

# The Racial Politics of Protection: A Critical Race Examination of Police Militarization

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## ABSTRACT

*Across the country, police departments are using aggressive, military-style tactics and weapons to enforce the law. More recently, the state of police militarization displayed in cities like Ferguson and Baltimore raises deep questions about the ethics of paramilitary policing and its consequences for minority citizenship and inclusion. This Note examines police militarization as the result of concerted political decisions that often trade on racial fear and anxiety. Beginning in the Reconstruction Era and continuing through to racial uprisings in the 1960s, the War on Drugs, and present movements for police accountability and racial justice, this Note argues that police militarization is, and has always been, a deeply racialized issue. Specifically, the trend of police militarization can be viewed as a race-making process—that is, patterns of police militarization have constructed and reinforced race and racial hierarchies in America. The racial politics of protection refers to a process of police militarization that allows the State to construct race by selectively assembling two groupings—those who will be marginalized through heightened surveillance and control and those who will be advantaged by their access to state protection. Ultimately, this Note stresses a more nuanced conversation about the critical intersections of race, militarization, and policing.*

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#### INTRODUCTION

On the morning of April 12, 2015, Freddie Gray, a black man from West Baltimore, stood near the intersection of North Avenue and Mount Street in Baltimore.<sup>1</sup> Gray and a companion spotted police officers in the area, Gray made eye contact with an officer and turned to run, and officers then pursued Gray.<sup>2</sup> Gray did not appear to be doing anything wrong that morning. By officers' accounts, all that happened leading up to the arrest was the eye contact and the pursuit.<sup>3</sup> Officers arrested Gray, handcuffed him, and placed him in the back of a police van. Half an hour later, Gray was unable to breathe or talk, suffering from a severe spinal cord injury that would ultimately kill him.<sup>4</sup> Police maintained that the arrest occurred without force or incident, but a video recording of the encounter shows Gray crying out in pain.<sup>5</sup> According to his family, Gray was treated for three fractured vertebrae and a crushed voice box after he was placed in police custody.<sup>6</sup> Incited by several highly publicized killings of black Americans at the hands of police, thousands in Baltimore took to the streets demanding answers and justice for Gray. Their outpouring of

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1. Adam Marton & Emma Patti Harris, *Freddie Gray Arrest Timeline*, BALT. SUN (Apr. 21, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bal-map-freddie-gray-arrest-timeline-20150421-htlstory.html> [https://perma.cc/3PSR-5YQ2].

2. *Why Freddie Gray Ran*, BALT. SUN (Apr. 25, 2015), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-freddie-gray-20150425-story.html> [https://perma.cc/88GK-PLYQ].

3. *Id.*

4. David A. Graham, *The Mysterious Death of Freddie Gray*, ATLANTIC (April 22, 2015), <http://www.theatlantic.com/politics/archive/2015/04/the-mysterious-death-of-freddie-gray/391119> [https://perma.cc/88GK-PLYQ].

5. *Id.*

6. *Id.*

anger and grief met a militarized state response, echoing practices of militarism in Ferguson and across the country.<sup>7</sup> Police in full riot gear, armed with batons, tear gas, pepper spray, and rubber bullets, were enlisted to control demonstrators.<sup>8</sup> The mayor implemented a citywide curfew, and all across the city, from 10:00 PM to 5:00 AM, people were instructed to remain indoors or face arrest.<sup>9</sup> Three thousand National Guardsmen were called in to help enforce the curfew.<sup>10</sup> The range of military-style tactics aimed at protestors increased agitation, precipitating more violence, fear, and frustration. Even within the militarized response, an egregious pattern of police brutality along racial lines emerged. In West Baltimore, a black man was pepper-sprayed while a crowd of officers pulled him to the ground by his hair for defying the curfew.<sup>11</sup> Across town, in the predominately white neighborhood of Hampden, one police officer calmly pleaded with white protestors to disperse.<sup>12</sup> The officer gave five warnings,<sup>13</sup> each time explaining “the last thing I want to do is put someone in handcuffs.”<sup>14</sup> When the National Guard arrived in the city, white protestors were not subject to harsh military control.<sup>15</sup> Instead, National Guardsmen protected white neighborhoods.<sup>16</sup> Reflecting everyday life in Baltimore, police power was not implemented equally. Black neighborhoods and black bodies were subject to heightened martial control by law enforcement.

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7. Dante Berry, *Stop the War on Baltimore*, NATION (May 6, 2015), <http://www.thenation.com/article/stop-war-baltimore> [https://perma.cc/E68Q-KXNL].

8. *Id.*

9. Alan Fausset, Richard Blinder & Nikita Stewart, *In Baltimore, National Guard Pullout Begins as Citywide Curfew Is Lifted*, N.Y. TIMES (May 3, 2015), <http://www.nytimes.com/2015/05/04/us/baltimore-lifts-citywide-curfew-put-in-place-after-rioting.html> [https://perma.cc/ZEB2-ZDQR].

10. Jessica Anderson & Ian Duncan, *Last of National Guard Troops to Leave Baltimore*, BALT. SUN (May 4, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-national-guard-demobilizing-20150504-story.html> [https://perma.cc/DW28-6ZUU].

11. Kevin Rector, *Man Pepper-Sprayed by Baltimore Police in Viral Video to Appear in Court*, BALT. SUN (May 4, 2015), <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-ci-pepper-spray-defendant-20150608-story.html> [https://perma.cc/6BTv-22ZP].

12. Elaine Magliaro, *Activists Voice Concern that the Enforcement of Baltimore Curfew Has Been Targeting Poor Black Communities Unevenly*, FLOWERS FOR SOCRATES (May 3, 2015), <http://flowersforsocrates.com/2015/05/03/activists-voice-concern-that-the-enforcement-of-baltimore-curfew-has-been-targeting-poor-black-communities-unevenly> [https://perma.cc/BVX9-ZJWR].

13. Kevin Rector, *Protesters in Hampden Break Curfew (for a Few Minutes) to Make a Point*, BALT. SUN (May 2, 2015), <http://www.baltimoresun.com/news/maryland/bs-md-hampden-curfew-20150502-story.html> [https://perma.cc/L43H-XBB8].

14. DeRay Mckesson (@deray), TWITTER (May 2, 2015, 7:12 PM), [https://twitter.com/deray/status/594685998719770624?ref\\_src=twsrc%5Etfw](https://twitter.com/deray/status/594685998719770624?ref_src=twsrc%5Etfw) [https://perma.cc/QHZ9-2KQB]; see also *Hampden, other areas tell different story of Baltimore curfew*, ABC 2 NEWS (May 4, 2015, 5:59 AM), <http://www.abc2news.com/news/crime-checker/baltimore-city-crime/hampden-other-areas-tell-different-story-of-baltimore-curfew> [https://perma.cc/3JXW-PKKT].

15. Magliaro, *supra* note 12.

16. Justin Glawe, *White Baltimore Gets Troops, Black Baltimore Gets Same Old Cops*, DAILY BEAST (Apr. 29, 2015), <http://www.thedailybeast.com/articles/2015/04/29/white-baltimore-gets-troops-black-baltimore-gets-cops-they-hate.html> [https://perma.cc/MVS8-4KC8].

This Note examines the phenomenon of police militarization, beginning with Baltimore to introduce my primary claim: police militarization is a deeply racialized issue. In the pages that follow, I examine the trend of police militarization as a race-making process—that is, patterns of police militarization have constructed and reinforced race and racial hierarchies in America. I argue that police militarization both reflects and reinforces a system of white supremacy and black subordination.<sup>17</sup> At the center of my analysis is the theory that police militarization reifies the idea that some lives—black and brown lives—will be subject to military-like state control and some lives—white lives—will be the beneficiaries of militarized state protection. In what I call the *racial politics of protection*, the process of police militarization allows the State to construct race by selectively assembling two groupings—those who will be marginalized through heightened surveillance and control and those who will be advantaged by their access to state protection.

This Note is descriptive, normative, and theoretical. I will describe the process of police militarization and the way that it operates; I will also critique the means by which it operates. Finally, I offer a theoretical framework through which to analyze the racial politics of protection. By examining protection and its administration by the State along racial lines, we may better understand how the State makes race materially and socially salient through the process of police militarization.

This Note proceeds in four parts. Part I examines the historical roots of police-military separation through the enactment of the Posse Comitatus Act, the U.S. federal law that restricts the use of the military in domestic law enforcement. Part II analyzes the militarization of the police as a response to racial uprisings in the 1960s, drawing connections to the racial politics of protection evident in recent events in Baltimore and Ferguson. Part III examines police militarization through the racialized War on Drugs. Part IV presents the contemporary reality of police militarization and describes the racial politics of protection as a theoretical framework. Finally, this Note concludes with thoughts for future discussion and inquiry.

Before beginning my analysis, it is important to first define certain terms and narrow the scope of this Note. By *police*, I mean the civil force of the national or local government responsible for enforcing the law as well as the prevention and detection of crime. By *military*, I mean U.S. soldiers or armed

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17. Scholars have noted:

By ‘white supremacy’ I do not mean to allude only to the self-conscious racism of white supremacist hate groups. I refer instead to a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings.

Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993, 1024 n.129 (1989).

forces and the institution that commands them. By *militarization*, I mean “the process of arming, organizing, planning, training for, threatening, and sometimes implementing violent conflict.”<sup>18</sup> *Police militarization* therefore refers to the reconfiguration of civilian police around the principals of militarism.<sup>19</sup> Additionally, for the purposes of this Note, much of my racial analysis will focus on the black community and black history. A similar analysis could explore the relationship between police militarization and other struggles for racial justice, immigration reform, gender equity, or queer liberation. Scholars and activists have and should continue to attend to these movements and their relationship to police militarization.

## I.

### THE HIDDEN STORY OF THE PCA

Perhaps no other story depicts the racial politics of protection like the story of the Posse Comitatus Act (PCA).<sup>20</sup> Enacted in 1878, the PCA has been lauded as upholding the principle that the military should be distinct from civilian law enforcement.<sup>21</sup> This Part unpacks the tumultuous roots of the PCA and its relationship to the racial politics of protection. Understanding the historical relationship between the police and the military sheds light on the contemporary trend of police militarization.

The PCA “establishes criminal penalties for people who willfully use members of the Army or the Air Force to execute the laws.”<sup>22</sup> For many scholars and courts, the PCA represents a tradition of strong resistance by Americans to military intrusion in civilian affairs.<sup>23</sup> While these scholarly critiques of police militarization point to an erosion of the PCA as responsible for the militarization of the civilian law enforcement,<sup>24</sup> they miss the critical

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18. Peter B. Kraska, *Militarization and Policing—Its Relevance to 21st Century Police*, 1 POLICING 1, 3 (2007).

19. *Id.*

20. 18 U.S.C. § 1385 (2012) (noting that the PCA provides “[w]hoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both”) (originally enacted by the Army Appropriations Act, ch. 263, § 15, 20 Stat. 145, 152 (1878)).

21. *Id.*

22. Sean J. Kealy, *Reexamining the Posse Comitatus Act: Toward a Right to Civil Law Enforcement*, 21 YALE L. & POL’Y REV. 383, 384 (2003).

23. *Id.* at 383.

24. See, e.g., *id.*; see also Nathan Canestaro, *Homeland Defense: Another Nail in the Coffin for Posse Comitatus*, 12 WASH. U. J.L. & POL’Y 99, 142–43 (2003) (“Posse comitatus, as a bar against the military’s enforcement of civil law, stretches back to the roots of American jurisprudence in English common law. After suffering decades of abuse and injustice at the hands of the Tudor and Stuart monarchs, the English knew very well of the consequences resulting from an unrestrained military presence in domestic affairs. Although this knowledge was impressed upon the psyche of our own nation as a result of similar tactics employed by British occupation forces, the principle has undergone a steady decline. The United States has slowly shifted away from showing restraint in the

reality that state protection has never been dispensed equally, and the enactment of the PCA fits within, rather than outside, the narrative of unequal protection. Rather than a broader condemnation of antimilitarism, the PCA was enacted to ensure black subordination in the post-Civil War South by blocking state protection of black rights and black lives.

This history allows us to think more broadly about the relationship between the military and the police—and social and political forces that govern this relationship. This history prompts us to read the PCA, not as a broad condemnation of militarism, but as evidence of an unequal pattern of protection, administered by the federal government, along racial lines. If the PCA functioned to protect white hegemony, then surely this alters the way we read its protective capacity today. Arguments that suggest police militarization might be blocked, or at least slowed, by strengthening the PCA, miss its peculiar racial history. It is less important that the PCA declared a separation between the military and civilian law enforcement. More important is that Congress exercised its power over military force to ensure white domination in the South.

#### A. *The Meaning of Freedom*

Speaking to the delegates of the Republican National Convention as the Election of 1876 approached, Frederick Douglass, a former slave and prominent black intellectual and abolitionist, asked, “But what is your emancipation?—what is your enfranchisement? What does it amount to, if the black man, after having been made free by the letter of your law, is unable to exercise that freedom, and having been freed from the slaveholder’s lash, he is to be subjected to the slaveholder’s shot-gun?”<sup>25</sup> Douglass’s appeal to the Republican delegates illustrates a key issue leading up to the adoption of the PCA: in the post-Civil War South, the rights and lives of former slaves would require fervent government protection.

During the Civil War, many blacks fought and died for the Union, a fact that was not lost on Northern Republicans who understood the importance of black support in the fight against the South.<sup>26</sup> In the wake of the Civil War, some Northern leaders were willing to enact more egalitarian policies aimed at blacks in the South. President Lincoln suggested that a reconstructed Southern government should include literate blacks and veterans as voters, and Republicans in Congress took steps toward egalitarian reform. In 1865, Congress created the Freedmen’s Bureau, which dispensed farmland, provided educational services, and afforded legal protection to some newly freed

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domestic use of the military’s forces, and is now moving towards a more pragmatic approach that relies on the military’s vast resources as a means of law enforcement.”)

25. PHILIP A. KLINKNER & ROGERS M. SMITH, *THE UNSTEADY MARCH: THE RISE AND DECLINE OF RACIAL EQUALITY IN AMERICA* 88 (1999).

26. *Id.* at 83.

blacks.<sup>27</sup> Yet, even after the abolition of slavery, Southern whites found other ways to continue black social, economic, and political bondage. Black Codes replaced Slave Codes in the South and served a virtually identical function. Both types of codes “legislated and regulated in minute detail every aspect of the life of a slave and of black/white interactions.”<sup>28</sup> New legal processes also kept “free” blacks tied to white-owned land through a feudal system of sharecropping that ensured perpetual debt. Emancipation had officially freed blacks from bondage, but the social, political, and economic realities in the South greatly resembled the days of slavery.

At the end of the Civil War, Southern opposition to Reconstruction and fervent obstructionism by the newly appointed President Andrew Johnson necessitated increased use of military force to protect black rights in the South.<sup>29</sup> In March 1867, Congress passed the Military Reconstruction Act, which used military action to enforce black enfranchisement and force ratification of the Fourteenth Amendment.<sup>30</sup> In 1871, Congress passed the Ku Klux Klan Act permitting military supervision of congressional elections to protect black voters.<sup>31</sup> Commitment to the political power of Southern blacks was less about achieving social equality and more about an interest convergence<sup>32</sup> between Southern blacks and Northern Republicans.<sup>33</sup> Northern, white Republicans understood that freed blacks would now count as full people for the purposes of Congressional representation but, without Northern military intervention, black voters would be controlled by white Southerners. Expanding black political power in the South was another means of expanding Republican political power throughout the country.<sup>34</sup>

In the face of intense Southern opposition, shallow Northern commitment to securing black rights faded. The North saw enforcement of black rights as

27. ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877* 144 (2002).

28. W. Haywood Burns, *Law and Race in Early America*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 461, 464–67 (David Kairys ed., 3d ed. 1998).

29. FONER, *supra* note 27, at 454–55.

30. KLINKNER & SMITH, *supra* note 25, at 81.

31. *Id.* (“In 1870 and 1871, Congress passed a set of bills setting penalties for violations of the Fifteenth Amendment, establishing national supervision of congressional elections to prevent discrimination, and punishing conspiracies to hamper state protection of constitution rights, via the 1871 ‘Ku Klux Klan Act.’”).

32. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 20, 22 (Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas eds., 1995).

33. KLINKNER & SMITH, *supra* note 25, at 79.

34. *Id.* (“[I]nstrumental reasons led many Northerners to support a more radical Reconstruction policy. The Black Codes and Johnson’s lenient policies promised not only to restore but to extend the South’s power in national politics. With the abolition of slavery, blacks now counted as full rather than three-fifths of persons in the apportionment of House seats and electoral votes. Yet, the Black Codes ensured that this increased political power would be wielded not by the freedmen but by the whites who had led the rebellion.”).

economically and politically costly.<sup>35</sup> At the same time, federal judges made it clear that black lives would receive little protection in the courts. In 1872, after disputed elections in Louisiana, black voters attempted to surround and fortify the Grant Parish Courthouse to safeguard recent election results.<sup>36</sup> Whites, many of them ex-Confederate soldiers now organized as Klansmen, laid siege to the courthouse.<sup>37</sup> When fifty blacks offered to surrender, Klansmen slaughtered them and over two hundred others.<sup>38</sup> No convictions were handed down in what came to be known as the Colfax Massacre.<sup>39</sup> The Supreme Court ultimately reasoned that any rights claimed by blacks were a matter to be determined by state governments.<sup>40</sup> In the *Slaughter-House Cases* of 1873, the Court began eroding the Fourteenth Amendment, severely limiting the power of the federal government to protect the rights of citizens against hostile state governments.<sup>41</sup> As congressional Reconstruction came to an end, waves of antiblack violence erupted throughout the South. Whites in Mississippi began to openly organize militias with the intention to “vote blacks down or knock them down.”<sup>42</sup> With Southern Democrats, federal courts, and many Northerners fighting to maintain the status quo, Republicans were not inclined to protect blacks in the South through military intervention. Describing Republican apathy toward black life, the prominent black novelist, Dr. Wells Brown, wrote, “There is a feeling all over this country that the negro has got as much as he ought to have.”<sup>43</sup>

### B. Race and Retreat

By the time voters reached the polls for the election of 1876, both presidential candidates, Rutherford B. Hayes and Samuel J. Tilden, stressed the need for reconciliation and an end to Reconstruction.<sup>44</sup> Following bitter election contests in four Southern states, Hayes won the presidency by the narrowest of margins. To quell the controversy surrounding the elections, the

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35. See WILLIAM GILLETTE, *RETREAT FROM RECONSTRUCTION: 1869–1879* 154 (1979).

