

RACIAL INEQUALITY IN PUNISHMENT AND POLICING IN THE UNITED STATES: A

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I. INTRODUCTION

On Sept. 24, 1985, Mary Bumpurs spoke during a forum at the Memorial Baptist Church in Harlem.¹ The task was admittedly difficult for her. A year earlier her mother, Eleanor, had been fatally shot by city police in her Bronx apartment after falling four months behind in rent. Referred to by some as an “eviction-by-murder,” the tragedy made national news partly because of her daughter’s efforts.² Through interviews, radio broadcasts, and public events, Mary Bumpurs challenged newspaper and media caricatures of her mother as “psychotic,” “knife-wielding,” and welfare dependent, pointing instead to the systemic inequities that her mother encountered and that played a role in her violent death.³ Bumpurs’ public criticism of these media portrayals of her mother (known differently by her children and neighbors as a deeply caring person), and of how public institutions failed her, helped to alert the nation to the everyday injustices that perpetuate state violence in Black and brown communities.

Mary Bumpurs became a political activist through this work, joining a tradition of anti-police abuse activism. Like Fannie Lou Hamer, Mamie Till Bradley (mother of Emmett Till, the

¹ Mary Bumpurs, “They’re Not Going to Get Away With What They Did,” *Workers Vanguard*, October 4, 1985,

² “Howard Beach: Black Victims on Trial,” *Workers Vanguard*, January 23, 1987, 1, 5.

³ Harris, “Beyond the Shooting: Eleanor Gray Bumpurs, Identity Erasure, and Family Activism against Police Violence,” *Souls*, 20, no. 1 (2018), <https://www.tandfonline.com/doi/abs/10.1080/10999949.2018.1520061>

14-year-old boy murdered in Mississippi in 1955), and other Black women before her, Bumpurs transformed her personal trauma into a national campaign through her political struggle against police violence in New York City.⁴ She collaborated with Black women organizers and activists, civil rights attorneys, religious leaders, local politicians, and the surviving family members of other Black people killed by police, like Veronica Perry whose son was shot by police a year after Mary Bumpurs' mother. Bumpurs regularly attended court hearings and was often the only person quoted in news reports who provided an alternate perspective to police officers and other state officials.⁵ In short, she bore witness to what was not covered in city newspapers, using her mother's life story to illustrate how the racial violence of the past continued unchecked in the present.⁶

“The law doesn't stand with us,” said Bumpurs in her calls for greater police accountability and for the conviction of the police officer responsible for her mother's death. “All I want is some justice, and I'm in this battle till the very end. We have to keep it going so people don't forget.”⁷

Mainstream newspapers and other outlets did not detail these broader dimensions of the Bumpurs case, particularly the political coalitions and movement that were “aborning” in its wake.⁸ Indeed, rarely if ever did the mainstream media report on the grassroots groups that worked daily to constrain targeted policing, surveillance, and incarceration and challenge the

⁴ Ibid.; Blaine, ““We will overcome whatever [it] is the system has become today’: Black Women's Organizing against Police Violence in New York City in the 1980s,” *Souls*, 20, no. 1 (2018), <https://www.tandfonline.com/doi/full/10.1080/10999949.2018.1520059>

⁵ For example, Levitt, “Cop Cleared in Bumpurs Case: Bronx Judge Clears City Cop in Fatal Shooting of Bumpurs,” *Newsday*, April 13, 1985, ProQuest Historical Newspapers (accessed September 7, 2022).

⁶ Harris, “Beyond the Shooting.”

⁷ “A year since the Bumpurs' murder,” *Unity Newspaper*, 8, 14, October 25, 1985, <https://unityarchiveproject.org/article/a-year-since-the-bumpurs-murder/> (accessed September 7, 2022)

⁸ See for example Editorials, “Eleanor Bumpurs: Coalition aborning,” *New York Amsterdam News*, November 24, 1984, 12, ProQuest (accessed September 7, 2022).

structural conditions behind safety deprivation⁹ (or the broader historical context that was the foundation for these challenges). Two decades before police burst into Eleanor Bumpurs' home, the New York State Assembly rejected a bill that Black advocacy groups tried to pass making it mandatory for police to complete civil rights courses and rejected another bill that the local chapter of the NAACP supported to create a civilian review board.¹⁰ In the years and months before Bumpurs' killing, a coalition of local Black groups in Los Angeles ran a 'Police Crimes Tribunal' in the aftermath of another killing of a Black woman, Eula Mae Love, where residents gave testimony and evidence to demonstrate the need for a mechanism of civilian oversight.¹¹ Other groups, like the United Front in Cairo, IL, and the House of Umoja in Philadelphia, worked to challenge the abusive policing of Black residents as well as provide structures of provision and material security that included food, shelter, and jobs.¹² In Cairo, the United Front also provided a pig farm, child care, and clothing, and in Philadelphia, House of Umoja invited young gang-affiliated youth into their homes and offered them education, shelter, and job training.¹³ Black police leagues like the Guardians Civic League (Philadelphia), Bronze Shields (Newark), Officers for Justice (San Francisco), and the Afro-American Patrolmen's League (Chicago) were organizing and passing resolutions *against* stop-and-frisk tactics and

⁹ We use the term "safety deprivation" here to depart from the conventional way crime and violence invoke individual guilt rather than contexts of deprivation and patterns of exclusion; it promotes an understanding that places with higher rates of some violent crimes are the same places that have endured histories of, and ongoing patterns of, structural violence, extraction, exploitation, denials of opportunity, dispossession and racialized state failure.

¹⁰ The bill was introduced by Shirley Chisholm and would have amended the administrative code of the city of New York to require as a condition of employment in the police force "the successful completion of courses in civil rights, civil liberties, minority problems and race relations." Assembly Bill # 2553, New York State Legislative Record Index, (NYSLRI) Feb. 17, 1965.

¹¹ Felker-Cantor, "The Coalition against Police Abuse: CAPA's Resistance Struggle in 1970s Los Angeles."

¹² Hinton, *America on Fire*; Weaver and Decker, "The Only Battle in the Nation's History in which the Black Community has not been Enlisted": Black Agency, Resistance, and Alternatives to Incarceration," Paper presentation at the annual meeting of the American Political Science Association, Washington, DC, August 27-31, 2014.

¹³ Ibid.

unrestrained use of force that ended Bumpurs' life.¹⁴ And in cities across the nation, grassroots groups created community hotlines, established extensive databases of tracking police abuse and nonresponse, held public hearings, began legal procedures to enjoin local authorities from using chokeholds and other deadly tactics, developed patrols to police the police, and established strategies to address structural harms, in addition to a variety of other actions designed to halt the occupation and criminalization of their communities.

These mobilization efforts are part of a long legacy of the Black freedom struggle that laid the groundwork for contemporary movements combating the inequities of policing and imprisonment. Their efforts and claims were often met with unresponsive (or worse, undermining and repressive) state institutions and many of the strong demands for protection, an end to exploitation, and alternatives for protection and safety often failed to take root. And while they mostly rejected piecemeal reforms, these demands were often met with just that – procedural enhancements as well as substantial expansions to the scope of police authority, surveillance, and manpower, and sometimes increased repression or retaliation.

Unfortunately, journalists and others in media tend to overlook or minimize these organizing efforts in their coverage of the criminal justice system in favor of reporting that centers on the views of authorities and officials within that system. In so doing, journalistic reporting is beset by problematic frames that perpetuate a racist and derogatory understanding of historically marginalized communities, which in turn limits the possibility of redressing racial inequality and injustice within the system. Some of these frames are outlined below:

An outsized focus on extraordinary police violence and neglect of routine state violence. First, the journalistic preoccupation with extraordinary acts of police violence in news

¹⁴ Prowse and Weaver, “‘We had to fight everything, including ourselves’: Black Police Leagues & Resistance to Racial Authoritarianism,” presented at the Justice and Injustice conference, Yale University, August 2022.

media (often very focused on a single encounter rather than a process or pattern of interactions) and reporting often neglects the ordinary and routine ways police and other state institutions perpetuate violence in people's daily lives and further exacerbate harm in coordination with non-law enforcement institutions like housing, anti-poverty agencies, and schools. Considering the Eleanor Bumpurs case, it is worth noting that the New York City Public Housing Authority called on the police to go to her apartment to evict her, an action that probably would have resulted in homelessness, jail time, or forced hospitalization. In Eula Mae Love's case, it was a \$22 unpaid gas bill and conflict with the gas company turning off her utilities that escalated to her killing. The anti-police abuse movements in the 1970s were often catalyzed by such police exchanges with residents. Such interactions have become increasingly common in the decades since as police came to be in more places and assumed broader responsibility.

A dearth of reporting on how routine policing affects vulnerable groups, particularly children. Journalists tend to bring a race-class lens to their coverage of policing in Black communities—almost always adults, and typically Black men. Yet much research shows that race and class intersect in profound ways during police encounters with age, gender, and disability status, including what are referred to as invisible disabilities. In fact, people's first encounters with police surveillance and criminalization often occur when they are children, making policing a childhood intervention.¹⁵ This painful reality has long spurred Black movements for justice.¹⁶

A misplaced emphasis on trust between police and communities and discussion of safety that neglects the impact of history. Journalists, researchers, and social commentators

¹⁵ Weaver and Geller, "De-Policing America's Youth: Disrupting Criminal Justice Policy Feedbacks that Distort Power and Derail Prospects"; Carl Suddler, *Presumed Criminal: Black Youth and the Justice System in Postwar New York*.

¹⁶ Elizabeth Hinton, *America on Fire*.

would do well to scrutinize easy questions around trust in police, a very strong narrative in the media. Discussions of trust tend to take a snapshot view; they focus on disrespectful police encounters that undermine trust or enhancing trust through training to improve interactions. Policing is a collective experience in racially subordinated communities, indicative of a longstanding relationship in which Black people among other populations have been excluded from the law's protection while also subjected to its capricious regulation. For meaningful and life-affirming social change to occur, the words and frames used to describe police interactions with communities should reflect these historical realities.

Considerable attention given to the accounts and perspectives of police and other state officials over that of local community members. Historically, news organizations have given preference to the words and accounts of police officers and other state officials while giving relatively scant attention to the perspectives and advocacy efforts of directly affected communities. What's more, the range of issues considered newsworthy is rather limited, focusing on "police misconduct" and the ensuing legal battles that follow such misconduct. Yet each story of police violence has a before and an after that extend far beyond the act itself—far beyond court proceedings – and that are relevant to the public.

Looking beyond extraordinary acts of state violence, and toward the ordinary ways that the criminal justice system and other policing systems harm health and democracy, invites journalists to reconsider what is newsworthy. It invites journalists to deeply consider how to cover issues of race, policing, and incarceration in rigorous and inclusive ways. It also invites journalists to not only consider how punishment, criminalization, and state violence are enduring features of Black inequality and subjugation in United States, but also to consider *the story beyond the story*: how Black communities engage in collective action and problem-solving in

response to state violence and dispossession in an ongoing struggle for safety, health, and political self-determination.

In this report, we describe in broad strokes the major transformations in policing and incarceration over the last 100 years. It is a story of both dramatic change as well as continuity. While social science debates have revealed important dimensions to punishment and policing, their starting assumptions, the data on which they rely, and the questions that they prioritize, too often distort Black agency, and discount Black knowledge or diminish the importance of the racism of law and policy.¹⁷ At times, these debates have contributed to problematic narratives of so-called “Black criminality” and so-called “disorderly” and “disorganized” communities.¹⁸ Thus, our report does not rehash conventional debates or traverse the entire social science literature on race and punishment. Instead, we document five key features of racial inequality and injustice in punishment that should inspire a fuller accounting of race and justice in our time. These five key features are as follows:

- 1) Policing and prisons serve as systems of racial control and political repression—in both their origins and their effects—which in turn undermine American democracy
- 2) Policing is a childhood intervention that racially socializes Black children
- 3) Policing is militarized, which connects the oppression of marginalized groups within the U.S. to those abroad in lands occupied by the U.S.
- 4) The effects of policing and punishment are political and help maintain a segregating, exploitative racial order
- 5) People from directly impacted communities have consistently fought the expansion of prisons and policing and offered alternate visions of how to realize safety and equity.

¹⁷ Murakawa, “Racial Innocence: Law, Social Science, and the Unknowing of Racism in the US Carceral State.”

¹⁸ Muhammad, *Condemnation of Blackness*.

The first four features are among the most important and durable elements of racial inequality and subjugation today, and yet are often obscured by some. The fifth feature is especially necessary for a more complete picture of racial inequality because it emphasizes the role of Black-led movements and discourse in challenging the political development of policing and incarceration. By considering Black political claims, we can better understand the durable inequality in those systems today; who gets to shape policy and whose ideas are heard and funded; and how institutions and those associated with them constrain and distort Black communities' claims for self-determination in ways that perpetuate destructive patterns of law enforcement and disinvestment.

Disproportionately policed and incarcerated communities have fought the expansion of prisons and policing and offered alternate visions of how to realize safety and freedom. Not only have they opposed every serious effort at anti-Black institutional expansion and challenged degrading prison conditions, but they have also developed protective structures based on communal knowledge and mutual aid. Their efforts were discounted, unfunded, or actively repressed. So, those who were in jail or prison and those who were survivors of state violence were not merely victims or objects of police, prosecutors, judges, and prisons but had historical roles that revealed them as sophisticated political activists and visionaries whose efforts and potential often went unrealized.

This report utilizes work from several fields—sociology, political science, Black studies, history, law, psychology—and draws on some well-known empirical trends as well as lesser-known oral histories, primary source and archival data, and interviews and ethnographic observation. The “facts of experience” are as equally vital as more conventional data¹⁹ in our

¹⁹ Cramer and Toff, “The Fact of Experience: Rethinking political knowledge and civic competence.”

report. In so doing, we incorporate material on real lives, racial processes, and the patterned nature of experiences with racialized state violence from more unconventional sources to show what we are missing when scholars and journalists narrow the range of sources or overemphasize quantitative data to the exclusion of oral testimony.

As a result of a narrow focus on empirical data gathered and disseminated by criminal justice authorities, many research investigations and research findings rely on approaches that systematically undercount bias by adjusting for factors that are themselves steeped in racial inequality, all the while discounting the selection bias whereby certain groups are stopped by the police far more than others.²⁰ While these data can be useful, what they don't measure is as important as what they do: how policing institutions disproportionately target vulnerable communities, and how police retaliate when people seek to hold them accountable, all of which have been highlighted in the wake of police violence in Ferguson, Baltimore, and Minneapolis.²¹ Recent research underscores this reality, finding that critical data on killings by police are systematically underreported.²²

Mainstream social science approaches to studying carceral systems tend to rely on police and prison reported or authorized data—data that already reflect practices and processes of racial targeting, sorting, and criminalization. This was dramatically highlighted by a recent *Lancet* article that underscored the vast numbers of police killings that were misclassified by coroners.²³

Table 1. Conventional vs. Bottom-Up Sources of Knowledge

²⁰ Ba, Knox, Mummolo, and Rivera, “The Role of Officer Race and Gender in Police–Civilian Interactions in Chicago”; Murakawa & Beckett, “The Penology of Racial Innocence”

²¹ We thank Spencer Piston for this idea.

²² Cook and Fortunato, “The Politics of Police Data: State Legislative Capacity and the Transparency of State and Substate Agencies.” <http://www.davidfortunato.com/apsr2022.pdf>

²³ “Fatal police violence by race and state in the USA, 1980-2019: a network meta-regression.”

Conventional Sources	Bottom-up Sources
Bureau of Justice Statistics	Real Costs of Prisons Archive
National Corrections Reporting Program	American Prison Writing Archive
Uniform Crime Reports	Citizens Police Data Project
National Incident Based Reporting Program	Black Youth Project Research
Fragile Families and Child Wellbeing Study	American Prison Newspapers, 1800-2020: Voices from the Inside
Survey of Inmates	A People’s Archive of Police Violence in Cleveland
National Corrections Reporting Program	Preserve the Baltimore Uprising Archive Project
Bureau of Justice Statistics	Voices of Crowne Heights oral histories, 2016-2017
State Departments of Corrections	Twenty-Five Years of Community Organizing and Institution Building in the Aftermath of Watts: 1965-1990
City Police Departments	Indefinite: Doing Time in Jail
US Census Bureau	Fatal Encounters
National Longitudinal Study of Adolescent to Adult Health	Invisible Institute’s Beneath the Surface
National Longitudinal Surveys	We Charge Genocide Petition to the UN
	Mapping Police Violence
	The Visiting Room
	UCI Prison Pandemic
	Prison Public Memory Project
	Prison Letters Database
	Million Dollar Hoods
	Voices of Mass Incarceration

Conversely, many of the bottom-up data sources, such as those in the column to the right in **Table 1**, provide more contextually sensitive information grounded in lived experiences. Yet these bottom-up data sources are more difficult to use, defy easy quantification, and show complexity. They are less well funded, viewed as less “official,” and consequently less often reported on – or used for sourcing – by some journalists. As a corrective, we highlight the work of scholars here who have produced and relied on more bottom-up sources of data.

COVID-19 in prisons is a powerful case example of how qualitative data are vital to accurately depict the lived realities of American prisons. In 2020, the coronavirus ripped through prisons and jails, which research revealed were epicenters of the pandemic, and spread in

communities beyond. According to the COVID Prison Project, over 579,000 cases have been reported among incarcerated people—likely a gross undercount that represents one-fifth or more of the prison population.²⁴ Moreover, one study in Chicago found that one in six of all coronavirus cases in Chicago were linked to people who were detained and released from the Cook County Jail.²⁵ Arrest, jailing, and release were more important than public transit, poverty, and population density in predicting transmission. But more troubling was the treatment of those confined to jails, prisons, and detention centers in the early months of the virus. Based on firsthand testimonials in the Prison Pandemic project (which operated a 1-800 hotline for incarcerated people in California) as well as the American Prison Writing Archive (a living archive of 3,300 prison writings from about 400 prison facilities that continuously receives essays), people incarcerated in jails, prisons, and detention centers also suffered extreme isolation: They described their experience of denied visits, indefinite lockdown, mental health programs closed until further notice, restricted group gatherings, no use of dayrooms, staff shortages that left the incarcerated people waiting in cells for food, washing their single provided mask in their cell toilet. They worried about loved ones who now were unable to visit. For example, Zachary Smith, Kenneth Key, and Joshua Strickland describe:

Other than the muffled coughing fits coming from inside the cells, there was no noise; no movement. Guys didn't go to recreation, didn't hang out playing cards or slamming dominos, and didn't walk to the chow hall.... During the twenty-four years of incarcerated (sic), I had never seen so many people at one time confined to their cells due to being sick.²⁶

²⁴ COVID Prison Project, <https://covidprisonproject.com>; Schwartzapfel and Park, "1 in 5 Prisoners in the U.S. Has Had COVID-19."

²⁵ Reinhart and Chen, "Incarceration and Its Disseminations: COVID-19 Pandemic Lessons From Chicago's Cook County Jail."

²⁶ Zachary A. Smith, "COVID-19 Is Mean But the Immune System is Meaner," The American Prison Writing Archive.

https://apw.dhinitiative.org/islandora/object/apw%3A12360375?solr_nav%5Bid%5D=c86e487b21a03b84d93a&solr_nav%5Bpage%5D=0&solr_nav%5Boffset%5D=3

...Over the next few days Illinois Dept of Corrections would place the entire prison system on Level One lockdown. No one knew what was going on and it was pure panic. Abruptly cut off from visits, phones, and no one offering up any information to the inmate population. Humanity had long left the prison, after all we were offenders, and deserved everything we got. The atmosphere was like several officers had been assaulted ...within a weeks time, several inmates would be removed from Bravo House and placed in what is known as X-House (which was once the death house for those sentenced to die. I couldn't imagine what was running through the mens mind; to now be housed in what was once the Death House, stripped of their property and placed on a more intense quarantine....The lock down would feel like it was disciplinary. Tactical units would be brought in, dressed in full riot gear, new guns that shoot rubber balls..... The lock down would be a few more weeks in, and we would start to get the news through the wall, as names were yell off G-Jones, Big Rusty, Old Man Jessie and Big Fella Wilson all had died as a result of Covid 19. The number of deaths would be played down.....²⁷

I am an inmate here currently sleeping in the same cell that the first inmate to die in Georgia lived in. This is a firsthand account of prisoners living conditions and treatment due to the coronavirus pandemic. On March 22 I was housed in dorm A-2 adjacent to dorm A1 which is the dorm for segregation and isolation. We were told to grab only a few things and our beds because we were being taken to the gym for a couple of days. We were instructed to leave all of our food, books, legal materials, and hygiene in our lockers. We spent the next 37 days sleeping on the floor. Every time it rained the roof leaked and flooded everything. The lights burning bright for days at a time. We were only allowed to shower 3 days a week, but the whole prison could shower any time they wanted. We found out that our dorm was being used to quarantine inmates that were suspected of being infected, locked in our cells with our property.²⁸

Besides providing a more complete view of contemporary prison crises such as the pandemic, bottom-up sources also provide uniquely important insights about the enduring role of racial repression. When we allow our accounts of race and punishment to flow from the perspective of those who live it, we show not only change but also the continuity of shared

²⁷ Kenneth Key, "From My Journal – COVID 19," The American Prison Writing Archive, https://apw.dhinitiative.org/islandora/object/apw%3A12360199?solr_nav%5Bid%5D=728f49f0940673724c09&solr_nav%5Bpage%5D=0&solr_nav%5Boffset%5D=2

²⁸ Joshua Strickland, "Prisoners & Covid 19," The American Prison Writing Archive, https://apw.dhinitiative.org/islandora/object/apw%3A12360266?solr_nav%5Bid%5D=69e10ac3c2bb0833585a&solr_nav%5Bpage%5D=0&solr_nav%5Boffset%5D=6, accessed 3-16-23.

narratives across time, space, and different eras of criminal justice governance. For example, when oral histories, prison autobiographies, newspaper accounts, commission reports, firsthand accounts and formal complaints of police and prison-related violence are used, a collective portrait of the experience of being surveilled, confined, and policed is revealed. When we examined archival and oral history sources, we were struck by how enduring, how remarkably persistent and consistent the experience of racially targeted policing has been, or what we have termed elsewhere a condition of “racially authoritarian governance.”²⁹ We can observe a sustained pattern of state violence and repression that violate democratic norms and that have conditioned how Black Americans experience citizenship. These narratives presented people suspended between ‘too much and too little,’ “unprotected by police and law but also subject to its capricious regulation.”³⁰ It is an experience that Monica Bell has called “legal estrangement,” Lisa Miller has called “racialized state failure,” and Gwen Prowse, Tracey Meares, and Vesla Weaver have called “distorted responsiveness.”³¹

The patterns we found described in the 1930s were reproduced and renewed over time. “Sassing” police becomes resisting arrest or disturbing the peace. The current state violence against Black people is directly linked to the past and has incredible staying power across generations and contexts.

A Brief History of Punishment and Racial Domination and Political Exclusion

²⁹ Weaver and Prowse, “Racial authoritarian in U.S. democracy,”

³⁰ Ibid, 1178.

³¹ Bell, “Police Reform and the Dismantling of Legal Estrangement”; Miller, “What’s violence got to do with it? Inequality, punishment, and state failure in US politics”; Prowse, Weaver, and Meares, “The State from Below: Distorted Responsiveness in Policed Communities.”

Policing, punishment, and confinement are explicitly entangled in the legacy of slavery, segregation, imperialism, forced and exploitative labor arrangements, and other projects of racial domination. Policing has been central to enforcing and upholding Jim Crow laws, the underenforcement of white racial violence (in the North as well as South), projects of displacement and disinheritance, and the maintenance of racial boundaries. While recent accounts focus largely on the post-civil rights era, archival sources and historical research remind us that prison, under-protection, and violence (often with the complicity of state institutions and local authorities) have long been mechanisms used to racially dominate and dispossess and figured prominently in the life and political economies of the South and North, and were key catalysts of the Great Migration³² and black political rebellions.

Notable among these sources is the *We Charge Genocide* petition to the United Nations. First presented in Paris in 1951 by a delegation led by Paul Robeson, and with signatories that included Claudia Jones and W.E.B. Du Bois, the petition presented painstakingly detailed information about systemic white racial violence and terrorism—often murders—and other atrocities committed against Black people at the hands of police and white vigilantes. These brutal acts of violence were rarely reported by local police or in white newspapers and all too often were ignored, permitted, or even perpetrated by government officials or agencies charged with safeguarding lives in the United States.³³ Putting these concerns in powerful perspective, an excerpt of the petition’s opening statement reads:

Our evidence concerns the thousands of Negroes who over the years have been beaten to death on chain gangs and in the back rooms of sheriff’s offices, in the cells of county jails, in precinct police stations and on city streets, who have been framed and murdered

³² Wills, “Racial Violence as Impetus for the Great Migration,” Jstor Daily, Feb. 6, 2019. <https://daily.jstor.org/violence-as-an-impetus-of-the-great-migration/>; “Lynching in America: Confronting the Legacy of Racial Terror,” Report by the Equal Justice Initiative. lynchinginamerica.eji.org/report/; Wilkerson, *The Warmth of Other Suns*.

