*, BOS. REV. (Jan. 12, 2017), <http://bostonreview.net/race/robin-d-g-kelley-what-did-cedric-robinson-mean-racial-capitalism> [<https://perma.cc/F2TR-YFHM>]; Jodi Melamed & Chandan Reddy, *Using Liberal Rights to Enforce Racial Capitalism*, ITEMS (July 30, 2019), <https://items.ssrc.org/race-capitalism/using-liberal-rights-to-enforce-racial-capitalism/> [<https://perma.cc/A23U-SVH3>]; Donna Murch, *How Race Made the Opioid Crisis*, BOS. REV. (Aug. 27, 2019), <http://bostonreview.net/forum/donna-murch-how-race-made-opioid-crisis> [<https://perma.cc/6D9X-77BP>].

266. Increasingly, in law and other disciplines, scholars are examining the histories of colonialism and enslavement as essential to understanding the shape of the world. *See, e.g.*, Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 HARV. L. REV. 1787 (2019); Park, *supra* note 69. For an example of a non-linear account of time, *see* NICK ESTES, *OUR HISTORY IS THE FUTURE: STANDING ROCK VERSUS THE DAKOTA ACCESS PIPELINE, AND THE LONG TRADITION OF INDIGENOUS RESISTANCE* (2019).

267. Crenshaw, *supra* note 153; Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111 (1997); *see also* Khiara M.

Once we understand policing and incarceration to be an embodiment of the structural and racialized ordering at the heart of our system of laws, we must understand decarceration and depolicing as central to larger social justice struggles. Lessons from those struggles should be front and center for criminal law scholars engaged in reform projects. There is a dialectic relationship between progress and backlash, and the status quo tends to adapt to forestall deep transformation.

As demands to defund the police continue to build momentum, the forces of retrenchment and preservation are already clear. Through unions and their violence against protestors, police are mobilizing opposition.<sup>268</sup> While there are a growing number of elected officials who support grassroots calls to defund and dismantle, there are many more elected officials and bureaucrats alike who resist them.<sup>269</sup>

Ending police violence will require deep and sustained work over time. Contemporary abolitionists invoke the struggles against enslavement as the framework for their cause—rooting their organizing in a long freedom struggle.<sup>270</sup> They are working toward “abolition democracy,” in the words of W.E.B. Du Bois and Angela Davis.<sup>271</sup> Abolition democracy is only possible if we dismantle slavery and the institutions that carry forward its violence, and build alternate modes for collective self-governance, so we might finally foster the transformation started during Reconstruction.<sup>272</sup>

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Bridges, *White Privilege and White Disadvantage*, 105 VA. L. REV. 449, 480–81 (2019) (“[T]hose of us who are interested in racial justice must always be on the lookout for new mechanisms of racial subordination.”).

268. See *The New Yorker Radio Hour: The Power of Police Unions*, NEW YORKER (July 31, 2020), <https://www.newyorker.com/podcast/the-new-yorker-radio-hour/the-power-of-police-unions> [<https://perma.cc/CNJ4-4XAH>].

269. See, e.g., David Montgomery, *Texas Governor Proposes Freezing Taxes in Cities that ‘Defund’ Police*, N.Y. TIMES (Aug. 18, 2020), <https://www.nytimes.com/2020/08/18/us/texas-abbott-police-defund-austin.html?smid=tw-nytnational&smtyp=cur> [<https://perma.cc/6QJE-WGN8>]; Navratil & Otárola, *supra* note 224 (describing how after a majority of the Minneapolis City Council vowed to dismantle the police department, the City’s Charter Commission stalled a ballot initiative to eliminate the city charter’s requirement for a police department and replace it with a Department of Community Safety and Violence Prevention).

270. See, e.g., CRITICAL RESISTANCE, WHAT IS ABOLITION? (2012), <http://criticalresistance.org/wp-content/uploads/2012/06/What-is-Abolition.pdf> [<https://perma.cc/8XUJ-MXBU>] (“We take the name ‘abolitionist’ purposefully from those who called for the abolition of slavery in the 1800’s.”).