36. KLINKNER & SMITH, *supra* note 25, at 87.

37. *Id.*

38. *Id.*

39. *Id.* at 87–88 (“[L]ocal trials produced only three convictions, and those were successfully appealed first to the federal circuit court, then to the U.S. Supreme Court. There, Chief Justice Morrison Waite stressed, like Miller in the *Slaughter-House Cases*, that many of the rights claimed by the African American plaintiffs were properly regulated by the states, not the national government. He also insisted that the Thirteenth and Fifteenth Amendments applied only against violations of rights motivated by racism. . . . Waite and the other justices managed not to find racism present in the Colfax massacre.”).

40. *Id.* at 85.

41. See *Slaughter-House Cases*, 83 U.S. 36 (1873); see also KLINKNER & SMITH, *supra* note 25, at 85 (“The *Slaughter-House* decision laid the groundwork for national acquiescence in their rebuilding of racial hierarchies.”).

42. GILLETTE, *supra* note 35, at 154.

43. KLINKNER & SMITH, *supra* note 25, at 85.

44. *Id.* at 88–89.

parties struck a deal. Hayes, the Republican candidate, would take the presidency and, in exchange, would withdraw military troops from the South once and for all.<sup>45</sup> Congress then adopted the Posse Comitatus Act. Currently, the PCA makes it a felony to willfully use the Army or the Air Force to execute laws.<sup>46</sup> Hayes's "infamous bargain"<sup>47</sup> brought an end to military Reconstruction. Restraining military troops in the South largely meant abandoning the cause of black rights.<sup>48</sup> Accordingly, the South would be left to restore a prewar social, political, and economic order built on black subjugation. With the federal government no longer willing to provide military protection to blacks, violence and intimidation increased in many areas.<sup>49</sup> Throughout the 1880s and into the 1890s, the number of lynchings climbed steadily.<sup>50</sup> Not only was the federal government unwilling to use military force to ensure black participation in civic life; the federal government was indisposed to the use of force to ensure black life, *period*.

Though the PCA represents a condemnation of military intrusion in domestic affairs, it also represents a political bargaining chip that ultimately betrayed black rights. After his election in 1876, Hayes prevented federal troops from interfering with white "local control" in the South.<sup>51</sup> But reservations about military intervention in the South were circumscribed to the protection of black rights. In 1877, after the Nez Percé Indian tribe refused to give up their ancestral land in the Pacific Northwest and relocate to an Indian Reservation in Idaho, federal troops forced the Nez Percé from their land.<sup>52</sup> That same year, in response to the third wage cut in one year by the Baltimore and Ohio railroads, Maryland railroad workers organized a strike to shut down railroad activity. In what came to be known as the Great Strike of 1877, workers clashed with state militia, burned train cars and stations, and demanded wage cuts be repealed. Federal troops were ultimately called in to quell the labor uprising.<sup>53</sup> The use of military force to protect the interests of railroads or force Native peoples from their land was acceptable to white Southerners and Northerners, but it was military intervention on behalf of *blacks* that they wanted to quash. Given the federal government's mixed commitment to the use of military force, the PCA functioned to block federal

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45. *Id.* at 89.

46. 18 U.S.C. § 1385 (2012).

47. KLINKNER & SMITH, *supra* note 25, at 89.

48. *Id.*

49. *Id.* at 90 ("With the federal government no longer willing to enforce Reconstruction strenuously, southern whites began to roll back most of the egalitarian gains of the previous decade. . . . Freed from the threat of federal intervention, violent intimidation of blacks continued and in some places increased.")

50. *Id.*

51. *Id.* at 89.

52. REVOLTS, PROTESTS, DEMONSTRATIONS, AND REBELLIONS IN AMERICAN HISTORY: AN ENCYCLOPEDIA 553–55 (Steven L. Danver ed., 2011).

53. KLINKNER & SMITH, *supra* note 25, at 89.

intervention in black subjugation and perpetuated the open atrocities committed against blacks in the South.

### *C. Race and Protection*

State protection was administered unequally along racial lines to safeguard the status quo, effectively blocking blacks from economic, social, and political uplift. A lack of protection came to define the black experience in the South and throughout the country. Through selective use of military coercion, the federal government made vulnerability to violence and exploitation a material disadvantage of blackness. Critically, excluding blacks from federal protection was enormously advantageous to many whites. It was economically beneficial because, without intervention, whites were free to rebuild an economic and social order predicated on black exploitation, including, but not limited to, the system of sharecropping. Excluding blacks from federal protection was also politically valuable to many whites because whites could effectively suppress black voters, ensuring the political process perpetuated their interest and advantage. Whiteness was further privileged by government action and inaction. Access to state protection became a racial marker of whiteness, provided racial cohesion, and also positioned whites superordinate to blacks. By examining the historical underprotection of black life we may better understand the present day.

Across the country, black communities are both overpoliced and underprotected,<sup>54</sup> and police militarization strengthens this harmful paradigm. Law enforcement—transformed into soldiers and outfitted with battle-ready equipment—police black communities as war zones. Principles of militarism, rather than careful and considered intervention, become the dominant means of addressing social problems in these communities. Unsurprisingly, violence and the repeated loss of black life is so often the product of police-community encounters. The exercise of military-like power by police not only disproportionately subjects blacks to military-like control, but also fortifies the boundaries between whiteness and blackness. The spectacles of armored vehicles on city streets, police in military-style uniform, and officers wielding submachine guns communicate a need to control certain communities with excessive force. In the age of paramilitary police tactics, racial control has become militarized. The following Part examines police militarization during the Civil Rights Era and its relationship to the racial politics of protection.

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54. “Overpoliced & Underprotected”: In *Michael Brown Killing, Neglect of Black Communities Laid Bare*, DEMOCRACY NOW! (Aug. 19, 2014), [http://www.democracynow.org/2014/8/19/over\\_policed\\_underprotected\\_in\\_michael\\_brown](http://www.democracynow.org/2014/8/19/over_policed_underprotected_in_michael_brown) [<https://perma.cc/6BM2-LNJJ>].

## II.

## BLACK REVOLT AND POLICE MILITARIZATION DURING THE CIVIL RIGHTS ERA

After the April 2015 uprisings in Baltimore, many made comparisons to the racial uprisings in the 1960s.<sup>55</sup> I argue that in the context of police militarization, the most useful lesson from the 1960s is that the State responds to racial uprisings by increasing police militarization and devaluing black lives. During the late 1950s and 1960s, many white Americans feared that blacks were “becoming increasingly impatient with the status quo and coming ever closer to the violent ‘fire next time’ described by writer James Baldwin.”<sup>56</sup> During the summer of 1965, many white Americans saw their worst racial nightmares come to fruition as racial uprisings struck more than one hundred cities across the United States.<sup>57</sup> Rather than address the root and structural causes of black unrest, the federal government responded to racial violence during the 1960s by militarizing the police under the guise of restoring law and order.<sup>58</sup> By exploiting racial fears and casting violence as a breakdown of law and order, government officials paved the way for increased police militarization. Police militarization happened slowly, a result of concerted political decisions<sup>59</sup> that allowed local law enforcement to adopt more of the characteristics of an army.

A. *Uprising in Watts*

Before his assassination, President Kennedy signaled the need for legislative redress to racial inequities, warning that “[t]he fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand. Redress is sought in the streets, in demonstrations, parades, and protests which create tensions and threaten violence and threaten lives.”<sup>60</sup> When white supremacists detonated a bomb in a Birmingham church, killing four girls attending Sunday school, Dr. Martin Luther King cautioned that government inaction could ignite the “worst racial holocaust the nation has ever seen.”<sup>61</sup> Even as blacks peacefully assembled to hear King’s “I Have a Dream” speech, the March on Washington nonetheless fueled white paranoia.<sup>62</sup> A protest of thousands of blacks in the nation’s capital drove many whites to

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55. See, e.g., Bryan Burrough, *Today, a Softer Response to Police Violence than in 1960s and '70s*, L.A. TIMES (May 2, 2015), <http://www.latimes.com/opinion/op-ed/la-oe-0503-burrough-violent-revolution-20150503-story.html> [<https://perma.cc/4HUF-PXN6>].

56. KLINKNER & SMITH, *supra* note 25, at 267–68.

57. *Id.* at 281.

58. See RADLEY BALKO, *RISE OF THE WARRIOR COP, THE MILITARIZATION OF AMERICA’S POLICE FORCE* 52–80 (2014).

59. *Id.* at 42.

60. John F. Kennedy, *Radio and Television Report to the American People on Civil Rights (June 11, 1963)*, in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: JOHN F. KENNEDY, 1963 469 (1964).