³³ William L. Patterson, ed, *We Charge Genocide: The Crime of Government Against the Negro People*.

by sham legal forms and by a legal bureaucracy. It concerns those Negroes who have been killed, allegedly for failure to say ‘sir’ or tip their hats or move aside quickly enough, or, more often, on trumped up charges of ‘rape,’ but in reality for trying to vote or otherwise demanding the legal and inalienable rights and privileges of United States citizenship formally guaranteed them by the Constitution of the United States, rights denied them on the basis of ‘race,’ in violation of the Constitution of the United States and United Nations Charter and the Genocide Convention... We Negro petitioners protest this genocide as Negroes and we protest it as Americans... We know that no American can be truly free while 15,000,000 other Americans are persecuted on the grounds of ‘race’ ...³⁴

Following the legacy of this human rights petition, which never yielded a formal inquest, over a half century later, an intergenerational grassroots group of activists issued the “We Charge Genocide Shadow Report” to the United Nations Committee Against Torture in 2014, documenting police violence, particularly against youth of color in Chicago.³⁵

In more recent years, social scientists have analyzed both the post-Reconstruction expansion of incarceration as well as the post-civil rights era turn to punishment. There is a consistent pattern: The incarceration of Black people increases after periods where they amass substantial political and economic power.³⁶ Specifically, where Black people emerged from one system of racial domination and threatened to throw off the yoke of subordination or threatened the economic and political power of whites, local officials turned to confinement. For example, in postbellum Georgia, using historical records of the convict leasing system, two studies found that Black incarceration varied systematically with the degree of Black economic power. Where whites could still reliably depend on Black subservient labor, they did not turn to the convict lease system. In contrast, counties where Black people began to acquire significant parcels of

³⁴ Patterson, *We Charge Genocide*, 4, 7.

³⁵ We Charge Genocide Report to the United Nations Committee Against Torture, “Police Violence Against Chicago’s Youth of Color.” <http://report.wechargegenocide.org>

³⁶ Muller, “Freedom and Convict Leasing in the Postbellum South;” Mazumder, “A Brief Moment in the Sun: The Racialized (Re)Construction of Punishment in the American South;” Eubank and Fresh, “Enfranchisement and Incarceration after the 1965 Voting Rights Act.”

land, established economic independence from whites, and made the “greatest strides” toward freedom and equality, had the highest increases in Black imprisonment rates. “In postbellum Georgia,” Christopher Muller writes, “black men faced comparatively high rates of imprisonment in the convict lease system for property crimes where African-Americans most successfully resisted the economic institutions and social order that replaced slavery.”³⁷ In an argument that resonates with our own, Soumyajit (Shom) Mazumder sees “incarceration as a form of political violence” that whites used to re-exert racial control and subordination, and to limit the extent of Black office-holding, wealth, and democratization in the South. The rapid growth in incarceration following Reconstruction was greatest in those areas most affected by Reconstruction and thus most interested in developing a “highly repressive state apparatus” to maintain dominance.³⁸ Black people experienced rates of incarceration 10 times that of white people in Georgia. A similar wave of imprisonment occurred in the Second Reconstruction (post-World War II to the late 1960s). Places covered by the Voting Rights Act and where Black people posed a political and electoral threat to white people, were the places where Black citizens were admitted to prison at the highest rates.³⁹ And in what can be called a “front lash,” racially conservative legislators advocated punitive crime control policies during the 1960s (in opposition to civil rights policies), and opponents of integration revived ideas of Black criminality (initially used in opposition to civil rights laws) to bolster support for new federal crime policy.⁴⁰

The rise of felon disenfranchisement laws further illuminates the roots of racial control and political repression. Disqualifying those in prison or with felony records from voting, these

³⁷ Muller, “Freedom and Convict Leasing,” 396.

³⁸ Mazumder, “A Brief Moment in the Sun.”

³⁹ Eubank and Fresh, “Enfranchisement and Incarceration after the 1965 Voting Rights Act.”

⁴⁰ Weaver, “Frontlash: Race and the development of punitive crime policy.”

provisions increased in the years leading up to the Civil War and in response to the expansion of African American civil rights under the Reconstruction amendments.⁴¹ For example, the Thirteenth Amendment abolished formal slavery in 1865 but also made an important exception of punishment for a crime. In other words, “The effect of the Thirteenth amendment was not to abolish slavery but to limit it to those who had been convicted of a crime.”⁴² Likewise, while the Fourteenth Amendment’s equal protection clause expanded the rights of citizenship to “all persons born or naturalized in the United States,” it also allowed for the disenfranchisement of adult males based on “participation in rebellion or other crimes.” Seizing these constitutional openings, several Southern states explicitly initiated or revised their disenfranchisement laws in order to exclude Black people from the vote. These Southern states in the wake of the Civil War used convict leasing, and then state-run prisons, as a way to reassert white dominance over Black populations.⁴³ The Mississippi Supreme Court clearly articulated this viewpoint in 1896 with a discussion of the Mississippi Constitutional Convention of 1890, which strove “to obstruct the exercise of the franchise by the negro race...[R]estrained by the federal constitution from discriminating against the negro race, the convention discriminated against its [presumed] characteristics and the offenses to which [their group was uniquely charged].”⁴⁴ As with many states at the time, the particular offenses that mandated disenfranchisement were applied solely

⁴¹ Behrens, Angela, Christopher Uggen, and Jeff Manza. 2003. “Ballot Manipulation and the ‘Menace of Negro Domination’: Racial Threat and Felon Disenfranchisement in the United States, 1850–2002.” *American Journal of Sociology* 109 (November): 559–605.

⁴² Wright, “Slaves of the State.” <https://www.prisonlegalnews.org/news/1994/may/15/slaves-of-the-state>

⁴³ Blackmon, *Slavery by Another Name*.

⁴⁴ Ewald, Alec C. 2002. “ ‘Civil Death’: The Ideological Paradox of Criminal Disenfranchisement Law in the United States,” 1091.

to Black people. Decades later, in 2016, one in 13 voting-age Black people was barred from voting in elections or serving on juries due to past convictions.⁴⁵

The historical record further shows that an enduring purpose of U.S. policing has been the protection of white property, the control of subjugated groups, and the suppression of labor, political and social movements, and rebellions.⁴⁶ The mid-20th century makes these purposes quite evident. In the 1950s and 1960s, American TV news programs broadcast the extent to which police were used as forces against Black freedom movements. In the South, police “denied protest permits, threatened and beat demonstrators, made discriminatory arrests, and failed to protect demonstrators from angry mobs and vigilante actions, including beatings, disappearances, and assassinations.”⁴⁷ Indeed, in many parts of the Deep South and elsewhere during the early to mid-20th century, police departments were simply extensions of the Ku Klux Klan.⁴⁸ When racial justice movements arose in Northern cities, police, often acting in concert with the FBI, used false arrests and jail time to blunt the political momentum of radical movements—even resorting to assassination, as in the case of Chicago Black Panther Party leader Fred Hampton, who was killed by an onslaught of bullets during a police raid.⁴⁹

And more generally, prisons, surveillance, and criminalization were used as strategies to quell movements in the mid-20th century by incarcerating large numbers of Black activists, thus turning them into political prisoners.⁵⁰ Over time, as the counterrevolution to civil rights gained

⁴⁵ Sentencing Project. 2016. “6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016.” *The Sentencing Project*. <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf> (November 25, 2018).

⁴⁶ Hinton, *America on Fire: The Untold Story of Police Violence and Black Rebellion Since the 1960s*; Seigel, *Violence Work: State Power and the Limits of Police*; Vitale, *The End of Policing*; Hernandez, *Migra! A History of the U.S. Border Patrol*; Fernandez, *Policing Dissent*.

⁴⁷ Vitale, *The End of Policing*, 48.

⁴⁸ Kuzmarov, *Modernizing Repression*.

⁴⁹ Vitale, *The End of Policing*, 49.

⁵⁰ Davis, *If They Come in the Morning*.

power, these racist strategies increasingly came from the top of the federal government. Members of the Nixon administration, for example, saw themselves at war against Black people and used surveillance—including the FBI’s illegal Counter-Intelligence Program (COINTELPRO)—to target radical Black organizations among other groups and to instill fear and dampen political challenges among Black leaders.⁵¹ So, with the advent of the “War on Crime,” political operatives used the presumption of criminality and criminal activity as a pretext to arrest, detain, and imprison high-profile Black organizers and to surveil and undercut Black radical political groups. In late 1969, Chicago Black Panther leader Fred Hampton was arrested and put on trial for allegedly stealing 71 bars of ice cream; to strengthen their case, prosecutors made the “unusual expense” of having the ice cream vendor return from Vietnam to testify.⁵² Corroborating these long-held suspicions, a high-ranking domestic affairs official under Richard Nixon shared that

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. ... We knew we couldn’t make it illegal to be either against the [Vietnam] war or [to be] black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did.⁵³

⁵¹ On COINTELPRO, historian Manning Marable writes: “Halting the emergence of Black political activism in the 1960s could not be left solely under the aegis of the criminal justice system. To accomplish this, the state developed an extraordinarily powerful and illegal apparatus—the COINTELPRO or ‘Counter Intelligence Program’ ... a wide-ranging series of assaults against progressive and Black nationalist leaders and organizations. In its sordid fifteen-year history of operations, the FBI sent ‘anonymous mailings (reprints, Bureau-authored articles and letters) to group members criticizing a leader or an allied group;’ encouraged ‘hostility up to and including gang warfare between rival groups;’ engineered the firing of SNCC, Black Panther and even Urban League officials and members; ordered ‘federal, state, or local authorities to arrest, audit, raid, inspect (or) deport’ Black activists; interfered with ‘judicial proceedings’ by targeting Black and white progressive attorneys sympathetic to Black liberation; and used ‘politicians and investigating committees, sometimes without their knowledge to take action against targets.’ Two hundred and thirty-three of the total 295 authorized actions against so-called ‘Black Nationalist Hate Groups were targeted against the Black Panther Party.’ See Marable, *How Capitalism Underdeveloped Black America*, 113-14.

⁵² Haas, *The Assassination of Fred Hampton*, 47-48.

⁵³ As reported by Baum, “Legalize It All,” *Harper’s Magazine*, April 2016.

Consequently, successive numbers of Black political dissidents were imprisoned during the late 1960s and early 1970s. Members of the Black Panther Party, such as Assata Shakur, George Jackson, Erica Huggins, Eldridge Cleaver, and Huey Newton, became internationally regarded political prisoners and social critics. Angela Davis, who never officially joined the Black Panthers, became a cultural and political icon during her imprisonment and trial, and today is one of the world's leading theoreticians of prison, punishment, and abolition.

That said, the same systems were deployed to undermine the political action of those already incarcerated. By the mid-20th century, a prisoner's rights movement was growing in California, for example, as people in prison organized political study groups, formed underground newspapers, and came close to establishing a Prisoners' Union as the "legally recognized...official representative of California prisoners."⁵⁴ Clearly, incarceration had a great influence on the goals and organizers of the Black freedom movement at this time, which in turn drove state repression at the local and federal levels.⁵⁵ A particularly notable instance of racial control and political repression was the rebellion at Attica prison and violent state retaking of the facility in September 1971. After the killing of Black activist and icon George Jackson at California's San Quentin prison and waves of prison protests at facilities across the country, incarcerated people at Attica Correctional Facility in Upstate New York began a five-day takeover of the prison. Prisoners at Attica quickly organized themselves. They invited journalists and others to come to Attica to serve as observers and to assist with the negotiations, and ultimately presented authorities with a list of demands that included requests for basic resources like adequate food and water, adequate medical treatment, and the right to politically organize.⁵⁶

⁵⁴ Cummins, *The Rise and Fall of California's Radical Prison Movement*.

⁵⁵ Berger and Losier, *Rethinking the American Prison Movement*; Corrigan, *Prison Power: How Prison Influenced the Movement for Black Liberation*; Felber, *Those Who Know Don't Say*.

⁵⁶ Thompson, *Blood in the Water*.

However, then New York Gov. Nelson Rockefeller, acting in concert with the Nixon administration, never intended to negotiate and on the fifth day sent troops into the prison with tear gas and guns. Firing indiscriminately into the smoke, the troopers killed 29 prisoners and 10 guards and shot 118 people. State officials then lied about what happened, reporting instead that the prisoners committed numerous atrocities and were responsible for the deaths and shootings.⁵⁷ The scene of state violence at Attica had a life of its own. Lawmakers and members of the public saw coverage of the massacre on the news for weeks and began to view Attica as an illustration that Black militant activism—inside and outside of prison—had gone too far and needed to be curbed. In other words: Law and order was needed.⁵⁸

In the numerous panels convened thereafter, the state's harmful actions were suppressed. New York State did not admit its wrongdoing in the uprising, choosing instead to only persecute the prisoners involved. Nor did the state adequately support the families of the slain prisoners and correctional officers; surviving spouses were persuaded to accept small workers' compensation settlements and forgo their right to sue for damages.⁵⁹ Politicians and policymakers used the Attica prison uprising as evidence of the need for a tough-on-crime approach, a key tenet of which was to lock up more people. Prison sentencing and incapacitation in the U.S. became much more severe over the next 20 years through the rise of mandatory-minimum sentencing and several new policies and practices (i.e., collapsing early release, abolishing parole, sending juveniles to adult confinement, expanding state criminal codes, and sentencing enhancements) and a stream of new federal and state investment in incarceration and

⁵⁷ Ibid.

⁵⁸ Simon, *Mass Incarceration on Trial*; Thompson, *Blood in the Water*.

⁵⁹ Oppenheimer, Mark. 2016, August 19. "A Riot as Omen of Trauma in Prisons Today." *New York Times*, SR7. Retrieved from <https://www.nytimes.com/2016/08/19/books/blood-in-the-water-a-gripping-account-of-the-attica-prison-uprising.html>.

policing through the Law Enforcement Assistance Administration (LEAA). In 1973, New York State passed the Rockefeller drug laws, the most draconian yet seen in the nation, creating a mandatory sentence of 15 years to life for possession of four ounces of narcotics—the equivalent of a second-degree murder sentence.⁶⁰ Alongside the increased use of solitary confinement and the death penalty and the construction of “supermax” prisons, these laws were duplicated around the country during the nation’s wars on crime and drugs. Subsequently, the U.S. prison population grew seven-fold from roughly 200,000 in 1970 to 1.6 million in 2010.⁶¹

This history demonstrates how state officials leveraged discourses of “Black criminality” as a means of political counterinsurgency and subjugation—constructing, deploying, and redeploying the idea of the Black criminal, and then directing policing and surveillance efforts at Black radicals and Black communities in general.⁶²

These are the roots of what many refer to as racialized mass incarceration—or the carceral state.

II. A BRIEF TOUR OF MAJOR DEVELOPMENTS

Since the mid-20th century, our nation subsequently embarked on one of the largest policy experiments in modern history: the expansion of its criminal justice system. Through a set of sweeping policy changes and investment, the United States’ capacity to punish, surveil, and confine has seen dramatic expansion over the last 50 years. Driven in part by political reactions to social movements and rebellions and demands for black equality, this level of expansion and severity in policing, punishment, disciplining and confinement of people in the

Thompson, *Blood in the Water*.

⁶¹ Ibid.

⁶² See Muhammad, *The Condemnation of Blackness*.

U.S. is unmatched in global perspective.⁶³ The rise in punishment occurred in every state, across every conceivable dimension, for 35 consecutive years after its ascent began in 1973.

Consequently, the share of the American population exposed to arrest—one third of all young adults by age 23—and incarceration has no historical precedent.⁶⁴

The rise of penal confinement and involuntary police contact is also one of the most significant transformations in the *relationship* between government and citizens in the post-Civil Rights era.⁶⁵ This state engagement in the lives of adults and children also represents one of the most extreme areas of racial inequality today.⁶⁶ For most of the extraordinary half century of growth in imprisonment, Black people were confined at rates six times that of whites. This vulnerability to entanglements with the criminal justice system is exacerbated by disability status and ethnicity. For example, over half of African Americans with a disability are arrested by age 28, and those who identify as both Black and of Latin American descent have the highest incarceration rates among all racial/ethnic groups, revealing the ways multiple dimensions of experience and disadvantage intersect.⁶⁷

However, focusing only on the relatively recent upward surge in racialized mass incarceration and mass criminalization can obscure the enduring legacy of coercive practices and patterns that have defined Black life, communities, and citizenship. Throughout U.S. history, Black people have been governed, controlled, and terrorized by punitive responses and criminalization – strategies used to dispossess economically and politically—to deny rights to

⁶³ Weaver, “Frontlash”; Hinton, *From the War on Poverty to the War on Crime*.

⁶⁴ See Brame, Robert, Shawn D. Bushway, Ray Paternoster, and Michael G. Turner. 2014. “Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23.” *Crime & Delinquency* 60(3):471–86.

⁶⁵ Hinton, *From the War on Poverty to the War on Crime*; Thompson, *Blood in the Water*; Lerman and Weaver, *Arresting Citizenship*.

⁶⁶ Wakefield and Wildeman, *Children of the Prison Boom*.

⁶⁷ McCauley, “The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender”; Patterson and Dagadu, “Fractures in the Color Line: Consequences of Constructions of Race and Ethnicity on Measures of Imprisonment.”

public space, and to police and punish ordinary adolescent habits and development.⁶⁸ Oral histories of Black life from the postbellum period to the present document the role of first patrollers, and then sheriffs, police, and even the “revenue agent.” As George Holloway describes about growing up in Memphis during Jim Crow:

There was a general fear of the police by blacks in the 1930s. If a policeman saw you on a corner, he'd almost always anticipate that you were stealing or up to no good. If you walked through a white neighborhood, they'd drive you out or arrest you, saying you were trying to steal or something. ... The police would always be on call to make sure the black high school students kept on strolling. I had to walk to Menassas [high school] through a number of white neighborhoods, and Chelsey. They kept an eye on us, and we couldn't stop at that [all-white] Guthrie School on Valentine; we couldn't even go across the yard back in those days.⁶⁹

Long before the tremendous rise in incarceration in the 1970s and the surge of Black incarceration rates, severe racial disparities in incarceration were present (if only recently documented by historical sociologists).⁷⁰ **Figure 1** below demonstrates that the Black rate of incarceration was higher than the white rate as early as 1880 and the racial disparity continued to climb until at least 1950. Racial disparities in incarceration reach a level of four to one—four Black incarcerated people for every one white—by 1940.

⁶⁸ Henning, *The Rage of Innocence*; Hinton, *From the War on Poverty to the War on Crime*, Weaver and Geller, “De-Policing America’s Youth: Disrupting Criminal Justice Policy Feedbacks That Distort Power and Derail Prospects”

⁶⁹ George Holloway, interviewed by Michael Honey, Baltimore, MD, 1990; from *Behind the Veil: Documenting African-American Life in the Jim Crow South*, Center for Documentary Studies at Duke University, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

⁷⁰ Muller and Schrage, “The Political Economy of Incarceration in the Cotton South, 1910–1925.”



Figure 1: Incarceration Rate and Racial Disparity, 1870-1950

Source: Reproduced with permission from Christopher Muller, who provided the data.

Incarceration data are based on census reports. See Muller, “Exclusion and Exploitation: The Incarceration of Black Americans from Slavery to the Present.” Nonwhite incarceration is nearly identical to black incarceration given the time period. Data for 1900 and 1920 are missing and we use 1904 and 1923 instead.

Gender also intersected with race, ethnicity, and age to produce profoundly racialized patterns of punishment and differentiated arrest practices. Between the mid-19th and early 20th century, Black women made up over 80% of the women in prisons and jails in the U.S.⁷¹ As historian Sarah Haley reports in *No Mercy Here: Gender, Punishment, and the Making of Jim*

⁷¹ LeFlouria, “Criminal justice reform won’t work until it focuses on Black women.” <https://www.washingtonpost.com/outlook/2021/02/12/criminal-justice-reform-wont-work-until-it-focuses-black-women/>

Crow Modernity, Black women in 1893 were more than six times more likely to be arrested than white women—and Black girls an extraordinary 19 times more likely to be arrested than white girls.⁷² These disparities persist even to today, outpacing disparities in arrest between Black and white men and boys in the same year.

Incarceration since 1960

In the 1970s through the 1990s, policing and incarceration became a central way that the state intervened in Black communities. **Figure 2** depicts the shift in the scale and racial concentration of incarceration since 1960. The incarceration rate of Black men rose steadily from 1,111 per 100,000 in 1980 until it peaked in 2001 at 3,535 per 100,000. Incarceration rates among Hispanic males also rose, from 317 per 100,000 in 1980 to 1,335 per 100,000 in 1999. The rate of growth for women was greater, despite lower overall levels and Black women constituted an overwhelming share. This tremendous rise, and its concentration among Black and Hispanic people can also be seen in other indicators, such as the population confined in jails, those on parole or probation, the rise in long-term incarceration, the rate and distribution of prison admissions, and the cumulative lifetime risk of imprisonment.⁷³ Black prison admissions skyrocketed from 1975 to 1990 when the rate of Black people sentenced and admitted to state and federal prisons grew by 823%.⁷⁴

For most of the 20th century and first two decades of the 21st, then, incarceration was marked by growing and persistent racial inequality. While racial disparities in prison *admissions*

⁷² Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity*. Also reported in Ritchie, *Invisible No More: Police Violence Against Black Women and Women of Color*, 30, which mentions that Black men, by comparison, were “1.4 times as likely to be arrested as white men, and Black boys were three times as likely to be arrested as white boys.”

⁷³ Western and Wildeman, “The Black Family and Mass Incarceration.”

⁷⁴ Author’s calculations based on analysis of data from Historical Statistics of the United States, “Sentenced Prisoners Admitted to State and Federal Institutions, by Race: 1926-1996.”

have been declining dramatically since the late 1990s, when the Black-white ratio was 6 to 1, inequities remain stark; in recent years, two Black people are admitted to prison for every one white person. Similarly, the overall share of the state prison population consisting of Black people fell slightly from 39.9 percent in 2013 to 37.8 percent in March 2020, although the pandemic interrupted the trend in declining racial disparity.⁷⁵ Finally, these racialized trends endure across gender: Today, Black women comprise 13% of the total female population in the United States but 30% of the U.S. women in prison and 44% of U.S. women in jail.⁷⁶

⁷⁵ Klein, et al. “The COVID-19 pandemic amplified long-standing racial disparities in the United States criminal justice system,” medRxiv 2021.12.14.21267199; doi:<https://doi.org/10.1101/2021.12.14.21267199>

⁷⁶ LeFlouria, “Criminal justice reform won’t work until it focuses on Black women.” <https://www.washingtonpost.com/outlook/2021/02/12/criminal-justice-reform-wont-work-until-it-focuses-black-women/>

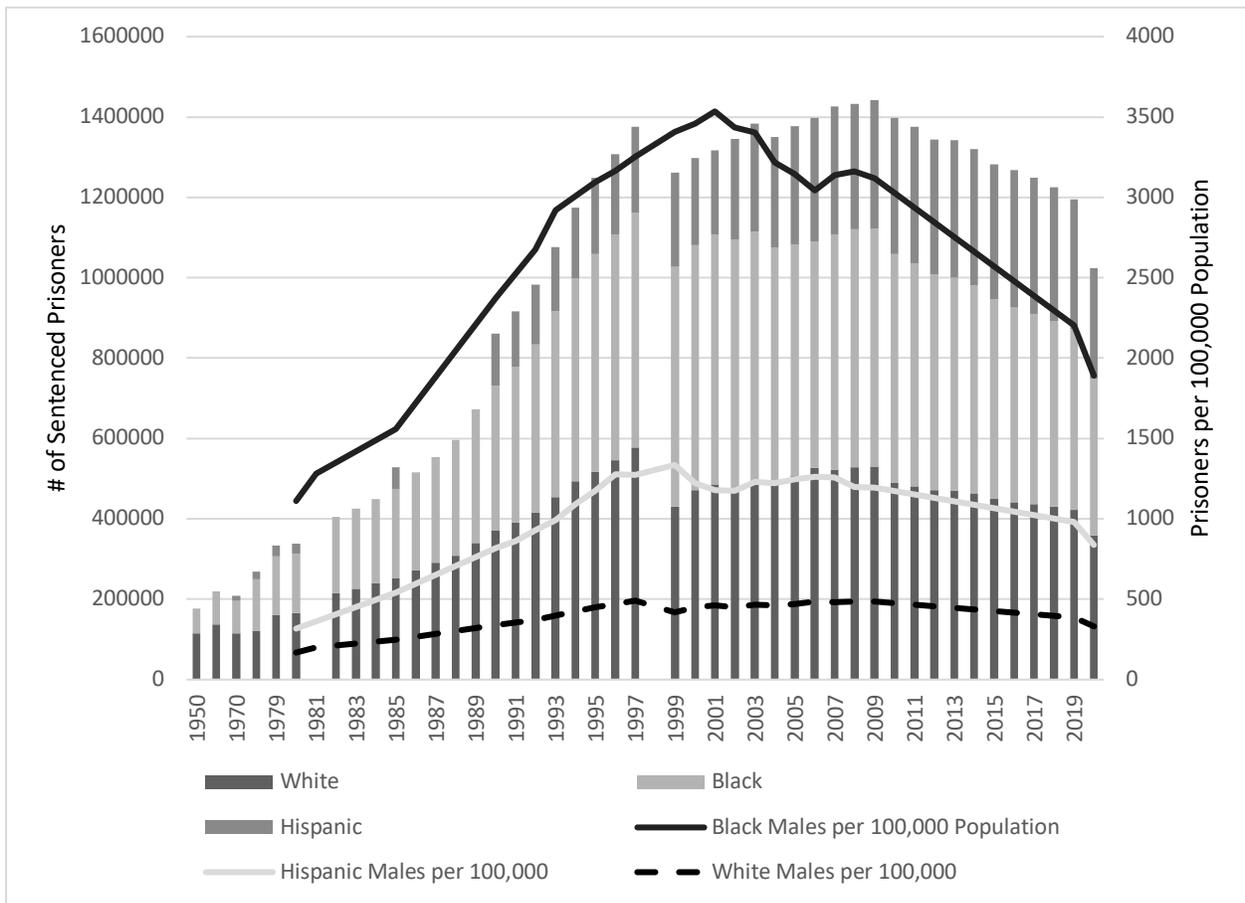


Figure 2: Imprisonment by Race, Ethnicity, and Sex, 1950-2020.