271. W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860-1880*, at 182 (1998) (defining “abolition-democracy based on freedom, intelligence, and power for all men” as compared to “industry for private profit directed by an autocracy determined at any price to amass wealth and power”); ANGELA Y. DAVIS, *ABOLITION DEMOCRACY* 95–96 (2005).

272. See DU BOIS, *supra* note 271, at 182–90; DAVIS, *supra* note 6, at 39; see also McLeod, *supra* note 67, at 1617 (“Abolitionist organizers understand their work to be related to the historical struggles against slavery and its afterlives, against imperialism and its legacies in more recent practices of racial capitalism, and against immigration enforcement and border fortification.”).

### B. *The Political Economy of the Carceral State*

Abolition ensures we stay focused on understanding police in relation to the carceral state and its political economy.<sup>273</sup> When organizers talk about abolishing the prison industrial complex, they mean to refer not just to the police but also prisons, surveillance, and other forms of penal control. Without a comprehensive look at these interconnected institutions that sustain unprecedented levels of incarceration, we cannot make reform recommendations capable of even denting this hydra-like system.<sup>274</sup>

Prisons and police are interdependent institutions. Their extraordinary costs—recent estimates suggest the criminal legal system runs at least \$182 billion annually, with \$63.2 to \$100 billion spent on police—reveal the centrality of penal control within the contemporary state.<sup>275</sup> The scale of mass incarceration is sustained by a government and corporate infrastructure funded by billions of dollars and staffed by millions of people.<sup>276</sup> To meaningfully reduce carceral control, we must look beyond police and police reform and consider the broader political, economic, and social ecosystem in which the police operate.

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273. For older scholarship taking on this relationship, see, for example, sources cited *supra* note 151. For more contemporary scholarship, see the work on fines and fees, gentrification and segregation, *infra*, and, for example, Amy J. Cohen, *Moral Restorative Justice: A Political Genealogy of Activism and Neoliberalism in the United States*, 104 MINN. L. REV. 889 (2019); Amy J. Cohen, *Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City*, 95 TEX. L. REV. 915 (2017); Janet Moore, *Isonomy, Austerity, and the Right to Choose Counsel*, 51 IND. L. REV. 167, 176–79 (2018).

274. To the extent that there is a latent commitment among some advocates of decarceration to expand police to deal with perceived fallout from decarceration, this line of thinking has all the problems of advocating for so-called “alternatives to incarceration” or e-carceration—which substitute the cage with other forms of violent social control. This is because police are themselves a source of violence, in addition to serving as frontline feeders into prisons and jails. See Arnett, *supra* note 123; Michelle Alexander, *The Newest Jim Crow*, N.Y. TIMES (Nov. 8, 2018), <https://www.nytimes.com/2018/11/08/opinion/sunday/criminal-justice-reforms-race-technology.html> [https://perma.cc/6CPC-72W9]. Increasing police power as we move to decarcerate only prolongs, rather than resolves, the deeper social, political, and economic crises we face, and sustains the violence and inequality of these systems on poor, Black, and brown communities in the United States.

275. See JUSTICE POLICY INST., *supra* note 124, at 2; Barry Friedman, *We Spend \$100 Billion on Policing. We Have No Idea What Works.*, WASH. POST (Mar. 10, 2017), [https://www.washingtonpost.com/posteverything/wp/2017/03/10/we-spend-100-billion-on-policing-we-have-no-idea-what-works/?utm\\_term=.d28003336c0d](https://www.washingtonpost.com/posteverything/wp/2017/03/10/we-spend-100-billion-on-policing-we-have-no-idea-what-works/?utm_term=.d28003336c0d) [https://perma.cc/YVP7-48GQ]; *Mass Incarceration Costs \$182 Billion Every Year, Without Adding Much to Public Safety*, EQUAL JUSTICE INITIATIVE (Feb. 6, 2017), <https://eji.org/news/mass-incarceration-costs-182-billion-annually> [https://perma.cc/VHV2-PT5T]; Niall McCarthy, *How Much Do U.S. Cities Spend Every Year on Policing?*, FORBES (Aug. 7 2017), <https://www.forbes.com/sites/niallmccarthy/2017/08/07/how-much-do-u-s-cities-spend-every-year-on-policing-infographic/#6b215f02e7b7> [https://perma.cc/3V87-A7BR]; Peter Wagner & Bernadette Rabuy, *Following the Money of Mass Incarceration*, PRISON POL’Y INITIATIVE (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html> [https://perma.cc/7VH5-5JBW]. The Prison Policy Initiative’s figures, for example, which include the \$182 billion total, are higher than the Bureau of Justice Statistics’ figure of \$81 billion because BJS reflects prisons, jails, parole, and probation, but leaves out a whole host of other costs, from police to courts and more. Compare Wagner & Bernadette Rabuy, *supra*, with *Justice Expenditures and Employment Extracts, 2012 – Preliminary*, BUREAU OF JUST. STAT. (Feb. 26, 2015), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5239> [https://perma.cc/4XHU-L789].