61. KLINKNER & SMITH, *supra* note 25, at 272.

62. *Id.* at 271.

fear the arrival of a not-so-peaceful racial uprising.<sup>63</sup> At the same time, the assassination of President Kennedy contributed to social perceptions of disorder.<sup>64</sup>

Amid this climate of fear came a key national incident that would push America towards more militarized policing. During the summer of 1965, Los Angeles became an epicenter for urban rebellion.<sup>65</sup> A six-day uprising struck the city after a violent interaction between police and community members brought years of hostility to a breaking point.<sup>66</sup> On August 11, Marquette Frye, a twenty-one-year-old black man, was driving his mother's car near Watts when a highway patrol officer stopped him.<sup>67</sup> Frye was unable to produce a license, and after two other officers arrived at the scene, the police prepared to arrest him.<sup>68</sup> That summer, Los Angeles was experiencing a crushing heat wave and many residents retreated outside to cool down.<sup>69</sup> A small crowd of observers gathered to witness the arrest, and soon, Frye's mother arrived on the scene as well.<sup>70</sup> What happened after that is still unclear, but tensions between the police, the Frye family, and onlookers quickly escalated.<sup>71</sup> As talk of an incident of police brutality spread among residents, frustration mounted. By that evening, Watts had exploded.<sup>72</sup>

Over the course of the Watts uprisings, officials estimated that as many as ten thousand black residents took to the streets in South Los Angeles.<sup>73</sup> As the days went on, some participants physically fought with police, obstructed firemen, beat white motorists, broke into stores, and lit fires.<sup>74</sup> Still others participated in looting and various acts of disorder.<sup>75</sup> Yet the majority of the participants demonstrated by jeering at police officers and openly encouraging other protestors.<sup>76</sup> As the days went on, it became clear that police were outnumbered and unprepared.<sup>77</sup> After three nights of rioting, the government deployed the National Guard to the riot area and implemented an 8:00 PM curfew.<sup>78</sup> By the time the dust settled in Watts, the uprisings ranked among the

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63. *Id.*

64. *Id.* at 110.

65. BALKO, *supra* note 58, at 51–53.

66. *Id.* at 51–52.

67. Anthony Oberschall, *The Los Angeles Riot of August 1965*, 15 SOC. PROBS. 322, 333 (1968).

68. *Id.*

69. BALKO, *supra* note 58, at 51.

70. Oberschall, *supra* note 67, at 333.

71. *Id.* at 333–34.

72. *Id.* at 334.

73. *Id.* at 326.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 336.

78. *Id.*

most costly in national history.<sup>79</sup> Losses reached forty million dollars, one thousand buildings were damaged or destroyed, more than one thousand people were injured, thirty-four people were dead,<sup>80</sup> and at least four thousand people were arrested on riot-related charges.<sup>81</sup>

### B. *Uncovering the Causes of Unrest*

Popular depictions of the Watts uprisings often neglect the root causes of racial unrest. In Los Angeles, and across the nation, black Americans were battling the relentless penury of urban ghettos. South Los Angeles, the epicenter of the deadly riots, was 81 percent black and 27 percent of the area's families lived in poverty.<sup>82</sup> Traditional paths of social mobility, like education, were also failing residents, as 65 percent of adults older than twenty-five had not finished high school.<sup>83</sup> Unemployment and stagnant wages also marred the black community. Of the arrested rioters, nearly one quarter was unemployed,<sup>84</sup> and blacks in South Los Angeles saw their wages stagnate or decline at a time when the rest of Los Angeles was experiencing an economic boom.<sup>85</sup> Critically, blacks in urban Los Angeles were also somewhat isolated from the movement for racial justice sweeping the South. While blacks were aware of the gains precipitated by the Civil Rights Movement, the passage of the Civil Rights Act of 1964 had little impact on the community as California already had laws against "discrimination in employment, political participation, and other activities."<sup>86</sup> Although blacks in Los Angeles may not have battled the same form of racism that shocked the nation in Selma, racial oppression and economic domination still severely limited their opportunities.

Compounding the struggle in the ghetto was pervasive discriminatory policing. In 1962, just three years before the riots, the California Advisory Committee of the U.S. Commission on Civil Rights (Committee) held hearings in order to "ascertain the state of police-minority group relations."<sup>87</sup> Black Angelenos complained to the Committee of:

[E]xcessive violence at the time of the arrest[s], greater surveillance and arrest in areas of minority group concentration, the arrest of Negroes and Mexican-Americans for conduct for which Caucasians are not arrested, discourteous and uncivil police language, conduct and other behavior directed against Negroes and Mexican-Americans,

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79. BALKO, *supra* note 58, at 52.

80. *Id.*

81. Oberschall, *supra* note 67, at 326.

82. Shawn Hubler, *After the Riots: Rebuilding the Community*, L.A. TIMES (May 11, 1992), [http://articles.latimes.com/1992-05-11/news/mn-1196\\_1\\_south-los-angeles](http://articles.latimes.com/1992-05-11/news/mn-1196_1_south-los-angeles) [https://perma.cc/5F3P-F522].

83. *Id.*

84. Oberschall, *supra* note 67, at 328.

85. *Id.* at 329.

86. *Id.* at 330.

87. *Id.*

unjustified harassment of Negroes and Mexican-Americans, and an unwillingness and inability to distinguish between law-abiding and potentially law-breaking minority group members.<sup>88</sup>

The grievances of black residents of Los Angeles took many forms. While individual incidents of police brutality often served to galvanize the community to action, repeated indignities at the hands of the Los Angeles Police Department (LAPD) ultimately worked to deteriorate police-community relations. Unnecessary and repeated stops, manhandling, name-calling, and other police methods “left behind a legacy of bitterness and hostility” in the black community.<sup>89</sup> These were the conditions of social and economic domination that set the stage for the uprisings and that black residents sought to resist.

But blacks in Los Angeles were not the only ones to adopt violent tactics to protest racial subordination. During the 1960s, a tide of unrest swept through urban America. In the summer of 1967, black residents of Detroit took to the streets to protest many of the same conditions present in Los Angeles. As in Los Angeles, a very distinct set of social, economic, and political structures characterized the cities where violence erupted. According to a report produced by the Kerner Commission in the aftermath of the violence: “White racism is essentially responsible for the explosive mixture which has been accumulating in our cities since the end of World War II.”<sup>90</sup> The Kerner Commission Report (Report) cited pervasive discrimination and segregation in employment, housing, and education as contributing to the “explosive mixture” that characterized many of America’s urban centers.<sup>91</sup> The black community was heavily restricted in employment and economic opportunities. According to the Report:

Negroes were twice as likely to be unemployed and three times as likely to be in unskilled and service jobs. Negroes averaged 70 percent of the income earned by whites and were more than twice as likely to be living in poverty. Although housing cost Negroes relatively more, they had worse housing—three times as likely to be overcrowded and substandard.<sup>92</sup>

Although the Kerner Commission had shortcomings, its members seemed to articulate what many blacks had long understood: even after historic legislative victories like the Civil Rights Act and the Voting Rights Act of 1965, the systematic exploitation of blacks remained intact. Blacks still stood at

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88. *Id.*

89. *Id.* at 331–32.

90. Philip Meranto, *The Kerner Report Revisited: An Overview*, in THE KERNER REPORT REVISITED 9, 10 (Philip Meranto ed., 1970), [https://archive.org/stream/kernerreportrevisi00asse/kernerreportrevisi00asse\\_djvu.txt](https://archive.org/stream/kernerreportrevisi00asse/kernerreportrevisi00asse_djvu.txt) (citing REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968)).

91. *Id.*

92. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 4 (1968).

the bottom of the economic ladder, trapped in urban ghettos and harassed by white police. By some key social indicators, like infant mortality and the number of black children attending segregated schools, blacks had actually regressed during the Civil Rights Era.<sup>93</sup> Unhappy with incremental changes made by the Civil Rights Movement, many blacks sought to push back against state-sanctioned inequality.

### C. *Setting the Stage for Police Militarization*

The government could have addressed social inequity as the root cause of the riots. Instead, government officials capitalized on racialized fear and anxiety to give the police more power, more weapons, and more authority.<sup>94</sup>

For many middle-class whites, racial uprisings in America's urban centers signaled "a rising criminal class that was increasingly out of control."<sup>95</sup> According to an April 1965 Gallop poll, "more than half the country cited race relations as their number-one concern."<sup>96</sup> A poll of white Americans conducted for *Newsweek* in 1969 found that "85 percent of whites thought that black militants were getting off too easily . . . and 66 percent thought that the police needed to be given more power."<sup>97</sup> Fearing the possibility of more violence, white America needed reassurance, and government-facilitated police militarization was the panacea offered. Couched in the rhetoric of law and order, the federal government was able to strengthen the police system through militarization.

Advancing police militarization as a response to racial uprisings meant constructing an identity for the protestors that placed them outside of state protection and in the realm of state threat. Sure enough, the Federal Bureau of Investigations (FBI), under the directorship of J. Edgar Hoover, analyzed racial unrest as a concerted plan between black militant groups and Communist factions looking to overthrow the U.S. government. A report from the FBI dated May 29, 1967,<sup>98</sup> advised the president that "[p]ropaganda on the part of communists and other subversives and extremist elements has contributed to Negro unrest. Demagogues like Martin Luther King, Jr., Stokely Carmichael, Floyd McKissick, Cassius Clay, and Dick Gregory have added fuel to the fires of racial discord . . . ."<sup>99</sup>

Not only did the FBI report label prominent civil rights leaders like Dr. King "demagogues," it also refers to riot participants as "young hoodlums"—much like media reports that characterized marginalized urban youth in

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93. KLINKNER & SMITH, *supra* note 25, at 110.

94. See BALKO, *supra* note 58, at 52–53.

95. *Id.* at 53.

96. *Id.* at 64.

97. *Id.* at 69.