Source: Bureau of Justice Statistics, Prisoners series.

If we move beyond the steady climb of the incarceration rate and the increase (and then slight abating) of racial disparity in prison admissions during the mid- to late-20th century, three other developments show how incarceration remains deeply affected by race.

First, when interactions among race, cohort, gender, and class are considered, the rise of incarceration was even more pronounced. Bruce Western and Becky Pettit found that nearly 70% of Black men born in 1970s and who did not receive a high school diploma were imprisoned by

age 35.⁷⁷ **Figure 3** below reproduces data from these sociologists, demonstrating that the growing vulnerability to imprisonment was concentrated almost entirely among the least-educated Black men born in the late 1970s, men who were adolescents and came of age during the War on Drugs era and intensive policing of the 1980s and 1990s. Although Black men as a group are historically vulnerable to disproportionate arrest and incarceration, college-educated Black men experienced comparatively slight rises (5.3% of the college-educated black male cohort born in the mid-1940s experienced incarceration, compared to 6.6% of their peers in the mid-1970s cohort); less than 15% of their Black predecessors without a high school education, who were born in the mid-1940s and came of age in the 1950s and 1960s, were imprisoned. By contrast, Black men who did not receive a high school degree and were born in the late 1970s had a likelihood of being imprisoned 10 times as high as their college-educated peers.

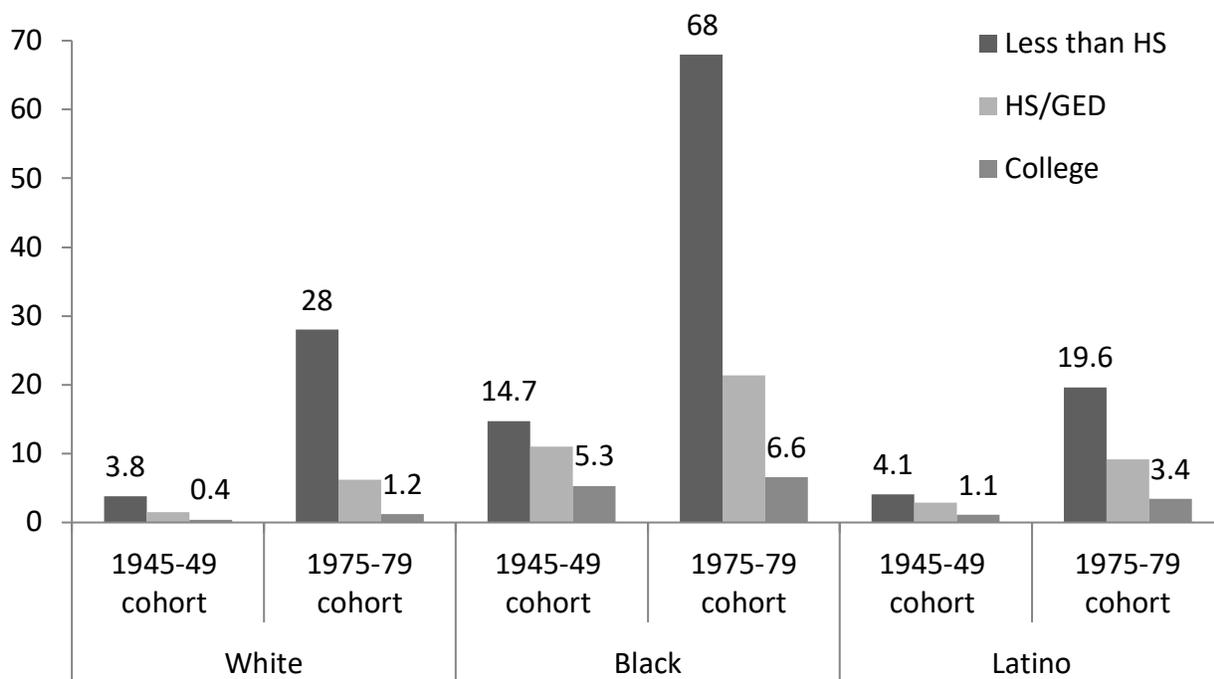


Figure 3: Risk of Imprisonment for Men by Age 35, by Cohort, Race, and Education
 Source: Western & Pettit 2010

⁷⁷ Western and Pettit, “Incarceration and Social Inequality.”

Second, incarceration is also spatially concentrated.⁷⁸ For example, Chicago’s West Garfield Park has an incarceration rate that is 42 times greater than the highest white incarceration neighborhood in Chicago.⁷⁹ Yet, individual affluence or disadvantage does not fully explain the nexus of incarceration and place: The richest and most-educated Black households reside in areas with higher rates of imprisonment than even the poorest, least-educated white families.⁸⁰ Indeed, while socioeconomic status is certainly entwined with exposure to incarceration, scholars began to notice that traditional markers of status and mobility were *less protective* against prison confinement for Black Americans compared to whites, revealing higher rates of incarceration compared to whites at every educational level. As depicted in Figure 3, Black men with college degrees had risks of imprisonment greater than whites with just a high school degree or equivalent, and as economist Raj Chetty and colleagues further documented, Black men born to parents in the top 1% of income experienced incarceration rates as high as their white peers whose parents were in the 34th percentile of the income distribution.⁸¹

Finally, Black people are much more likely to have indirect exposure to the criminal justice system through their families and neighborhoods.⁸² Black women are much more likely to

⁷⁸ Simes, *Punishing Places: The Geography of Mass Imprisonment*; Sampson and Loeffler, “Punishment’s place: the local concentration of mass incarceration”; Western, *Punishment and Inequality*

⁷⁹ Sampson, *Great American City*.

⁸⁰ Muller and Roehrkasse, “Racial and Class Inequality in US Incarceration in the Early Twenty-First Century.”

⁸¹ Chetty et al., “Race and Economic Opportunity in the United States: an Intergenerational Perspective”; Badger et al., “Extensive Data Shows Punishing Reach of Racism for Black Boys,”

<https://www.nytimes.com/interactive/2018/03/19/upshot/race-class-white-and-black-men.html>.

⁸² Bobo and Thompson, “Racialized Mass Incarceration: Poverty, Prejudice, and Punishment”; Lee, Porter, and Comfort, “Consequences of Family Member Incarceration: Impacts on Civic Participation and Perceptions of the Legitimacy and Fairness of Government”; Wildeman, “Parental Incarceration, Child Homelessness, and the Invisible Consequences of Mass Imprisonment”; Turney, “The Unequal Consequences of Mass Incarceration for Children”; Enns et al., “What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey.”

be in a social network where the share of people imprisoned is higher. One study found that 44% of Black women but only 12% of white women have a family member imprisoned.⁸³ White people were much more likely, thus, to have networks where exposure to incarceration or conviction was rare. One in five Black people has a family member imprisoned. The Black-white difference in experiencing the incarceration of a family member is actually most pronounced for the most educated.⁸⁴ In short, while it is true that more affluent Black people are less likely to have an immediate friend or relative in prison, it is also the case that Black people at every income and education level, even the highest, have higher levels of connection to incarcerated people and the best-off Black people are more likely to know a confined person than the worst-off white people.⁸⁵ By contrast, white people (even those with low incomes, who as a group, are experiencing increasing rates of prison admission) are much less likely than Black people to reside in neighborhoods where imprisonment is concentrated or to be related to incarcerated people in family and kin networks.⁸⁶

Policing and Community Governance

The reach of the criminal justice system extends further once we consider those enduring other forms of contact. In 2010, over 4.8 million people were under some form of community supervision,⁸⁷ about 5 million were formerly incarcerated (2% of non-African American population compared to 10% of the African American population), and 19 million had a felony on their record (6% of the non-African American population compared to 23% of the African

⁸³ Lee, et al., “Racial Inequalities in Connectedness to Imprisoned Individuals in the United States.”

⁸⁴ Muller and Roehrkasse, “Racial and Class Inequality in US Incarceration in the Early Twenty-First Century.”

⁸⁵ Bobo and Thompson, “Racialized Mass Incarceration: Poverty, Prejudice, and Punishment.”

⁸⁶ Muller and Roehrkasse, “Racial and Class Inequality in US Incarceration in the Early Twenty-First Century.”

⁸⁷ Glaze, “Correctional Populations in the United States, 2010.” <https://bjs.ojp.gov/content/pub/pdf/cpus10.pdf>

American population).⁸⁸ The National Employment Law Project also estimates that “about 70 million people have a record of arrest or conviction, which often makes employment difficult.”⁸⁹

Besides probation or parole, or prior felony conviction or former incarceration, several studies have also pointed to the dramatic expansion in misdemeanor arrests, civil ordinance violations, asset seizures, gang injunctions, child support enforcement, brief jail confinement, fees and fines related to courts and municipal violations, which together signify the changing role of police in everyday lives.⁹⁰ The most significant of these was the rise of “broken windows” policing across every major city in the United States (also known as quality-of-life or order-maintenance policing). Broken windows policing was one of the most important local policy developments in the last decades. It was based on a theory of crime that saw petty infractions (e.g., farebeating, graffiti, cursing in public) and public displays of disorder as gateways to more serious predatory crime, and signals to others that disrespect for law was tolerated.⁹¹ Policing became the way the nation addressed social problems (like homelessness, poverty, mental health and substance abuse crises, and housing instability) and a key feature of urban governance and management of economically dispossessed people and communities.

The post-1960s era shifted away from the “social tolerance of deviance” and “a heightened sociopolitical concern for those who suffer the consequences of deviance rather than those who cause it.”⁹² Police forces cracked down on minor violations of order, not the structural conditions that impacted such behavior. As Soss and Weaver describe, “The new policing discourses depicted the residents of [race-class subjugated] ... communities not as citizens facing

⁸⁸ Shannon et al., “The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010.”

⁸⁹ As cited in Kushner, “Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind.”

⁹⁰ Kohler-Hausmann, *Misdemeanorland*; Roberts, *Shattered Bonds*; Alexis Harris, *A Pound of Flesh*; Soss and Page, “The Predatory Dimensions of Criminal Justice.”

⁹¹ Harcourt, *Illusion of Order*.

⁹² Laniyonu, “Coffee Shops and Street Stops: Policing Practices in Gentrifying Neighborhoods,” p. 902.

social barriers or as victims needing protection from slum landlord predation, violence, and misaligned service provision but as potential (or likely or already active) criminal targets in need of surveillance.”⁹³ Together, the rollout of these institutionalized practices vastly expanded police oversight and scrutiny of Black communities. On nearly every indicator, police power and involvement in the lives of black citizens and neighborhoods grew. Police insinuated themselves into the lives of more and more residents, around more and more matters, while doing less to protect and create the conditions for wellbeing or fixing the “broken windows.”

Young Black and Latino men were the stated targets of quality-of-life policing. The precinct commander in one of the nation’s most well-known police killings—Amadou Diallo in New York City—instructed his rank officer about who to stop and if such stops did not significantly increase, the officer would be given an unfavorable assignment: “Male blacks,” he said to his rank officer. “I told you that at roll call, and I have no problem telling you this: male blacks 14 to 20.”⁹⁴ Ray Kelley, the chief of police in New York City, described the aspiration of stop and frisk as a strategy of “instill[ing] fear in them, every time they leave their home, that they could be stopped by police.”⁹⁵

Anecdotes like these are accompanied by equally dramatic empirical trends, which were derived from court orders to collect police stop and frisk data by race after Diallo’s killing in 1999. Analyses now show that at the height of stop and frisk in New York City, 95% of Black men ages 18 to 19 were stopped in a single year.⁹⁶ According to data acquired by the New York ACLU, more than 5 million police stops and street interrogations were made since 2002; in every

⁹³ Soss and Weaver, “Police Are Our Government,” p. 571.

⁹⁴ Quoted in Taylor, *From #BlackLivesMatter to Black Liberation*, p.126.

⁹⁵ Quoted in *Ibid*, p. 126.

⁹⁶ Fagan et al. “Street Stops and Broken Windows Revisited.” Note that this careful empirical analysis derives a more conservative estimate of 79 percent once the numbers are adjusted for the possibility of repeated stops among a single individual.

year, the majority of those stops have been Black, while the share of whites stopped never rose to more than 12% of the total. Between 2002-2011, nearly nine out of every 10 people stopped and frisked had no contraband, were not found to be engaged in unlawful activity, and were not issued a summons or arrest.⁹⁷ These sorts of racially targeted policing practices continue in other cities – as well as small towns⁹⁸ – across the country. For example, about 40% of adults stopped and questioned by police in Chicago in 2014 were young Black adults between the ages of 18 and 30, a total of more than 241,000 police stops.⁹⁹

Today, law enforcement’s encroachment into community life, and its collaborations with other institutions affects how Black parents (especially Black mothers) care for their children and seek to keep them safe.¹⁰⁰ For example, Shannon Malone Gonzalez’s research powerfully reveals that Black mothers from different social class backgrounds engage in [the “police talk”](#) with their children in an effort to make their children aware of their distinct vulnerability to police violence and to give their children tools of how to handle hostile encounters with police;¹⁰¹ mothers emphasize that the ultimate goal is to stay alive and to “make it home.” Black mothers educate both their sons and daughters about police confrontations, although such discussions may also inadvertently elevate the vulnerability of Black boys as the primary targets while minimizing the documented racial vulnerability of Black girls to police violence.¹⁰²

But the threat of criminalization also extends to Black motherhood. As shown by two decades of research by legal scholar and sociologist Dorothy Roberts, child protective services

⁹⁷ ACLU of New York. “Stop-and-frisk Data.” <https://www.nyclu.org/en/stop-and-frisk-data>

⁹⁸ Fagan and Ash, “New Policing, New Segregation: From Ferguson to New York”

⁹⁹ For the data, see <https://lucyparsonslabs.com/posts/stop-and-frisk/>

¹⁰⁰ See for example, Dow, *Mothering While Black: Boundaries and Burdens of Middle-Class Parenthood*, and Elliott and Reid, “Low-Income Black Mothers Parenting Adolescents in the Mass Incarceration Era: The Long Reach of Criminalization.”

¹⁰¹ Malon Gonzalez, “Making It Home: An Intersectional Analysis of the Police Talk.”

¹⁰² Ibid.

(CPS) and the police increasingly work together—sharing data and jointly responding to reports—in ways that expand both agencies’ respective powers to enter homes without a warrant, to surveil and regulate families, and to arrest adults and remove children.¹⁰³ “Because child welfare is classified as part of the civil legal system, CPS workers are not considered to be law enforcement officers” and are effectively exempted by the courts from Fourth Amendment procedural requirements pertaining to police searches.¹⁰⁴ So, by accompanying CPS case workers, police officers have a Fourth Amendment loophole through which entanglements with the child welfare system beget entanglements with the police and the criminal justice system. “While each system targets Black mothers independently, each also draws Black mothers into each other’s net.”¹⁰⁵ Because police (who place a close second to teachers in the number of reports they make to child protection authorities) disproportionately target Black people and communities, Black families are then reported and investigated at far higher rates. What’s more, whenever caseworkers investigate a home, they also inspect the household for misconduct, legal or otherwise, and make a report to 911 of any legal infractions.¹⁰⁶ Still, because police increasingly accompany caseworkers on investigations, they may find a reason to arrest someone in the family.¹⁰⁷

So, partly as a result of these racialized practices by child protective services and the police, recent foster care rates for U.S. children (576 per 100,000) resemble recent incarceration

¹⁰³ Roberts, *Torn Apart: How the Child Welfare System Destroys Black Families—And How Abolition Can Build A Safer World*, 191.

¹⁰⁴ *Ibid.*, 164.

¹⁰⁵ *Ibid.*, 192-94. Statistical research underscores this claim, finding that “involvement with the child welfare system is a spillover consequence of arrest.” See Edwards, “Family Surveillance,” 62-63, as cited by Roberts, *Torn Apart*. For a historical account of these practices, see also Kohler-Hausman, “‘The Crime of Survival’: Fraud Prosecutions, Community Surveillance, and the Original ‘Welfare Queen’” and Gustafson, “Cheating Welfare: Public Assistance and the Criminalization of Poverty”

¹⁰⁶ *Ibid.*, 193.

¹⁰⁷ *Ibid.*

rates for U.S. adults (582 per 100,000),¹⁰⁸ and more than one in 10 Black children in the U.S. is forcibly separated from parents and placed in foster care by age 18.¹⁰⁹ Thus, low-income Black mothers today adapt their parenting strategies to address “not only...fears that their children will be criminalized by mainstream institutions and the police, but also...concerns that they themselves will be criminalized as bad mothers who could lose their parenting rights.”¹¹⁰

These dynamics in the child welfare system echo broader patterns of the migration of policing and surveillance into other domains and institutions beyond formal law enforcement. Indeed, scholars now point to the interlinkages between those institutions traditionally understood as providing social services, education, and recreation as actually working with police agendas to keep tabs on Black people (especially youth), regulate movement, and criminalize behaviors and show the ways they ultimately end up furthering criminalization and oversight, including community centers, local social services and welfare offices, departments of child welfare, housing authorities, and especially schools.¹¹¹

In addition to the “coupling” of policing with community institutions and social services, the growth of other mechanisms have enlarged contact with people who would not have been under the purview of the criminal justice system in decades past: misdemeanor justice, banishment, therapeutic policing, predation, and criminalization of poverty.¹¹² Scholars have

¹⁰⁸ Ibid., 23.

¹⁰⁹ Wildeman and Emanuel, “Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2001-2011, as cited by Roberts, *Torn Apart*, 22.

¹¹⁰ Elliott and Reid, “Low-Income Black Mothers Parenting Adolescents in the Mass Incarceration Era: The Long Reach of Criminalization.”

¹¹¹ See especially, Shedd, *Unequal City* (on schools); Rios, *Punished* (on the role of community centers); Roberts, *Torn Apart* and Fong, “Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life” (on child welfare institutions); Stuart, *Down, Out, and Under Arrest* (on local antipoverty “Missions”); Soss, Fording, and Schram, *Disciplining the Poor* (on welfare); Paik, *Trapped in a Maze* (on social service agencies).

¹¹² Shedd, *Unequal City*; Kohler-Hausmann, *Misdemeanorland*; Beckett and Herbert, *Banished*; Stuart, *Down, Out, and Under Arrest*; Soss and Page, “The Predatory Dimensions of Criminal Justice”; Beckett and Murakawa, “Mapping the shadow carceral state: Toward an institutionally capacious approach to punishment”; Gustafson,

begun to show that these low-level encounters were not only the majority of our system but the context in which racial inequality and criminalization flourished, as much as property crimes were the areas where racial targeting happened in the era of convict leasing. These encounters were often weaponized for profit even where those stopped never received a formal conviction. For example, municipalities like New York brought in \$1 billion a year in fees and fines for quality-of-life offenses. And the prevalence of these contacts surged; for example, misdemeanor arrests in New York City, which actually began lower than felony arrests in 1980, continued a sharp rise long after felony arrests began a steady decline in 1990.¹¹³

The new approach was characterized by several shared features that actually showed that formal adjudication or serious predatory violence was not how many Americans were brought into the justice system, nor were the consequences for daily life less significant or less of a gateway into more involvement.¹¹⁴ The evidence of several studies that investigated stop-and-frisk, investigatory stops, the use of monetary sanctions and fines, misdemeanor charges, trespass admonishments, and civil violations show 10 patterns that are remarkably consistent:

- 1) The focus of proactive policing strategies was on “quality-of-life” offenses and *incivility*, rather than serious violent victimization – “behaviors that ostensibly inhibit the enjoyment or consumption of public space” – for more affluent and white residents.¹¹⁵ In other studies, the focus of policing was on regulating non-criminal behavior (such as

“Cheating Welfare: Public Assistance and the Criminalization of Poverty”; Soss, Fording, and Schram, *Disciplining the Poor*.

¹¹³ See figure on page 361 in Kohler-Hausmann, “Misdemeanor Justice: Control without Conviction.”

¹¹⁴ Rios, *Punished*; Stuart, *Down, Out, and Under Arrest*; Kohler-Hausmann, *Misdeamnorland*; Page and Soss, “The Predatory Dimensions of Criminal Justice”; Beckett and Herbert, *Banished*; Bell, “Anti-Segregation Policing”; Laniyonu, “Coffee Shops and Street Stops: Policing Practices in Gentrifying Neighborhoods”; Brayne, “Surveillance and System Avoidance”; Fagan, et al. “Street Stops and Broken Windows Revisited”; Katzenstein & Waller, “Taxing the Poor: Incarceration, Poverty Governance, and the Seizure of Family Resources”; Harris, *A Pound of Flesh*; Natapoff, *Punishment without Crime*.

¹¹⁵ Laniyonu, “Coffee Shops and Street Stops: Policing Practices in Gentrifying Neighborhoods,” p. 899.

service resistance) and making contact with people to “keep tabs,” and not actual serious offending.¹¹⁶

- 2) Formal conviction, adjudication, or prolonged confinement is often not the outcome and most of these contacts never result in formal charge, punishment, or guilt. In the places where data exist, most police stops do not result in arrest and most misdemeanor charges are either dismissed or do not result in a conviction. For example, one study that systematically analyzed misdemeanor arrests in New York City, found that “over 50% of the dispositions for misdemeanor arrests in New York City in 2011 were dismissals.”¹¹⁷ Yet, they entail often extended engagements with official authorities. Thus, scholars conclude that the status of being banished (i.e., having a trespass admonishment or exclusion order), “wanted” (i.e., having an outstanding warrant), having a nuisance violation, dealing with a misdemeanor case, or having a monetary sanction **is an important legal standing that places people in a category between free and unfree**. It triggers oversight by authorities and identifies them for other burdens and often leads to extended engagements with the criminal justice system. For example, nuisance citations can lead to eviction from housing,¹¹⁸ a misdemeanor charge often results in having one’s fingerprints stored in a database (even those whose cases are later dismissed), and those who entered the system with a simple misdemeanor charge that was later dismissed often lost their jobs due to the time spent taking off work going back and forth to the court.¹¹⁹

¹¹⁶ Stuart, Down, Out, and Under Arrest. In this study of Los Angeles, officers spoke about using arrest to get residents services.

¹¹⁷ Kohler-Hausmann, “Misdemeanor Justice,” 363.

¹¹⁸ Desmond and Valdez, “Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women.”

¹¹⁹ Kohler-Hausmann, “Misdemeanor Justice.”

3) As criminal law expanded, it also blurred with the civil legal system, often exposing people to policing and incarceration who otherwise would not be and further widening an already expansive net. Despite the lack of formal punishment, a focus on minor transgressions operates as a gateway to harsh punishments or extended entanglements. In the figure below, a violation at the bottom tier can quickly route one to the middle or top of the pyramid. If one has a misdemeanor charge and fails to appear, for example, harsher sanctions follow; if one sleeps on a park bench due to being unhoused and violates a “parks exclusion order,” a civil violation can become a criminal offense;¹²⁰ if one curses in public and gets an administrative fine but fails to pay, it generates an outstanding warrant. Police were regularly called on students for violating school rules, not criminal offenses.¹²¹

4) The “process is the punishment.”¹²² Studies show that these low-level violations were not minor inconveniences but that their informal costs rivaled or were greater than formal sanction. They steal time and are an assault on privacy and dignity. Those navigating these systems endure significant material hardship, job loss, housing instability and hardship,¹²³ significant financial debt, and expulsion from public space, enduring isolation from people and places that are vital community connections. For example, in a study of Seattle sociologists have found that people who had a drug or prostitution offense were excluded from zones of the city; the requirements effectively meant that

¹²⁰ Beckett and Herbert, *Banished*.

¹²¹ Rios, *Punished*.

¹²² Feeley, *Process is the Punishment*. See Kohler-Hausmann, “Misdemeanor Justice,” on procedural hassles.

¹²³ Pattillo, et al. “Monetary Sanctions and Housing Instability.” “We find substantial evidence of a housing instability-LFO nexus, a caustic churn whereby a population with identifiable housing hardships is saddled with a punishment that deepens financial strain and thus weakens housing stability.”

people could not travel through vast areas of the city to visit loved ones or access needed services.¹²⁴

- 5) The threat of potential confinement shapes daily habits of avoidance. The social isolation that results underwrites further marginality. Residents of Skid Row in Los Angeles went to “extreme lengths” to mitigate and deflect the burdens of intensive police oversight, often avoiding staying in one place too long. Youth in Oakland, to contend with the criminalization and extensive oversight they experienced, developed practices to cope with and counter scrutiny of their lives, practices that were themselves deemed deviant and intensified oversight.¹²⁵ Several accounts trace how this isolation, and displacement from people and places they relied on, made people more vulnerable to violence and economic insecurity. Moreover, studies find that people who have police contact engage in “system avoidance,” and that being policed is strongly associated with a broader disconnection from medical, educational, and labor market institutions. For example, one important study found that those who had adversarial police contact had much higher odds of not obtaining medical care (33% higher odds of not obtaining medical care when needed among those stopped by police, 29% higher among those arrested, and 33% higher among those convicted).¹²⁶
- 6) These low-level encounters reproduce race and class inequities. Though lower-level contacts are more difficult to measure, the evidence that exists shows extreme racial concentration and interactions by age, gender, race, class, and neighborhood, and the people targeted are disproportionately Black. For example, 40% of Black men under 25

¹²⁴ Beckett, *Banished*.

¹²⁵ Rios, *Punished*.

