An Abolitionist Horizon for (Police) Reform

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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 re legitimize 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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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.

INTRODUCTION

“We used to think that if we improved policing we could escape its violence,” Rachel Herzing began.1 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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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.²

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,³ 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.⁴ The nationwide protests catapulted prison and police abolition into the mainstream and, in the process, unsettled the intellectual foundations of liberal police reform efforts.⁵

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

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.7

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.8 As I explain in Part I, since Ferguson and Baltimore, legal scholars have been

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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 E. 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. PEAFF, 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 obscures distinct understandings of the nature of the problem as mass vs. over incarceration). Some scholars prefer the moniker “hyper” to mass incarceration to connotate 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. 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 re legitim ize their social function despite the structural turn in conceptions of police violence. 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. In Part III, I draw on contemporary organizing to deepen the critique of police and to develop an

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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).

abolitionist horizon that reimagines and redirects reform toward the political, economic, and social transformations necessary to confront the enduring realities of police violence.\textsuperscript{12} 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.\textsuperscript{13} 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 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.\textsuperscript{14} 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.\textsuperscript{15}


\textsuperscript{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 HARNET & FRED MOTEN, THE UNDERCOMMONS: FUGITIVE PLANNING & BLACK STUDY 42 (2013).

\textsuperscript{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. 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. 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. 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; 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. Zimmer, 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 “taking 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. It suggests how mainstream accounts of police within law and legal scholarship fail to address the experiences of communities disproportionately subjected to police violence.

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
and produce our political, economic, and social order. 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. Judges allow...
police to “do mostly anything they want,” including harassment, brutalization, killing, SWAT raids, body cavity searches, and the use of chemical weapons. 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). But the Fourth Amendment is not simply permissive of police violence; it amplifies the racialized “risks of being subjected to violence.”

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. This discretion allows police to target poor, Black, and brown people. 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).


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 & Anna 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).


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.\(^29\) Qualified immunity provides police an almost insurmountable defense against civil rights claims.\(^30\) Police union contracts protect police power and insulate police violence from review and consequence.\(^31\) Moreover, indemnification practices mean that police do not pay an actual dime of any civil damage awards—local governments do.\(^32\)

(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.\(^33\) 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.\(^34\) 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 (explaining the validity and limits of Feldman’s research).


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.”).


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

In jurisdictions large and small, policing is connected “to cash flow through the courts and correctional agencies.” 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.” These costs are primarily imposed on the poor. 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. The immense powers of police to stop, frisk, cite, arrest, brutalize, and shoot are


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 cancelation 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).


39. Id.
combined with the imperative to generate cash. An estimated ten million people owe more than $50 billion in criminal legal debt.

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

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; Nataf, 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 (“Approximately 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).

summons for all manner of activity.\textsuperscript{44} Police deploy physical force such as shootings, pepper spray, tasers, body cavity searches, and SWAT raids.\textsuperscript{45} Millions of police searches take place annually.\textsuperscript{46} 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.”\textsuperscript{47} As a result, violence is enmeshed in routine policing, including traffic stops.\textsuperscript{48}

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

\begin{itemize}
\item 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).
\item FRIEDMAN, supra note 23, at 6–12.
\item Id.; Fagan & Ash, supra note 36, at 53–54.
\item Harmon, supra note 22, at 315.
\end{itemize}
central to police work. 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. With thousands of police jurisdictions in the country and no government-mandated reporting, the rates of these killings and violence were unavailable. Since then, organizers, journalists, and scholars have worked to compile this information. 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 and make an arrest every three seconds—amounting to more than ten million arrests each year.


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


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


(4) Targeted by Race and Class. Policing is not impartial. 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. 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.


See also Monika 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." 62

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

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., Nnemaya 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 reconstitutes 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 #BlackWomenLivesMatter: 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); Ameta 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. More broadly, policing over time has targeted queer, trans, and disabled people, especially those of color.

(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. 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.” “Cops routinely hurt and humiliate black people because that is what

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”).

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.