98. FED. BUREAU OF INVESTIGATION, REPORT ON PREVENTION AND CONTROL OF MAJOR DISTURBANCES (May 29, 1967), reprinted in URBAN RACE RIOTS 23 (Michal R. Belknap ed., 1991).

99. *Id.*

Baltimore as “thugs.”<sup>100</sup> Critically, the report casts racial uprisings as a clear internal threat to national security and, accordingly, emphasizes the need for a militarized police response. The irony is, viewed from the perspective of many black protestors, the riots of the 1960s may be understood as a demand for state recognition and protection. Across the country, black communities were suffering from discrimination in housing, employment, and education while the government either facilitated unequal conditions or stood idly by. Uprisings in urban areas were a demand for state protection and an end to state-sanctioned black exploitation. But Hoover’s response illustrates how the black community was constructed outside of state protection and treated instead as an internal insurrection.

In responding to racial unrest, the FBI emphasized the need for increased cooperation and communication between the military and police authorities. The FBI encouraged a “prompt, efficient, and impressive display of force” by the police and advised every police organization to have a written plan for riot control.<sup>101</sup> These plans included “steps to be taken if the riot exceeds the capabilities of the department, which could be a mutual-aid pact with police of adjacent communities and/or steps to obtain assistance from the National Guard or Federalized troops if the riot reached such proportion.”<sup>102</sup> The report also read, “[T]he utilization of military assistance should be effected without undue delay and the lines of communication should be such that authority for the use of [military] troops could be speedily obtained.”<sup>103</sup> Thus, if blacks could organize themselves into violent militias with the aim of disturbing the American social order, then the government would counter with greater police armament.

The militarized response to the riot also had the more direct effect of marking black communities as the objects of military-like control. As military personnel patrolled black neighborhoods with armored trucks and weaponry, the State communicated its politics of protection. Militarized police control protected white communities by patrolling black ones. Not only were black communities to receive no state protection, but the rhetoric of law and order would also label them an internal threat. Even as the Kerner Commission’s report revealed greater attention could be placed on the substandard conditions of urban ghettos, the government’s response was to strengthen its ability to respond to black resistance with military-style tactics.

After Watts, a presidential task force that convened in response to the riots offered a number of official recommendations, many of which signaled a trend of increased police-military coordination and armament. The task force

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100. *The Problem with “Thugs,”* BALTIMORE SUN (Apr. 29, 2015), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-thugs-freddie-gray-20150429-story.html> [https://perma.cc/46D8-ABJJ].

101. FED. BUREAU OF INVESTIGATION, *supra* note 98, at 27.

102. *Id.* at 25.

103. *Id.* at 27.

recommended enhanced interjurisdictional police coordination techniques and a military liaison system for metropolitan police departments.<sup>104</sup> The task force also recommended increased development of riot control equipment for police utilization and “a national conference or series of conferences among police officials for riot prevention and control training.”<sup>105</sup> Following the riots, the LAPD took this mandate to heart. For top police officials in the LAPD, the riots revealed that police were unprepared to contain the threat posed by racial uprisings. LAPD officials turned to the military for tactical training and guidance.<sup>106</sup> The LAPD began “informally consulting” with the Marines and turned to military personnel for techniques to respond to snipers.<sup>107</sup> Embarrassed by its lack of preparedness during the city’s unrest, the LAPD began to cultivate a new breed of police unit that would adopt military tactics and weaponry. What emerged was the first Special Weapons and Tactics (SWAT) team.<sup>108</sup> Not surprisingly, the SWAT team’s first target was the Los Angeles chapter of the Black Panther Party. On December 6, 1969, a SWAT team raided the party’s Los Angeles headquarters,<sup>109</sup> and after an exchange of gunfire,<sup>110</sup> several members of the Black Panther Party surrendered to a militarized police force.<sup>111</sup> But this was only the beginning of SWAT team activity. Soon, police departments across the country were fighting to replicate the LAPD’s model. By 2010, SWAT “spread to nearly every city in the country,”<sup>112</sup> and federal programs have equipped them with greater amounts of surplus military equipment.<sup>113</sup>

#### D. Protecting Advantage

The story of urban unrest in the 1960s can help us analyze police militarization and racial uprisings today. Today, the proliferation of SWAT teams has come under increased scrutiny as an unnecessary form of police militarization. But what we now think of as excessive domestic militarism was once sold to the American public as an appropriate response to racial uprisings and black nationalist groups. Indeed, excessive showings of force by police

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104. REPORT OF THE PRESIDENT’S TASK FORCE ON THE LOS ANGELES RIOTS (Sept. 17, 1965), reprinted in URBAN RACE RIOTS 13 (Michal R. Belknap ed., 1991).

105. *Id.*

106. BALKO, *supra* note 58, at 53.

107. *Id.* at 60.

108. Clyde Haberman, *The Rise of the SWAT Team in American Policing*, N.Y. TIMES (Sept. 7, 2014), <http://www.nytimes.com/2014/09/08/us/the-rise-of-the-swat-team-in-american-policing.html> [<https://perma.cc/W6C6-2YFM>].

109. BALKO, *supra* note 58, at 76–77.

110. *Id.* at 78 (“Over the next three hours, LA police and the Black Panthers exchanged over five thousand rounds in a crowded city setting.”).

111. *See id.* at 79 (“The Panthers awoke to men with guns breaking down their door and firing bullets into the walls. Paramilitary police tactics were new at the time . . .”).

112. *Id.* at 80.

113. Haberman, *supra* note 108.

were more readily accepted when buried in the narrative of white protection and black threat. The troubling reality is that the justifications for police militarization then actually reflect many of the justifications for police militarization now—the dangerous military tactics used by police are a perfect complement to the dangerous black and brown classes that are subject to police control.

I draw this connection to encourage critics of police militarization to pay close attention to the rhetoric emerging from cities like Baltimore and Ferguson. Wherever the narrative of “law and order” is used to describe black resistance to the everyday violence of poverty, demilitarization activists should exercise caution. Indeed, “law and order” is a coded term meant to reassure white America that its homes and neighborhoods will remain within the bounds of militarized state protection. Demilitarization activists should continue to assert that black resistance to police brutality does not signal a loss of “law and order.” Rather, the real indication of lawlessness is government disregard for black life and opportunity, laid bare by fatal encounters with the police.

At the same time, I draw this connection to make an interrelated claim. Namely, police militarization also reflects the underprotection of black and brown communities. Urban uprisings in the 1960s reveal black frustration with conditions in the inner city. However, police militarization was a misguided government response to demands for greater racial equity and resource distribution between blacks in urban ghettos and the white elite. Blacks wanting increased state protection from poverty and exploitation were instead met with greater state repression in the form of militarized overpolicing. Militarism was again cast as an appropriate response to social problems.

When police organize around the tenets of militarism and the military model, violence is so often the result of encounters between law enforcement and the black community. Instead of providing protection and service, militarized police patrol communities as war zones, signaling their racial politics of protection. Black communities are treated as sites of internal insurrection, constructing members of the community outside the boundaries of citizenship and protection. Protection is currency, used by the State to strengthen, rather than dissolve, racial hierarchies.

### III.

#### RACE, POLICE MILITARIZATION, AND THE WAR ON DRUGS

In this Part, I expand upon the racial politics of protection framework to examine the War on Drugs, when police militarization reached a high-water mark atop the wave of a deeply racialized political project. Race politics influenced the militarization of the police during the War on Drugs, and the racial politics of protection can help us understand this relationship.

Much has been written about the War on Drugs and its impact on the criminal justice system, mass incarceration, and the social and economic

prospects of the black and brown community.<sup>114</sup> Recently, considerable attention has also been given to the role of the drug war in expanding police militarization across the country. In the early 1970s President Richard Nixon first popularized the term “drug war”; President Ronald Reagan later transformed the rhetorical war into an actual war that facilitated greater collaboration between the military and the police. In 1981, Congress enacted the Military Cooperation with Law Enforcement Officials Act (the Act).<sup>115</sup> The Act “expanded the powers of the military to cooperate with law enforcement by providing equipment, research facilities, and information; by training and advising police on the use of loaned equipment; and by assisting law enforcement personnel in keeping drugs from entering the country.”<sup>116</sup> As a result, in 1984, the military provided \$100 million in drug war assistance, including aerial surveillance, transport of enforcement personnel, and loans of equipment and personnel.<sup>117</sup> In 1989, Congress passed the National Defense Authorization Act (NDAA), further increasing the role the Department of Defense would play in carrying out the drug war.<sup>118</sup>

NDAA also instituted the Defense Department’s 1033 Program (Program). Under the 1033 Program, local police departments could apply for surplus military equipment from the federal government with virtually no showing of need or public oversight.<sup>119</sup> Still thriving today, surplus equipment under the Program is not just restricted to police departments. Under the Program, even school districts can, and have, applied for surplus military equipment.<sup>120</sup> By 2013, the value of property transferred through the Program reached nearly \$450 million.<sup>121</sup> The Program further ramped up the drug war by giving preference to agencies that requested the equipment for drug enforcement purposes<sup>122</sup> and requiring that agencies receiving the Program equipment use it within one year of receipt.<sup>123</sup>

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114. See also CHARLES BOWDEN, *DOWN BY THE RIVER: DRUGS, MONEY, MURDER, AND FAMILY* (2002). See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

115. Pub. L. 97-86, tit. IX, § 905(a)(1), 95 Stat. 1114 (1981) (codified as amended at 10 U.S.C. §§ 371–78 (2012)).

116. Kealy, *supra* note 22, at 409.

117. PRESIDENT’S COMM’N ON ORGANIZED CRIME, *AMERICA’S HABIT: DRUG ABUSE, DRUG TRAFFICKING, AND ORGANIZED CRIME* 380 (1986).

