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Police Reform through a Power Lens

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JOCELYN SIMONSON

Police Reform Through a Power Lens

ABSTRACT. Scholars and reformers have in recent years begun to imagine new and different configurations for how the state can design policing institutions. These conversations have increased in volume and urgency in response to the 2020 national uprising against police violence, when radical demands born within social movements have gained steam—demands to defund the police, to institute “people’s budgets,” and to give communities control over the state provision of security. In recent years, within this time of foment and possibility, social movements have been proposing, creating, and sometimes establishing new governance arrangements that shift power over policing to those who have been most harmed by mass criminalization and mass incarceration. These recent pushes by social movements for power shifting surface a fundamental set of questions about the very purpose of police reform, adding a new way for scholars and reformers to think about the contours and objectives of the state’s provision of safety and security—what this Article terms the power lens.

This Article examines the movement focus on power shifting in the governance of the police at both the local and national levels. It fleshes out a three-part theoretical account of why the power lens is an important and necessary addition to how scholars and reformers view the regulation of policing. First, shifting power to policed populations is reparative, in the sense that it shifts power downward toward populations who have been denied political power directly as a result of the history of policing policies and practices in their neighborhoods. Second, power shifting is a means of promoting antistatist subordination, based on the idea that it is wrong for the state to engage in practices that enforce the inferior social status of historically oppressed groups. Third, a power lens on police reform promotes a particular view of contestatory democracy, one in which democratic policing has as one of its objectives the facilitation of countervailing power for those subject to the domination of the state. Taken together, the power lens brings a critical eye to the ways in which the construction of the notion of “expertise” often denies agency to the people who most often interact with police in the streets and on the roads. More broadly, the power lens opens up discussions of reform to first-order questions about how the state should go about providing safety and security in our time, with or without the police as we know it.



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INTRODUCTION

The demands that emerged amid the 2020 uprisings against police violence and white supremacy brought into the national consciousness radical ideas for change in how the state should provide safety and security. There are demands to defund the police, to have the people decide how budgets are allocated, and to give communities control over how to define public safety. To look back just one year is to see how these visions are the product of long-term organizing by directly impacted people—especially Black, Latinx, and Indigenous people—pushing to create new visions of how to keep each other safe. In June 2019, for instance, Black Lives Matter Chicago and other local groups held a press conference to condemn the killing by Chicago Police Department (CPD) officers of five people of color in the previous thirty days. The activists issued a call to action, summarized in this tweet: “Defund, Disarm, Disrupt CPD and business as usual. #FightBack #CPACNow.”¹ The last hashtag references a bill that had been recently reintroduced in the Chicago City Council to form the Civilian Police Accountability Council (CPAC), which would consist of civilians chosen through elections in each neighborhood district.² As the activists supporting the bill have written: “Without taking power away from the police and the state systems that operate in complicity, nothing will change. We need community in control. It is our democratic right.”³ When protests erupted on the streets of Chicago in May and June of 2020, people were ready with their transformational demands. “CPAC NOW” became a ubiquitous sign and chant,

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1. See BLM Chicago (@BLMChi), TWITTER (June 12, 2019, 2:25 PM EDT), <https://twitter.com/BLMChi/status/1138875087577387009> [<https://perma.cc/AZ6G-S52N>]; see also Press Release, MacArthur Justice Center, Coalition of Community and Civil Rights Groups Call on the City, Attorney General, State’s Attorney to Address Escalating Police Violence (June 13, 2019), <https://www.macarthurjustice.org/coalition-of-community-and-civil-rights-groups-call-on-the-city-attorney-general-states-attorney-to-address-escalating-police-violence> [<https://perma.cc/S5RQ-YCK8>] (describing the coalition that “urged the Mayor and City Council to implement the Civilian Police Accountability Council (CPAC) as the only way to create meaningful community-based accountability and ensure those most impacted by police violence have the necessary role to transform the Chicago Police Department”).
 2. See Matt Masterson, *Chicago Alderman Renews Push for Elected Police Oversight Council*, WTTW NEWS (May 14, 2019, 1:49 PM), <https://news.wttw.com/2019/05/14/chicago-alderman-renews-push-elected-police-oversight-council> [<https://perma.cc/AG78-2XN4>]; *The People’s Guide to an Elected Civilian Police Accountability Council*, STOP POLICE CRIMES (Mar. 2015), https://jcua.org/wp-content/uploads/2016/10/CPAC_B-W_PeoplesGuide_March2015.pdf [<https://perma.cc/A87S-G28G>] (summarizing the proposed ordinance).
 3. See BLMChicago (@BLMChi), TWITTER (June 19, 2019, 12:11 PM EDT), <https://twitter.com/BLMChi/status/1141377967484002304> [<https://perma.cc/G6JV-JU4M>].

often placed or chanted in tandem with a demand to defund the Chicago Police Department.⁴

In late 2019, a national coalition of grassroots groups led by people who are formerly incarcerated, the “People’s Coalition for Safety and Freedom,” took the 25th Anniversary of the 1994 Crime Bill as an opportunity to present a vision of national legislation that could replace that much-maligned bill.⁵ The new legislation would require the federal government to reduce its spending on the criminal legal system and invest instead in health, education, housing, and infrastructure.⁶ The People’s Coalition insists that new national policies be generated by “join[ing] forces with the people most harmed by policing, criminalization and incarceration.”⁷ The result is a call for a “People’s Process,” in which federal legislators would be required to conduct townhalls, workshops, and peoples’ assemblies on the impact of mass criminalization; hold in-district congressional hearings on the impact of the 1994 Crime Bill; and, ultimately, draft legislation based on the priorities of directly impacted people.⁸ These ideas reemerged in the summer of 2020, embodied in the BREATHE Act and the People’s Coalition’s continued work to engage in their own “People’s Process” to craft federal budgeting priorities.⁹