67. Roberts, supra note 22, at 262. The carceral state prevents Black people’s political power: it “isolate[s] them in prisons, den[es] 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.”68 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.69

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.70 Some scholars who document the structures of police violence do not advance any mode of reform.71 Others chart more transformative paths.72 Dorothy Roberts recently wrote a sweeping essay calling for abolition constitutionalism.73 Paul Butler calls for abolition and a Third Reconstruction.74 Allegra McLeod advances a project of “substituting a constellation of other regulatory and social projects for criminal law enforcement,”75 and “attempting to achieve peace,

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://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.” 76  Dean Spade champions abolitionist frameworks for enacting transformative change beyond traditional law reform strategies, including, centrally, mutual aid. 77  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.” 78  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.” 79

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

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 prosecutor discretion; and investing more in other social projects. See generally id.


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.”).

confront the contradictions of attempting to reform a system that is central to maintaining a racially and economically stratified society. 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. 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. 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.

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.”).

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. A subset of these scholars push for more democracy within policing, with an emphasis on increasing public participation in criminal law enforcement. Their reforms often take the form of rule of law innovations or community policing and civilian review.


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 degrees); 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.\textsuperscript{87} Powerful segments of the populace have consented to a democratic system that empowers police to punish poor, Black, and brown people.\textsuperscript{88} Fundamentally, our democratic institutions produce police violence, however shallow, captured, raced, and classed our democracy may be.\textsuperscript{89}

Calls for community policing and civilian review overlook critiques and inconclusive evidence over whether either curbs police violence or power.\textsuperscript{90} Many accounts—in disciplines like sociology, history, political science, and American and Black studies—frame community policing as central to government attempts to reestablish democratic governance of policing is that policing does not fall equally on all parts of society.”\textsuperscript{91} Rather than directly address concerns about police violence and economic inequality, the state invested in community policing in an attempt to reestablish

\textsuperscript{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).

\textsuperscript{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.

\textsuperscript{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.”).


control.\textsuperscript{92} Indeed, community policing started as a reform, and is now seen as central to the growth of policing.\textsuperscript{93}

Fundamentally, the “more democracy” frame fails to account for the anti-democratic nature of the carceral state.\textsuperscript{94} 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.\textsuperscript{95} 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.”\textsuperscript{96} 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.”\textsuperscript{97} 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.\textsuperscript{98} 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.\textsuperscript{99}

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

\begin{itemize}
\item \textsuperscript{92} Hinton, supra note 91, at 113–14, 187–91; Heatherton, supra note 91, at 177.
\item \textsuperscript{93} Herzing, supra note 6; Schenwar & Law, supra note 91, at 149.
\item \textsuperscript{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.
\item \textsuperscript{96} Lerman & Weaver, supra note 95, at 8–12.
\item \textsuperscript{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”).
\item \textsuperscript{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”).
\item \textsuperscript{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 McLod, 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”).
\end{itemize}
these impulses, they argue, do not align with optimal social outcomes. These scholars claim that top-down, data-focused, and expert-driven institutions, processes, and policies will restrain police discretion and curb incarceration. Bureaucratic control will bring greater rationality to a system they characterize as rife with irrational outcomes. 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. 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. It will take an upheaval of our conceptions of crime, punishment, and expertise to undo mass criminalization and stop police violence.

More Procedural Justice. Procedural justice is a framework concerned with police legitimacy and authority. 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).


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.
arguments. First, people obey and assist the police when they perceive police as legitimate. 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. Advocates of procedural justice encourage police to foster the perception of fairness to produce legitimacy, which, in turn, is said to encourage public compliance.

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. 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
reputation and record of discrimination.\textsuperscript{111} Moreover, police departments do not measure or hold police accountable for how “procedurally just” they are.\textsuperscript{112}

Nonetheless, adherents advocate for procedural justice trainings for police.\textsuperscript{113} But training is part of the problem.\textsuperscript{114} 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.”\textsuperscript{115} 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.\textsuperscript{116}

Beyond training, some argue that police should shift to a procedural justice model focused on building “social control, solidarity and cohesion.”\textsuperscript{117} 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 impurity 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.\textsuperscript{118} Arguments that the police become forces for social


\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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.