118. National Defense Authorization Act, Pub. L. 101-189, div. A, tit. XII, §1202(a)(1), 103 Stat. 1563 (1989) (codified as amended at 10 U.S.C. § 124(a) (2012)).

119. ACLU, *WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING* 16 (2014).

120. Dylan Scott, *Report: School Districts Are Receiving Free Military Gear from the Pentagon*, TPM (Sept. 15, 2014), <http://talkingpointsmemo.com/dc/school-districts-1033-program-military-equipment> [https://perma.cc/Z88Y-CF8F].

121. ACLU, *supra* note 119, at 24.

122. Taylor Wofford, *How America’s Police Became an Army: The 1033 Program*, NEWSWEEK (Aug. 13, 2014), <http://www.newsweek.com/how-americas-police-became-army-1033-program-264537> [https://perma.cc/M9G5-JJ2P].

123. ACLU, *supra* note 119, at 16.

The War on Drugs also expanded the number of joint operations and training opportunities between the military and the police. In 1989, President George H.W. Bush created JTF-6, special task forces designed to “coordinate the anti-drug efforts of the military and police agencies and to provide military reinforcements to law enforcement agencies for anti-drug efforts.”<sup>124</sup> JTF-6 have trained thousands of police officers in “skills such as marksmanship, interview and interrogation, narcotics interdiction, and field tactical operations.”<sup>125</sup>

In order to wage the War on Drugs, police and military officials have found more ways to support each other. While there is no shortage of evidence drawing connections between the War on Drugs and police militarization, minimal attention has been paid to the racial dimensions of this process.

#### A. *The Impact of Race*

Leading scholars have described the War on Drugs as a concerted political strategy to translate racialized fear and resentment into political opportunity for Republicans and Democrats alike.<sup>126</sup> When President Reagan first announced the drug war, rates of drug abuse in the country were steadily declining, and had been for some time. Less than 10 percent of Americans considered substance abuse among the nation’s more pressing issues.<sup>127</sup> Yet the rhetorical value of the War on Drugs was not lost on politicians or the American public. The Reagan administration funneled millions of dollars into the War on Drugs and waged an equally influential public relations campaign that demonized drug users and poor communities of color.<sup>128</sup> Racist tropes like the so-called “crack mother” and “crack baby” were circulated to win white support for the War on Drugs.<sup>129</sup>

The drug war also institutionalized racist politics of protection that further entrenched white advantage. Given the gross disparities in arrests, sentencing, bail amounts, and detention, there is no doubt that blacks are singled out for harsher punishment through our drug laws. Research shows that whites are just as likely to use drugs as blacks<sup>130</sup> and are *more likely* to sell drugs.<sup>131</sup> In 1980,

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124. Kealy, *supra* note 22, at 419.

125. *Id.* In 1999 alone, JTF-6 employed 3,000 members of the military for the War on Drugs and trained 2,700 law enforcement officers. *Id.* at 419 n.240.

126. *See, e.g.*, ALEXANDER, *supra* note 114.

127. *Id.*

128. For a discussion on the demonization of black mothers and black women during the War of Drugs, see DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1998).

129. *See generally* Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991).

130. *Criminal Justice Fact Sheet*, NAACP, <http://www.naacp.org/pages/criminal-justice-fact-sheet> [https://perma.cc/L644-U4HH] (last visited Oct. 15, 2015).

131. Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INSTITUTION (Sept. 30, 2014), <http://www.brookings.edu/blogs/social-mobility-memos/posts/>

whites were about 45 percent more likely to sell drugs than blacks.<sup>132</sup> Other studies show that “6.6 percent of white adolescents and young adults (aged 12 to 25) sold drugs, compared to just 5.0 percent of blacks.”<sup>133</sup> Yet while black people represent 12 percent of the total population of drug users, they represent 38 percent of those arrested for drug offenses and 59 percent of those in state prison for a drug offense.<sup>134</sup>

Black defendants also receive harsher and longer sentences for drug offenses. In fact, black people serve virtually as much time in prison for drug offenses (58.7 months) as whites do for violent offenses like assault, rape, or homicide (61.7 months).<sup>135</sup> Current practices and policies in policing and throughout the criminal justice system clearly communicate that black lives are less worthy of compassionate alternatives to incarceration and more worthy of state surveillance and control. These same practices bestow upon whites protection and leniency from incarceration. Some forms of leniency and protection are doled out in more covert (although incredibly influential) ways—through police and prosecutorial discretion, for example. While whites and people of color use and sell drugs at comparable rates “people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations.”<sup>136</sup>

The federal government also demonstrates leniency through more explicit means, such as the federal crack versus powder cocaine sentencing schemes, which once made it one hundred times more costly to be caught with crack versus the more expensive powder cocaine,<sup>137</sup> and the disproportionate use of public video surveillance cameras in black neighborhoods.<sup>138</sup> The racial politics of protection helps us understand that even as the nation adopts punitive policies that wreak havoc on minority communities, whites are still disproportionately shielded from the wide-ranging misery that these policies confer. Regardless of militarized policing and the ever-expanding criminal justice system, whiteness still awards people substantial protection.

This racial politics of protection has resulted in the overincarceration of blacks, as well as the systematic underprotection of the black community. While Reagan might have gained political capital by overpolicing black Americans through the drug war, it was President Bill Clinton, a Democrat,

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2014/09/30-war-on-drugs-black-social-mobility-rothwell [https://perma.cc/T38E-LUPS].

132. *Id.*

133. *Id.*

134. *Criminal Justice Fact Sheet*, *supra* note 130.

135. *Id.*

136. *Race and the Drug War*, DRUG POL’Y ALLIANCE, <http://www.drugpolicy.org/race-and-drug-war> [https://perma.cc/VZ39-TPH4] (last visited Feb. 25, 2016).

137. *Fair Sentencing Act Summary*, ACLU, <https://www.aclu.org/node/17576> [https://perma.cc/U94R-GXQQ] (last visited Jan. 15, 2016).

138. Jay Stanley, *Police Cameras Outside Your Door*, ACLU (Oct. 4, 2012), <https://www.aclu.org/blog/police-cameras-outside-your-door> [https://perma.cc/4J6A-6EQB].

who would win political favor through the systematic underprotection of blacks. As the War on Drugs funneled more blacks into the criminal justice system than ever before, the Clinton Administration sought to capitalize on its political popularity by socially marginalizing those caught in its web. Clinton removed the social safety net for drug offenders by excluding them from federal financial aid for higher education, eligibility for government food assistance, and access to publically subsidized housing.<sup>139</sup> As a result, Clinton's political posturing eliminated many of the traditional tools of social mobility available to low-income people. This ensured that members of the black community, who had been disproportionately funneled into the criminal justice system by racist law enforcement, were then stripped of access to state social protection.

In addition to the life-long social penalties that often accompany drug convictions, the economic forces driving the drug war worked to further disadvantage those caught in its web. Although their economic prospects are bleak, blacks in the criminal justice system still serve an important economic role for the nation. Many corporations, both globally and nationally, rely on prisons as an important source of profit and revenue.<sup>140</sup> Prisons have swelled to a multibillion-dollar industry,<sup>141</sup> and at the center of prison profiteering, human lives produce massive profits. Private prisons often charge high daily rates for prisoners, telecommunications companies levy exorbitant fees for prison phone calls, and construction companies generate billions of dollars through a seemingly never-ending cycle of prison construction.<sup>142</sup> Much has been written about the so-called "prison industrial complex"—used to describe the growing links between the penal industry, corporations, and the government. Prison activists and abolitionists coined the term in part to describe "a set of bureaucratic, political, and economic interests that encourage increased spending on imprisonment, regardless of the actual need."<sup>143</sup>

More attention should be given to the increasing relationship between the "prison industrial complex" and the "military industrial complex."<sup>144</sup> I have

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139. See, e.g., ALEXANDER, *supra* note 114.

140. See, e.g., PRISON PROFITEERS: WHO MAKES MONEY FROM MASS INCARCERATION (Tara Herivel & Paul Wright eds., 2007).

141. Eric Schlosser, *The Prison-Industrial Complex*, ATLANTIC (Dec. 1998), <http://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669> [<https://perma.cc/6JJV-9U4X>] ("What was once a niche business for a handful of companies has become a multibillion-dollar industry with its own trade shows and conventions, its own Web sites, mail-order catalogues, and direct-marketing campaigns.")