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4. See Curtis Black, *Community Oversight or Control? Coalitions Meet on Competing Police Accountability Standards*, CHI. REP. (July 1, 2020), <https://www.chicagoreporter.com/community-oversight-or-control-coalitions-meet-on-competing-police-accountability-proposals> [<https://perma.cc/EQ3T-5F99>] (describing “thousands of Chicagoans in the streets in recent weeks demanding community control of police in the form of an elected Civilian Police Accountability Council”).
 5. See Deanna Hoskins, Andrea C. James & Kumar Rao, Opinion, *The '94 Crime Bill 25 Years Later: It's Time for a Reckoning*, COLORLINES (Sept. 30, 2019, 11:40 AM ET), <https://www.colorlines.com/articles/94-crime-bill-25-years-later-its-time-reckoning-op-ed> [<https://perma.cc/MSW9-XH9Z>] (announcing the formation of this coalition). On the 1994 Crime Bill, see Lauren-Brooke Eisen, *The Complex History of the Controversial 1994 Crime Bill*, BRENNAN CTR. FOR JUST. (Apr. 14, 2016), <https://www.brennancenter.org/our-work/analysis-opinion/complex-history-controversial-1994-crime-bill> [<https://perma.cc/7BPR-224G>].
 6. See Hoskins, James & Rao, *supra* note 5.
 7. *Id.*
 8. See *Reckoning with Mass Criminalization and Mass Incarceration: A Proposal to Advance a New Vision of Public Safety and Dismantle the 1994 Crime Bill Through a Participatory People's Process*, CTR. FOR POPULAR DEMOCRACY 5 (Sept. 2019) [hereinafter *Reckoning with Mass Criminalization*], <https://secureservercdn.net/198.71.233.150/yjt.ea.myftpupload.com/wp-content/uploads/2020/07/94-Violent-Crime-Act.pdf> [<https://perma.cc/2DEK-KS82>].
 9. See *The BREATHE Act*, MOVEMENT FOR BLACK LIVES (July 2020), https://breatheact.org/wp-content/uploads/2020/07/The-BREATHE-Act-PDF_FINAL3-1.pdf [<https://perma.cc/832D-SVZJ>]; *People's Process*, PEOPLE'S COALITION FOR SAFETY AND FREEDOM, <http://safetyandfreedom.org/a-peoples-process> [<https://perma.cc/LQ24-5Z24>]; *People's*

These two long-term collective efforts—locally, in Chicago, for community control of the police; and nationally, via the People’s Coalition, to repeal and replace the ’94 Crime Bill—represent two different scales of a growing emphasis within social movements: reckoning with police violence by imagining new forms of governance and policymaking in which power is shifted to those who have been most harmed by mass criminalization and mass incarceration. These calls for power shifting surface a series of questions about police reform and the governance of criminal legal institutions more broadly. One set of questions gets at the specifics of institutional design within governance arrangements. This is a subject that Sabeel Rahman and I take up in a parallel work, analyzing the elements of institutional design in local governance that can (or cannot) facilitate contestation, build power, and push back against the antidemocratic structures of laws themselves.¹⁰ But the movement visions of legislative and institutional change also bring forth a more fundamental set of questions about the very purpose of “police reform,” whether it is local, national, or somewhere in between. By concentrating on power arrangements and a particular form of contestatory democracy, these movements open up police “reforms” to new institutional arrangements with the potential to facilitate the defunding and even abolition of policing as we know it.

Underlying the contemporary movement demands for governance changes that include community control of the police and a national “People’s Process” is a critique of two leading ways of thinking about the objective of reforming the governance of law enforcement. The first traditional way of thinking about police reform is *instrumental*: reformers focus on policies that they hope will lead to particular outcomes traditionally associated with policing success—as examples, a reduction in reports of violent crime or a reduction in police use of unconstitutional excessive force.¹¹ A second leading way of conceptualizing police reform focuses on building trust between the police and communities so as

Coalition for Safety and Freedom (@Ppls_Coalition), TWITTER (July 15, 2020, 4:24 PM EDT), https://twitter.com/Ppls_Coalition/status/1283497591012040706 [<https://perma.cc/YEM6-KS4M>].

10. See K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679 (2020). What we do not do, however, is provide a broader theoretical account of why shifting power should be a goal of police reform specifically.
11. See, e.g., NAT’L ACADS. OF SCI., ENG’G & MED., PROACTIVE POLICING: EFFECTS ON CRIME COMMUNITIES 119-32 (David Weisburd & Malay K. Majmundar eds., 2018) (describing how to measure reductions in crime and disorder associated with policing); cf. Nat’l Inst. of Just., *Overview of Police Use of Force*, U.S. DEP’T JUST. (Mar. 5, 2020), <https://nij.ojp.gov/topics/articles/overview-police-use-force> [<https://perma.cc/34C9-WAJD>] (discussing the difficulties that arise from measuring police use of excessive force).

to enhance the *legitimacy* of the police.¹² Often, the instrumentalist and the legitimacy approaches are combined in a manner that aims to strike a balance between the two goals, or to weave them together into one coherent method.¹³ In contrast to the instrumentalist approach or the legitimacy approach, the movement focus on governance and policymaking in police reform adds a different idea about what it means to regulate the police effectively. The reform proposals from movement groups surface the specific role that policing plays in denying people in highly policed neighborhoods their democratic standing and collective political impact. They advocate reform efforts to counteract the anti-democratic nature of policing. They focus on power.

Since the uprisings in Ferguson and Baltimore intersected with the formation of the Movement for Black Lives (M4BL), the last six years have seen far-reaching changes in how the public and legal scholars alike think about policing¹⁴—changes that have only intensified in the wake of the 2020 uprisings.¹⁵ These changes would not have been possible without the push from

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12. See, e.g., Tracey L. Meares, *The Path Forward: Improving the Dynamics of Community-Police Relationships to Achieve Effective Law Enforcement Policies*, 117 COLUM. L. REV. 1355, 1361-68 (2017); *Final Report*, PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 9-18 (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [<https://perma.cc/ML3G-GG9J>].
 13. See, e.g., Kami Chavis Simmons, *Increasing Police Accountability: Restoring Trust and Legitimacy Through the Appointment of Independent Prosecutors*, 49 WASH. U. J.L. & POL'Y 137, 158 (2015) (describing the goal of reform as finding a combination of ways to “effectively restore trust and reduce police violence”); *Leadership*, NAT'L INITIATIVE FOR BUILDING COMMUNITY TRUST & JUST., <https://trustandjustice.org/about/leadership> [<https://perma.cc/J8VS-MV8S>] (describing the organization's mission to promote “the best of law enforcement and community-driven approaches to improve public safety, minimize arrests and incarceration, enhance police legitimacy, and rebuild relationships between law enforcement and distressed communities”); PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 12, at iii (combining instrumental ideas about outcomes with reforms focused on increasing trust between police and communities); cf. Kate Levine, *Discipline and Policing*, 68 DUKE L.J. 839, 852 (2019) (“[T]ransparency is a core reform suggestion in almost every recent scholarly proposal regarding policing problems.”).
 14. See Samuel Walker, “Not Dead Yet”: *The National Police Crisis, A New Conversation About Policing, and the Prospects for Accountability-Related Police Reform*, 2018 U. ILL. L. REV. 1777, 1782-83 (describing the “National Police Crisis” after the 2014 events in Ferguson and the creation of a “New Conversation” about police reform).
 15. For just a small sample of legal scholars engaging with new ideas around police reform in the summer of 2020, see, for example, Monica Bell, *Black Security and the Conundrum of Policing*, JUST SECURITY (July 15, 2020), <https://www.justsecurity.org/71418/black-security-and-the-conundrum-of-policing> [<https://perma.cc/FWY6-NMHX>]; Barry Friedman, Brandon L. Garrett, Rachel Harmon, Christy E. Lopez, Tracey L. Meares, Maria Ponomarenko, Christopher Slobogin & Tom R. Tyler, *Changing the Law to Change Policing: First Steps*, JUST. COLLABORATORY (June 2020), <https://law.yale.edu/sites/default/files/area>