\textsuperscript{116} Lvovsky, supra note 23, at 2006–08.

\textsuperscript{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://perma.cc/5SV8-88LJ] (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.”).

\textsuperscript{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 Anna 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.119 Even where legal scholars worry about police access to big data, they default to developing rules that govern access rather than limiting it altogether.120 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


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”).

“biases” and “unconscious racism.”

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.”

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. From StingRays and Tasers to surveillance drones and facial recognition software, the number and variety of police tools are central to police power. 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. Body cameras retain power, perspective, and control in the

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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).


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

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. CompStat is now widely viewed as having incentivized the rise of stop and frisk in New York City. 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. 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...
called the “two faces” of American freedom. The structures of our colonial slaveholding society have long created freedom for whites on the backs and lands of Indigenous and Black people. Racial violence is a central and persistent feature of U.S. history.

But legal scholarship tends toward contemporary accounts of police. These accounts root police in the nineteenth century with the establishment of metropolitan police departments in London and Boston. 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. 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.

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. 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; KELLY LYLTE 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. FREEMAN, 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).


137. See, e.g., FREEMAN, 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. . . . [a]nd 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.138 Amidst movements and rebellions, the federal wars on crime and poverty contributed to the exponential growth of policing and incarceration.139 Even community policing was central to a project of relegitimization after rebellion.140

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.


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]o liberal 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.¹⁴¹ 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.¹⁴² 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.¹⁴³ 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.¹⁴⁴ But even before 2020, a growing number of abolitionist

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


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).

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.145

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.146

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).”147

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.148 As a fundamental building


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/FKX8-5VSP]. 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-I.pdf [https://perma.cc/24YV-ER0M].
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.”149 Police abolition challenges the existence of police as “an inevitable fixture in society.”150

In abolitionist thinking, policing and incarceration are contingent, rather than necessary, forms of violence, constitutive of the terrain of inequality and maldistribution.151 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.152


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.”).


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. 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. Scholars in other disciplines have investigated the emergence of police within the history of enslavement and settler colonialism. The roots of modern anti-welfare politics); **Jonathan Simon**, *Governings Through Crime* 18 (2007) (“No doubt we do govern the poor through crime, ... reclassifying, 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 Bickett & 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).


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. These policing efforts sought to monitor, control, suppress, and kill Black and Indigenous people: to exploit labor, life, and land. From 1704 to the mid-1860s, almost all Southern colonies and states developed slave patrols. Early slave patrols often drew patrols from preexisting militias that settlers created “almost as soon as the first settlers’ ships touched land” to fight Indigenous people and competing colonial powers.

Runaway slaves were among “the greatest problems of slave government,” and slave revolts were “the most fear-invoking” for slaveowners. From 1865 to 1866, the possession of firearms, and insulting gestures or acts to criminalize and control the movements of newly freed Black people and their labor between 1865 and 1866. David W. Oshinsky, “Worse Than Slavery.”

A Brief History of Slavery and the Origins of American Policing

Transitional Police Type


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.


159. December 2017, 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.”

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.”


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.”161 Similarly, criminalization, incarceration, and policing were central to Indigenous dispossession.162

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.163 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.”164

2. Material

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

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 onto 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.


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.

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 disenchanted youth.”

Prisons and police became “partial geographical solutions to political economic crises”—and their work was particularly focused on Black and brown people.

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. 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.” At the top of the list of twelve municipalities, Oakland spent 41.2 percent of its general fund expenditures on the police department. For every dollar Oakland spent on the police department from 2015 to 2017, it spent only eight cents on housing and community development. 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.”

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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.


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.