¹²⁶ Brayne, “Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment.”

endured an investigatory stop. In New York City, in 2010, Black people and people of Latin American and Caribbean descent constituted 49% and 33% percent respectively of all misdemeanor arrests; in Seattle, Black people are between 38% and 40% of those who are banished from public space due to a trespass admonishment or exclusion order, yet only comprise 8% of the city's residents.¹²⁷ More broadly, as Friedman and Pattillo argue in their work on monetary sanctions, such mandated fees imposed on justice-involved people “legally authorizes further impoverishment of the poor, thereby increasing inequality.”¹²⁸

- 7) People are subjected to low-level interactions based on *who they are, not what they did*—the neighborhood in which they live, or the car they drive, or their racial group membership¹²⁹ not the alleged offense they commit. Here, race, poverty, and place become key predictors of being stopped, fined, banished, and so on. For example, Charles Epp and his colleagues found that those subject to investigatory stops (not a traffic safety violation) were most likely to be Black men under 25 years old driving a low-value car and driving in particular areas; such stops were not explained by driving patterns.¹³⁰
- 8) These lower-level contacts have fewer constitutional safeguards, fewer procedural hurdles that the state must get over, and “shadowy” legal protections. They are often not publicly legislated and subsequently give officers and judicial agents more discretion over when a charge is dropped, case is dismissed, or whether a fine is imposed, or a

¹²⁷ Epp et al., *Pulled Over*; Kohler-Hausmann, “Misdemeanor Justice: Control without Conviction;” Beckett and Herbert, *Banished: The New Social Control in Urban America*, 67-68.

¹²⁸ Friedman and Pattillo, “Statutory Inequality: The Logics of Monetary Sanctions.”

¹²⁹ Epp, et al., *Pulled Over*.

¹³⁰ *Ibid.*

person is frisked.¹³¹ Scholars point to the *selective enforcement* of minor transgressions and public order violations.

- 9) These contacts engage institutions *beyond* the criminal justice system, where other institutions become a backdoor into it, as well as families and networks beyond the person charged, fined, or surveilled. Criminalization happens through multiple institutional contacts and venues, creates an “institutional maze” that drives family poverty and inequality,¹³² and increasingly gives way to a “surveillant assemblage” of institutions sharing data.¹³³ A key theme across research on low-level contacts is that this is not benevolent but extends *intrusive oversight* into the lives of young people and those on the margins, and blurs the lines between social services, social workers, community providers, and law enforcement; police come to inhabit social service roles and community centers, and social programs and schools come to serve criminalization roles. The youth in Rios’ Oakland study, for example, were required to meet with their probation officers in the community center and schools provided office space to probation officers and police, the security guards at their schools regularly communicated with police officers as boys left at the end of the school day or were called when the students talked back or cursed, and when one teenage boy landed in the hospital and almost died from an attack, he was summarily added to the city’s gang database despite no affiliation and no arrest history. As Rios explains, “When the police classified Spider as a gang member, school staff, community workers, and other adults in the community

¹³¹ See especially, Beckett and Herbert, *Banished*; Kohler-Hausmann, *Misdemeanor Justice*; and Epp, et al. *Pulled Over*.

¹³² Paik, *Trapped in a Maze: How Social Control Institutions Drive Family Poverty and Inequality*.

¹³³ Brayne, “Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment.”

also adopted this categorization ... despite his being the victim who had been stabbed.”¹³⁴

Similarly, city and state officials exploit family relations and social networks, relying on these to bring in an individual or to capture an unpaid legal financial obligation or bail money.¹³⁵ Scholars have termed this “courtesy stigma” – family or connections become suspect.¹³⁶

10) These intensive state interactions were not only responding to instability and precarity but also became a *source* of instability, constraining the ability to work, live, and maintain social ties and shifting burdens onto disadvantaged people and places. As people and their families find it difficult to adhere to the demands of civil orders to stay out of certain areas, pay off their prohibitive legal financial obligations, and comply with the vast array of accompanying requirements of their misdemeanor violation, they were more, not less, likely to experience a spell of poverty, eviction, homelessness, or health crisis. Failure is high, and some of the requirements imposed seem designed to ensure failure. For example, in several studies on monetary sanctions, scholars find a cycle whereby poor people cannot pay the exorbitant court costs and fees, are then threatened with more punishment if they cannot pay, and sometimes even signed up for payment plans in what Pattillo and Kirk term “layaway freedom.”¹³⁷

¹³⁴ Rios, Punished: Policing the Lives of Black and Latino Boys,” 78.

¹³⁵ Soss and Page, “A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation.”

¹³⁶ Rios, Punished.

¹³⁷ Pattillo and Kirk, “Layaway Freedom: Coercive Financialization in the Criminal Legal System.”

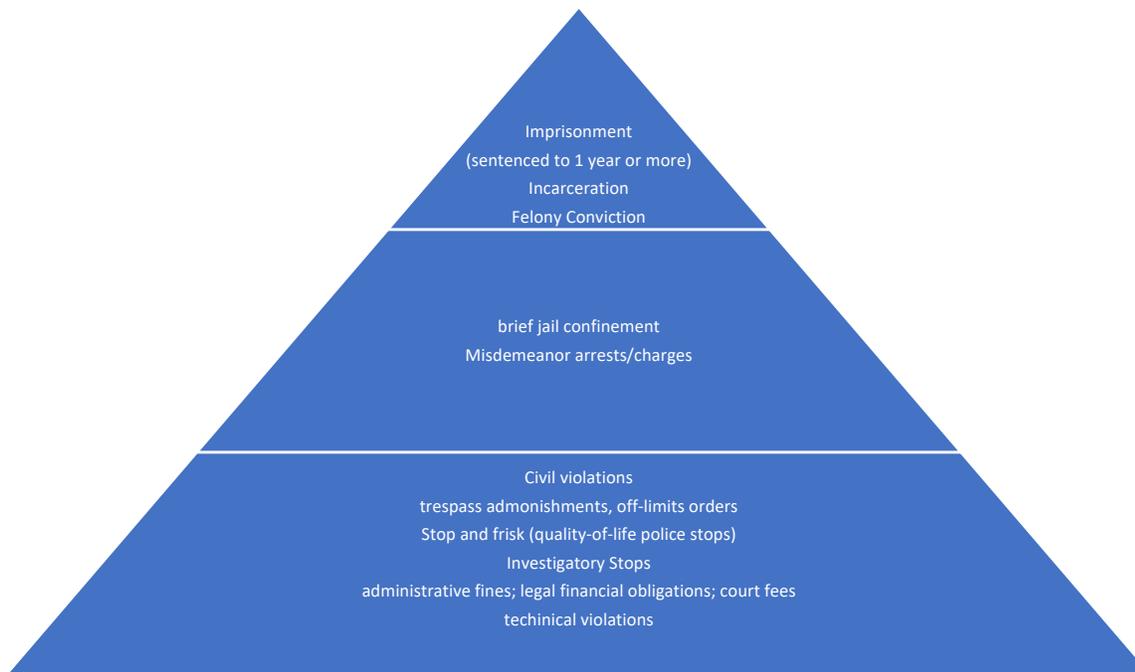


Figure 4: Tiers of Criminal Legal Contact.¹³⁸

As opposed to empirical trends in prison confinement, data tracking systematic growth over time in lower-level contacts, particularly the bottommost tier, are scarce, and race is even more challenging to disaggregate. Most of the scholars in the paragraphs cited above produced figures for particular localities—for example, banishment in Seattle, stop and frisk and misdemeanor charges in New York, investigative traffic stops in Kansas City—or relied on ethnographic studies in Oakland, Seattle, Chicago, Philadelphia, or Los Angeles.

Some of the best evidence that does exist on lower-level contact is in changes in arrest patterns that span the rise and fall of the drug war and aggressive policing strategies. Two studies here document a sharp generational shift. Using data on the experiences of young adults in the National Longitudinal Survey of Youth (NLSY), Weaver and colleagues look at the group born

¹³⁸ This schematic is not meant to be exhaustive; indeed, it is an oversimplified one-dimensional visual that doesn't capture all the ways entanglements in various systems interact across various levels. For example, involvement by child protective services can be triggered by lower level encounters (tier 1) that can then impose systems-level harms that lead to cycles of arrest and/or incarceration and a loss of parental rights (tiers 2 & 3).

in the mid-1960s, and the group born 20 years later in the mid-1980s. The latter would have been “coming of age” (i.e., entering early adulthood) after the substantial changes to policing discussed above. In 1980, among the earlier group, 11% had been arrested, 8% convicted, and 2% incarcerated by the time they were 23. In contrast, among the “broken windows” cohort, almost a quarter had been arrested, 12% convicted, and 5% incarcerated by 2000.¹³⁹

Robert Sampson and his colleagues in the Project on Human Development in Chicago Neighborhoods, a data collection project that began after the NLSY data, examined age and official arrest history curves typical in criminological research and found a huge divergence, such that “the probability of being arrested was nearly twice as large” for those born in the early to mid-1980s and their arrest probability remained high in contrast to those born in 1995 (a more recent cohort not analyzed in the Weaver study), which has “an age-arrest curve that barely increases after 16.”¹⁴⁰ The divergence across age groups was not due to dispositional or other differences like drug use. Instead, arrest trajectories depend significantly “on the historical timing of when children reach late adolescence and early adulthood.”¹⁴¹ When police enforcement of drug offenses wanes and sharply falls in the ensuing years after its peak in the 1990s, the kids who grew up in that environment were much less likely to be arrested. Neil and Sampson conclude: “Remarkably, 70% of individuals born in the mid-1980s to disadvantaged families had been arrested by their mid-20s, compared to about a quarter of the disadvantaged members of the younger cohort from the mid-1990s.”¹⁴²

¹³⁹ Weaver, Papachristos, and Zanger-Tishler, “The Great Decoupling”; see also Brame et al., “Cumulative prevalence of arrest from ages 8 to 23 in a national sample.”

¹⁴⁰ Neil and Sampson, “The Birth Lottery of History,” 1153.

¹⁴¹ Ibid, abstract.

¹⁴² Ibid, 1169.

Across both studies, the consistent picture that emerges is that those who turned 18 in the late 1990s had *drastically higher arrest likelihood* than either those who turned 18 around 2015 or those who turned 18 around 1980. These were the young people who grew up during the drug war and during an era of high rates of reported violence. Neil and Sampson show that the latter group, the 2015 cohort, experienced falling drug arrests and disorderly conduct arrests in Chicago, compared to the 1990s cohort when disorder arrests were strikingly high (constituting just under a quarter of Chicago Police Department arrests). They calculate how arrests would have changed for the latter group if they had faced the 1980s cohort’s arrest patterns, and they find that “55% of the arrest gap ... is explained by changing drug arrest patterns.”¹⁴³

Despite the growth and intensification of oversight and surveillance, the system was also characterized by another longstanding feature: under protection and unresponsiveness by police. The uneven distribution of protection and aggressive oversight tends to track one another; those places that endure more safety deprivation are also those places that had difficulty having responsive police when they were in crisis or endured serious violent victimization – what we have termed elsewhere “distorted responsiveness.”¹⁴⁴ Yanilda Gonzalez explains that in economically vulnerable communities outside the United States, “This generates important contradictions, as the communities that are most ravaged by deficient security and police abuse often depend on police for vital social services.”¹⁴⁵ By analyzing distorted responsiveness on a large, representative survey – the Cooperative Multiracial Post-Election Survey – we can see a clear dynamic emerge. White respondents characterized police authorities in their community as operating efficiently and providing quality service — 45% of them characterized police in their

¹⁴³ Ibid., 1162.

¹⁴⁴ Prowse, Weaver, and Meares, “The State from Below: Distorted Responsiveness in Policed Communities.”

¹⁴⁵ González, ““What citizens can see of the state”: Police and the construction of democratic citizenship in Latin America,” 507

neighborhood as quick to respond for serious emergencies and as less present for trivial infractions of the law. For Black and Latino respondents, a much greater share saw the opposite: “They give you time to die.” “They take a long time to get there ... when you really need them ... but they be harassing people who ain’t got nothing.” Or “They’ll go to certain neighborhoods and just pick at you ... now when you really are needed in that neighborhood, they might have never come.”¹⁴⁶

	White	Black	Latino
Slow for emergencies	15.77%	30.88%	24.99%
Fast for small infractions			
Slow for emergencies	10.13%	16.22%	
Slow for small infractions			15.11%
Fast for emergencies	45.11%	32.88%	
Slow for small infractions			37.00%
Fast for emergencies	28.99%	20.11%	
Fast for small infractions			23.0%

Source: Author’s analysis of the 2020 Collaborative Multiracial Post-Election Survey. Full Adult Sample. N=16,154

Under protection and policing that treat Black lives as less important continue a historical pattern. In a 1968 interview, Bert Hawkins, a white police officer hired in 1939 and later promoted to sergeant whose beat included the Black Louisville, Kentucky, area known as Walnut Street, spoke with amusement about how police slowed their response to a shooting:

I’m going to say something now about an incident that actually occurred. And I think it’s amusing in a way, and probably it shouldn’t be said for other reasons, but I had--my regular partner was off on a particular night, and I had an old-time policeman that didn’t even have a beat he was kind of helping around the station house and they put him with me because my partner was off. At this time, I was maybe a six-months police, hadn’t

¹⁴⁶ Prowse, Weaver, and Meares, “State from Below.”

been there very long at all. But I had this old fella, really too old to walk a beat or ride a beat, or anything else. And we were riding down Market Street and we got a shooting call. This time we only had one-way radios, you couldn't answer back. And we got a shooting call. I think about 7th or 8th in the Walnut Street in front of a tavern. So as usual, I stepped on the gas and went out 12th Street, heading for Walnut and going pretty fast and the older fella says, "wait a minute here, young man, pull over here a minute, I want to talk to you." And I pulled over to the curb and he said, "Now, let's just wait about 15 minutes." He says, "those people out there shoot at one another. Your life is worth 10 of theirs. Just wait a while till it's all over and we'll go up there and send the people to the hospital." [chuckles] But those things happen and in a way, they are amusing but you wonder how did they actually get anything done back in the old days.¹⁴⁷

III. POLICING BLACK CHILDREN

One of the most important aspects of punishment and policing today is that it deepens Black childhood inequality and constructs a racial curriculum and processes of political and legal socialization. Black childhood and early adolescence are distinct, a key moment where youth are exposed to authoritarian relations with government, seen as less innocent and more culpable, disciplined for transgressions that are regarded as youthful when done by white children, and witnesses to state violence. And they are outside of childhood itself, perceived by police and the public alike as adults at 13 and a half.

The policing of Black children is one of the most well-understood truths of life in Black communities, one that has been an enduring feature of Black political life, and one of the least acknowledged in broader media narratives.

Throughout history, Black children have been subjected to harsh public discipline. They even have collective names – The Scottsboro Boys, The Harlem Six, The Soledad Brothers, The Wilmington Ten, the Central Park Five. Indeed, the first account of a prison by a Black person in the United States was that of Austin Reed, in 1858.¹⁴⁸ Reed, a free Black child living in Rochester, New York, was imprisoned when he was 6 years old and he spent most of his adult life in a penitentiary. After his father dies and his mother falls on hard times, Reed is sent at the

¹⁴⁷ Hawkins, Bert. Interview by Penny Chumbley, March 11, 1968. African American Community Interviews, Oral History Center, Archives & Special Collections, University of Louisville.

¹⁴⁸ Reed, Austin. *The life and the adventures of a haunted convict*. Edited by Caleb Smith; with a foreword by David W. Blight and Robert B. Stepto. New York: Random House, 2016.

age of 6 to work on a farm. Suffering whippings and other indignities by the white owner, he sets fire to the property and is sent to the House of Refuge, an early reformatory in upstate New York where he is confined until he is 21. Most of Reed’s adult life is spent at Auburn State Prison in New York, where he writes about being compelled to work and the fear of the lash used on young kids, the “cat-o’-nine tails.”

Historians, sociologists, and legal scholars have explored how Black children were “presumed criminal” and how the concept of innocence was divorced from Black youngsters, stretching back to the antebellum period;¹⁴⁹ how much public policy and political agendas on crime and new policing techniques and theories derived from ideas that Black youth were dangerous and the key sources of disorder;¹⁵⁰ how 21st-century Black rebellions were catalyzed because Black youth were targets of extreme oversight;¹⁵¹ and how Black kids were often kept out of progressive era reforms and white reformatories and activists mounted campaigns to struggle for alternatives to segregated juvenile justice.¹⁵² These scholars have documented the underenforcement of violence toward Black children,¹⁵³ greater social control, repressive enforcement, and criminal sanctions toward Black adolescents,¹⁵⁴ as child welfare systems abetted the criminal justice system in projects of oversight of Black kids—and their mothers.¹⁵⁵

We see the experience of Black children described in the writings of Black intellectuals and authors as policed subjects, denied youthful indiscretion, and instructed early on that their

¹⁴⁹ Suddler, *Presumed Criminal*; Gross, *Colored Amazons*; Webster, *Beyond the Boundaries of Childhood*.

¹⁵⁰ Feld, *Bad Kids*.

¹⁵¹ Hinton, *America on Fire*.

¹⁵² Ward, *The Black Child-Savers*; Muhammad, *Condemnation of Blackness*

¹⁵³ Natapoff, “Underenforcement;” Kennedy, *Race, Crime and the Law*; Hinton, *America on Fire*; Forman, Jr., *Locking Up Our Own*.

¹⁵⁴ Henning, *The Rage of Innocence: How America Criminalizes Black Youth*.

¹⁵⁵ Roberts, *Shattered Bonds*; Roberts, *Torn Apart*; Roberts, “Prison, Foster Care, and the Systemic Punishment of Black Mothers.”

bodies were deviant and the property of the state.¹⁵⁶ We see it in the work of Audre Lorde, James Baldwin, Huey Newton and others.¹⁵⁷ Many Black academics themselves relate their own memories of being policed or having their kin policed, sometimes as a primary subject,¹⁵⁸ often as just part and parcel of growing up.¹⁵⁹ Black fiction writers have been attuned to the policing and incarceration of Black kids, including Colson Whitehead's *Nickel Boys*, or Rion Amilcar Scott's fictional short stories, *The World Does Not Require You*, or *Friday Black* by Nana Kwame Adjei-Brenyah.

Long before the rise of broken windows tactics or the expansion of policing in cities across the country after the Safe Streets and Crime Control Act of 1968, police occupied a central place in Black childhood. Ferdie Louise Walker, who gave an oral history interview in the 1990s about her upbringing as part of an effort to document lives in the Jim Crow era, remembers being a young girl waiting for the bus in Fort Worth, Texas, during the 1930s, a day that defined her “morbid fear of policemen” long after her preadolescence:

One really harassing kind of thing that I went through and at that time I was 11 years old and I will never forget it. I used to go back and forth to church on Sunday afternoons to the United Methodist youth group and I always rode the bus. And you had to stand on the corner which was about two blocks from my house to catch the bus and the policemen, in those days all police people were white and all bus drivers were white And these policemen would harass me as I was standing on this corner waiting for the bus to come. And sometimes the two of them would drive up, you know, the bus stop was up high and the street was down low. And they'd drive up under there and then they'd expose themselves. While I was standing there and it just really scared me to death. And the only reason I did not go home at that time was because if I had gone home my mother would have made me stay. So I just stepped back from the corner...But it was these same cops. So I had a morbid fear of policemen all of my life and it has not completely gone away... and this was in the broad open daylight with the sun shining. But I will never forget it and it always comes back to me

¹⁵⁶ Jones, “The regular routine.”

¹⁵⁷ “Most black parents are very aware of the conflicting and bewildering influences that surround their children, and they experience a deep anxiety over whether they will get into trouble with the law or at school.” Newton, *Revolutionary Suicide*, 44.

¹⁵⁸ Allen, *Cuz*; Butler, *Chokehold*.

¹⁵⁹ Laymon, *Heavy*

every time I get into a really tight experience. That was really bad and it was bad for all black girls, you know.¹⁶⁰

Walker goes on to explain that even into her career as a social worker in Topeka, Kansas, she would often turn to the minister or other leaders to intervene in situations rather than call the police, a dynamic of aversion many scholars today have found in the aftermath of police abuse.¹⁶¹ In situations of domestic violence, Walker concludes, “I should call the police, but I don’t believe in the police.”

Though we have fewer systematic studies during this period, in 1966, a dissertation explored how Black children defined freedom, giving clues to the prominence of police and jail in the minds of children, and to Ferdie Walker’s concluding sentiment that it was “bad for all black girls.” Black teachers interviewed 100 Black children in primary and secondary school in Urbana, Illinois, and asked them about their knowledge of the legal system, the police, and the meaning of freedom in daily life. The author noted first that comments about policing were derived from actual experience rather than vague expressions as the children were “able to cite specific examples of mistakes they think police make” and detailed reasons for not wanting to enter the policing profession. The author was surprised by how children defined freedom as being *free from* rather than *free to*, and how Black childhood was laden with adult-like concerns:

From second through sixth grade, there was a negative interpretation of freedom. These children seemed preoccupied with the restraints to freedom. ‘Getting out of jail,’ was the most common response of the second grade children. In the fourth, many were concerned with ‘being pushed around,’ as well as being free from jail. By sixth grade, several mentioned having freedom from ‘money worries,’ as well as from various kinds of interferences. **There was little child-like concern with being free to play or being free of school.** Rather it was to be free of adult problems such as jail and money worries. ...

¹⁶⁰ Ferdie Louise Walker and Archie Lee Walker, interviewed by Paul Ortiz, Tuskegee, AL, 1994; from *Behind the Veil: Documenting African-American Life in the Jim Crow South*, Center for Documentary Studies at Duke University, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

¹⁶¹ Desmond, Papachristos, and Kirk, “Police Violence and Citizen Crime Reporting in the Black Community”; Bell, “Situational Trust” on how mothers who sometimes need to rely on police navigate their decisions to engage.

For second grade children to think of freedom in terms of being free from jail probably does not reflect a typical American childhood concept.¹⁶²

The policing of Black children tends to appear in the social science literature not in terms of the state's consistent treatment and policy response to Black youngsters, but as worrisome outcomes, statistics disconnected from historical legacies and context, flat-footed claims that youth perceptions of police “vary by race” absent deeper theorization and examination.¹⁶³ In journalistic narratives, the policing of Black childhood appears as episodic scandals – the throwing to the ground of Black girls swimming, Kalief Browder's horrendous ordeal in Rikers Island, kids being described as having “hulk” like strength before their lives are ended – rather than a coherent, consistent policy (and societal) approach to Black childhood. Even rarer is an understanding of white youth criminality, and what the targeted and racialized nature of police encounters means for underenforcement, under criminalization, and relative protection from public discipline among white youth who enjoy what one scholar calls a “racial pass.”¹⁶⁴

The policing of Black children and teens and Latin American-descended children and teens is prevalent, occurs early in a young person's life, and its correlation to offending has

¹⁶² Schnepf, Virginia, “A Study of Political Socialization in a Sub-Culture: Negro Children's Knowledge of and Attitudes toward the Police, Law, and Freedom.” University of Illinois, Phd. 1967. Emphasis ours.

¹⁶³ This reflection by Dylan Jackson (“The Case for Conceptualizing Youth-Police Contact as a Racialized Adverse Childhood Experience”) perfectly captures how much we obscure through statistical approaches that start from assumptions that police stops affect black and white youth similarly, black youth simply just endure more stops and more force. Such an approach negates historical, collective trauma:

“Ultimately, what these youths convey in this work is that police-induced trauma is, in many respects, its own class of trauma; it is set apart as a uniquely potent historical, racialized, intergenerational form of trauma that is affixed to a collective experience of marginalization... We must acknowledge that, for Black youths, police-initiated microaggressions and violence—which are often inextricably tied to assumptions of Black criminality—are toxic, modern-day echoes of centuries of abuse and oppression, channeled through an institution that has been an instrument of structural racism for centuries. Such an acknowledgment also necessitates that we examine this form of adversity in context.”

¹⁶⁴ Weaver, “The Kavanaugh hearings show who we afford a second chance and who we don't”; on the “racial pass” see Capers, “The Under-Policed.”

gotten weaker over time.¹⁶⁵ Black youth have significantly greater exposure to police “beginning in preadolescence” and those stops are more intrusive and forceful¹⁶⁶, and legal scholars find that these stops are less likely to lead to a recovery of a weapon or drugs.¹⁶⁷ In both nationally representative datasets as well as administrative data for cities where police stops are collected and can be analyzed by age, Black and Hispanic youth are much more likely to be exposed to police stops; conditional on being stopped, Black and Hispanic youth are more likely to be frisked, searched, or have other force used on them. In one large representative survey, 23% of white youth reported being stopped by police by age 15 and only 1% of white boys reported being frisked or handcuffed in their interactions.¹⁶⁸ Among Black boys, almost 40% were stopped, 12% frisked, 12% were handcuffed.¹⁶⁹ These differences remain strong and statistically significant even after accounting for differences in socioeconomic status and other factors and cannot be explained by the differences in offenses. Data using administrative police records, or for specific cities, come to similar conclusions.¹⁷⁰ In studies that systematically compare across groups, one of the most striking findings is that Black youth are policed at rates that see no parallel among any other group, including any age group of white men. For example, in New York City, based on administrative data that depicts the average yearly rate of police stops per

¹⁶⁵ Weaver & Geller, “De-Policing America’s Youth”; Geller, “Policing America’s Children;” Weaver, Papachristos, and Zanger-Tishler, “The Great De-Coupling”

¹⁶⁶ Geller, “Youth-Police Contact: Burdens and Inequities in an Adverse Childhood Experience, 2014-2017”. The odds of police contact were twice as high among black boys as white boys. Differences among girls were not statistically significant. Hispanic/white differences were smaller in magnitude and not statistically significant.

¹⁶⁷ Fagan, et al., “Street Stops and Broken Windows Revisited.”

¹⁶⁸ Weaver & Geller, “De-Policing”; Geller, “Policing America’s Children”

¹⁶⁹ Ibid.

¹⁷⁰ For example, in New York City, black 15-year old boys were stopped at a rate of more than 600 per 1000 students in public schools. Legewie and Fagan, “Aggressive policing and the educational performance of minority youth.” See also Hagan, Shedd, and Payne, “Race, ethnicity, and youth perceptions of criminal injustice.” They found that about half of Chicago students in a large sample in that city had been stopped by 10th grade.