movement actors to recognize the racialized and subordinating history of policing in the United States.¹⁶ A number of legal scholars has argued recently that transformative change is necessary if we are to realize legitimate, fair, and equal means through which the state can provide security. For example, Paul Butler, Bennett Capers, and Tracey Meares have all called for us to think of police reform as a “Third Reconstruction,”¹⁷ implying a total shift in the way that the state provides security in the context of the history of racist and racialized policing. Amna Akbar, Monica Bell, and Barry Friedman have, in different ways, all called for a complete transformation in how we think about the path forward: For Bell, it is a focus on undoing the subordinating effects of racial segregation;¹⁸ For Friedman, it requires disaggregating the roles that we ask police officers to play in order to reduce harm;¹⁹ And for Akbar, it requires the reduc-

/center/justice/document/change_to_change_final.pdf [https://perma.cc/3V6H-PGST]; Amna Akbar, Monica Bell, Dorothy Roberts & Jocelyn Simonson, *Beyond Reform: Reenvisioning the Role of Police*, YOUTUBE (June 24, 2020), <https://www.youtube.com/watch?v=qGXVSg5Ejdl> [https://perma.cc/AP98-F3FY]; and Monica Bell, Allegra McLeod, Jamelia Morgan, Anthony O’Rourke & Rick Su, *Defunding the Police: A Conversation*, U. BUFF. SCH. LAW (Aug. 12, 2020), <https://www.law.buffalo.edu/news/defunding-the-police.html> [https://perma.cc/7YB3-35MC].

16. Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 416 (2018) (“The rebellions in Ferguson and Baltimore . . . and the accompanying swell of Black-led organizing, forced hard-charging conversations about law, the police, and the state—routine conversations in communities of color that are relatively absent in legal scholarship—onto the national stage, changing the debate over race in the United States.” (footnote omitted)).
17. Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1475 (2016) (“I want to support a frame alignment around the term ‘Third Reconstruction’”); I. Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 1, 59-60 (2019) (“How do we make a reality what CRT scholars and fellow travelers have long called for, a *Third Reconstruction* that would ‘merge “we” and “they” while eliminating the role that whiteness and blackness play in determining who belongs and who does not?’” (footnote omitted) (quoting Lisa A. Crooms-Robinson, *Is the Third Time the Charm? Reconstructing Personhood and Reimagining “We the People,”* 43 HUM. RTS. 28, 31 (2018))); Tracey Meares, *A Third Reconstruction?*, BALKINIZATION (Aug. 14, 2015), <http://balkin.blogspot.com/2015/08/a-third-reconstruction.html> [https://perma.cc/UAC5-877W] (“Once we have [a] system in which the formal and hidden curricula are the same for everyone we will have achieved the goal of the Third Reconstruction.”); see also Capers, *supra*, at 59 n.323, 60 nn.324-30 (collecting sources of Critical Race Theory (CRT) scholars who have linked CRT to the idea of a Third Reconstruction).
18. See Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 677-84 (2020).
19. See Barry Friedman, *Disaggregating the Policing Function*, 169 U. PA. L. REV. (forthcoming 2021) (manuscript at 26-52), <https://ssrn.com/abstract=3564469> [https://perma.cc/Q8EF-WZ3S].

tion and elimination of the police footprint altogether.²⁰ And a number of scholars have called for the “democratization” of policing, a rethinking in how we administer policing as much as in what our policies and priorities for policing should be.²¹

Even if these scholars disagree on what that “reconstruction,” “transformation,” or “democracy” would look like, as well as whether the institution of policing can ever be compatible with racial justice or public safety,²² there is a tentative agreement from many corners that large-scale transformation is necessary and possible. This tentative consensus creates an opening to imagine new and different configurations for how the state can organize policing specifically and the provision of safety and security more generally. Thanks to the radical visions of social movements, a vast range of possibilities stretches out before us, from cementing our current policing practices with improved specialization and increased resources, to abolishing our institutions of policing altogether. It is within this range of possibilities that some movement actors have begun to propose and create new forms of governance arrangements that shift power over policing to those who have historically been the targets of policing. Although many of these efforts remain relatively unrecognized in the public sphere, some have gained national attention in 2020, including calls to defund the police, efforts to institute people’s budgets that implicate law enforcement and community wellbeing, calls for community control over policing, and demonstrations of long-term mutual aid as an alternative to policing.

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20. See Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1782, 1832-39 (2020).
21. See, e.g., Richard A. Bierschbach, *Fragmentation and Democracy in the Constitutional Law of Punishment*, 111 NW. U. L. REV. 1437, 1452-53 (2017); Catherine Crump, *Surveillance Policy Making by Procurement*, 91 WASH. L. REV. 1595, 1655-62 (2016); Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1889-1907 (2015); Joshua Kleinfeld, *Three Principles of Democratic Criminal Justice*, 111 NW. U. L. REV. 1455, 1464-65, 1483-86 (2017); Sunita Patel, *Toward Democratic Police Reform: A Vision for “Community Engagement” Provisions in DOJ Consent Decrees*, 51 WAKE FOREST L. REV. 793, 798 (2016); Maria Ponomarenko, *Rethinking Police Rulemaking*, 114 NW. U. L. REV. 1, 20-45 (2019); Christopher Slobogin, *Policing as Administration*, 165 U. PA. L. REV. 91, 134-51 (2016); see also Symposium, *Democratizing Criminal Law*, 111 NW. U. L. REV. 1367 (2017) (a collection of essays on the theme of democratizing criminal law); Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 809-16 (2012) (urging legal scholars to study the regulation of policing by analyzing the comparative advantages of various regulating institutions beyond courts and constitutional rights).
22. Compare, e.g., PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 229-47 (2017) (pushing toward the abolition of policing), with Tracey L. Meares, *Synthesizing Narratives of Policing and Making a Case for Policing as a Public Good*, 63 ST. LOUIS U. L.J. 553, 558-62 (2019) (describing how policing can be transformed to serve as a legitimate public good using principles of procedural justice).