Policing and incarceration have become fundamental tools for neoliber-
al state management. As the state has deregulated markets, privatized
services, cut welfare, and divested from public infrastructure like trans-
portation and housing, it has invested in police and prisons. The state has built through
policing “a monopoly over emergency response, dealing with crisis, resolving
interpersonal conflicts and much more.” Policing and imprisonment have
become the state’s responses to social problems like houselessness, mental health
crises, drug use, and unemployment, from which the state has otherwise
divested.

Evidence from Prison Inmates, Arrests, and Self-Reports, 94 AM. ECON. REV. 155, 158 (2004); Juleyka
[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
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-A3H4] (calling for greater
investments in education in highly policed neighborhoods as a way to decrease rates of incarceration);
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);
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
[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://perma.cc/Q8NG-ASCW] (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.”\(^{177}\) We criminalize the houseless rather than build and guarantee housing.\(^{178}\) We criminalize access to public benefits and public housing.\(^{179}\) Arrests and incarceration create barriers to housing, work, and benefits, creating yet another contradiction between prisons and basic needs.\(^{180}\)

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.\(^{181}\) Police protect property over people, and the capitalist class over labor. When abolitionist organizers say the police were never meant to protect us,\(^{182}\) 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.\(^{183}\) 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 support, or social housing, have absorbed some of the surveillance and punishment missions of the police and the prison system.”\(^{184}\)

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178. See id.

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


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, Foreward 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/1OVZx6TN91vdHdF3EiOIPe9RYMZUMxA/view?usp=ssharing [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.”).

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. 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. 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. 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. 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. 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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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.\textsuperscript{189} 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.\textsuperscript{190} The criminal system leaves wealthy white people alone, marking them as good, law-abiding citizens rightly deserving of plentitude.\textsuperscript{191} 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.”\textsuperscript{192}

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.\textsuperscript{193}

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

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\textsuperscript{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).
\textsuperscript{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.”). Municipal parking is often not acted against people with power).
\textsuperscript{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://perma.cc/4X6P-YWQT].
\textsuperscript{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-GCS5] (explaining that the criminal legal system often does not act against people with power).
\textsuperscript{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. 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.

As Angela Davis put it in her classic work Are Prisons Obsolete, we will not “discover one single alternative” to prisons and police. 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.

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


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[1]” that “expand[s] the reach of policing” or abolitionist change:198 Will the proposal reduce funding, tools, tactics, technology, the scale of the police, or “challenge the notion that police increase safety”?199 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.200 In contrast, common police reforms like training, body cameras, and community policing increase funding, resources, and, possibly, scale.201

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.202 In the wake of


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 FOUND. (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.”).

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. 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.

Abolitionist demands are often focused on divesting, dismantling, and delegitimizing the infrastructure of criminalization. Chicago’s #NoCopAcademy campaign is a prominent example of a campaign focused on shrinking police infrastructure. 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. Emanuel positioned the infrastructure project—which included


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).

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

The #NoCopAcademy campaign argued that a police training facility cannot “address the structural violence of policing.”210 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.211 #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


210. #NOCAPACADEMY, 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. #NOCAPACADEMY, 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. #NOCAPACADEMY, 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.”

#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. 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. 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. 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.

Both

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/ (discussing residents’ seeking funding for “schools, affordable housing, health care and good jobs available to neighborhood residents”).

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 (discussing residents’ seeking funding for “schools, affordable housing, health care and good jobs available to neighborhood residents”).

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


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.”

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. 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. 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.

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—others ask the state to invest within


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.”223 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.”224

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.”225 Dream Defenders combines “defund police” with “rebuild our communities.”226 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.227 A central

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].


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

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.”

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. After failed efforts to indict Burge for torturing approximately 120 Black men and women in the 1970s and 1980s, 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. 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.

Abolitionist intellectual and organizer Mariame Kaba framed the campaign as expanding the “potential vision of what justice could look like when people are harmed.” 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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230. See MOVEMENT FOR BLACK LIVES, supra note 229, at 69; About, CHICAGO TORTURE JUSTICE MEMORIALS, https://chicagotorture.org/about/ [https://perma.cc/RR63-XKZG].