1,000 residents from 2004-2012, the stop rate was so high it was nearly one stop for every Black man 18 years of age (976 stops per 1,000 18-year-old Black men.)¹⁷¹

Perhaps what is more important, however, is the amount of contact and the tender ages of onset and the force involved. One scholar measured differences by race and ethnicity in long-term, cumulative exposure to police among middle and high school students in New York City, finding that one-fourth of Black youth and 21% of Latin American youth in the 2005-2006 cohort were exposed to the highest level of stops in their immediate residential environment, an average of 4.3 stops per day, compared to white youth, over half of whom had the lowest level of exposure.¹⁷² Black youth also were uniquely exposed to potentially lethal force in stops that resulted in an arrest or contraband found. This is where the racial disparity in police drawing a gun in a stop is highest. In other words, “when young black civilians are found in violation of the law during stops, they are more likely to experience potentially lethal force than young white civilians as well as older Black and White civilians...”¹⁷³

Police intervention happens at a very young age, not as young as Austin Reed, but considerably before residents can drive, vote, or rent a car. Scholars have measured the median age of youth stopped by police and it was consistently around 13 for all kids and younger for Black children.¹⁷⁴ Using the Fragile Families and Child Wellbeing 15-year follow-up, one study found that among those who reported being stopped, 30% had their first stop between the ages of 8 and 12.¹⁷⁵

¹⁷¹ Figures & Legewie, “Visualizing Police Exposure by Race, Gender, and Age in New York City.” Legal scholar Jeffrey Fagan also has produced a similar estimate based on administrative data: 95% of black men 18-19 years old were stopped in a given year.

¹⁷² Legewie and Cricco, “Long-Term Exposure to Neighborhood Policing and the Racial/Ethnic Gap in High School Graduation.”

¹⁷³ Kramer and Remster, “Stop, Frisk, and Assault? Racial Disparities in Police Use of Force During Investigatory Stops,” p. 986.

¹⁷⁴ Geller, “Policing America’s Children.”

¹⁷⁵ Geller, “Youth-Police Contact”

Studies also underscore another crucial racial difference, not just in amount of exposure but its relationship to conduct: It takes a lot less for Black youth to enter the criminal justice system or to endure a stop. So large was the gap in the National Longitudinal Survey of Youth that Black youngsters not engaged in offending were almost as likely to be arrested as white teens and young adults who did report engaging in unlawful acts.¹⁷⁶ Police encounters with adolescents and preadolescents “do not separate the bad from the good,” Weaver and Geller argue. Rather, “they distinguish the kids growing up without resources and in areas of high surveillance from the rest.”¹⁷⁷ Youth of color live in neighborhoods (and attend schools) where there is a substantial investment in surveillance¹⁷⁸ and there are institutional failures in other public goods like schools and health care.

When a team of researchers collected 860 conversations about policing across six U.S. cities in 2016-2018, participants often recalled how experiencing a police stop as a child was a defining moment in their adolescence.¹⁷⁹ They remembered the touch of police as they were patted down, of being considered criminally suspect for playing with their friends, and how police questioned them about gang affiliation based on the colors of their clothing or caps. They were assumed to be dealing drugs simply because they had passed through a predominantly white or affluent neighborhood (“racial incongruity” stops in legal parlance) or had money in their pockets from summer jobs. They recalled times when they were asked where they were going or what they were doing, particularly when they were in a group. They understood that in

¹⁷⁶ Weaver, Papachristos, and Zanger-Tishler, “The Great De-Coupling;”

¹⁷⁷ Weaver & Geller, “De-Policing America’s Youth,” p. 213.

¹⁷⁸ Shedd, *Unequal City*.

¹⁷⁹ Portals Policing Project dialogues, Principal Investigators Tracey Meares and Vesla Weaver; www.portalspolicingproject.com.

their public schools, officials called police before they called parents. And when they were victims, they were treated with disrespect and suspicion.

I remember being a little boy... we did mischievous stuff as little kids, going to five and dime store, and steal little water guns but when we got caught they took us down the police station, you know what they did? They put the big phone books on our heads and hit us with the blackjack, the knife sticks they used to carry. You have so much ringing in your ear, man, you're like man, I'm not going to forget this, you know? [Baltimore]

The first time the police stopped me I was 11 years old and they stopped me 'cause I was playing water balloon fights, with my friends, during the summer. And, um, they handcuffed all of us, they paraded us in front of the community, they had the helicopter on us, and this was like a group of 11 years olds. Like, nobody was older than 13. And, like, they had guns on us, like they pointed a gun to my head, and they threatened our lives. Afterwards, even though we were kids, like, the entire communities thought that we were up to something bad. [Los Angeles]

But once you in a crowd – four to five people, y'all just walking, they gonna roll the window down ask y'all question.. Probably pat you down, they wanna do all that just by walking down the street coming home from school, still got book bags on... they'll just get out the car and bug up with you, they'll just start spazzing out of nowhere and then want us to say something, want us to say – go at them with lip so they could have a reason to grab that gun.....I ain't even fitting to lie to you, that's how it work. [Chicago]

I'm walking and I'm like, I look back and I was like oh, and I just slid over, thinking they were going to go around me, no he pulled up, hopped out the car and was like, "Get against the wall." I'm like, "I didn't even do anything," they were like, "You gave me attitude," So, they gave me a jaywalking ticket... I was 13-years-old, and the day that I had to do that, I had a cheer competition. [Los Angeles]

Studies document that Black and brown youth, especially those in less affluent communities, not only experience intense police oversight, but they also take up habits directly in response to racial criminalization, avoiding places, styles, and group activities that might be normal for others and that are important to social capital, associational life, and democratic freedoms.¹⁸⁰ They also create elaborate strategies to minimize police stops, including attenuating

¹⁸⁰ Jones, "The regular routine"; Rios, *Punished: Policing the Lives of Black and Latino Boys*; Bell, "Anti-Segregation Policing"; Shedd, *Unequal City: Race, Schools, and Perceptions of Injustice*; Weitzer and Brunson, "Strategic Responses to the Police Among Inner-City Youth"; Goffman, "On the Run;" Fox-Williams, "The Rules of (Dis)engagement: Black youth and their strategies for navigating police contact"

their masculinity.¹⁸¹ Being policed “shape[s] people’s life space – affecting what they do, where, and with whom,” and shrinks their social worlds when their worlds should be expanding.¹⁸² Strip searches become part of a “regular routine”; loved ones are enlisted into projects of criminalization;¹⁸³ mundane behaviors and normal, boisterous childhood play become invitations for police notice. Places of leisure, education, and communal life were also sites of police oversight, leading to relations that were more authoritarian than democratic. As one parent noted to another parent, “Make sure you raise him right because out here he could do the simplest thing being a normal kid and once they get him in they (sic) system and in they (sic) hands, it’s over with.”¹⁸⁴

Extensive evidence from administrative data, nationally representative samples of kids, and qualitative accounts show that these encounters produce significant harm to young people in their most impressionable years, sometimes beyond adolescence. Black children and children of Latin American descent who are stopped by police involuntarily, or witness police violence, experience worse mental health, damage to educational trajectories, and are more likely to subsequently engage in unlawful activity. Their wellbeing suffers: PTSD symptoms, anxiety, depression and emotional disturbances were higher among teens who were stopped¹⁸⁵ or high schoolers who resided near police killings;¹⁸⁶ math and reading scores immediately dropped after exposure to intensified policing in their area;¹⁸⁷ and youth who were arrested had a greater

¹⁸¹ Stuart and Benezra, “Criminalized Masculinities: How policing shapes the construction of gender and sexuality in poor black communities;” Bell, “Anti-Segregation Policing”;

¹⁸² Jones, “The regular routine,” p. 36.

¹⁸³ Rios, *Punished: Policing the Lives of Black and Latino Boys*.

¹⁸⁴ Portals Policing Project dialogues.

¹⁸⁵ Geller, “Policing America’s Children” working paper; Sugie & Turney, “Beyond Incarceration: Criminal Justice Contact and Mental Health”

¹⁸⁶ Ang, “The Effects of Police Violence on Inner-City Students.”

¹⁸⁷ Legewie and Fagan, “Aggressive policing and the educational performance of minority youth.” This study leveraged variation in timing of a rollout of a police surge in New York City that encouraged high volume stops and placed 1500 more police in the area led to a sharp decline in test scores.

likelihood of dropping out of school.¹⁸⁸ Some of the compromised mental health associated with these stops “spilled over” to the mothers of youth, and the effects were especially pronounced among those mothers who had had their own dealings in the criminal justice system.¹⁸⁹ Several of the associations and causal relationships reported above were stronger for Black youth and Latin American-descended youth than their white counterparts or among those living in contexts of acute disadvantage.

Police stops and arrests in childhood tend to channel kids into more system involvement and may even facilitate later offending.¹⁹⁰ There is some indication that this channeling is specific to Black kids. For example, when scholars followed eighth graders in Seattle into adulthood, they found that being stopped as kids predicted arrest later on but only for Black youth; those who were exposed to a police stop in childhood had 11 times greater odds of being arrested by their 20th birthday than white peers.¹⁹¹ One study found that boys who were stopped *and had not offended* were more likely to later commit a crime.¹⁹² Other studies have shown that this “labeling” effect relates to how youth end up embracing the “tough” identity others perceived rather than the vulnerability they experienced.¹⁹³ In the Portals Policing Project, consider how this Baltimore man describes his brother internalizing and becoming the scripted identity conveyed by police, which saddled him with a criminal record and even more oversight:

You can go to college and speak however you want, but if you're a, you know, tall, Black dude, they're just, they're automatically going to assume whatever. You fit the description, you know, “are you this person?” And literally no matter what you say, they're going to assume that you aren't. So, it's just scary whenever we're hanging out or whenever I know that they're going out or something, just being like ... Because like, one

¹⁸⁸ Kirk & Sampson, “Juvenile arrest and collateral educational damage in the transition to adulthood”

¹⁸⁹ Turney, “The Mental Health Consequences of Vicarious Adolescent Police Exposure”

¹⁹⁰ Liberman, Kirk, & Kim, “Labeling effects of first juvenile arrests”

¹⁹¹ McGlynn-Wright, et al. “The Usual, Racialized, Suspects: the consequences of police contacts with black and white youth on adult arrest.”

¹⁹² del Toro, et al., “The criminogenic and psychological effects of police stops on adolescent black and Latino boys.”

¹⁹³ Rios, *Punished*.

of my older has been, has a- a criminal record. **And, I think maybe it was like the first time he was stopped by cops, he was like, had to have been like 13 or 14, and it kind of colored a lot of his experiences, so he just ended up in a bad group of people kind of, just because he, as a child was told that he was this person. And so he, you know, went along with that.** Um, but just like every time, I know he's going out somewhere, even though he's not the same person that he used to be, I just get so nervous, because it's like they'll stop him thinking or assuming or saying that he's doing something, even if he's not. Then they'll look him up and see that he has a record, and it could go any way. And then they'll just make up a justification for whatever they want to do. It's just really nerve wracking.¹⁹⁴

According to recent scholarship, Black and Hispanic¹⁹⁵ kids also witness more police violence and killing, and the impact is extreme. “Each officer-involved killing in Los Angeles caused three students of color to drop out of high school,” according to recent work by Desmond Ang.¹⁹⁶ Ang examined 300 police killings in Los Angeles and measured academic achievement afterward, finding that high school students who lived in the same area as the police killing—residing less than a half-mile away—had immediate, large, and statistically significant declines in their grade point averages (GPAs), and were less likely to graduate or enroll in college. Black and Hispanic students took five semesters for their GPAs to recover. This was only the case for Black and Hispanic students and only when another Black or Hispanic person was killed by police, suggesting uniquely racial trauma. Thus, scholars have identified a range of ways policing deepens childhood trauma, adversity, disrupts healthy development, and compromises future prospects.

However, if we were to conclude that racial inequality is really just a matter of greater contact, or harsher treatment in those interactions, or the racially specific harms to health and education, we would be missing a defining feature of inequality: **Black children are not seen as**

¹⁹⁴ Portals Policing Project dialogues.

¹⁹⁵ Please note that “Hispanic” is the adjective used in this research to describe youth of Latin American descent. We use the author’s language here for precision.

¹⁹⁶ Ang, “The Effects of Police Violence on Inner-City Students,” 119.

children at all.¹⁹⁷ Childhood itself is scarce and inequitably distributed. A significant factor behind the “disparities” in exposure to police and forceful contact is the inequality in who can claim childhood. In a definitive study, Phillip Goff and colleagues explored perceptions of age and culpability of Black, Latino, and white boys who had committed a hypothetical offense, as well as the role of dehumanization (as distinct from prejudice) in shaping responses.¹⁹⁸ When shown a picture in this hypothetical scenario, Black kids were evaluated as 4.5 years older than they actually were and these age errors were higher when the white participants in the study associated Black people with apes, a central measure of dehumanization. Black children faced an “innocence gap” and were seen as less innocent and more culpable for their actions after age 9, while white children enjoyed the “protective cloak” of childhood into their teens.

The innocence gap and dehumanization did not just float in the minds of white participants in Goff’s laboratory studies. It predicted actual force among police officers against Black children. The social scientists did a series of Implicit Association Tests (IAT) with over 100 police officers and subsequently were able to link their personnel files – actual records of use of force and misconduct – to the officer’s IAT.¹⁹⁹ When officers associated Black people with apes on this test, it reduced their ability to see children as an essential category worthy of protection. Among actual criminal justice authorities empowered to enact great harm, police officers erroneously perceived Black children as being adults when they were just 13 years old, less in need of protection, and more culpable than white or Latino kids.²⁰⁰ Moreover, dehumanization uniquely predicted state violence; dehumanization led to greater use of force

¹⁹⁷ For historical discussion of innocence and black children, see Webster, *Beyond the Boundaries of Childhood*.

¹⁹⁸ Goff, et al., “The Essence of Innocence: Consequences of Dehumanizing Black Children.”

¹⁹⁹ Ibid.

²⁰⁰ While the study by Goff and colleagues was focused on boys, research suggests the innocence gap extends to Black girls as well. See for example, Epstein, Blake, and Gonzalez, *Girlhood Interrupted*.

<https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>

against Black children by police officers across their careers (and was a better predictor than measures of traditional racial prejudice). This provides crucial context for actual criminal justice outcomes—where Black children are less likely to be diverted after arrest, more likely to have their cases transferred to adult courts and to have their bodies handled with force by authorities.²⁰¹

But what of white children? Not only did white boys not experience overestimates of their age and distorted perceptions of culpability, but they experienced what Goff and colleagues speculate is a “pro-white humanization.” The association of Black people with animals led officers to underestimate the ages of white kids and *lessen culpability* – they were seen as *more childlike and by extension, more in need of protection*.

The key takeaway in Goff’s tests have been imparted as lessons among young people. In this brief exchange, it is taken for granted:

Baltimore young person: I'm scared of the police. (laughs)

Los Angeles: (laughs) And that's sad. Like, like me looking at you, like, you look like a young kid, like, like your average young kid. You know, but it's really sad that a police officer who's gonna look at you and see-

Baltimore young person: A grown adult, Black man with a gun type, you feeling me?²⁰²

Moreover, the innocence gap has a foundation in the antebellum period, where Black children were “frequently left outside the nineteenth century's emerging constructions of both race and childhood” and “presumed to lack the inherent innocence ascribed to white children.”²⁰³

²⁰¹ Stevens and Morash, “Racial/Ethnic Disparities in Boys’ Probability of Arrest and Court Actions in 1980 and 2000: The Disproportionate Impact of ‘Getting Tough’ on Crime.”

²⁰² Portals Policing Project dialogues.

²⁰³ Webster, *Beyond the Boundaries of Childhood*.

“That’s when we learned what race was then...”: Constructing Blackness through policing of children

Policing confers racial devaluation and dehumanization, defines racial boundaries, marks groups as suspicious, and constructs raced geographic spaces.

They show how the state values Black children. There is no equalizing a stop of a white youth with a Black youth because white youth are not told to “watch the sunset on his shiny head, you fucking N----,” as one youth was told at age 16 when he “caught” his first case and was taken into the county by police.²⁰⁴ White children do not, when they are stopped, think to themselves or wonder, “Was I stopped because I was white? Did police ask if I had drugs on me because of normal protocol or because I was white? Did they tell me to leave this area because I don’t belong *as a white person*? Did they stop me because I’m in a group and being in a group of white people is seen as suspicious? Or because my car, style of dress, and physical features associates my entire racial group with criminality?” There is no “Harlem Six” or “Soledad Brothers” for white youth, understood as a group because of a racially specific punishment. Being stopped is not only an individual event that we can neatly parse statistically; rather, it is a collective racial experience that draws on shared narratives of historical and ongoing racial injustice.²⁰⁵ Being stopped is not only “concentrated” among people of color, as many of the social scientific studies suggest, it signifies a deeper relationship to the state as a Black people – a people who have endured multiple forms and eras of captivity, bondage, and punitive treatment at the hands of state authorities, and a criminalized subject-citizenship unique among all Americans. Based on these experiences and collective memory, parallel structures of protection as well as resistance have been built.

²⁰⁴ Portals Policing Project dialogues.

²⁰⁵ Bell, “Police Reform and the Dismantling of Legal Estrangement;” Epp, et al., *Pulled Over*.

The role of police in “helping” Black children learn a place in the racial hierarchy is evident before policing was expanded in the late 20th century. Growing up in Memphis in the 1930s and 1940s, Edgar Allen Hunt described racial learning and resistance that parallels narratives today:

They [police] run us away from over there. **That’s when we found out what race really was then...**

On weekends, we would go to Washington Park, and that was a colored park, as they used to call them then. And the young white fellahs who went to L.C. Humes High School, which is right down the street from Manassas, would come over to that park and we'd play sandlot football against them, until the police came by and saw it and broke it up. They come in there; they'd run the white kids out the park and run us on back over to toward to the pool. Just didn't allow no mixing, you know.[...] Sometimes we'd be ahead when the police come and break it up; sometimes they'd be ahead. So we'd always have to come back to do it again, you know. Until mama got wind of it, that the police was breaking the games up and running the black youngsters with sticks. They would just talk to the white ones, but they'd try to hit you with a stick to get you on away from there. So after she find out what was going on, she say, "I don't want you going back over there and playing no more ball with them white boys," you know. That's just the way it was back then.

...Well, coming on up from that, when I was a little older and we get out on the street, the police run us off the corner if we were standing up just talking, you know. They drive up and say "N****r, get off of that corner," you know. Or, "boy," both of them was about the same. And they called old folks "uncle" and stuff like that. But that meant for you had to go if they tell you to move. And so we just got used to moving when they said move, until I got about fifteen or sixteen and then I didn't want to move so quick.... I was in high school, just getting in high school pretty good and sometimes they come to run us off the corner and they'd go one block and turn around, "Don't be on that corner when we get back." So we'd leave the corner and go around and get behind some hedges and when they come back, we'd brick them, we'd throw bricks at them. Bust the windows out and take off. But that was our way of retaliating, you know...²⁰⁶

This historical context tends to recede in contemporary studies. The sociological or economic studies of the corrosive effects of a police stop or police killing on depression, PTSD,

²⁰⁶ John David Cooper, Barbara Lee Cooper, and Edgar Allen Hunt, interviewed by Paul Ortiz, Memphis, TN, June 1995; from *Behind the Veil: Documenting African-American Life in the Jim Crow South*, Center for Documentary Studies at Duke University, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

academic achievement, graduation, or “future orientation,” report that the relationships between police exposure and a given outcome were only statistically significant or strongest/most enduring among Black youth or those living in disadvantaged areas. Why would police contact only act as a “stressor” among those who were Black or residing in segregated and disadvantaged places? Though many of these scholars do not go further to theorize, collective racial devaluation is an obvious mechanism. A Black grandmother states plainly:

They shoot black peoples like they dogs. And our children have to be afraid to come outside in a, in a crowd with they cousin of theirs because they know the police gonna stop them. Now I have a, I have a twelve-year-old grandson and a two-year-old grandson.... my twelve-year-old, when he was four he used to run from the police. He said, "There go the police," and get to running. Now what he know about being afraid of the police? He just a child. You know what I'm saying?²⁰⁷

Policing is a significant moment of racial learning and socialization into what it means to be Black and one’s group position in the larger political community, as Hunt’s experience really drives home when he conveys, “that’s when we found out what race really was.” Policing and other interactions in the criminal justice system instill in Black people – through repetition – a sense of “their inferior social, racial, and moral position”²⁰⁸ in American democracy and even more fundamentally that the institutions that are supposed to represent them, are racially unjust. They experience these stops as racial encounters, not just responses to offenses or their actions.²⁰⁹ As one person said, they understand that “this isn’t really here to protect you. ... These cop cars are here to make sure you don’t steal any of the rich white people’s stuff.”²¹⁰ In this way, police stops help construct broader racial narratives of inequality, power, and belonging

²⁰⁷ Portals Policing Project dialogues.

²⁰⁸ Fassin, “The Police are the Punishment,” p. 557.

²⁰⁹ Butler, *Chokehold*; Carbado, “Racial Naturalization;” Epp, et al., *Pulled Over*; Soss & Weaver, “Police Are Our Government.”

²¹⁰ Portals Policing Project dialogues.

in childhood. When police stop youngsters, the message the kids receive is that they are not seen as children but instead as potential suspects, “symbolic assailants,”²¹¹ who should be singled out for surveillance and who need to account for their being in public space; they confirm expectations of being routed into the system, impart lessons that they are suspect and deserving of surveillance and marked as potentially non-law-abiding. Police encounters prioritize submission and compliance over democratic voice. Often, they serve as powerful reminders that the state doesn’t regard you as a rights-bearing citizen, worthy of respect, dignity, positive intervention and civic regard. As legal scholars describe: “Being stopped by the government in a public space also suggests public discounting of worth. It appears to the person stopped to be a form of public shaming that derives from the feeling that the state has no problem displaying its power and control over the citizen on a public stage.”²¹²

Moving beyond an individual analysis of procedural justice, Monica Bell interprets the ideas youth express in Baltimore as an experience of legal estrangement, a well of collective alienation and interpretation of the law as an exclusionary mechanism.²¹³ Young people learn important political and civic lessons about how authorities work and what to expect from police, judges and politicians. For example, in data from the Black Youth Project and the Cooperative Multiracial Post-Election Survey, Black and brown youth already exhibited diminished citizenship and alienation from the law, as Figure 5 shows.²¹⁴ They had already learned that “there’s one set of rules for some people and another set of rules for people like me”; and “the official rules say police can’t do certain things but, in reality, they can do whatever they want.” They disagreed that they were a full and equal citizen or that democracy protected them from

²¹¹ Brunson and Miller, “Young Black Men and Urban Policing in the United States.”

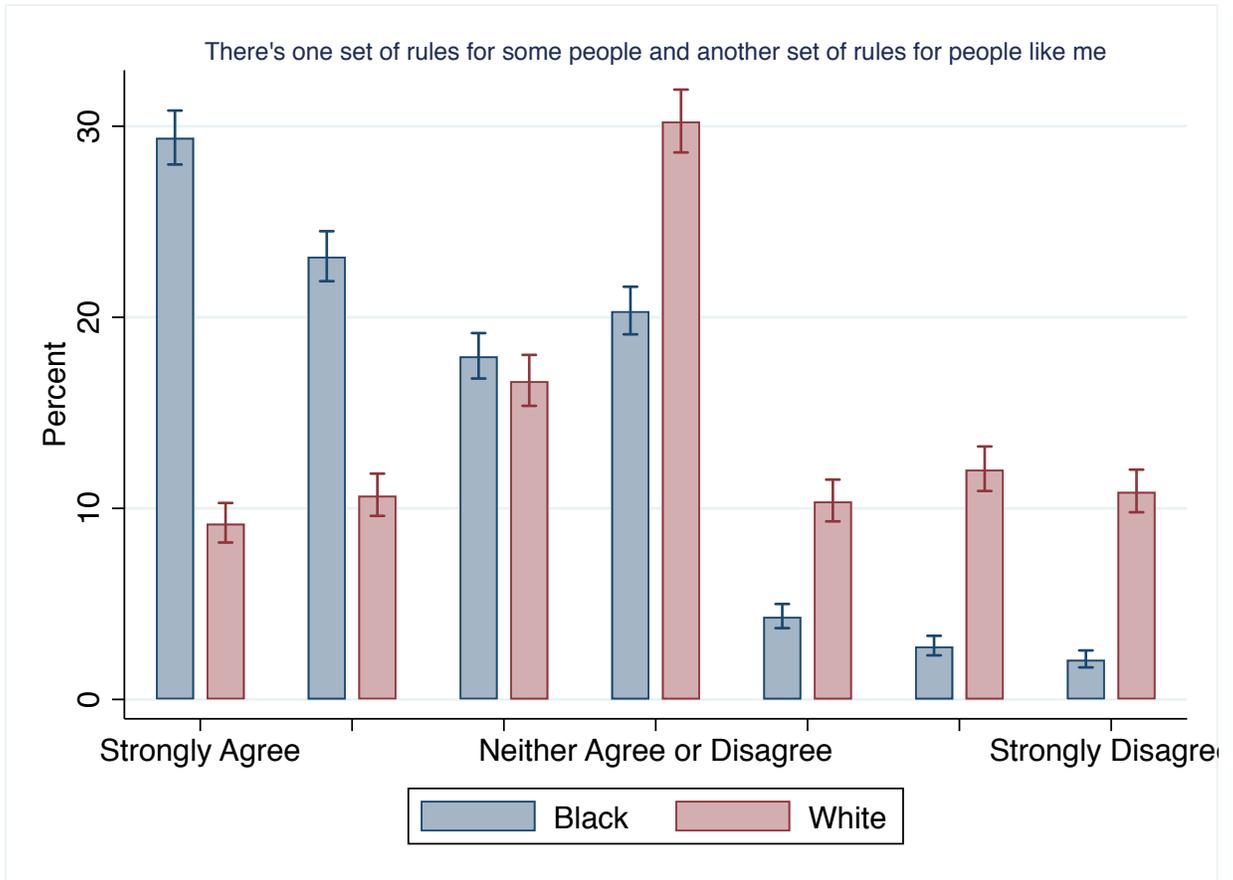
²¹² Fagan, Tyler, and Meares, “Street Stops and Police Legitimacy in New York,” p. 203.