In many of these proposals, one central goal of the “reform” is to shift power away from the police and toward policed communities.

In this Article, I identify the movement focus on power shifting in the governance of the police and provide an account of why we should incorporate the power lens into the array of objectives of “police reform.” This analysis consists of three theoretical arguments. First, shifting power to policed populations might be *reparative*,²³ in the sense that it shifts power downward toward populations who have been denied political power directly as a result of the history of policing policies and practices in their neighborhoods.²⁴ Second, power shifting might be a means of promoting *antissubordination*, based on the principle that “it is wrong for the state to engage in practices that enforce the inferior social status of historically oppressed groups.”²⁵ Third, a power lens on police reform promotes a particular view of *contestatory democracy*, one in which democratic governance has as an objective the facilitation of countervailing power for those subject to the domination of the state. This view is anchored to a larger belief that direct forms of agonistic contestation are crucial for democratic justice,²⁶ in part because it is our criminal legal system itself that, by definition, yields forms of domination and violence.²⁷

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23. Cf. Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L.J. 811, 835-36 (2006) (explaining reparations and what they are designed to accomplish); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 394 (1987) (“Reparations . . . is a concept directed at remedying wrongs committed against the powerless.”).
24. See generally AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL* 64-69 (2014) (describing the erosion of citizens’ power to hold police officers and departments accountable); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2067 (2017) (“[A]t both an interactional and structural level, current regimes can operate to effectively banish whole communities from the body politic.”).
25. Reva B. Siegel, *Equality Talk: Antissubordination and Anticlassification Values in Constitutional Struggles over Brown*, 117 HARV. L. REV. 1470, 1472-73 (2004); see also Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107, 108, 157 (1976) (arguing that the Equal Protection Clause should prohibit laws that “impair[] the status of a specially disadvantaged group”).
26. See, e.g., Jocelyn Simonson, *Democratizing Criminal Justice Through Contestation and Resistance*, 111 NW. U. L. REV. 1609, 1612, 1623-24 (2017).
27. Cf. EGON BITTNER, *THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY: A REVIEW OF BACKGROUND FACTORS, CURRENT PRACTICES, AND POSSIBLE ROLE MODELS* 38-39 (1970) (describing policing as primarily about the imposition of force); Harmon, *supra* note 21, at 762 (“Police officers are granted immense authority by the state to impose harm.”); Alice Ristrot, *The Thin Blue Line from Crime to Punishment*, 108 J. CRIM. L. & CRIMINOLOGY 305, 306-07 (2018) (describing the role of force inherent to the nature of policing).

Taken together, these ways of thinking about power shifting in policing – as reparations, as a method of antisubordination, or as facilitating contestation necessary for democracy – create a lens on policing that adds a critical layer to the dominant ways of thinking about the objectives of “police reform.” The power lens asks analytical questions separate and apart from traditional focuses on outcomes like crime rates, incidents of police violence, or a community’s trust in the police. Instead, it asks reformers to consider who has been and is in danger of being harmed by policing, and to connect that inquiry to questions about who has control *over* policing policies, priorities, and practices. It asks scholars and reformers to imagine what it would mean to set aside temporarily a desire to rely on traditional “experts”²⁸ or even “evidence-based”²⁹ practices – for it may be that lay people are not well-equipped to form policies and distribute resources in a way that leads to improvements in traditional police-reform metrics, like crime rates or trust in the police. Divorced from this focus on outcomes, the power lens brings a critical eye to the ways in which the construction of expertise itself denies agency to the people who most frequently interact with police on the streets and on the roads: most often, poor Black and brown people. One way to unearth this analysis is to examine the governance and policymaking proposals being put forth by social movement actors – people traditionally thought of as “nonexperts” – themselves.

Methodologically, this Article uses social movement visions of legal change as a starting point for asking broader questions about how we think about and study policing and the criminal legal system.³⁰ In this sense, it is both descriptive and normative: it provides a descriptive account of a way in which some social movement actors are approaching reform, and then follows with a normative account of why scholars should take this approach seriously and weave it into existing scholarly accounts of the regulation of policing. When this view

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28. See, e.g., RACHEL ELISE BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION 165-85 (2019); Ponomarenko, *supra* note 21, at 41-44; cf. John Rappaport, *Some Doubts About “Democratizing” Criminal Justice*, 87 U. CHI. L. REV. 711, 759 nn.276-78, 760 nn.279-82 (2020) (collecting studies showing that laypeople can be punitive, in contrast to the view that democratizing criminal adjudication will lead to leniency).
29. See, e.g., ANTHONY A. BRAGA & DAVID L. WEISBURD, POLICING PROBLEM PLACES: CRIME HOT SPOTS AND EFFECTIVE PREVENTION 99-151 (2010) (describing the importance of focusing on “evidence-based” police practices); Brandon L. Garrett, *Evidence-Informed Criminal Justice*, 86 GEO. WASH. L. REV. 1490, 1493 (2018) (“Evidence-informed practices refer to a family of approaches that have brought greater use of data and science into the criminal justice system.”).
30. For more on this methodology, see Amna Akbar, Sameer Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. (forthcoming 2021) (manuscript at 40-54), <https://ssrn.com/abstract=3735538> [<https://perma.cc/4TTY-NRS3>].

“from the bottom” is brought into scholarly discourse over the contours of police reform and police accountability, the resulting analysis expands the range of possibilities for how we approach goals such as justice and public safety.³¹

The power lens is rarely going to be, on its own, a complete way of approaching reform of the criminal legal system. Instead, it can be a complementary lens, one that must be separated out in order to be analyzed properly. In a sense, it is at the meso-level of police reform: concentrating on governance and policymaking arrangements rather than outcomes or policies themselves.