231. Akbar, supra note 4.


country. The Movement for Black Lives has since released a toolkit advancing reparations as an abolitionist strategy.

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. 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.

Take, for example, generationFIVE, an abolitionist organization that aims to end child sexual abuse within five generations. 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. Policing and prison cannot “solve” childhood sexual abuse because the problem’s “reality and scope . . . is just too big.” Moreover, policing 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.


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.” According to generationFIVE, “intervening in and preventing” child sexual abuse is our “collective responsibility.” 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. 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. 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. The refrain calls our attention to the frequency with which we respond to social problems and interpersonal conflict without the police. 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.\(^\text{247}\)
Similarly, Kaba points to places where communities deal with social conflict without recourse to police, including in affluent neighborhoods and schools.\(^\text{248}\)
For another example, Tourmaline speaks of offering to drive a drunk friend home rather than calling the police.\(^\text{249}\)
For the people with whom we are in relationship, we already know that policing and punishment do not “solve our problems.”\(^\text{250}\)

But abolitionist organizers understand the reasons why people call the police are complex, especially in an environment without obvious alternatives.\(^\text{251}\)
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.\(^\text{252}\)

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 Herzig & Isaac Onutero, 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/4B4Y-7R8W].


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.

community power and wellbeing . . . without relying on the cops.”253 A survey of the local community revealed that 911 calls commonly triggered police interference with health emergencies.254 The survey also revealed a community desire for health care provision without police involvement.255 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.”256 Cohort members developed “no call” plans for their


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.” Herzog, 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, SPIRTHOUSE, https://www.spirthouse-nc.org/harm-free-zone [https://perma.cc/NSAB-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-AV3P] (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.257 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.”258 The project creates alternatives to calling the police while simultaneously questioning the logic of police involvement in medical crises in the first place.259

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.260 The push for particularized alternatives asks us to pay attention to communities and their 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


[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://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=IwAR1dZRIxLmNEU-SQ-zGgFHGeKMeVrj1lJbioV0M0adXT73eNpXdgZHg5gA [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.\textsuperscript{261} 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.

\subsection*{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.\textsuperscript{262} It brings into focus the material dimensions of historical and contemporary processes of racialization.\textsuperscript{263} 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.\textsuperscript{264} 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

\begin{itemize}
\item \textsuperscript{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).
\item \textsuperscript{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).
\item \textsuperscript{264} See, e.g., HERNÁNDEZ, supra note 132; HERNÁNDEZ, supra note 162.
\end{itemize}
scale. Thus, police are central not only to racialization but to capitalism, and capitalism’s dependence on racialization and violence.265

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.266 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.267
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. 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.

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. They are working toward “abolition democracy,” in the words of W.E.B. Du Bois and Angela Davis. 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.

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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.”).


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-nynational&smtype=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).


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.\(^\text{273}\) 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.\(^\text{274}\)

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.\(^\text{275}\) The scale of mass incarceration is sustained by a government and corporate infrastructure funded by billions of dollars and staffed by millions of people.\(^\text{276}\) 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.

\(^{273}\) 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.


\(^{276}\) GÖTTSCHALK, 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.277

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.278 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;279 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;280 and by the public, who

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. 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 houselessness every single day. In virtually all states, it is criminal to sleep, urinate, or drink alcohol outside. Houseless people are aggressively policed. As a result, houseless people are in and out of jail. 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 houseless. 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).


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. 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. 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 re legitimization 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.” The capacious shape of the abolitionist horizon allows those who emphasize various, even conflicting, political commitments (antiracist, feminist, socialist, anarchist) to come together. 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). But across the ideological spectrum, there is recognition of the need to strengthen bonds of solidarity

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).


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.\textsuperscript{291}

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.\textsuperscript{292} 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 as a tool, we will sharpen our understanding of social change projects that deploy many strategies, including reform, politics, and protest.

\textbf{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

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

\textsuperscript{292}Consider, for example, the accountability process created within BYP100 to respond to interpersonal harm within the organization. McLeod, \textit{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.