²¹³ Bell, “Police Reform and the Dismantling of Legal Estrangement.”

²¹⁴ Lerman and Weaver, *Arresting Citizenship*, see chapter 7 specifically.

police misconduct.

Figure 5.



Source: Based on author’s analysis of the 2020 Cooperative Multiracial Post-Election Survey.

It is not enough, as scholars or journalists, then, to simply report out disparities and “gaps” in police encounters, sanctions, school suspensions, and conclude that there are persistent gaps in enforcement that are “troubling.” Instead, these encounters constitute some of the most important evidence of how state authorities reify racial groups and construct racial inequality and racial socialization, often through the denial of childhood innocence.

IV. POLICE MILITARIZATION

Policing in the United States is heavily militarized, a development that has violent and racial dimensions and that stretches further back than most realize to the early 20th century

On more than one occasion, James Baldwin used the phrase “occupied territory” to describe 1960s Harlem in New York City, and other heavily policed Black neighborhoods across the nation.²¹⁵ The police officer “represent[s] the force of the white world...to keep the Black man corralled up here, in his place,” Baldwin wrote. “He moves through Harlem, therefore, like an occupying soldier in a bitterly hostile country.”²¹⁶ While some readers may object to Baldwin’s analogy, his words nonetheless provide a striking lens into a key feature of the modern carceral state: police militarization. Over the past century, policing in the United States has been increasingly militarized – a trend that stretches back to the dawn of the 20th century.²¹⁷

While professional police forces in Boston, New York, and other cities were established in the mid-19th century as an alternative to military forces, police departments became steadily more military-like throughout the next century. Earlier police forces were often corrupt (“on the take”) and untrained; moreover, they were used to protect the economic and political interests of white businesses, to manage indigenous and migrant labor populations as well as regions occupied and colonized by the United States, and to maintain white supremacy in the South following the Civil War.²¹⁸ Police forces continued to serve similar roles as new standards, procedures, and credentialing requirements were introduced. Hence, from their founding, professional police departments were established to control people of color and working-class

²¹⁵ Baldwin, *The Price of the Ticket: Collected Nonfiction, 1948-1985*, 416.

²¹⁶ *Ibid.*, 211.

²¹⁷ Go, “The Imperial Origins of American Policing: Militarization and Imperial Feedback in the Early 20th Century.”

²¹⁸ Baldwin, *The Price of the Ticket: Collected Nonfiction, 1948-1985*, 211.

populations, as well as to suppress labor movements, urban rebellions, and other forms of political dissent.²¹⁹

Domestic policing is also deeply interwoven with U.S. military dominance internationally. Sociologist Julian Go refers to this as *imperial feedback*, where techniques and tools deployed by the military to maintain colonial rule overseas—usually over nonwhite minority populations—were borrowed by police for similar purposes in the United States.²²⁰ In the early 20th century, this imperial feedback amounted to the centralization and professionalization of domestic policing units, and the establishment of new modes of training, including the adoption of “new technologies of criminal identification, intelligence units, and crime-mapping techniques, ...mobile squads and mounted units.”²²¹ Urban race relations and perceived racial threats related to internal migration and demographic change motivated police in the U.S. to adopt these militarized methods in the first place, giving the militarization of policing a distinctly racial character.²²² In Black neighborhoods, militarization did not only involve borrowing techniques and strategies but literally integrating local policing and military police (MP) forces. As an oral history of a white police officer in early 1940s St. Louis makes clear, the city’s police force “increased tremendously because we had all of the soldiers from Fort Knox [military base] and their MPs were assisting us...every weekend we had a number of MPs in the police station; we rode some in the police car, and they made every call if a soldier was involved... The actual police work increased tremendously during the war... [T]he MPs were

²¹⁹ Ritchie, *Invisible No More: Police Violence Against Black Women and Women of Color*; Patterson, ed., *We Charge Genocide: The Crime of Government Against the Negro People*; Vitale, *The End of Policing*; Lepore, “The Invention of the Police”; Hadden, *Slave Patrols*.

²²⁰ Go, “The Imperial Origins of American Policing.”

²²¹ *Ibid.*, 1197.

²²² *Ibid.*

very active. In fact, they would become over-active sometime[s], but they were a big help to have around.”²²³

Years later, a similar cycle of militarization occurred. In *Badges Without Borders: How Global Insurgency Transformed American Policing*, Stuart Schrader traces how the expansion of the nation’s domestic and global law enforcement units built upon each other in the years following World War II. During the Cold War, U.S. police advisors trained police overseas to suppress social unrest and anti-colonialism agitation in Asia, Africa, and Latin America using strategies of police repression transported from big-city police departments here in the U.S. Such strategies had themselves been adapted from counterinsurgency policing techniques developed decades earlier along the Tropic of Cancer (which passes through such countries as Mexico, Saudi Arabia, India, China, Algeria and more).²²⁴ For example, the telecommunications procedure among U.S. police departments operating a centralized command division and separate geographic areas of patrol—an important aspect of policing—was first developed at and then imported from military counterinsurgency efforts in the Philippines.²²⁵ Moreover, the modern emphases on data-driven patrols and officer training and retraining, which are among the cornerstones of domestic policing in the U.S., had years earlier defined the professionalization of soldiers in colonized U.S. territories.²²⁶

In the 1950s, the Eisenhower administration created a new agency—the International Cooperation Administration (ICA)—that worked with the State Department, Pentagon, and CIA to oversee a police assistance program to provide police and paramilitary forces in Vietnam,

²²³ Hawkins, Bert. Interview by Penny Chumbley, March 11, 1968. African American Community Interviews, Oral History Center, Archives & Special Collections, University of Louisville.

²²⁴ Schrader, *Badges Without Borders: How Global Insurgency Transformed American Policing*, 19.

²²⁵ *Ibid.*

²²⁶ *Ibid.*

Laos, and 20 other countries with gear and to train them in riot control, counter-guerrilla control, and surveillance.²²⁷ From that agency emerged the Office of Public Safety in 1962, which aided and trained police in 52 countries across the globe in techniques of riot control, marksmanship, stop and frisk, setting up surveillance units across national borders, and the gathering and maintenance of statistical and other records.²²⁸ While the concept of “counterinsurgency” did not yet exist, these efforts laid the blueprint for its emergence as a centerpiece of policing and police repression, internationally and domestically.²²⁹ Tear gas, for example, was developed as a “riot control agent” abroad and is now used on a regular basis domestically. Even an infrastructure as ubiquitous as the U.S. 911 system derived from a tool to counteract political dissidents in Venezuela, in this case, from the creation of a universal emergency-services telephone number in that same country in 1963. “Public safety advisors learned what worked and what went wrong in Venezuela and shared their lessons at home.”²³⁰

In short, U.S. police advisers “repatriated” the same policing techniques, now further perfected, back to the United States to quell the urban rebellions and civil rights and antiwar protests of the late 1960s. Advisers within the Johnson administration were unsettled by how the urban rebellions of 1964 had overwhelmed police forces and believed those events called for reform. To some, OPS “could provide the nucleus” for a “technical police assistance program which could provide local and state communities with the guidance, training, and help they urgently need to meet developing problems.”²³¹ The culmination of these administrative efforts was President Johnson’s 1968 declaration of a War on Crime (later championed by the Nixon

²²⁷ Ibid., 85.

²²⁸ Ibid.

²²⁹ Harcourt, *The Counterrevolution: How Our Government Went to War Against Its Own Citizens*.

²³⁰ Schrader, *Badges Without Borders*, 151.

²³¹ Ibid., 126.

Administration) and with the passage of the Omnibus Crime Control and Safe Streets Act that same year. Under the aegis of that legislation, the Law Enforcement Assistance Administration (LEAA) was born, which throughout the 1970s provided substantial funding (through block grants²³² – usually federal funds given to local programs) to expand and train local police departments in the image of OPS-assisted international counterinsurgency police forces. With LEAA funding, local police departments were able to buy surplus military-grade gear, tear gas, gas masks, body armor, and experiment with “police aviation” helicopters.²³³ The Los Angeles Police Department used such funds to invest in elite tactical training, hardware, and other repressive techniques—schemes motivated in response to the 1965 Watts uprisings.²³⁴ The LAPD also reintroduced community relations programs aimed at Black and brown youth,²³⁵ which served to “decentralize police functions without decentralizing police power.”²³⁶ This also set the stage for the reallocation of government funding from community and social services to militarized policing.²³⁷ For example, the Comprehensive Crime Control Act of 1984, signed by President Ronald Reagan, resulted in rerouting most funding for drug rehabilitation programs (totaling \$900 million) to warplanes, helicopters, and intelligence.²³⁸

Yet, Schrader emphasizes that intensified policing was not the only path the United States could have taken. The National Advisory Commission on Civil Disorders, which published its

²³² Block grants are a way for the federal government to pass funds down to states and localities to use discretionarily (as opposed to a categorical grant for a specific purpose). Typically, states must submit a plan to the federal government to show how the funds will be used, and often there is a requirement to continue maintaining the program after federal funds run out, which means that state and local spending ramps up. It is important to note here that until the LEAA, the federal government spent very little with respect to state and local crime control. After this time, states ramped up funding.

²³³ Schrader, *Badges Without Borders*, 139.

²³⁴ According to research by Jill Lepore, 31 people were killed and more than 4,000 were arrested during the Watts uprisings. “[F]ighting the protesters, the head of the LAPD said, was “very much like fighting the Viet Cong.” See Lepore, “The Invention of the Police.”

²³⁵ Felker-Kantor, *Policing Los Angeles: Race, Resistance, and the Rise of the LAPD*.

²³⁶ *Ibid.*

²³⁷ *Ibid.*

²³⁸ Hinton, *From the War on Poverty to the War on Crime*, as cited by Harcourt, *The Counterrevolution*, 142.

1968 report commonly known as the Kerner Report, recommended that the federal government invest in jobs, housing, and education to alleviate the racial and economic inequities and exploitation that gave rise to urban unrest. Instead, the Johnson administration rejected the proposal and chose to pursue only its recommendations for how to reform and strengthen police forces.²³⁹ Here, again, the architects of police repression in the U.S. and police training overseas offered suggestions in their testimony before the Kerner Commission. Bryon Engle—head of the reformist police training program in Kansas City, the key architect of U.S. foreign police assistance in postwar Japan and elsewhere, and the first director of the Office of Public Safety—recommended that the federal government bring back the police tactics and techniques refined abroad: “The Communists have had long experience in utilizing disturbances, riots, terrorism, as political action tools,” Engle said in a statement to the Commission. “As a consequence, we...have put a lot of emphasis on nonlethal riot control. We have found there are many principles and concepts which apply, whether it is [in] Asia, Africa, or South America. Perhaps those same principles would apply in the United States.”²⁴⁰

Consequently, U.S. politicians and bureaucrats at the state and federal levels launched a new model of governance molded on counterinsurgency warfare. According to this tenet, occupied populations are composed of “a small active minority of insurgents, a small group of those opposed to the insurgency, and a large passive majority that can be swayed one way or the other.”²⁴¹ Today, in the wake of 9/11 and the subsequent war on terror, large and small cities across the United States increasingly deploy military gear and tactics learned in Iraq and

²³⁹ For background see The National Advisory Commission on Civil Disorders, *The Kerner Report*.

²⁴⁰ Bryon Engle, Statement, September 20, 1967, series I, Civil Rights during the Johnson Administration, 1963-1969, Part V. Records of the NACCD (Kerner Commission) online (CRDJA), 001346-003-0256, 1328-1335, as cited in Schrader, *Badges Without Borders*, 5.

²⁴¹ Harcourt, *The Counterrevolution*, 8.

Afghanistan in routine encounters with their residents, making it a part of their daily policing.²⁴² From its founding in the mid-1990s to 2014, the Department of Defense’s Excess Property Program has transferred more than \$5 billion in military equipment to U.S. police forces. During this period, “Police forces across the country ... stockpiled over 500 military-grade aircrafts, 44,000 night-vision devices, 93,000 assault weapons, 200 grenade launchers, and 12,000 bayonets.”²⁴³ Policing agencies also continue to station cameras throughout cities—30,000 in Chicago alone—as tools of total surveillance.²⁴⁴ The myriad pictures taken of unarmed protesters facing tactical SWAT teams in Ferguson, Missouri, after the shooting of Michael Brown in August 2014 and the April 2015 killing of Freddie Gray by Baltimore police, visualize how militarization reshapes police reactions when called to public account. As reported by the Washington Post in its coverage of protests following Brown’s death, the police “employed armored vehicles, noise-based crowd-control devices, shotguns, M4 rifles like those used by forces in Iraq and Afghanistan, rubber-coated metal pellets, and tear gas.”²⁴⁵

The use of such militarized methods made urban Black and brown neighborhoods “over patrolled and under protected.”²⁴⁶ In early to mid-20th century Chicago, for example, police served as a force to protect white economic and political interests, patrolling Black neighborhoods and surveilling and arresting Black residents, and choosing not to intervene in incidents of white racial violence and terrorism.²⁴⁷ Then, beginning in the 1970s, police detectives began using forms of torture — including beatings, suffocation, electrocution, and sexual assault — to coerce confessions from African Americans on the South Side. Overseen by

²⁴² Ibid., 12-14.

²⁴³ Ibid., 131.

²⁴⁴ <https://www.nytimes.com/2018/05/26/us/chicago-police-surveillance.html>; <https://www.aclu-il.org/en/news/ten-years-after-first-warning-chicagos-massive-surveillance-camera-system-continues-pose>

²⁴⁵ The Washington Post, as cited by Harcourt, *The Counterrevolution*, 132.

²⁴⁶ Balto, *Occupied Territory: Policing Black Chicago from Red Summer to Black Power*.

²⁴⁷ Ibid.

commander Jon Burge, a Vietnam veteran²⁴⁸ turned police officer who learned these techniques while serving overseas, this team of detectives became known as the Midnight Crew and tortured at least 120 African Americans between 1972 and 1991.²⁴⁹ Writes historian Nikhil Singh, “techniques of brutality and punishment migrated with Burge from [Vietnam]... back to Chicago,” traveling onward with fellow detective Richard Zuley who “brought his police expertise from Chicago to Guantanamo Bay in the service of the ‘enhanced interrogation regime’ in the current wars.”²⁵⁰ Following the revelations at Abu Ghraib and other searing examples of U.S. torture in the early 2000s, tales of police torture in Chicago reached international organizations such as the Inter-American Commission on Human Rights, which was invited to investigate, received testimony that established an “overwhelming record” of police violence in the city, and whose platform also drew notice from the United Nations.²⁵¹

These revelations of extreme police violence only underscore the broader shadow of police violence and extraordinary levels of police occupation in Black Chicago. An analysis of data from the Chicago Tribune shows that about 60% of those shot by police between 2010 and 2015 were young Black people between the ages of 12 and 30, and Black young adult-age

²⁴⁸ In *Race and America's Long War*, historian Nikhil Singh details the connections between Jon Burge's actions as a soldier during the Vietnam War and police commander in Chicago: “Burge was assigned to the Ninth Military Police Company at a base named Dong Tam (‘united hearts and minds’), located fifty miles south of Saigon. This was the heartland of U.S. counterinsurgency operations, which escalated steadily in the late 1960s. When local villages were suspected of involvement in ambushes that killed U.S. soldiers, their fingers and genitals were wired up to makeshift electric-shock devices built from a crank and a field telephone. As one soldier put it, ‘We could do pretty much whatever we wanted to them, as long as we didn’t leave scars.’ Discharged in 1969, Jon Burge returned to Chicago and joined the police department. Racial unrest was high, spurred by sharp racial turnovers in many Chicago neighborhoods. Over a twenty-year period, Burge presided over a police unit that systematically tortured over one hundred criminal suspects, every single one of them African American. The preferred method was a makeshift black box with two exposed wires and a crank that generated electric shocks. Created on home soil, forged in war, and institutionalized in policing, techniques of brutality and punishment migrated with Burge from Georgia to Saigon and back to Chicago.” See Singh, *Race and America's Long War*, 68-69.

²⁴⁹ Kitchen, *My Midnight Years: Surviving Jon Burge's Police Torture Ring and Death Row*; Ralph, *The Torture Letters: Reckoning with Police Violence*.

²⁵⁰ Singh, *Race and America's Long War*, 68-69.

²⁵¹ McLeod, “Envisioning Abolition Democracy”; Baer, *Beyond the Usual Beating*, 193–94

women and men are respectively 10 and 14 times more likely to experience police use of force compared to white peers, according to data requested from the Citizens Police Data Project under the Freedom of Information Act.²⁵² Finally, 40% of adults stopped and questioned in 2014, and 40% of those arrested that year were Black young adults between 18 and 30, totaling more than 241,000 police stops and 43,000 arrests.²⁵³ Similar numbers show the disproportionate treatment of Black citizens existed until recently in New York City, where 5 million stops and 2.5 million frisks occurred between 2002 and 2012; the overwhelming majority of those affected were male and Black or brown.²⁵⁴

Predictably, police militarization has violent consequences. Using data on the U.S. Department of Defense's transfer of surplus military gear to police, researchers have found a significant relationship between increased militarization and police lethal force.²⁵⁵ Other research uses geocoded census data to show that militarized SWAT or "special weapons tactics" teams are more often placed in communities that are predominantly Black.²⁵⁶ This relationship holds after accounting for local crime rates. Moreover, longitudinal data of active SWAT teams in 9,000 law enforcement agencies show that being militarized neither enhances public safety nor reduces local crime rates, while experiments conducted within fielded surveys demonstrate that seeing militarized police in news reports diminishes the public's support for police.²⁵⁷

The political consequences of police militarization also cannot be underestimated. By the 1960s and 1970s, local and federal-level state officials regularly used incarceration and

²⁵² <http://apps.chicagotribune.com/cpd-shootings-database/>; <https://theintercept.com/2018/08/16/chicago-police-misconduct-racial-disparity/>

²⁵³ <https://lucyparsonslabs.com/posts/stop-and-frisk/>

²⁵⁴ Singh, *Race and America's Long War*.

²⁵⁵ Lawson, "Police Militarization and the Use of Lethal Force"; Delehanty et al., "Militarization and police violence: The case of the 1033 program."

²⁵⁶ Mummolo, "Militarization fails to enhance police safety or reduce crime but may harm police reputation."

²⁵⁷ *Ibid.*

surveillance to blunt Black political dissent emerging from the civil rights and Black power movements.²⁵⁸ The FBI's Counter Intelligence Program (COINTELPRO), which raided the Black Panthers' headquarters in 1968 and 1969, and was involved in the killing of Fred Hampton, chairman of Chicago's Black Panther Party, is a notable example of how counterinsurgency strategies – including surveillance – were “brought home” to the U.S.²⁵⁹ Another major touchpoint was the state-ordered massacre at Attica Correctional Facility near Buffalo, New York, by state troopers in upstate New York, which occurred after Gov. Nelson A. Rockefeller refused to negotiate in favor of total annihilation of “the enemy.” Thirty-three prisoners and 10 correctional officers were killed in the retaking of the prison, an action by state officials that exemplifies the politicized dimensions of militarized police responses.²⁶⁰ Locally, too, militarized tactics were deployed; Philadelphia police dropped a combat grenade on a Black activist group's headquarters in 1985, killing five children and six adults, and decimating three full blocks of inhabited rowhomes (a total of 61 homes) in an act that forcibly displaced many in the Black neighborhood.²⁶¹

Prison confinement became more racially disproportionate with this cycle of militarization. Increasingly, the share of Black people in the nation's prison population rose from

²⁵⁸ Marable, “Black Prisoners and Punishment in a Racist/Capitalist State,” 111-12. Specifically, Marable writes of COINTELPRO: “Halting the emergence of Black political activism in the 1960s could not be left solely under the aegis of the criminal justice system. To accomplish this, the state developed an extraordinarily powerful and illegal apparatus—the COINTELPRO or ‘Counter Intelligence Program’ ... a wide ranging series of assaults against progressive and Black nationalist leaders and organizations. operations, ... [through which] the FBI sent ‘anonymous mailings (reprints, Bureau-authored articles and letters) to group members criticizing a leader or an allied group;’ encouraged ‘hostility up to and including gang warfare between rival groups;’ engineered the firing of SNCC, Black Panther and even Urban League officials and members; ordered ‘federal, state, or local authorities to arrest, audit, raid, inspect (or) deport’ Black activists; interfered with ‘judicial proceedings’ by targeting Black and white progressive attorneys sympathetic to Black liberation; and used ‘politicians and investigating committees, sometimes without their knowledge to take action against targets.’ Two hundred and thirty-three of the total 295 authorized actions against so-called ‘Black Nationalist Hate Groups’ were targeted against the Black Panther Party.”

²⁵⁹ Harcourt, *The Counterrevolution*, 114.

²⁶⁰ Thompson, *Blood in the Water*; Harcourt, *The Counterrevolution*.

²⁶¹ Thompson, “Saying Her Name.” <https://www.newyorker.com/news/essay/saying-her-name>

22% in 1930 to 32% in 1960 to 41% in 1980.²⁶² As the Vietnam War waned, the federal government redeployed surplus ammunition, soldiers who had fought in the war, surveillance technologies, and military experiments in prisoner of war (POW) isolation and brainwashing to wage a “war on crime” in the U.S. by way of prisons and policing.²⁶³ The migration of these hardware, tactics, and hundreds of thousands of soldiers from the defense arena to the criminal justice system led to the reinstatement of solitary confinement in the 1970s and the rise of “supermax” prisons in the 1980s. Subsequently, one in five people held today in U.S. prisons—who are disproportionately Black people—are put in solitary confinement in any given year.²⁶⁴ In the state of Pennsylvania, this level of extreme isolation affects more than 10% of all Black men born between 1986 and 1989 by the time they reach age 32.²⁶⁵

The idea that equipment and strategies of war and counterinsurgency came home and altered policing must be taken seriously when we examine the militarized dynamics of police behavior.

V. BOTTOM-UP RESPONSES TO CRIMINAL LEGAL INSTITUTIONS

The U.S. carceral state did not emerge unchallenged. Black and brown communities and their representatives have for decades offered alternate visions of how to achieve safety and justice, and many have also fought the expansion of prisons and policing. Besides opposing anti-Black practices and challenging degrading prison conditions, they also developed protective structures that used communal knowledge and provided for their own needs. Their efforts were discounted, unfunded, or actively repressed. These community-based responses and viewpoints give important context to the history of the carceral state and carceral expansion and a better understanding of ongoing resistance movements and those involved in them. As opposed to seeing incarcerated people and survivors of police and state violence as victims or objects, we now see their historical roles as impactful, sophisticated political activists and visionaries.

²⁶² Bureau of Justice Statistics, Table 2, Race of Prisoners Admitted to State and Federal Institutions, 1926-1986, as cited by Sherry, *The Punitive Turn in American Life: How the United States Learned to Fight Crime Like a War*.

²⁶³ Sherry, *The Punitive Turn in American Life*.

²⁶⁴ Western et al., “Solitary confinement and institutional harm”; Resnik, “The Singularity and the Familiarity of Solitary Confinement”; Resnik et al., “Aiming to Reduce Time-in-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms.”

²⁶⁵ Pullen-Blasnik et al., “The population prevalence of solitary confinement.”

Across the last half of the 20th century, local organizers, politicians, and ordinary people (some imprisoned) have tried to transform policing and incarceration. They argued that punishment and confinement exacerbate rather than ease social problems and recommended that state authorities instead invest in social services, resources, and infrastructures that would support individuals and communities. The campaigns they led shared several commitments in their demand for a new structure, including the ability to discipline and remove abusive police, a force controlled by a democratically elected body representing the neighborhood, police that live in the neighborhood, regular public forums to collect community priorities and complaints, and the redirection of resources away from police and toward things that would support the communities' economic independence. These same tenets regarding policing continue to animate the visions of local Black residents today. Most legislators answered calls for safety and community investment with beefed-up policing—a response that continues to obscure and undermine Black-led mobilizations that contest police repression and racial criminalization, and that confront historic and ongoing legacies of prison confinement.

The examples below are not as well-known as they should be, given that they form part of an enduring tradition of anti-carceral mobilization in Black communities that can be witnessed even in the early 20th century. That is when the National Negro Congress protested and wrote an open letter about the police in Washington, D.C., after the police stormed a boarding house where 11 women lived or when Zechariah Alexander describes in his oral history the existence of a modern underground railroad, a network of Black funeral homes and other businesses that tried to help convicts on nearby plantations escape to safety.²⁶⁶ Alexander explains:

²⁶⁶ Murphy, *Jim Crow Capital*; Zechariah Alexander, interviewed by Rhonda Mawhood, Charlotte, NC, 1993; from *Behind the Veil: Documenting African-American Life in the Jim Crow South*, Center for Documentary Studies at Duke University, David M. Rubenstein Rare Book & Manuscript Library, Duke University.