Indeed, there is no guarantee that a power-shifting arrangement in policing would on its own lead to any particular outcomes. Communities, however defined, are not monolithic,³² a reality that has become especially salient as communities of color have disagreed internally over the summer of 2020 about calls to defund the police.³³ The result of power shifting in police reform could easily go in a very different direction than that envisioned by activists in Black Lives Matter Chicago or the People’s Coalition, the two movement groups that are at the center of the examples of the power lens that I examine in this Arti-

31. See Matsuda, *supra* note 23, at 324 (“Looking to the bottom—adopting the perspective of those who have seen and felt the falsity of the liberal promise—can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice.”); cf. Richard Delgado, *Law Enforcement in Subordinated Communities: Innovation and Response*, 106 MICH. L. REV. 1193, 1204 (2008) (book review) (discussing how looking to the responses of subordinated communities to policing can help unearth new ways of thinking about policing).

32. Cf. Monica C. Bell, *The Community in Community Justice: Subordination, Consumption, Resistance, and Transformation*, 16 DU BOIS REV. 197, 210 (2019) (“[M]embers of marginalized communities who seem similarly situated can simultaneously have multiple types of relationships with the crime control apparatus.”); Robert Weisberg, *Restorative Justice and the Danger of “Community,”* 2003 UTAH L. REV. 343, 348 (describing how the term “the community” in its different forms “can mask fundamental ambiguities of group definition . . . or serious political conflicts within what otherwise seems a determinate group”). This is especially true when describing “community” solely by artificial geographical boundaries. See Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1844 (1994) (describing the “oppressive and disempowering” nature of boundary-drawing in the context of racial segregation sanctioned by local governments); Richard C. Schragger, *The Limits of Localism*, 100 MICH. L. REV. 371, 403-59 (2001) (arguing that defining “communities” within local boundaries gives priority to certain privileged decisionmakers over others, and can actually be exclusionary).

33. See Peter Hermann & Clarence Williams, *On a D.C. Street Beset by Gun Violence, Calls to Fix Policing, Not Defund It*, WASH. POST (July 10, 2020, 7:29 PM EDT), https://www.washingtonpost.com/local/public-safety/on-a-dc-street-beset-by-gun-violence-calls-to-fix-policing-not-defund-it/2020/07/10/350f46de-c143-11ea-b4f6-cb39cd8940fb_story.html [https://perma.cc/5QAK-4YN8]; Jeffrey C. Mays, *Who Opposes Defunding the N.Y.P.D.? These Black Lawmakers*, N.Y. TIMES (Aug. 10, 2020), <https://www.nytimes.com/2020/08/10/nyregion/defund-police-nyc-council.html> [https://perma.cc/8BLA-A2PQ].

cle. Community control of the police, for instance, might very well lead a particular police district to more police patrols, more arrests, more stops-and-frisks, and an increase in other tactics that are seen as “tough on crime.”³⁴ Moreover, changes in top-level policies in police departments have no guaranteed effect on the behavior of police officers; changes in police department policies or even resources might not lead to widespread change on the ground.³⁵ Such a result would surely frustrate activists who aimed to reduce or defund policing in their neighborhoods. But considering the normative value of this outcome would be a separate question from whether there had been a power shift in the course of the governance arrangement that led to this kind of policing. This Article attempts to engage in that separation between various lenses and levels of reform, giving the power lens the serious attention that social movements demand of us.

At the same time, it is through the process of demanding power that movement groups are able to put more radical demands—such as abolition—on the table of what is possible.³⁶ It is no coincidence that the calls for power shifting that this Article describes come from abolitionist grassroots organizations, many of which organize under the banner of the Movement for Black Lives,³⁷ and all of which have been engaging in collective projects to redefine public safety on their own terms, imagining and creating ways in which “we

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34. See Rappaport, *supra* note 28, at 759-60 (collecting studies of lay opinions of punishment questioning the lenience of lay people); *cf.* JAMES FORMAN, JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* 10-11 (2017) (documenting how residents of Washington, D.C., promoted “tough on crime” policies when faced with a lack of other options); Kate Levine, *Police Prosecutions and Punitive Instincts*, 98 WASH. U. L. REV. (forthcoming 2021) (manuscript at 3) (on file with author) (describing how Black Lives Matter and other movement groups do not speak with one voice with regard to “punitive instincts”).
35. *Cf.* JAMES Q. WILSON, *VARIETIES OF POLICE BEHAVIOR* 227-29 (1978) (describing the limited effects of local-community involvement and even local politics on the everyday behavior of policing); Barbara Armacost, *The Organizational Reasons Police Departments Don't Change*, HARV. BUS. REV. (Aug. 19, 2016), <https://hbr.org/2016/08/the-organizational-reasons-police-departments-dont-change> [<https://perma.cc/4X4U-6E7B>] (arguing for the necessity of top-down police reform).
36. For extended analyses of the movement push to abolish the police, see, for example, Akbar, *supra* note 20; V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453, 1527-42 (2019); Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1617-37 (2019), which describes abolitionist efforts in Chicago that center on policing; and Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 20-29 (2019), which describes the abolitionist analysis of the origins of policing within slave patrols and other deliberate state means of oppressing Black Americans.
37. See *About Us*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/about-us> [<https://perma.cc/L4TN-PZAA>].

keep us safe” in a world without police.³⁸ The analysis by these groups of the ways in which policing in the United States has mediated the oppression of people and communities on the basis of race, gender, and disability focuses on how policing is deeply intertwined with structural impediments to self-governance.³⁹ Indeed, although there are plenty of disagreements between individual abolitionist groups about which method of power shifting is the best road to abolition,⁴⁰ there is seemingly a consensus that power shifting is important and necessary to the larger abolitionist project, and it should be a part of “non-reformist” or “transformative” reforms.⁴¹ This is because abolitionist