276. GOTTSCHALK, *supra* note 3.

Police and prisons are pillars in our political economy. Redressing the scale of policing and incarceration therefore requires that we pay attention to the many institutions of carceral control and how their expansion has hollowed out modes of social provisioning. To move from a society focused on punishment to one focused on provision, we must think about housing and education alongside policing and incarceration. We must consider building new modes of well-paid and dignified work for those with criminal records as well as large numbers of guard labor. We must understand that decarceration and depolicing will require fundamental transformation of the material and ideological infrastructure of our collective lives.

### C. *Fundamental Transformation*

This crisis of police violence is more than a crisis of the police. It is a crisis of our entire system of laws and statecraft. Understanding police as central to the maintenance of a political economy of racialized violence and exploitation, abolition necessitates the fundamental transformation of society. It rejects efforts to repair the police as investments in an unequal status quo. It asks us to stay focused on reforms that reduce the resources and legitimacy of police and expand the space for non-carceral responses to interpersonal harm and human need.<sup>277</sup>

Abolition challenges the prevailing reform agenda in two ways. First, it advances reform as a strategy toward fundamental transformation, rather than an end goal. In this way, it invites a dialectical relationship between radical imagination and practical projects. Second, it replaces police with society and the state as the object of transformation.<sup>278</sup> In this way, it clarifies the need for a broad range of strategies for meaningful decarceration and depolicing—including through demands on the state, non-carceral modes of accountability, and projects and experiments to build community resilience and capacity. In so doing, it forces us to understand reform as only one part of a larger project of transformation and the police as only one object of attention among many.

The power of the police is not simply constituted by Fourth Amendment jurisprudence and its capitulation to police power. The power of the police lies as much in the police's budgets, unions, and scale as it does in the belief that police provide for public safety and solve social problems. Police are empowered by local officials, who rely on them to ticket and generate revenues to compensate for tax cuts;<sup>279</sup> by state and federal officials, who pass countless criminal laws that provide more and more power to arrest and imprison; by prosecutors and judges, who defer to police judgment;<sup>280</sup> and by the public, who

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277. See CRITICAL RESISTANCE, *supra* note 198.

278. But see Meares, *Synthesizing Narratives of Policing*, *supra* note 66, at 553–54 (calling for “police transformation”).

279. See, e.g., Johnson, *supra* note 34.

280. See, e.g., Kate Levine, *Who Shouldn't Prosecute the Police*, 101 IOWA L. REV. 1447 (2016).

reelect the prosecutors and judges that give the police a pass. Police are empowered by the idea that their existence was, is, and will remain inevitable.

Abolitionist campaigns expand our notions of law reform, which are typically focused on federal constitutional rights.<sup>281</sup> Abolitionist demands like “defund the police” remind us that if we are interested in building a more just world, we cannot wage our battles simply on the terrain of rights, litigation, rule of law, or administrative innovation. We must consider the historical, material, and ideological dimensions of our demands and our strategies. We must examine where we invest money and what kind of infrastructure we build for collective life. We must investigate the ideas that motivate and justify things as they are. We must appraise who has what resources, for what end, and why. We have to understand how such profound inequity came to be, why it persists, and what needs to be redressed to create the equitable society we aspire to but have not yet realized. We have to ask: If police and prisons are the stuff of structural violence, what are the elements of structural flourishing, and what are the strategies to build them?