But our business was not just a business. It was a haven. ... During the period of time when there was such cruelty in the lower south, when they uncovered the peon areas those plantations down there they had blacks that were in prison on the plantations. Many blacks escaped from those. ... [describing how the system worked] I'm a farmer. I'd buy, I'd purchase the persons who were jailed, black. I'd purchase their time and they would have to come and work for me for a certain number of years. ... Many of them never got out of those plantations. When they'd try to leave, they'd kill them and bury them. ... Many of those people escaped. Many times we have slept what we might call escapees from those camps in our funeral home on their way to different places. And those were things that very few blacks knew about because we couldn't even trust blacks.... So we were involved in what was called, what we might call an underground movement during that period of time, see.²⁶⁷

Many local struggles and Black rebellions were catalyzed from police violence, occupation, and brutal enforcement practices.²⁶⁸ Indeed, much of 20th-century Black resistance was organized around police repression. This resistance employed unconventional tactics that went beyond large-scale demonstrations and smaller local rebellions; for example, Black groups created mechanisms to “police the police” through community alert patrols, oversight organizations, and developed extensive databases tracking police abuses. Then, as now, police repression generated a political response grounded in protection and defense, self-determination, and communal reliance, preservation, and demands for power and deep transformation of structural harms. But in much of the dominant work on criminal justice governance by social scientists and journalists, there is little exploration of the legacies of these efforts (or even acknowledgment of their existence), how they sought to remake the criminal justice system, or how that very system evolved to close out these alternative visions and political demands.

These local struggles and campaigns for criminal justice reform prioritized community-based solutions, drew heavily on discourses of protection and uplift, and often labored explicitly to practice protection of Black communities through local patrols and other models that prefigure

²⁶⁷ Ibid.

²⁶⁸ Hinton, *America on Fire*.

(and help explain) contemporary political responses to police and early abolitionist thought. **The historical record is not only filled with local cases of the actual practice of an alternative vision and parallel structures of safety; it also shows how political demands for a more democratic, accountable, and just police apparatus went unheeded.**

Challenging Repressive Legislation & Early Arguments for Structural Change

As archival data from the NAACP and the National Urban League, congressional hearings, and the black press show, Black grassroots organizations and Black political leaders vigorously opposed 1960s legislation that expanded prisons and policing under the rubric of the war on crime.²⁶⁹ For example, in resistance to the targeting of Washington, D.C., for extreme surveillance and punishment in the 1967 and 1970 D.C. Crime Control bills, Julian Bond called it “creeping fascism,” Roy Wilkins called it an “anti-black bill,” and Gus Hawkins said it would encourage police to “go head-hunting in black communities.”²⁷⁰ The *Baltimore Afro-American* sounded alarms: “millions of poor black and white citizens will now live in fear of police bursting into their homes with guns blazing”... “the police have no intentions of knocking down doors in Chevy Chase or any other affluent suburb... this provision is only for use in the black ghetto and if the legislation passes, this is where it will be used.”²⁷¹ And the *Chicago Defender* called out how the bill completely ignored the pleas of the community and district

²⁶⁹ Weaver and Decker, “‘The Only Battle in the Nation’s History in which the Black Community has not been Enlisted’: Black Agency, Resistance, and Alternatives to Incarceration,” Paper presentation at the annual meeting of the American Political Science Association, Washington, DC, August 27-31, 2014.

²⁷⁰ “Julian Bond Says Nixon Plans Fascism,” *Philadelphia Tribune*, July 21, 1970, p. 10; “Wilkins Speaks: Anti-Crime Frankenstein,” *Afro-American*, August 8, 1970, p. 4; “Gus Hawkins Fears D.C. No Knock,” *Los Angeles Sentinel*, August 13, 1970, p. C13.

²⁷¹ “Crime Bill Still Bad,” *Afro-American*, August 1, 1970, p. 4.; “Man’s Home His Castle But Not Under Crime Bill,” *Afro-American*, November 15, 1969, p. 5.

commissioners for greater gun control and targeted interventions for jobless youth and young adults with interrupted schooling.²⁷²

When these bills became law, Black activists and political leaders continued to push an alternate vision that would redirect funding focused narrowly on punitive policing to support community-based, anti-harm initiatives.²⁷³ Nonetheless, legislators sidelined and underfunded these proposals, choosing instead to use Black and brown communities as demonstration sites for new police strategies.²⁷⁴

Even when Black communities posed early challenges to marijuana decriminalization, passed strict gun control legislation, and called for greater police enforcement, they did so in an effort to protect Black lives and in a context of broader claims for more public investment for their communities. In his historical account of Black politics in the nation's capital, James Forman Jr. concludes that "American racism narrowed the options available to black citizens and elected officials."²⁷⁵ While many in Black communities did desire more and improved law enforcement, they saw expanded police enforcement as only one tool in a broader strategy to protect Black lives, calling for a "Marshall Plan for urban America" that included funding for jobs, schools, and housing. "But because African Americans are a minority nationally, they needed help to win national action against poverty, joblessness, segregation, and other root causes of crime," Forman writes. "The help never arrived...African Americans never got the Marshall Plan—just the tough-on-crime laws."²⁷⁶ If we look closely at the history of anti-crime activism, we see that almost no claim for resources for greater policing and expanded

²⁷² Louis Cassels, "D.C. A Trouble Spot as Crime Rate Rises," *Chicago Daily Defender*, February 26, 1963, p. 9.

²⁷³ Weaver and Decker, "'The Only Battle in the Nation's History in which the Black Community has not been Enlisted'

²⁷⁴ *Ibid.* Hinton, *From the War on Poverty to the War on Crime*.

²⁷⁵ Forman, *Locking Up Our Own*, 11.

²⁷⁶ *Ibid.*, 13. See also the argument about black demands being "selectively heard" in Hinton, Kohler-Hausmann, and Weaver, "Did Blacks Really Endorse the 1994 Crime Bill?"

surveillance was unaccompanied by a call for a redistribution of power, opportunity, and resources.²⁷⁷

Between 1963 and 1984, Black congressional members were a key voting bloc against punitive approaches to criminal justice policy, voting often without the support of white liberal allies.²⁷⁸ Black members of Congress comprised nearly half of all “nays” in the sweeping Anti-Crime Bill of 1984 that beefed up sentencing guidelines, enabled asset seizure in drug cases, increased most drug penalties, and allowed juveniles charged with serious offenses to be prosecuted as adults.²⁷⁹ Black opposition would continue to show similar dynamics in the next decade, too, when Black Democrats and the Congressional Black Caucus countered the sweeping investment in prisons and police in the Violent Crime and Law Enforcement Act of 1994 with an alternative bill that put at its center racial inequality, racial bias in death penalty administration, and substantial sums for drug treatment, crime prevention through education and health funding, and community-driven programs. Locally, opposition to anti-Black policing was so fierce in Chicago that it caused the mass defection of Black voters from the Democratic party candidate for State’s Attorney, Edward Hanrahan, due to his role in the surveillance and coverup of police

²⁷⁷ Black anti-crime activism was extremely different from white “law and order” campaigns. In Forman’s important account, black leaders were very critical of white exploitation and they did not fold neatly into to a harsh vs. soft binary that media and academic frames sometimes lazily fall into. There is complexity here: we can see both collective anger at crime and neighborhoods reeling from drug markets and addiction and collective anger and uprising against police violence and exploitative arrangements and racist subjugation. We can see that they were deeply concerned with a justice system that was unresponsive to black victims, that they truly believed the consequences of drug use would be worse for their kids than white youth – “decriminalization looked like another roadblock to black success”, and that they framed safety in a race-conscious way as a civil rights issue to protect black life. Moreover, black lawmakers were operating in a context before the full weight of how punitive laws would affect their communities would hit, according to Forman. Once the criminal justice system became a greater threat to black lives and that these bills hadn’t led to protection of black life but to more black people being locked up, their stance changed.

²⁷⁸ See especially Eckhouse, “Race, Party, and Representation in Criminal Justice Politics.”

²⁷⁹ Author’s analysis of black members of Congress roll call votes on HR 5690. House Democrats passed this bill as an alternative to the GOP-constructed bill that the GOP attached to the appropriations bill in the Senate. The final bill that passed was a compromise, and was attached to the appropriations bill, so did not have a separate roll call.

actions that killed Fred Hampton; voters in black wards crossed party lines to vote for his Republican challenger.²⁸⁰

Also, during this period, leaders of the NAACP and National Urban League contested the rise of law-and-order politics. Roy Wilkins, executive director of the NAACP, linked high rates of crime to government practices that routinely impeded civil rights work in improving social conditions and public provision. “Until we do something about housing, unemployment and schools,” Wilkins said, “we cannot hope to do anything constructively corrective about crime.”²⁸¹ Likewise, Vernon Jordan, head of the Urban League, proposed a “no-fault rehabilitation system” outside of prisons for first-offenders, prisoner rights to organize and present grievances, and ultimately the replacement of prisons with alternative systems based in communities.²⁸²

But beyond resisting the escalation of policing and expansion of the carceral state, Black leaders and grassroots organizations also created successful alternative programs to address community harm. For example, the Community Assistance Project in Chester, Pennsylvania, as early as 1970 provided a free bail program and community-rooted bail banks, and a community “conflict resolution program” whose main objective was to “divert people away from the Criminal Justice System through the resolution of problems in their own community, thus eliminating the need for judicial redress.”²⁸³ These programs could have served as models for an alternative approach to addressing harm and perhaps even lessened the incarceration rate in those communities. Likewise, in September 1971, the NAACP created “Project Rebound,” a program

²⁸⁰ Balto, Occupied Territory.

²⁸¹ *The Crisis* official magazine of the National Association for the Advancement of Colored People, “Editorials: Facing the Crime Crisis,” December 1973.

²⁸² Ibid.

²⁸³ “The Chester Community Assistance Project, Chester, Pennsylvania,” cited in Weaver and Decker, ““The Only Battle in the Nation’s History in which the Black Community has not been Enlisted””

that today would be referred to as a re-entry initiative, connecting individuals recently released from prison with social services. Through a joint community rehabilitation program built on support from public schools, private and public social service agencies, and local businesses and corporations, Rebound was able to offer literacy skills, high school equivalency training, higher education, job counseling, and family counseling.²⁸⁴ Preceding policies and programs that are mainstream today, these Black-initiated, community-based programs could have served as national models for an alternative approach to mass incarceration.

Policing the Police

Indeed, the debate over community control and oversight of police stretches beyond the “community policing” paradigm of the 1990s to the midcentury protest era. Throughout the 1960s and 1970s, Black communities confronted police power and police terror in community-based efforts to patrol the police and “highlight the violence of the state, and offer local residents a counter-example.”²⁸⁵ Local community members in cities across the country organized groups that patrolled the streets to prevent police violence and coercion, observe and challenge local law enforcement by showing them that “we see you and we will surveil your surveillance of us, and if you beat innocent people, we will defend our community.” The historical record is replete with local examples of black-led challenges to police authority, sometimes even from within the police themselves (such as the Afro American Patrolmen’s League in Chicago). While specific tactics and ideologies differed, these community-based efforts were grounded in the collective protection of Black lives and a refusal to accept existing policing practices.

²⁸⁴ Howard, *The Crisis*, official magazine of the National Association for the Advancement of Colored People, “Project Rebound,” January 1971.

²⁸⁵ Malloy, *Out of Oakland*.

Consider New York City in the 1960s, where much debate revolved around community input over policing and other “crime control” measures. In 1965-1966, many Black organizations supported a Civilian Review Board. When membership on the police complaint board was restricted to those on the police department’s payroll, the NAACP established an assistance program for people who wanted to file complaints of police misconduct and abuse to circumvent their effective exclusion.²⁸⁶ And in 1975, civilian patrol units were placed in different parts of Brooklyn, New York, as part of an experimental approach to community control. In this pilot, an idea initiated by the Rev. Clarence Norman of First Baptist Church in the Crown Heights section of Brooklyn, and supported by the 71st police precinct, community residents chose patrollers and paid for their walkie-talkies.²⁸⁷

Political responses to police continued to take many forms. Throughout the 20th century, in Black areas of almost every major city, police violence and oppression were unifying sources of a resounding expression of community autonomy, self-protection, and control. Historical research on local Black freedom struggles shows that community control of the police was of paramount importance, and most local Black liberation groups formed around confronting police occupation of Black communities. For example, the Black Panther Party platform in 1966 started with a political demand calling for an end to police violence. Point #7: “We want an immediate end to POLICE BRUTALITY and MURDER of Black People. We believe we can end police brutality in our Black community by organizing Black self-defense groups that are dedicated to defending our Black community from racist police oppression and brutality. The Second

²⁸⁶ “National Association for the Advancement of Colored People Memorandum to Presidents and Legal Redress Committee Chairman of New York City Branches, NAACP From John Morsell Re: Civilian Complaints Against the Police, November 28, 1966,” NAACP Papers, Library of Congress, Box V: 2739, Folder 2, Legal Department, General Office File, Gen. adm. File, Police, Civilian Review boards, New York, New York, Correspondence.

²⁸⁷ “Black Associations Join Tenants in Crime Fight.” J. Zamgba Browne. *New York Amsterdam News*, 12/27/75, p. B1.

Amendment to the Constitution of the United States gives a right to bear arms. We, therefore, believe that all Black people should arm themselves for self-defense.”²⁸⁸

And yet, a shared tenet developed around the idea of more just law enforcement: that Black communities should have democratic authority over the policing of their communities. In 1966, in the Watts neighborhood of Los Angeles, local residents established programs to challenge police authority and maintain peace in their community. After one very prominent police killing of Leonard Deadwyler in Los Angeles, Black residents created the Temporary Alliance of Local Organizations (TALO) and made demands based on self-determination.²⁸⁹

TALO had a Police Alternatives Committee to confront police violence and occupation of Black and Mexican neighborhoods. Out of this developed the Community Alert Patrol (CAP), an effort for communal self-protection against police and “a grassroots experiment in self-rehabilitation.”

In *Policing Los Angeles*, Max Felker-Kantor describes these community self-determination efforts as follows:

Volunteers drove cars with white cloth tied to their antennas in honor of Deadwyler and monitored the police to document ‘unequal enforcement and application of the law.’... Members met nightly at the office of a local black nationalist organization, which they called the Base, to plan their patrols. Members mapped out routes through areas frequented by black youth...because the police often selectively enforced the city’s antiloitering statute, ambushing black youth with as many as ten to twenty squad cars. The volunteer patrols carried cameras and tape recorders to record information about police arrests, even following arrested youth to police stations to monitor their treatment. CAP played off of the LAPD’s own slogan, To Protect and to Serve, by riding in cars marked To Protect and Observe... CAP would become so integral to the neighborhood that residents began to see CAP as an alternative form of law enforcement, even calling on patrollers to intervene in street fights and domestic disputes.²⁹⁰

²⁸⁸ Newton, *To Die for the People*, 4-5.

²⁸⁹ Felker-Kantor, *Policing Los Angeles*.

²⁹⁰ *Ibid.*, 70-71.

As a part of these efforts, youth patrols would “accompany the police on their rounds to take detailed notes and photographs of their behavior. Where the patrols felt the police acted badly, they filed complaints and sometimes tried to turn on some political heat to achieve redress.”²⁹¹

These efforts in Watts inspired the Oakland Patrols. Black Panther Party leader Huey Newton read an article about the Community Alert Patrol, which helped shape his own designs of self-defense patrols but with one key difference: Newton’s patrols in West Oakland, California, would not just carry notepads and recorders and two-way radios but would be armed.²⁹² These community patrols constituted the Panthers’ first program activity, where they monitored police violence to make the police serve the community rather than act, in Newton’s words, as an “occupying army.”²⁹³ Subsequently, Newton and Black Panthers co-founder Bobby Seale “patrolled the streets of Oakland with law books, tape recorders, and guns...[a patrolling program that] galvanized the community and gained nationwide attention by ‘policing the police.’”²⁹⁴ Giving full force to the Black Panther Party’s Oakland patrols and its effects, Newton described them as follows:

Out on patrol, we stopped whenever we saw the police questioning a brother or sister. We would walk over with our weapons and observe them from a ‘safe’ distance so that the police could not say we were interfering with the performance of their duty. We would ask the community members if they were being abused. Most of the time, when a policeman saw us coming, he slipped his book back into his pocket, got into his car, and left in a hurry. The citizens who had been stopped were as amazed as the police at our sudden appearance. I always carried lawbooks in my car. Sometimes, when a policeman was harassing a citizen, I would stand off a little and read the relevant portions of the penal code in a loud voice to all within hearing distance. In doing this, we were helping to educate those who gathered to observe these incidents. If the policeman arrested the citizen and took him to the station, we would follow and immediately post bail.²⁹⁵

²⁹¹ Waskow, “Community Control of the Police,” 5.

²⁹² Murch, *Living for the City*.

²⁹³ Shames and Seale, *Power to the People: The World of the Black Panthers*, 23.

²⁹⁴ *Ibid.*

²⁹⁵ Newton, *Revolutionary Suicide*, 127-28.

Although the Oakland patrols were blunted by then-Gov. Ronald Reagan, who passed an act prohibiting the carry of weapons within city limits, these new models of community oversight served as a blueprint for the emergence of similar bottom-up efforts to “police the police” throughout the country.²⁹⁶ In 1969, the Detroit Task Force for Justice, an organization dedicated to community oversight of police and breaking the power hold of the Detroit police officers’ association, sought funding for a cop-watching program that would employ lawyers and investigators to follow on their patrols of Black neighborhoods.²⁹⁷

Campaigns to Shift Oversight to the People

Taken together, local efforts to “patrol the police” were one way that community control ideas were practiced locally. But they also represented a broader electoral strategy to shift power over police back to the communities. The sentiment here was that better police training, additional black officers, and civilian review bodies without binding oversight powers would not fix the structural design flaws that kept police “insulated from residents in a way that other government agencies and institutions have not.”²⁹⁸ Advocates believed that it was only through genuine authority to define the policies, practices, and resources of the institution itself—often through elected bodies representing not an at-large district but a neighborhood area—that the behavior of the police force would reflect community safety needs and be accountable to community interests.

In October 1969, the local Black Panthers in Milwaukee mounted a campaign to decentralize police, shift power to communities, and make the police a subject of community

²⁹⁶ Shames and Seale, *Power to the People: The World of the Black Panthers*

²⁹⁷ “Coalition to Monitor Cops in Ghettos,” *Chicago Daily Defender*, Jan. 14 1969, p. 7.

²⁹⁸ Kelly, R.M., 1978. “Sources of the Community Control Over Police Movement,” *Journal of Voluntary Action Research*, 7(1-2), 30.

oversight and control. Citing police abuses and structural failings with respect to poor Black communities, the Black Panthers advocated for “the creation of separate police departments for the white, black and brown communities.”²⁹⁹ And in 1972-73, the Chicago Campaign for Community Control of Police (CCCCP) was launched in Chicago “after several incidents of police murder and brutality in the Black, Latino and white working-class communities.”³⁰⁰ Under the system, the police would receive a much smaller share of city resources, and more of the budget would go to community programs.³⁰¹ To make this happen, the CCCCCP developed an ordinance akin to the strategies developed in California and elsewhere to put community control on the ballot. The proposed law was to “transfer the powers of supervising and administering the Chicago Police Department and all its affairs to the citizens of Chicago at large.” The CCCCCP called for a dramatically decentralized and reorganized police force with 21 local districts, each controlled by a board made up of elected citizens that “should reflect the composition of the community” and these local civilian boards would set all policies and police practices. Thus, each neighborhood would have complete authority over what tactics police could use in their boundaries, like stop and frisk, to make hiring decisions so that police in the neighborhood or district looked like and resided in the community, have the ability to fire abusive officers, and to hold public hearings to hear citizen grievances and concerns. The CCCCCP also demanded a cutting of city funds for police and investing the money in social goods (i.e., “free some of our tax money to come back to our communities to provide jobs which will establish an economic

²⁹⁹ Witt, *The Black Panthers in the Midwest*.

³⁰⁰ Platt, *Velvet Hand and Iron Fist*.

³⁰¹ Balto, *Occupied Territory*.

base for our community existence.”).³⁰² Historically, then, community control of police has had an economic independence and wellbeing dimension.³⁰³

That these community control campaigns ultimately “withered on the vine” had much to do with police repression and active resistance. In Chicago, for example, leaders spent so much time fending off the police, fighting charges and warrants and raids while police worked actively to subvert coalitions forming among black groups that the campaign was stunted.³⁰⁴ Similarly, the LAPD “worked to contain movements for self-determination and community control of the police”³⁰⁵ in Los Angeles. In many cases, these campaigns faced serious police resistance and reprisals, including both police opposition to Panthers in formal politics as well as assault, intimidation, and intense surveillance of their members. Nevertheless, these community control campaigns and discourses played a vital role in vocalizing and making prominent popular ideas that were emerging from communities. They “articulated an alternative framework of safety grounded in Black communal self-protection and knowledge.”³⁰⁶ As Simon Balto observes: “then as now, what those activists were doing was not so much telling people what to think about the police as they were channeling opinions that large sections of the community already held...they were as much articulators of community grievances as they were shapers of them.

...”³⁰⁷

The Centrality of Safety as a Political Issue

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Felker-Kantor, *Policing Los Angeles*.

³⁰⁶ Weaver, Prowse, and Piston, “Withdrawing and Drawing In: Political Discourse in Policed Communities,” 641.

³⁰⁷ Balto, *Occupied Territory*, 79-80, 228.

But beyond community control and self-determination, a prominent and longstanding concern among Black communities has been more broadly “the protection of black lives as a civil [and human] rights issue.”³⁰⁸ Whether from white vigilante violence or police violence and neglect, safety has been a key political issue in Black communities going back to the work of Ida B. Wells. This was certainly a concern in the 1960s, when Black organizations challenged the federal government to take white racial violence and police violence into account with its legislative measures addressing crime and safety. In May 1967, a California chapter of the NAACP proposed amendments to President Johnson’s Safe Streets and Crime Control Act, which they argued failed to sufficiently recognize the high levels of hate crimes and racial terrorism committed against racial minority groups. They petitioned Congress to add provisions to the Act to specifically eliminate crimes “perpetrated against minority groups,” particularly those perpetrated by law enforcement officials.³⁰⁹ In this sense, resistance to police repression and activism to contest safety deprivation were interwoven parts of the early movement for Black lives.

Black concerns over safety and community control continued into the 1970s and 1980s. By 1970, a 15-member National Alliance on Shaping Safer Cities (led by civil rights, religious, legal, educational, health and labor organizations) had formed and organized a conference with the aim of “tak[ing] the crime issue both from the ultra-right that calls for repression and from the ultra-left that calls for violent confrontation.”³¹⁰ Throughout the ‘70s, the racialized and politicized framings of “crime” also posed a quandary for Black leaders who knew that Black people were disproportionately victims of violent crime but rarely received justice at the hands of

³⁰⁸ Forman, *Locking Up Our Own*, 11.

³⁰⁹ *The Crisis* official magazine of the NAACP, May 1967, “Proposed Amendments and Resolutions Submitted by NAACP Branches”

³¹⁰ *The Crisis* official magazine of the NAACP, Jun-Jul 1970, Editorial “Safer Cities”

police, courts, and legal authorities. Consequently, many believed it was more effective to address root issues, including poverty, racism, disenfranchisement, and other conditions that produce community harm, than to support “continued oppression of the black masses via mainstream ‘law-and-order’ policies and practices.”³¹¹

Prison Resistance, Rebellions, and Retaliation in the 1970s

All the while, prisons were sites of profound political resistance during the 1960s and ‘70s. According to historian Dan Berger, since the ‘60s, the prison has served as a “strategic metaphor and structuring institution” around which Black freedom struggles—from the Black Panthers to the current Movement for Black Lives—are waged. In these settings, groups of incarcerated people and allies on the outside worked to forge organized resistance movements—through writing, lawsuits, strikes, uprising, and political alliances—in and out of the penitentiary to challenge unjust prison conditions and other injustices.³¹² As mentioned previously, the killing of Black Panther activist George Jackson in 1971 at California’s San Quentin Prison triggered a wave of prison uprisings and subsequent state repression and increased control.³¹³ These uprisings included well-known rebellions at men’s prisons, notably Attica³¹⁴, as well as the less acknowledged uprising among incarcerated women – the August Rebellion – in 1974 at the Bedford Hills Correctional Facility in New York where 200 women took control of the institution in response to the brutal treatment by male guards toward Carol Crooks,³¹⁵ who had

³¹¹ *The Crisis* official magazine of the NAACP, December 1973, “Editorials: Facing the Crime Crisis”

³¹² Berger and Losier, Rethinking the American Prison Movement

³¹³ Simon, Mass Incarceration on Trial.

³¹⁴ The prisoner takeover at New York state’s Attica Prison following George Jackson’s death, and the state government’s violent retaking of the prison resulting in the deaths of 40 prisoners and correctional officers, exemplified the violent confrontations that erupted between mass rebellion and state repression during the 1970s. See Thompson, *Blood in the Water*.

³¹⁵ <https://www.villagevoice.com/2016/08/30/august-rebellion-new-yorks-forgotten-female-prison-riot/>

been thrown down a flight of stairs, tied by hands and feet to a pole, and thrown in a solitary cell naked after she refused to go to solitary confinement because the prison was not adhering to a court order not to put her there. These anti-carceral political actions were not without repercussions. In *Blood in the Water*, historian Heather Ann Thompson documents how mandatory minimum sentencing guidelines, solitary confinement, and supermax prisons took hold of states across the country as a response to a perceived Black militant core emerging among prisoners.³¹⁶

In other words, collective resistance efforts in the '60s and '70s often had countervailing outcomes—expanding the discourse and radical calls for a redistribution of power as well as politicizing police abuse and detention but also giving rise to violent retaliation and a subsequently expanded systems of policing and punishment and new forms of oversight and authority. These responses not only worked to diminish collective forms of resistance and rebellion, particularly those challenging carceral power, but also compromised if not destroyed Black spaces for collective care and protection. For example, when police raided the Chicago Panther headquarters in the late '60s, they destroyed the very place that was serving meals to kids and delivering vital medical provision—so much so that the storming of the headquarters and killing of Fred Hampton were re-enacted on the local news so that the white public could see destruction of Black protective spaces.³¹⁷

These violent state actions were not only a response to resistance and rebellion among prisoners and activists, but also pervaded local environments, urban and nonurban, in response to mass rebellion. Historian Elizabeth Hinton provides a powerful account of these dynamics in

³¹⁶ Thompson, *Blood in the Water*.