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38. See, e.g., *About People’s Budget LA*, PEOPLE’S BUDGET LA, <https://peoplesbudgetla.com/about> [<https://perma.cc/D9NA-9TXP>] (describing how a coalition of organizations in Los Angeles has been fighting for five years to present an alternative vision of public safety in which the city spends money on public services rather than policing); see ZACH NORRIS, *WE KEEP US SAFE: BUILDING SECURE, JUST, AND INCLUSIVE COMMUNITIES* 63-99 (2020) (describing community efforts for mutual aid and protection in Oakland).
39. See, e.g., *Enough Is Enough! A 150 Year Performance Review of the Minneapolis Police Department*, MPD150 (2017), https://www.mpd150.com/wp-content/themes/mpd150/assets/mpd150_report.pdf [<https://perma.cc/PNT9-MP7L>]; *Solutions*, AGENDA BUILD BLACK FUTURES, <https://www.agendatobuildblackfutures.com/solutions> [<https://perma.cc/5W2D-PQSG>] (connecting demand to “[r]educe police budgets and reallocate residual funds to the people’s vision of public safety” to the demands to honor workers’ rights, value women’s work, and promote trans health); *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms> [<https://perma.cc/VQR4-29TN>] (connecting demands for community control of both policing and schools to the push to equalize political power); see also Rahman & Simonson, *supra* note 10, at 693-99 (describing how contemporary movement visions of change concentrate on counteracting long-term structural inequalities created by or facilitated by the state).
40. Compare, e.g., Beth Richie, Dylan Rodríguez, Mariame Kaba, Melissa Burch, Rachel Herzing & Shana Agid, *Problems with Community Control of Police and Proposals for Alternatives*, COMMUNITY RESOURCE HUB (Sept. 2020), <https://drive.google.com/file/d/12q4eWZQzwJj-EFrLUU2XbnLipKnXIuxG/view> [<https://perma.cc/8KT6-A4ZC>] (presenting a critical analysis of community control of the police from an abolitionist lens), with Max Rameau & Netfa Freeman, *Community Control vs. Defunding the Police: A Critical Analysis*, BLACK AGENDA REP. (June 10, 2020), <https://www.blackagenda.com/community-control-vs-defunding-police-critical-analysis> [<https://perma.cc/5YJA-G7H4>] (arguing that defunding the police will not shift power and lead to abolition in the way that instituting community control of the police would).
41. See *8 to Abolition: Abolitionist Policy Changes to Demand from Your City Officials*, 8 TO ABOLITION COALITION, https://static1.squarespace.com/static/5edbf321b6026b073fef97d4/t/5ee0817c955ea484011b8fe/1591771519433/8toAbolition_V2.pdf [<https://perma.cc/UN7B-CPDX>] (“As abolitionists, we recognize that reforms that do not reduce the power of the police . . . simply create new opportunities to surveil, police, and incarcerate Black, brown, indigenous, poor, disabled, trans, gender oppressed, queer, migrant people, and those who work in street economies.”); cf. Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 98-106 (2020) (describing building power as one of three central

demands require contending with first-order questions about how the state should provide safety and security: Should it be through policing and prosecution and prisons or through state support of communities and responding to harm in other ways? By claiming power over the governance arrangements that lead to the distribution of state resources and agencies devoted to “safety,” abolitionist social movements are able to put these first-order questions on the table and then contest the answers to them in ways that traditional, consensus-based modes of reform have foreclosed.

The Article proceeds in four parts. In Part I, I present an account of leading ways of thinking about the purposes of police reform, each of which contrasts with the movement focus on power—what I term the power lens. Part II presents a descriptive account of the contemporary, social movement focus on power shifting as a central goal of police reform, using the examples of community control of the police and the push to adopt a “People’s Process” to write new federal legislation. Part III presents a theoretical account of the power lens, focusing on three justifications for it: a reparative view, an antisubordination view, and a view of contestation as necessary for democracy. In Part IV, I explore some implications of the power lens for how reformers should think about the governance and scope of policing. In particular, I examine how the power lens unsettles traditional notions of expertise in policing. I conclude by arguing that if scholars and reformers were to think about power shifting alongside other goals of reform, we could open up the terrain of reform to ideas and communities that are too often excluded from the conversation. Indeed, we could potentially open up our governance arrangements to contestation over the very existence of our institutions of policing.

I. THE OBJECTIVES OF POLICE REFORM

What is the purpose of policing? The state’s “police power” is not itself inherently about police officers walking the beat, or responding to 911 calls or other emergencies, or arresting people, or any number of activities that the po-

hallmarks of “non-reformist reforms”); Marbre Stahly-Butts & Amna A. Akbar, *Transformative Reforms, Abolitionist Demands*, STAN. J. C.R.-C.L. (forthcoming 2021) (manuscript at 2-3) (on file with author) (explaining how for abolitionist social movements, one of the five requirements of a transformative reform—a reform that supports the goal of abolition—is “whether the reform builds or shifts power”).

lice regularly engage in today.⁴² Instead, as Markus Dubber has written, the police power is and has been “a body of state action enormous in scope as well as in variety.”⁴³ When it comes to the purpose of the forms of state action that we call policing, though, we have come to assume a rather uniform set of goals. These goals are relatively consistent throughout the literature on law enforcement, even if particular scholars do not embrace all of them: that policing practices should reduce crime, make people feel safe, and promote trust between police officers and communities so that they can work together to coproduce safety—all while limiting the harms of policing, such as police violence, as much as possible. Legal scholarship has well articulated and supported each of these goals. And these goals bring with them particular metrics of measuring change. In this Part, I outline, in broad strokes, some predominant ways in which legal scholars tend to think about and measure the objectives of police reform outside of constitutional change.⁴⁴ I then contrast these traditional metrics of success to the focus on power that emerges from an examination of social movement actors’ proposals for change.

A. *Traditional Ideas of Policing Success*

In this Part, I describe a series of traditional ways of thinking about policing success, each of which scholars have studied in detail, and most of which do not take shifting governance or policymaking power to policed populations as one of their goals. Broadly speaking, these traditional approaches can be placed into two camps: one that focuses on instrumental outcomes and one that centers on legitimacy. More recently, there has been a rhetorical shift in the literature toward an emphasis on the “democratization” of policing. My purpose is

42. Cf. Friedman, *supra* note 19, at 5-6 (arguing that police have for centuries been asked to play these various roles without sustained questioning of whether they are the appropriate actors).

43. MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS OF AMERICAN GOVERNMENT* 94 (2005); cf. Alice Ristroph, *An Intellectual History of Mass Incarceration*, 60 B.C. L. REV. 1949, 1967-69, 1972-80 (2019) (describing the formation and expansion of local American police forces at the same time as legal scholars defended the necessity of police discretion).