Abolitionist campaigns point to the materiality of law and the fundamental importance of the local. The life of the law is in more than words and rights. It includes the material infrastructure through which it comes alive: buildings, budgets, resources, institutions, and technology.

Because abolition posits state and society as the object of transformation rather than the police, it asks us to work across our fields of study to reconsider projects of reform. Consider the criminalization of the over half million people dealing with homelessness every single day.<sup>282</sup> In virtually all states, it is criminal to sleep, urinate, or drink alcohol outside.<sup>283</sup> Homeless people are aggressively policed.<sup>284</sup> As a result, homeless people are in and out of jail.<sup>285</sup> Decriminalization is an important strategy of decarceration and depolicing. But it does not go far enough. We cannot meaningfully call for decriminalization without then thinking about what other support people may need and the larger social structures that make people so deeply vulnerable. Decriminalization does not alleviate the underlying precarity faced by people who are homeless. Redressing housing insecurity requires taking on the real work of making

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281. For an account of how today’s movements expand our conceptions of rights and reforms, including a powerful revisiting of the debate over the critique of rights, see John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City’s Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081 (2019) (evaluating the successful New York City campaign for a right to counsel in eviction proceedings as part of larger housing justice organizing). For another conceptualization of the role of law in progressive struggles, see Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797 (1990).

282. *State of Homelessness: 2020 Edition*, NAT’L ALL. TO END HOMELESSNESS (2020), <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2020/> [<https://perma.cc/KD9Y-VA6C>].

283. See generally Bauman et al., *supra* note 179.

284. See generally *id.*

285. See *id.* at 34.

housing more widely available, decommodifying or guaranteeing a right to adequate housing, and providing access to the means by which to pay rent, e.g., a job that pays a living wage. Facing the problem head-on requires working for broad political, economic, and social transformation, toward a robust regime of provision and entitlements.

Demands for reform are a necessary but insufficient tool for political, economic, and social transformation.<sup>286</sup> While no single reform can usher in transformation, bottom-up reforms build and shift power, expand democratic domains, and demonstrate the potential for alternative political, economic, and social arrangements.<sup>287</sup> Abolitionists aim to make it harder for the current order to reproduce itself, while building pathways to new possibilities. Reorienting work towards transformation rather than relegitimization changes the quality and the stakes of the gambit. It reinjects reform projects with a transformational potential that brings the goal of substantive equality closer to fruition.

Through demands to divest and dismantle, modes of accountability, and community-based experiments, abolitionist organizers build modes of collective care and social provisioning to ensure that “no one is disposable.”<sup>288</sup> The capacious shape of the abolitionist horizon allows those who emphasize various, even conflicting, political commitments (antiracist, feminist, socialist, anarchist) to come together.<sup>289</sup> As a result, there are different conceptualizations of transformation and disagreements about whether alternative institutions and practices are prefigurative experiments (for anarchists), or stopgap measures until the state takes responsibility (for socialists).<sup>290</sup> But across the ideological spectrum, there is recognition of the need to strengthen bonds of solidarity

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286. There is a long history of debate on the possibility and limits of law reform to transform the fundamental characteristics of our prevailing order. That debate centers on the possibility of the “non-reformist reform.” ANDRÉ GORZ, *STRATEGY FOR LABOR: A RADICAL PROPOSAL* 6–8 (Martin A. Nicolaus & Victoria Ortiz trans., 1967); see also Marbre Stahly-Butts & Amna A. Akbar, *Transformative Reforms, Abolitionist Demands*, 17 STAN. J. C.R. & C.L. (forthcoming 2020) (exploring abolitionist frameworks for reforms).

287. Amna A. Akbar, *The Left is Remaking the World*, N.Y. TIMES (July 11, 2020), <https://www.nytimes.com/2020/07/11/opinion/sunday/defund-police-cancel-rent.html> [<https://perma.cc/B569-5RN3>].