142. *Id.*

143. *Id.*

144. The phrase "military-industrial complex" entered mainstream lexicon after President Dwight D. Eisenhower cautioned the American people against the defense industry's growing power in politics during his 1961 farewell address to the American people. Dwight D. Eisenhower, *Farewell Radio and Television Address to the American People* (Jan. 17, 1961), <http://www.presidency.ucsb.edu/ws/?pid=12086> [<https://perma.cc/2K2M-R9US>].

argued that the military and the police continue to share tactics, equipment, and information, but I also echo the findings of scholars who assert that the military and the police share important “structural features” driven by economic exploitation. As Professor Angela Davis writes:

Both systems generate huge profits from processes of social destruction. Precisely that which is advantageous to those corporations, elected officials, and government agents who have obvious stakes in the expansion of these systems begets grief and devastation for poor and racially dominated communities in the United States and throughout the world. The transformation of imprisoned bodies—and they are in their majority bodies of color—into sources of profit who consume and also often produce all kinds of commodities, devours public funds, which might otherwise be available for social programs such as education, housing, childcare, recreation, and drug programs.<sup>145</sup>

I quote Professor Davis to assert that connections between the police and the military are driven by a political economy that values corporate profit over the flourishing of human life. Her argument also relates to some of my central findings, including the point that the police and the military share technologies, training, and equipment that allow them to “mutually support and promote each other.”<sup>146</sup> As the proliferation of U.S. weapons and military campaigns across the globe create new knowledge and equipment, we can expect an increase in police militarization at home. As the line between the military and police fades, the economic logic behind the War on Drugs, the War on Terror, mass surveillance, and global military campaigns in Iraq, Afghanistan, Syria, and Yemen, ultimately strengthens. In this economic logic, many black and brown lives are more valuable in bondage than they are in freedom. This is the economy behind the racial politics of protection. Blacks are overpoliced and underprotected, in part, because it is economically lucrative for a minority of people. As connections between the military and the police expand, both the “prison industrial complex” and the “military industrial complex” become increasingly profitable areas of business. The more these two complexes find new ways to stimulate and support each other, the more corporate and government financial stakes increase. Slowing the militarization of the police will require greater attention to the monetary relationships that exist between the U.S. military and law enforcement.

#### IV.

##### WAR AT HOME

On August 9, 2014, police in Ferguson, Missouri, fatally shot an unarmed, black teenager, Michael Brown, and left Brown’s body facedown in the middle

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145. ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 88 (2003).

146. *Id.* at 86.

of Canefield Drive for four hours.<sup>147</sup> For four hours, Brown's lifeless body laid in plain view of his neighbors, family, and community members.<sup>148</sup> Shortly after the death of Brown, but especially after the nonindictment of the white officer who shot him, protests erupted in Ferguson.<sup>149</sup> Many believed that black resistance to state-sanctioned physical violence and economic suppression in the city was long overdue. According to the Department of Justice's 2015 Report on the Ferguson Police Department, the black population in Ferguson rests at 67 percent, but blacks accounted for 93 percent of arrests, 95 percent of the jailed population, 92 percent of cases with active warrants in the jurisdiction, and 85 percent of vehicle stops.<sup>150</sup> The Ferguson Police Department has a clear revenue-generating mandate—each interaction with police results in fines, fees, and restitution that are dispersed into the city's general fund.<sup>151</sup> For 2015, Ferguson anticipated that \$3.09 million of its projected \$13.26 million budget would come from court fines and fees.<sup>152</sup> In other words, court fines and fees, disproportionately levied against the black community, comprise nearly 25 percent of the city's revenue. This means that discriminatory policing effectively fuels a large portion of the City of Ferguson. These were the conditions protested in Ferguson, and the government responded with a militarized reaction.<sup>153</sup>

One photo circulated in the wake of the Ferguson protests poignantly depicts the militarized police response. In the photo, a white police officer, dressed in a military uniform and helmet, sits atop an armored tank that reads "ST. LOUIS COUNTY POLICE."<sup>154</sup> The officer stares down the barrel of a semiautomatic rifle, pointed directly into a crowd of protestors. One young black protestor, dressed in a plain white t-shirt, faces the officer, both hands raised above his head in the "hands up, don't shoot" stance popularized in the wake of the Ferguson protests. There are hundreds of photos like this emerging

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147. Julie Bosman & Joseph Goldstein, *Timeline for a Body: 4 Hours in the Middle of a Ferguson Street*, N.Y. TIMES (Aug. 23, 2014), <http://www.nytimes.com/2014/08/24/us/michael-brown-a-bodys-timeline-4-hours-on-a-ferguson-street.html> [<https://perma.cc/S5HR-MYCK>].

148. *Id.*

149. *Michael Brown's Shooting and Its Immediate Aftermath in Ferguson*, N.Y. TIMES (Aug. 25, 2014), [http://www.nytimes.com/interactive/2014/08/12/us/13police-shooting-of-black-teenager-michael-brown.html/#time348\\_10366](http://www.nytimes.com/interactive/2014/08/12/us/13police-shooting-of-black-teenager-michael-brown.html/#time348_10366) [<https://perma.cc/H4V7-LJTZ>].

150. Wilson Andrews, Alicia Desantis & Josh Keller, *Justice Department's Report on the Ferguson Police Department*, N.Y. TIMES (Mar. 4, 2015), <http://www.nytimes.com/interactive/2015/03/04/us/ferguson-police-racial-discrimination.html> [<https://perma.cc/TYE7-G3JH>].

151. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 9 (2015).

152. *Id.* at 10.

153. See Glenn Greenwald, *The Militarization of U.S. Police: Finally Dragged into the Light by the Horrors of Ferguson*, INTERCEPT (Aug. 14, 2014), <https://firstlook.org/theintercept/2014/08/14/militarization-u-s-police-dragged-light-horrors-ferguson> [<https://perma.cc/YG7N-VNWX>].

154. Nicole Flatow, *The Most Outrageous Police Tactics in Ferguson*, THINKPROGRESS (Aug. 14, 2014), <http://thinkprogress.org/justice/2014/08/14/3471088/the-most-outrageous-police-tactics-in-ferguson> [<https://perma.cc/8ZXS-2MTC>].

from Ferguson, depicting the military-like control of black bodies. While deeply troubling, militarized policing in Ferguson is not an exception. Today, police departments in many communities in America resemble an army.

*A. The Reality of Police Militarization*

Across the country, police departments are using aggressive military tactics and weapons to enforce the law. In its June 2014 report, “War Comes Home,” the American Civil Liberties Union (ACLU) documented military weaponry flooding into local police departments.<sup>155</sup> State and local agencies have purchased hundreds of lethal weapons, tactical vests, and body armor at no cost and with virtually no public oversight through the Department of Defense’s 1033 Program.<sup>156</sup> The ACLU report found a total of 15,054 items of battle uniforms, or personal protective equipment, received by sixty-three responding agencies during their investigation period.<sup>157</sup> Five hundred law enforcement agencies have received Mine Resistant Ambush Protected (MRAP) vehicles built to withstand armor-piercing roadside bombs. In 2007, “the United States spent \$50 billion to produce 27,000 MRAPs and deploy them to Iraq and Afghanistan.”<sup>158</sup> Now out of date, or no longer needed in foreign battlefields, MRAPs have made their way to local police departments where officers patrol communities like war-zones.

In addition to the proliferation of military weapons throughout local law enforcement departments, police training also exposes aspiring officers to the culture of militarism that now permeates the force. According to the U.S. Department of Justice’s Bureau of Justice Statistics Report on State and Local Law Enforcement Training Academies (BJS Report), the majority of police recruits receive their training in academies with a stress-based military orientation.<sup>159</sup> Stress-based military training is designed to prepare young recruits for combat in war zones by teaching recruits to force the enemy into submission. As one police trainer put it, “We trainers have spent the past decade trying to ingrain in our students the concept that the American police officer works a battlefield every day he patrols his sector.”<sup>160</sup> This training does not prepare recruits to win community trust by solving crimes and protecting constitutional rights.<sup>161</sup> In this logic, police officers are transformed into soldiers, and black and brown communities morphed into battlefields.

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155. ACLU, *supra* note 119.

156. *Id.* at 25.

157. *Id.* at 5.

158. *Id.* at 22.

159. *Id.* at 18.

160. Glenn French, *Police Militarization and an Argument in Favor of Black Helicopters*, POLICEONE (Aug. 13, 2013), <http://www.policeone.com/SWAT/articles/6385683-Police-militarization-and-an-argument-in-favor-of-black-helicopters> [<https://perma.cc/EW5U-9VR5>].

161. See Karl W. Bickel, *Recruit Training: Are We Preparing Officers for a Community Oriented Department?*, COMMUNITY POLICING DISPATCH (June 2013), <http://cops.usdoj.gov/>

Military-style tactics are also becoming conventional police strategies. One of the clearest manifestations of military-style tactics is the rise of SWAT teams. A survey of police departments across the country reveals that “the number of SWAT teams in small towns grew from 20 percent in the 1980s to 80 percent in the mid-2000s, and that as of the late 1990s, almost 90 percent of larger cities had them.”<sup>162</sup> It is estimated that “the number of SWAT raids per year grew from 3,000 in the 1980s to 45,000 in the mid-2000s.”<sup>163</sup> Contrary to popular belief that SWAT teams are utilized in active shooter and emergency situations, a report conducted by the University of Missouri–St. Louis’s Department of Criminology and Criminal Justice found that from 1986 to 1998 “the overwhelming number of SWAT deployments studied were for the purpose of executing a warrant (34,271 for warrant service, in contrast to 7,384 for a barricaded suspect and 1,180 for hostage-taking cases).”<sup>164</sup> Many of these SWAT teams used flash-bang grenades, combat helmets, and battle-dress uniforms to serve search warrants, conduct investigations, and search for drugs.<sup>165</sup> The proliferation of paramilitary policing has occurred with great speed and little public oversight.