44. The approaches below focus on the subset of legal scholarship that analyzes “police reform” as an object of study separate from constitutional criminal procedure. Cf. Harmon, *supra* note 21, at 809-16 (laying out this field). Proposed changes in constitutional doctrine can then be a part of potential reforms, and compliance with constitutional rules may be a goal in itself, especially for those focused on legitimacy.

not to provide a taxonomy of scholarly approaches to policing⁴⁵ but rather to highlight that power is largely absent from the dominant frameworks that focus on reform.

1. *Instrumental Approaches*

One central and ongoing way of thinking about the purpose of policing and police reform focuses on *instrumental outcomes* that target the reduction of crime. The primary goal of policing, in this approach, is to contribute to low levels of violence and victimization and make people “safer,”⁴⁶ with “safety” defined as an absence of physical violence or property intrusion.⁴⁷ Scholars and practitioners alike then measure the success of various reforms by analyzing whether those reforms lead to a reduction in “crime rates,” or, relatedly, a re-

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45. Indeed, others have done this much more thoroughly. See, e.g., DAVID ALAN SKLANSKY, DEMOCRACY AND THE POLICE 66-105 (2008); Joshua Kleinfeld, *Manifesto of Democratic Criminal Justice*, 111 NW. U. L. REV. 1367, 1399 (2017) (separating scholars into “democratizers” and “bureaucratizers”); Tracey L. Meares, *The Good Cop: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing—and Why It Matters*, 54 WM. & MARY L. REV. 1865, 1866 (2013) (contrasting scholars who focus on “lawful” or “effective” policing with those who focus on policing that is “rightful”); Bernard Harcourt, *The Influence of Systems Analysis on Criminal Law and Procedure: A Critique of a Style of Judicial Decision-Making* 2-3 (Colum. Law Sch. Pub. Law Research, Working Paper No. 14-562, 2013), <https://ssrn.com/abstract=3062900> [<https://perma.cc/RX8C-TZPS>] (describing “internal” and “external” approaches of legal scholars in studying the “criminal justice system”). Moreover, I join Seth Stoughton in the belief that “[n]o single footnote, nor even an entire article, is sufficient to list the range of scholars who have studied policing and offered suggestions for improvement on everything from agency culture to the use of force.” Seth W. Stoughton, *The Blurred Blue Line: Reform in an Era of Public & Private Policing*, 44 AM. J. CRIM. L. 117, 146 n.217 (2017).
46. Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 901 (2015) (“Most local policing seeks to facilitate criminal justice and prevent crime and disorder in order to make a community safer and happier.”).
47. See Barry Friedman, *What Is Public Safety?* 1 (May 2020) (unpublished manuscript) (on file with author) (“When public safety is discussed in the public sphere, it is assumed we mean freedom from injury, violence, and crime, certainly to one’s person, and to one’s property as well. . . . Surely, though, being safe means much more than freedom from sudden physical harm.”). This traditional definition of public safety is contested, especially in movement spaces. See NORRIS, *supra* note 38, at 9 (“There are two ways to think about safety. There is a fear-based way and a care-based way. . . . The fear-based model defines safety only in terms of being free from *crime* and *criminals*, which is limited, and limiting.”); Lauren Johnson, Cinnamon Pelly, Ebony Ruhland, Simone Bess, Jacinda K. Dariotis & Janet Moore, *Reclaiming Safety* 9-28 (unpublished manuscript) (on file with author) (describing participatory-action research in which community members in Cincinnati are collectively redefining public safety for themselves).

duction in fear of crime or evidence of “disorder.”⁴⁸ Beginning in the 1990s, police departments themselves increasingly measured their own success this way. For example, departments used CompStat—a managerial system developed by Bill Bratton and the New York Police Department that includes frequent analysis of reports of crimes and arrests by officers—with the stated, primary goal of the reduction of crime.⁴⁹ Using this and other evidence-based methods, researchers have been able to analyze the effectiveness of various police policies, including mandatory-arrest policies, hot-spot policing, broken-windows policing, and “community-oriented policing.”⁵⁰ Most of these studies use the same metrics: (1) police statistics on the occurrence of certain felony crimes as reported by the police and (2) survey results in which people report whether they have been victims of crimes or whether they feel safe and secure in their neighborhoods.⁵¹ Such efforts aim to reduce “civilian” violence and promote safety, but do not focus on how policed individuals and communities experience agency or power.

There is also a related recognition, especially among legal scholars, that the goal of decreasing crime and disorder must be balanced against the potential

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48. See WESLEY SKOGAN & KATHLEEN FRYDL, *The Effectiveness of Police Activities in Reducing Crime, Disorder, and Fear*, in FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE 217, 217-51 (2004) (summarizing this literature); see also Meares, *supra* note 45, at 1873 (summarizing this literature and describing this view as, “The question is no longer whether police can make a difference. We ask instead, ‘How much of a difference in crime rates can police make?’”).
49. James J. Willis, Stephen D. Mastroski & David Weisburd, *Making Sense of COMPSTAT: A Theory-Based Analysis of Organizational Change in Three Police Departments*, 41 LAW & SOC’Y REV. 147, 148 (2007); see also William J. Bratton, Former Comm’r of Police of N.Y., *Cutting Crime and Restoring Order: What America Can Learn from New York’s Finest*, Address at the Heritage Foundation (Oct. 15, 1996), in HERITAGE FOUND., THE HERITAGE LECTURES 12 (1997), <https://www.heritage.org/crime-and-justice/report/cutting-crime-and-restoring-order-what-america-can-learn-new-yorks-finest> [<https://perma.cc/HCV5-5XU8>] (“We began to run the [New York Police Department] as a private profit-oriented business. What was the profit I wanted? Crime reduction.”); Shaile K. Dewan, *New York’s Gospel of Policing by Data Spreads Across U.S.*, N.Y. TIMES (Apr. 28, 2004), <https://www.nytimes.com/2004/04/28/nyregion/new-york-s-gospel-of-policing-by-data-spreads-across-us.html> [<https://perma.cc/95NA-KF6P>] (describing the implementation and effect of CompStat).
50. See, e.g., BRAGA & WEISBURD, *supra* note 29, at 99-149 (summarizing this literature); Cynthia Lum, Christopher S. Koper & Cody W. Telep, *The Evidence-Based Policing Matrix*, 7 J. EXPERIMENTAL CRIMINOLOGY 3, 8-9 (2011) (describing the rise of “evidence-based policing,” and introducing a “matrix” through which to analyze police strategies along multiple dimensions).
51. See SKOGAN & FRYDL, *supra* note 48, at 227-51; David Weisburd & John E. Eck, *What Can Police Do to Reduce Crime, Disorder, and Fear?*, 593 ANNALS AM. ACAD. POL. & SOC. SCI. 42, 50-51 (2004).