288. *No One is Disposable*, *supra* note 185 (discussing the aspect of abolitionist work of figuring out how our relationships with each other don’t model the state’s logic of who is disposable).

289. McDowell & Fernandez, *supra* note 143, at 375–78; see also CRITICAL RESISTANCE, THE CR ABOLITION ORGANIZING TOOLKIT, *supra* note 148, at 16–19 (pointing to different political and moral commitments that might lead someone to adopt an abolitionist stance).

290. See Angela Y. Davis & Dylan Rodriguez, *The Challenge of Prison Abolition: A Conversation*, 27 SOC. JUST. 212, 215 (2000) (“The call for prison abolition urges us to imagine and strive for a very different social landscape.”); see also CAMP, *supra* note 139, at 147 (elaborating on the concept of abolition democracy as a socialist conception of democracy, including “not only the political right to vote and participate in elections but also the economic right to public housing, education, health care, employment, and transit”). Abolition is not compatible with all political commitments. See McLeod, *supra* note 76, at 656, 671–76 (discussing the “regressive fiscal agenda” of “neoliberal penal reform,” which is “not merely ineffective as a decarceration framework” but also “at odds with dismantling the carceral state”).



between communities stripped of connection by our carceral system. Communities must work together to reimagine safety; to care and provide for one another; and to prevent, intervene in, repair, and transform harm in response to all manner of social problems.<sup>291</sup>

Unquestionably, abolitionist demands and experiments are not easy for legal scholarship to metabolize. These campaigns are often local and even hyperlocal, and with their focus on material infrastructure and budgets, the campaigns contravene our conceptions of law reform.<sup>292</sup> But rather than reject or ignore them, we should welcome the insights they provide. Abolitionist campaigns and experiments teach us about the importance of the local, and the limited and necessary nature of law reform to effectuate broad and deep social change. They also signal the inherent failure of reform projects that focus exclusively on police governance.

Some may argue that organizers' demands to defund police or conduct experiments in community alternatives to 911 are not within the purview of law, but fall under the umbrella of politics or protest. But these categories are not mutually exclusive. Organizers are engaged in a battle for fundamental social change, and they are turning to campaigns for reform as one among a variety of strategies and tactics toward transformation. Organizers are fighting oppressive legal institutions through campaigns focused on shrinking their material footprint—money, resources, staff—and, in the process, creating space for new forms of social organization. They are drawing on protest and reform campaigns to advance their visions. With an abolitionist horizon in view, they are turning to reform as a tool to build a different world, rather than tinkering with this one. If we seek to understand how organizers are using law a tool, we will sharpen our understanding of social change projects that deploy many strategies, including reform, politics, and protest.

#### CONCLUSION

It has been six years since I heard Rachel Herzing speak in Los Angeles. Since then, I have listened to and learned from abolitionist organizers across the country. I have read their handbooks, studied their campaigns, attended their trainings, and collected paper trails of their experimentation and innovation. I have obsessively followed their news coverage, press releases, and podcasts. At the beginning of this journey, I was struck by Herzing's clarity, and how it clashed with prevailing narratives around police and police reform. I looked for

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291. McDowell & Fernandez, *supra* note 143, at 383 (noting tension between short-term harm reduction efforts and long-term abolition).

292. Consider, for example, the accountability process created within BYP100 to respond to interpersonal harm within the organization. McLeod, *supra* note 67, at 1630–31 (describing a BYP100 accountability process created in response to and in consultation with a member who said she was sexually assaulted by another member).

sources for claims that originally sounded grandiose—for example, that the history of police lay in slave patrols—and found them to be grounded in substantial evidence. As I listened and read, studied and wrote, I changed too. My critique sharpened, and my hope grew.

The 2020 uprisings have forced another reckoning with how police violence structures our society. The uprisings simultaneously gave new currency to demands to abolish the police and pointed to the growing influence of abolitionist organizing. Taking abolitionist organizing seriously requires that we face the failures of police reform. It invites us to reorient toward the collective work of transforming the structures and relations of power that undergird police violence, so that greater human flourishing takes root.