This culture of paramilitarism in policing has been particularly costly to minority communities and led to unnecessary loss of life. In Detroit, the killing of a black child, seven-year-old Aiyana Stanley-Jones, drew national attention. Early one summer morning, Aiyana slept beside her grandmother when a SWAT team mistakenly raided her home searching for a suspect in a homicide investigation. One officer fired at Aiyana, striking her head and killing her.<sup>166</sup> Many were outraged at the senseless murder of an innocent child in what appeared to be a military raid fueled by a combat mentality. Many also condemned the excessive use of force that unfairly targeted the black community in Detroit. This disproportionate use of military force against black and brown communities has been observed nationwide. The ACLU found that the use of paramilitary weapons and tactics primarily impacted people of color, particularly when these tactics were used to execute drug searches.<sup>167</sup> Ultimately, police were much more likely to deploy paramilitary tactics to execute a search warrant if all the participants were people of color (84 percent deployment rate) than when all the participants were white (65 percent deployment rate).<sup>168</sup>

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[html/dispatch/06-2013/preparing\\_officers\\_for\\_a\\_community\\_oriented\\_department.asp](http://www.aclu.org/html/dispatch/06-2013/preparing_officers_for_a_community_oriented_department.asp)  
[<https://perma.cc/9NB5-RJUP>].

162. ACLU, *supra* note 119, at 19.

163. *Id.*

164. *Id.*

165. *Id.* at 5–6.

166. Charlie LeDuff, *What Killed Aiyana Stanley-Jones?*, MOTHER JONES (Nov.–Dec. 2010), <http://www.motherjones.com/politics/2010/11/aiyana-stanley-jones-detroit>  
[<https://perma.cc/DS5G-BBLS>].

167. ACLU, *supra* note 119, at 2.

168. *Id.* at 36.

Acknowledging that military policing, and policing more broadly, disproportionately impacts black and brown people, this Note has looked beyond the racial impacts of this phenomenon to examine its racialized roots. Government-sanctioned police militarization is just part of the story in Ferguson, Baltimore, and countless other cities across the country. By centering on questions of race, we can begin to understand what work race does in facilitating police militarization. At the same time, we may also understand how police militarization constructs race and reinforces racial hierarchies in America.

When analyzing the contemporary state of police militarization, we must first disassociate police militarization from actual notions of crime. Some people view increased police militarization as evidence that police work has become more dangerous. Proponents of this argument often see increased police armament as a response to an upsurge in dangerous crime. In fact, since the mid-1990s the job of police officers has become increasingly safer. It is as safe today as it has ever been.<sup>169</sup> The number of officer deaths in 1975 more than halved by 2014, despite many more police officers on the street.<sup>170</sup> Rates of violent crime have also reduced significantly since the mid-century. The year 2013 saw nearly 9,000 fewer homicides, about 27,000 fewer rapes, and about 368,000 fewer aggravated assaults than 1991.<sup>171</sup> This reduction occurred when the country's population increased by sixty-four million people.<sup>172</sup> This means that police militarization has continued without a logical connection to increased risk to police officers.

Rather than a response to increases in violent crime, police militarization can be viewed as a state-sanctioned form of racemaking. As the federal government funnels military equipment and training into local police departments, it enables the presence of tanks on city streets, networks of surveillance cameras surreptitiously patrolling entire communities,<sup>173</sup> and even assault weapons and grenade launchers in public schools.<sup>174</sup> Even if the official police mandate is to protect and serve *all* people, the current state of policing is

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169. See Radley Balko, *This Isn't 1968. Baltimore Isn't Watts. And Hillary Clinton Isn't Michael Dukakis*, WASH. POST (May 6, 2015), <http://www.washingtonpost.com/news/the-watch/wp/2015/05/06/this-isnt-1968-baltimore-isnt-watts-and-hillary-clinton-isnt-michael-dukakis> [https://perma.cc/2HC5-3MVH].

170. *Officer Deaths by Year*, NAT'L L. ENFORCEMENT OFFICERS MEMORIAL FUND (Apr. 9, 2015), <http://www.nleomf.org/facts/officer-fatalities-data/year.html> [https://perma.cc/3BMT-ZQ9B].

171. Balko, *supra* note 169.

172. *Id.*

173. John Duda, *Looking at Baltimore's Surveillance Cameras*, INDYPENDENT READER, <https://indyreader.org/content/looking-baltimores-surveillance-cameras> [https://perma.cc/7QUK-U7AX] (last visited May 13, 2015).

174. Niraj Chokshi, *School Police Across the Country Receive Excess Military Weapons and Gear*, WASH. POST (Sept. 16, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/09/16/school-police-across-the-country-receive-excess-military-weapons-and-gear> [https://perma.cc/7233-C2BP].

such that black and brown communities are subject to greater surveillance and control. Unlike poor and minority communities, many white communities experience policing of a different nature. Rather than patrol white communities with suspicion, police are often dispatched to white communities to provide security and assistance—this unequal access to security is a key element of the racial politics of protection. Police militarization has the dual impact of increasing state control of black and brown people while simultaneously increasing protections for white people.

Militarized policing creates more opportunities for the surveillance of black and brown bodies in the communities where they live, work, socialize, and attend school. This heightened control is not a result of the inherent dangerousness of these groups or of any enhanced risk to police officers that has accumulated over time. Rather, government programs have made black and brown people vulnerable to militarized control based on the color of their skin. This is a material disadvantage of being black or brown—a racial marker.

Most importantly, the images of black neighborhoods patrolled by tanks and armored vehicles in Ferguson and Baltimore clearly demarcate who is outside of state protection. As in the 1960s, rather than focus on the substantive grievances of marginalized groups, the State treats these groups as an internal insurrection. When black communities are patrolled with weapons built to subdue foreign enemies, this communicates something about the citizenship status of black people—that their status is inferior, that they are dangerous, and that they are somehow outside the American polity. At the same time, an absence of images depicting white communities locked down by militarized police conveys white position within the realm of state protection. White people are treated as full citizens, worthy of the protections and security that this status entails. Protection is manipulated to signal who enjoys full citizenship and who will be relegated to second-class status.

#### CONCLUSION

This Note critically examines history to shed light on police militarization today. It argues that police militarization is a result of concerted political decisions that often trade on racial fear and anxiety. Further, the present state of police militarization on display in cities like Ferguson and Baltimore reinforces racial hierarchies and may have lasting consequences for black citizenship and inclusion.

I conclude with a reflection that I hope will strengthen and solidify the movement for racial justice and police accountability sweeping this nation. Black Americans have an important stake in antiwar and antimilitarization campaigns. The line between the military and police is blurring, and this means that black and brown communities are poised to be victims of intensified, military-like police control, while remaining severely underprotected by the

State. Both nationally and globally, freedom from military control is also a material advantage of whiteness that too often goes unacknowledged.

Mainstream America is increasingly scrutinizing the expansion of police militarization, especially in the areas of domestic surveillance. With high-profile whistleblowers like Edward Snowden and Chelsea Manning, the victims of heightened state control now have white faces. There is ground for an alliance of interest across racial groups, but the American mainstream must first acknowledge that police militarization has been facilitated by racist ideologies. We must also reject conversations that ignore the racial underpinnings of police militarization. To neglect race is to neglect one of the driving forces behind police militarization.

I also want to conclude with a call for activists and scholars to explore the critical intersections of race, foreign wars, and militarization. There are many ways that these three social forces shape everyday life in this country, and I am increasingly aware that my own life trajectory has been intimately shaped by all three. I was born in Khartoum, Sudan. Most of my family belongs to a small but well-known indigenous tribe found in the northeast part of the country along the banks of the Nile River. In the 1960s, as a result of the construction of the Aswan Dam, much of my family was displaced. The Aswan Dam flooded parts of the Nubian region and prevented the annual inundation of the Nile that provided valuable nutrients to the soil.

Many will also recognize Sudan as a site of consistent political strife and military campaigns. One of those campaigns was the twenty-five-year Civil War between Southern Sudanese liberation fighters and the Northern Sudanese government. Racist ideology further complicated the dimensions of this war because many Northern tribes are significantly lighter skinned than the Southern tribes and received material advantages from the British colonial empire.

The war, and its impact on the country, was one of the primary reasons my father and mother decided to leave Sudan and immigrate to the United States. In a pre-9/11 world, my father was granted political asylum, which involved battling an incredibly racialized immigration process. I was four years old at the time, a black female, a Muslim, and a new immigrant. Through implicit and explicit signals, I quickly caught on to the importance of my racial identity in my new home, but it was not until after 9/11 that I began to unpack the connection between my life trajectory and the wars and military campaigns that shaped it.

When the United States went to war with Afghanistan and declared its so-called War on Terror, I felt like the country had declared war on the entire Muslim world. I knew many Muslims and immigrants who condemned the war, but virtually none of my black friends, teachers, and community members spoke out. Looking back on this experience, I see how bifurcated my young mind must have felt. I knew this war deeply impacted my ethnic and religious

identity, but I could not understand how the war impacted my racial identity. I include this story to lay bare my motivations for this Note. For me, this particular Note is a means of mending that bifurcation, of putting together that which has been falsely severed. As the United States continues to beat the drums of war across the globe, those of us at the intersection of marginalized groups should shine a light on the dangerous and impoverished logic of wars abroad and at home.