³¹⁷ Wilkins and Clark, *Search and Destroy: A Report by the Commission of Inquiry into the Black Panthers and the Police* (New York: Metropolitan Applied Research Center, 1973). See also Hinton, *America on Fire*.

America on Fire, which documents that Black rebellions since the 1960s largely arose in response to policing of Black people. Put differently, police violence itself precipitated community uprisings. These local uprisings, in cites large and small where Black people endured segregated and unequal conditions, tended to remain local in size and public interest.³¹⁸ They also demonstrate that while negative interactions with policing and punishment typically do diminish interest or capacity to vote,³¹⁹ these same interactions often increase more contentious forms of political voice, such as protest behavior.³²⁰ Scholar Hannah Walker, for example, finds that a sense of systemic injustice—the belief that negative experiences with the criminal justice system are the product of discriminatory, group-based targeting—is the factor that mediates the relationship between personal experiences with the carceral state and protest or other non-voting forms of political action.³²¹

And yet these rebellions—against not only police violence but the broader injustices of exploitative conditions and anti-Black violence—were usually always met with extraordinary force by the state: “Riot-control training, military-grade weapons such as AR15s and M4 carbines, steel helmets, three-foot batons, masks, armed vehicles, two-way radios, tear gas—these and other techniques, weapons, and tools flowed into cities, even small ones, across the United States” in response to Black rebellion.³²² This violent dynamic is not fleeting or intermediary but a durable reality that has only institutionalized and legitimized violent policing practice in people’s imaginations. Documenting the rebellions and violent police responses in Miami in 1980, Los Angeles in 1992, and Cincinnati in 2001, Hinton notes that after the war on

³¹⁸ Hinton, *America on Fire*, 15.

³¹⁹ Weaver and Lerman, “Political Consequences of the Carceral State.”

³²⁰ Owens and Walker, “The Civic Voluntarism of ‘Custodial Citizens’: Involuntary Criminal Justice Contact, Associational Life, and Political Participation”; Owens, “Ex-Felons’ Organization-Based Political Work for Carceral Reforms”; Lawless and Fox, “Political Participation of the Urban Poor.”

³²¹ Walker, *Mobilized by Injustice: Criminal Justice Contact, Political Participation, and Race*, 130.

³²² Hinton, *America on Fire*, 11.

crime militarized and institutionalized an expanded police role, these later rebellions only occur in response to “exceptional instances of police violence”—that is, police killings. “There are no longer rebellions against everyday policing practices,” Hinton observes, “a sign that the status quo has become accepted, however bitterly.”³²³

By the 1980s, there was a growing body of evidence that institutional racism was rooted in the criminal justice experiment and that another way was possible. A 15-member National Minority Advisory Council on Criminal Justice held 33 public hearings over a four-year period before releasing a report to the Justice Department that reconfirmed what the NAACP and other racial justice organizations already knew: that the “US Criminal Justice System has been used to control minorities and [to] suppress their opposition to white racism.”³²⁴ With Black people making up just under half of the 400,000 people in U.S. prisons by 1982, the criminal justice system had become, as one writer put it, “the cutting edge of institutional racism.”³²⁵ All the while, the NAACP had been administering a prison program that reached 4,000 participants across 30 branches, and showed far lower recidivism rates among program participants than those who did not participate (during this period, the recidivism rate averaged 67 percent).³²⁶ In a 1980 position piece, the NAACP national office said it was “cognizant of the ever-increasing number of black prisoners in this nation’s penal institutions,” and yet the NAACP prison programs were met with “increased resistance on the part of some prison officials...to positive rehabilitation programs initiated by the NAACP prison branches.”³²⁷

³²³ Ibid., 15.

³²⁴ *The Crisis*, “The NAACP and the Criminal Justice System,” April 1982.

³²⁵ Shelton, *The Crisis*, “Growing Paranoia in U.S.,” December 1982.

³²⁶ Mobley, *The Crisis*, “NAACP Prison Program, First Ten Years,” April 1982. The NAACP Prison Program’s objectives included the following: aiding in the rehabilitative process of incarcerated people by allowing them to participate in the NAACP; channeling prisoners’ energy and talents to constructive pursuits; helping prospective parolees find jobs before release; and reducing recidivism rates and tax money spent on incarceration. See also *The Crisis*, “Stars Salute NAACP Prison Branch Program,” December 1984.

³²⁷ Mobley, *The Crisis*, “NAACP Prison Program,” March 1980.

Anti-Carceral Organizing in the 1990s: From the Death Row Ten to Critical Resistance

Law-and-order politics was ascendant between the 1980s and the early 2000s, taking full shape through a machinery of laws, rules, policies, and practices which, according to Michelle Alexander, maintains the “racial caste system” in the United States.³²⁸ Yet, as scholars now recognize, these years were also ones where new important political collectives and movements began to form.³²⁹ These movements not only contested the status quo logics of crime, prisons, and police, but they also offered a different way forward. One of the most striking arenas of such movement activity has been Chicago. Between 1972 and 1991, and especially during the 1980s, dozens of Black Chicagoans were tortured by the Chicago police and sent to prison due to coerced confessions.³³⁰ Several of these Black Americans—with few exceptions, young Black men with criminal records—were sent to death row.³³¹ Yet, during their years in the Condemned Unit at Illinois’ Pontiac Correction Center, they began to share their stories with one another, and in 1996, they participated in legal classes to support each other’s cases.³³² Through this mutual aid work, these men discovered that they shared near-identical experiences with police torture that sent them to death row. Ronald Kitchen, a torture survivor and participant in the class, placed this experience in searing perspective: “Reading through the transcript we kept discovering similarities coming up over and over again... The same detectives who had tortured me testified in many of the others’ trials. The same methods, the same threats, the same abuses—

³²⁸ See Alexander, *The New Jim Crow*.

³²⁹ See for example, Ransby, *Making All Black Lives Matter*.

³³⁰ Ralph, *The Torture Letters: Reckoning with Police Violence*.

³³¹ Reeves et al., *Tortured by Blue: The Chicago Police Torture Story*.

³³² *Ibid.*

the same people. ... We realized about a dozen of us had been tortured into false confessions—all at the hands of this group of officers.”³³³ Based on this revelation, these men—who called themselves the Death Row Ten—decided to make their experiences of torture public. They and their families began a sustained partnership with death penalty abolitionist organizers in Chicago, a critical move that led not only to a moratorium and eventual abolition of the death penalty in Illinois, but a movement that pressed for and won a \$5.5 million reparations ordinance from the city of Chicago for survivors of police torture.³³⁴ These movements exemplify the importance of “political visibility” in anti-carceral organizing. Members of the Death Row Ten shared their stories with news organizations and at “Live From Death Row” call-in events, actions that brought local, national, and international attention to histories of police torture and racial injustice in Chicago.³³⁵

Concurrently, important activist developments were also emerging in other parts of the country. In September 1998, a conference was held at the University of California at Berkeley entitled “Critical Resistance: Beyond the Prison Industrial Complex.”³³⁶ What had been an idea two years earlier between scholar-activist Angela Davis and Cassandra Shaylor, a then-graduate student at the University of California, Santa Cruz, and a lawyer for incarcerated women, grew to an organizing committee of 28 people who largely identified as women and nonbinary.³³⁷ In total, the conference included around 3,500 attendees from all over the nation and world, marking “an entirely new phase of anti-prison activism” that helped build a network among numerous organizers and organizations, and that developed and popularized the concepts of

³³³ Kitchen, *My Midnight Years*, 140.

³³⁴ *Ibid.*; Reeves et al., *Tortured by Blue: The Chicago Police Torture Story*.

³³⁵ Kim, “The Death Row Ten: Interrupting Illinois’ Death Machine.”

³³⁶ Davis et al., *Abolition. Feminism. Now.*, 36-45.

³³⁷ *Ibid.*

prison abolition as well as the prison industrial complex.³³⁸ For the organizers in Critical Resistance, creating a new vocabulary was important in offering an alternate analysis of the problem. For example, Critical Resistance advanced the concept of “prison abolition” in order to draw explicit connections between the anti-slavery and anti-carceral movements. Likewise, the term “prison industrial complex”—first coined a few years earlier by critical geographer Mike Davis—emphasized how government interests, corporate interests, surveillance, and policing shaped a system of relationships that together form a larger political economy. This system extended far beyond prisons, proponents argued, to implicate schools, child welfare systems, housing assistance, and other public institutions. By offering up these concepts, Critical Resistance gave new generations of organizers and organizing institutions the language to better articulate bolder anti-carceral and abolitionist claims.³³⁹ Although mainstream social scientists and journalists tend to overlook the impact of this longstanding organizing, the new vocabulary and frameworks developed from it have shifted the national debate about policing, incarceration, and broader systems of punishment.

These histories underscore how vital, Black-led institutions are to anti-carceral movements today. As the work of historian Barbara Ransby shows, the current Movement for Black Lives (M4BL) has its antecedents in Black feminist-centered organizations, including Critical Resistance and INCITE! Women of Color against Violence, which drew early on from members’ personal experiences as witnesses and survivors of state violence to make prison and police abolition core tenets of their work.³⁴⁰ So, organizations have played a critical role in

³³⁸ Ibid.

³³⁹ Ibid.

³⁴⁰ Ransby, *Making All Black Lives Matter*.

providing key resources (e.g., workshops, political education, tactical support, scaffolding structures) and vision to ongoing resistance movements such as M4BL.

Black-led Local Struggles Today: #LetUsBreathe, Participatory Defense, Cop-Watching, and Community Bail Funds

This history has resulted in a range of Black-led collectives, such as Black Visions in Minneapolis, the Dream Defenders in Florida, and the young-adult, Chicago-based groups including Black Youth Project 100, Assata’s Daughters, and the #LetUsBreathe Collective. These organizations draw inspiration from the Black Panthers, whose survival programs (often led by Black women) provided powerful examples of mutual aid in the form of the Sickle Cell Anemia Research Foundation, prisoner programs, Cooperative Housing Program, Oakland Community School, liberation schools, elderly protection from crime (SAFE), and free breakfast program.³⁴¹ In that spirit, these organizations—such as Assata’s Daughters—teach individuals how to cop-watch or keep police accountable by video recording aggressive interactions on observers’ cell phones. Others, like the Dream Defenders, established a trauma response center with other organizations. Rather than address harm and violence with a police response, this center instead provides direct services, including mental health counseling, job placement, job placement, and legal support.

The #LetUsBreathe Collective remade space once used for police violence. For nearly three weeks in the summer of 2016, organizers and their supporters in Chicago—led by the #LetUsBreatheCollective in coalition with Black Youth Project 100 and other groups—encamped in a vacant lot across the street from a facility used for off-the-books police

³⁴¹ Newton, *To Die for the People*.

interrogations, torture, and other abuses.³⁴² The extent of these revelations cannot be understated. According to data obtained through a transparency lawsuit from the Guardian, more than 7,000 people—6,000 of them Black—had been “disappeared” in the warehouse between August 2004 and June 2015.³⁴³ Inspired by activists who occupied space near the Ferguson police department headquarters after the fatal police shooting of Michael Brown, these Chicago organizers reimagined and repurposed an area once used for police torture and abuse as “a community block party and occupation to imagine a world without police.”³⁴⁴

The original idea behind the political action was to create a “visual spectacle,” pitching seven tents that reflected seven vital areas to which police funds could be redirected: arts, education, employment, housing, mental health, nutrition, and restorative justice. But quickly thereafter, organizers realized that the space could be repurposed to reinvigorate community.³⁴⁵ “Part of being out here is having the autonomy to construct a village where we live our values every day and have the courage to resolve conflict without calling police,” said Kristiana Colón, co-director of the #LetUsBreathe Collective.³⁴⁶ Renamed “Freedom Square,” the encampment fed more than 200 people a day and was supported by volunteers, organizers, and in-kind donations.³⁴⁷ That same year, the collective created the #BreathingRoom from a defunct, 4,000-square-foot press building.³⁴⁸ The space is “the first free-standing Black-led liberation space [in Chicago] since the Black Panthers,”³⁴⁹ and currently hosts a number of political education and

³⁴² Clifton, “How protests in Ferguson inspired the occupation of ‘Freedom Square,’” *Chicago Reader*, <https://chicagoreader.com/columns-opinion/how-protests-in-ferguson-inspired-the-occupation-of-freedom-square/>

³⁴³ Ackerman, “Homan Square revealed: how Chicago police 'disappeared' 7,000 people,” *The Guardian*, <https://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands>

³⁴⁴ Clifton, Clifton, “How protests in Ferguson inspired the occupation of ‘Freedom Square.’”

³⁴⁵ Ibid.

³⁴⁶ Ibid.

³⁴⁷ Ibid.

³⁴⁸ <https://www.letusbreathecollective.com/breathingroomspace>

³⁴⁹ Ibid.

cultural organizing events, but always with an eye toward healing, building partnerships among the Chicago organizing community, and incubating programs that “aim to force prisons and policing into obsolescence.”³⁵⁰

Alongside these movement efforts were legal battles that resulted in a 2014 Illinois appellate court decision that forced the city of Chicago to release decades of police misconduct complaints. These allegations, which cover 1988-2018 and total nearly 250,000 complaints, are housed under the Citizen Police Data Project, the Invisible Institute’s interactive online platform.³⁵¹ Using an algorithmic and narrative justice lens, scholar-organizer Trina Reynolds-Tyler and other colleagues at the Invisible Institute began *Beneath the Surface*, a project that investigates gender-based police violence experienced particularly by Black women and girls. Thus far, the project has identified 90 separate complaints of police mistreatment of sexual assault survivors and 194 incidents of police neglect in cases of intimate partner violence, including several officers who were named in multiple complaints.³⁵² These cases join other forms of legal disputes and lawsuits from communities enduring intensive policing and criminalization that have obtained access to police contact (e.g., stop and frisk, arrest) data in recent years. These cases and others illustrate how directly impacted communities and their allies have begun to utilize data in more sophisticated ways to contest the narratives produced by police departments and other carceral institutions.

These bottom-up political mobilizations in Chicago are part of broader anti-carceral and abolitionist movements. Notably, the past decade has experienced a rise in alternatives to mainstream approaches of “community policing.” Contrary to community policing and police-

³⁵⁰ Ibid.

³⁵¹ Citizen Police Data Project, <https://cpdp.co>.

³⁵² *Beneath the Surface*, <http://www.btsurface.com>.

community meetings, which critics say ultimately serves to deputize select members of neighborhoods to legitimize police practices and to surveil and inform on others,³⁵³ these approaches emphasize critical engagement by the community and “adversarial forms of community participation” rather than collaboration with police forces.³⁵⁴ For example, organizations and collectives across the country assemble volunteers to record the daily proceedings in local courts; in so doing, these organizations use policing tactics against carceral institutions, serving as “self-appointed watchdogs who can present the results of their observations in their own words, on their own terms, and independent of official accounts and trends.”³⁵⁵ Families and political allies of Chicago’s Death Row Ten used court-watching techniques to remind agents of the court that each member of the Death Row Ten was connected to a broader community of supporters, thereby tipping the balance of power so often concentrated, for the most part, among judges and prosecutors. An extension of this work is the participatory defense model whereby defendants’ loved ones and supporters learn about a defendant’s case and perform their own legal investigations to shift unequal court dynamics that often lead to inequitable legal outcomes.³⁵⁶ According to organizer Mariame Kaba, these campaigns are important strategies of abolitionist organizing.³⁵⁷

Another important strategy increasingly used by individuals and groups is cop-watching, during which onlookers use their mobile phones and other video recording devices to “police the police,” documenting police stops and interrogations in order to not only deter misconduct and

³⁵³ Cheng, “The Cumulative Discretion of Police over Community Complaints.” Importantly, Cheng empirically shows that police use such meetings to curate citizen complaints towards enhancing their own legitimacy and endorse the need for their services; the show of public participation actually leads to enhancing police power. Over time through the process of cumulative discretion over complaints, more critical voices stop attending in a nefarious feedback loop.

³⁵⁴ Simonson, “Copwatching,” 393.

³⁵⁵ Simonson, “Democratizing Criminal Justice through Contestation and Resistance,” 1618.

³⁵⁶ Ibid.

³⁵⁷ Kaba, *We Do This ‘Til We Free Us: Abolitionist Organizing and Transformative Justice*.

create a record to contest the narratives of law enforcement but also to raise public consciousness, provide communal guardianship, and push back more generally against repressive and controlling state practices. Cop-watchers come from all walks of life. In *Down, Out, and Under Arrest*, sociologist Forrest Stuart reports on the cop-watching activities of the Los Angeles Community Action Network (LACAN), an activist organization comprised mostly of low-income residents of LA's Skid Row who also came out of prisons and the Black Power organizing tradition. Around 2008, LACAN began its own cop-watching initiative, Community Watch, which "record[ed] officer interactions to increase accountability, mitigate police aggressiveness, and generate evidence for use in civil litigation, criminal defense, and political organizing campaigns."³⁵⁸ Unlike most criminalized residents in Skid Row, these organizers "actively sought out as much police contact as possible" and "increased their own police contact and risked arrest to protect *others*."³⁵⁹ Still, the introduction of filmed police interactions in cases was far from conclusive evidence. Police introduced contextual evidence that proved decisive in court cases, and LACAN cop-watchers devised counter strategies of recording incidents start to finish and of more proactively interrogating police during filmed encounters. As creative as these "tactical innovations" were, they nevertheless had mixed results as officers used tactics of arrest, confiscation, and intimidation to discourage people from cop-watching, and used personal knowledge of LACAN members' home addresses, criminal records, addiction histories, and other intimate information to dissuade their activism. Here, we see the limits of "police footage" from another perspective, reinforcing the fact that police officers enjoy unequal power and legitimacy.

³⁵⁸ Stuart, *Down, Out, and Under Arrest*, 207.

³⁵⁹ *Ibid.*

Finally, community groups in cities across the nation have increasingly created bail funds, harkening back to early programs of assistance like the Chester community assistance program, over the past five years, based either in partnership with public defenders or activist or identity-based organizations. These community bail funds are powerful in aiding criminal cases, providing a rotating pool of funds to defendants who otherwise could not afford to post bail, so that they “are able to fight their case from a position of freedom, without losing their jobs, housing, or custody of their children.”³⁶⁰ These bail funds also make a broader statement that contests the assumptions of money bail. “Literal action—the posting of bail—itself becomes a form of on-the-ground resistance to the workings of the criminal justice system,” writes legal scholar Jocelyn Simonson. “The result is a powerful form of popular input into criminal justice from outsiders who rarely have a say in how their local justice systems are administered.”³⁶¹

And as it had before, prison too was a site of resistance in recent times. From Aug. 12, 2018, to Sept. 9, 2018, incarcerated workers in U.S. prisons across at least 17 states carried out a National Prisoners’ Strike. The demonstration, executed on the 47th anniversary of Attica, occurred two years after perhaps the largest prison protest in American history: a network of actions that involved roughly 50 prisons and at least 24,000 participants across at least 12 states. These actions were motivated by the demand for basic human rights and social provisions, including the “immediate end to prison slavery,” the reinstatement of Pell grants, voting rights, and authorized legal avenues of prisoner redress for rights violations.

VI. CONCLUSION

³⁶⁰ Simonson, “Bail Nullification,” 589.

³⁶¹ *Ibid.*, 590.

Rather than restating the arguments of our report, we conclude with an invitation for researchers and journalists to expand the questions, people, events, and perspectives they write about with respect to the criminal justice system, and to do so with a much broader context in mind. The foundation we have laid here provides critical background so that when an event related to the criminal justice system—policing, incarceration, safety—grabs media or popular attention, writers will be better able to situate the occurrence, judicial outcome, or political discourse surrounding that event in a longer history of racialized punishment, governance of Black childhood, police militarization, and other power relations that have constructed Black life as expendable, profitable, and devoid of innocence and that have collapsed social analysts’ and journalists’ ability to see and acknowledge consistent efforts by Black people to transform this relationship.

This history offers a reorientation regarding whose perspective can or should be accounted for and of what kinds of political or policy work are newsworthy. For example, the last section of this report points to the organizing of Black peoples across the 20th and 21st centuries against insecurity from state violence, punishment, and economic dispossession. This history (much of it unknown and ignored) challenges assumptions that “Black people are just as punitive” or that “Black people are not concerned with safety,” showing how Black communities have consistently been proponents of safety and justice.

Once we recognize that Black political claims have centered investing in community wellbeing in addition to better enforcement to address safety deficits, we might instead ask: Why weren’t their calls for structures of safety and opportunity heeded? Why did the needed investment never materialize? Those questions would lead one to ask, for instance, what it is about our political system that limits democratic responsiveness to Black claims and that

produces a lopsided delivery of discipline and criminalization without protection and human flourishing? As Deva Woodly succinctly puts it: “It has never been a question of voice, but always one of the hearing.”³⁶²

The answer to these questions points to a recurring theme that we address in this report: a racially repressive state that consistently views and positions Black children, Black mothers, Black communities, and Black life as subject to monitoring, control, under-protection, and violence. Subsequently, Black political demands for protection against harm and threats to health and human flourishing instead elicit methods that control, punish, surveil, discipline, and (by way of profits and revenue) extract and contain rather than securing wellbeing and fundamentally protecting.

But instead of rehashing debates about the racial prejudice and psychological states of officers who kill, a focus on the racial and political history of criminalization leads to a different set of questions and understandings about how policing flows from beliefs about the (lack of) innocence, vulnerability, and humanity among race-class subjugated communities. This reorientation also reveals a consistent pattern: That the incarceration and policing of Black people in the U.S. increases after periods where they amass substantial political and economic power.

This reorientation also demands that we examine state practices that prey on and dispossess race-class subjugated communities. Today, large sums of assets in racially and economically oppressed communities drain the wealth of families through hefty bail premiums, jails and prisons that charge their wards for their confinement, asset forfeitures that now eclipse amounts yielded from criminal theft, and states that charge hefty amounts to people for being

³⁶² Woodly, *Reckoning: Black Lives Matter and the Democratic Necessity of Social Movements*, 216.

supervised on probation or through electronic monitoring. Journalists might ask, as two social scientists recently did, “What does it mean to be treated—by one’s own government and in the name of law and justice—as a target of plunder?”³⁶³

Finally, reporting on the latest episode of police violence or abuse tends to follow a common script: Black communities are distrustful of police, therefore the solution is to fix the trust deficit and increase their trust. Our report points to the inadequacy of these frames and the approach that tends to follow. The problem with these frames is that they focus on how to make people more “trusting” of police, which treats the relationship between police and communities as the thing to be fixed rather than the structural and power dynamics and processes of non-protection and state harm that led to distrust. When we focus on attitudes and perceptions as the cause for concern, rather than the relationship of racialized punishment—collective, intergenerational, sustained—and the asymmetries of power that leads to those perceptions and continually reinforces them, then we will arrive at thin prescriptions.³⁶⁴ Many academic theorists have now provided concepts to help us: legal estrangement, asymmetric citizenship, distorted responsiveness, punitive governance, and racialized state failure.³⁶⁵ These concepts help us identify the institutional failures, power dynamics, and uses of police power that define U.S. state governance and place them in a larger context as part of broader projects of racial control and extraction that produce the so-called “distrust” orientation of Black communities towards the criminal justice system.

³⁶³ Page and Soss, “The predatory dimensions of criminal justice,” 294.

³⁶⁴ See especially Monica Bell on the need for a more encompassing diagnosis. Bell, “Police Reform and the Dismantling of Legal Estrangement.”

³⁶⁵ Bell, “Police Reform and the Dismantling of Legal Estrangement;” Gonzalez and Mayka, “Policing, Democratic Participation, and the Reproduction of Asymmetric Citizenship;” Prowse, Weaver, and Meares, “The State from Below;” Lebrón, *Policing Life and Death: Race, Violence, and Resistance in Puerto Rico*, Miller, “Racialized Anti-Statism and the Failure of the American State.”

This report recognizes that the criminal justice system is a site of collective racial memory and ongoing knowledge production in Black communities. One of the first ways youth learn where they stand in U.S. society is through encounters with that system, namely police (e.g., “that’s when we knew what race was then”). Thus, efforts to “increase citizen trust” in police and other authorities and to reign in abusive officers without contending with the deeper relationships at work and cumulative racial socialization borne out of policing Black citizens and spaces mischaracterize the problem and discount the more fundamental, ongoing structures that produce this collective experience.³⁶⁶

Today, some of the most popular so-called reforms to criminal justice policy and practice are just that: reforms. As such, they leave intact structures of economic injustice and resource inequality, fail to contend with how U.S. policing and criminalization have been used as methods of racial control, and mostly do not address the “racialized regimes of resource extraction”³⁶⁷ and political exclusion that are central to the criminal justice system. Thus, they fail to produce the safety and justice for which many have struggled – from Mary Bumpurs to the Afro-American Patrolmen’s League to the Movement for Black Lives. If journalists are to report more rigorously on what makes for deep and sustaining change in the criminal justice system, then they must look to the knowledge and wisdom held by directly impacted communities and community leaders who proposed solutions decades ago that are only now being given the attention and investment they deserve.

³⁶⁶ Bell, “Police Reform and the Dismantling of Legal Estrangement.”

³⁶⁷ Page and Soss, “The predatory dimensions of criminal justice.”