harms of policing, including the harm of police violence.⁵² The result is a call for the police to abide by constitutional rules and other laws that govern police violence and, relatedly, to focus on eliminating racial disparities or other harms that may not trigger constitutional rules.⁵³ Rachel Harmon has termed a version of this idea “harm-efficient policing” – “policing that imposes harms only when, all things considered, the benefits for law, order, fear reduction, and officer safety outweigh the costs of those harms.”⁵⁴ This instrumental balancing of harms and goods in policing has grown in prominence since 2015, when leaders at all levels of government pushed for police reforms by, for example, revisiting their use of force policies and strengthening disciplinary processes for officers who use deadly force.⁵⁵ It has also grown with the advent of federal structural-reform litigation, under which consent decrees have allowed reformers to pursue a host of different ways of measuring and incentivizing police lawfulness.⁵⁶ Under this approach, measurements of the success of policing

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52. See, e.g., Friedman, *supra* note 19, at 8-17 (discussing multiple levels of the harms of policing); Harmon, *supra* note 46, at 901-12 (discussing the need to balance the benefits and harms of policing at the local level).
 53. Cf. Aziz Z. Huq, *The Consequences of Disparate Policing: Evaluating Stop and Frisk as a Modality of Urban Policing*, 101 MINN. L. REV. 2397, 2417-43 (2017) (describing the multiple layers of communal harm that result from racial disparities in stop-and-frisk policing, and arguing that current constitutional doctrines are ill-equipped to address them); Jason Mazzone & Stephen Rushin, *From Selma to Ferguson: The Voting Rights Act as a Blueprint for Police Reform*, 105 CALIF. L. REV. 263, 295-310 (2017) (laying out a range of harms that can be measured, including unlawful stops and seizures, incidents of excessive force, and evidence of racial profiling).
 54. Harmon, *supra* note 21, at 792; see also *id.* (critiquing the idea that “debates about [the costs of policing practices] focus on whether the practices are constitutional or whether they are effective, not whether they are harm efficient”). But see BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 185-242 (2001) (critiquing the traditional versions of measuring “harm” that don’t take into account how policing policies affect civilians as subjects).
 55. See generally Ram Subramanian & Leah Skrzypiec, *To Protect and Serve: New Trends in State-Level Policing Reform, 2015-2016*, VERA INST. JUST. (Apr. 2017), <https://www.vera.org/downloads/publications/041417-PolicingTrendsReport-web.pdf> [<https://perma.cc/H5LJ-X22V>] (summarizing trends among seventy-nine police-reform bills passed by at least thirty-four states and the District of Columbia between 2015 and 2016); *The State of Justice Reform 2017: The State of Policing*, VERA INST. JUST. (2017) [hereinafter *The State of Justice Reform 2017*], <https://www.vera.org/state-of-justice-reform/2017/the-state-of-policing> [<https://perma.cc/VJR6-6JJQ>] (describing reforms at state and local levels across the country). Federal reform efforts, however, have been all but eliminated under the Trump Administration. See *The State of Justice Reform 2017, supra*.
 56. See Stephen Rushin, *Structural Reform Litigation in American Police Departments*, 99 MINN. L. REV. 1343, 1397-1421 (2015) (describing how structural-reform litigation operates, and ana-

tend to analyze both crime rates and rates of harms such as, but not limited to, unconstitutional policing. But here too, the purpose of minimizing harms to individuals or racial groups is not to give them individual or collective power, but rather to balance the harmful conduct of the police against the goals of crime control.⁵⁷

2. *Legitimacy Approaches*

There is a separate and often complementary view of the objective of police reform: the objective of legitimacy, or to use Tracey Meares's term, "rightful policing."⁵⁸ The social science guiding the legitimacy approach demonstrates that when people perceive police as legitimate, they are more likely to comply with the law, cooperate with the police, and support their police departments.⁵⁹ The legitimacy approach brings principles of procedural justice into the conversation of police reform, arguing that police departments should engage in practices that people with whom they interact perceive to be fair and just.⁶⁰ A legitimacy-focused reform might also work to train police officers to prioritize "police-community relations" as a long-term goal.⁶¹ Success of such approach-

lyzing its benefits and its limits); Walker, *supra* note 14, at 1791-99 (summarizing this trend and scholarship about it).

57. *But see* Huq, *supra* note 53, at 2439 (describing political powerlessness at the neighborhood level as one of the harms of stop-and-frisk policing).
58. *See* Meares, *supra* note 45, at 1873-76 (contrasting "rightful policing" with traditional police-reform goals of "effectiveness" and "lawfulness").
59. *See, e.g.,* Meares, *supra* note 12; Tom Tyler, *What Are Legitimacy and Procedural Justice in Policing? And Why Are They Becoming Key Elements of Police Leadership?*, in POLICE EXECUTIVE RESEARCH FORUM, LEGITIMACY AND PROCEDURAL JUSTICE: A NEW ELEMENT OF POLICE LEADERSHIP 6, 7-8 (2014); Tom R. Tyler, Jeffrey Fagan & Amanda Geller, *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, 11 J. EMPIRICAL LEGAL STUD. 751, 776 (2014).
60. *See* Meares, *supra* note 12, at 1364-66; Stephen J. Schulhofer, Tom R. Tyler & Aziz Z. Huq, *American Policing at a Crossroads: Unsustainable Policies and the Procedural Justice Alternative*, 101 J. CRIM. L. & CRIMINOLOGY 335, 338 (2011); Tom R. Tyler, *From Harm Reduction to Community Engagement: Redefining the Goals of American Policing in the Twenty-First Century*, 111 NW. U.L. REV. 1537, 1539 (2017).
61. *See, e.g.,* Seth W. Stoughton, *Principled Policing: Warrior Cops and Guardian Officers*, 51 WAKE FOREST L. REV. 611, 614 (2016) ("For real change to occur the principles and values that underlie policing must not only instruct officers to act lawfully but also encourage them to build public trust and increase police legitimacy. . . . [L]ong-term goals [should focus on] improving police-community relations. . .").

es can then be measured through social-science instruments that measure trust, including surveys of community members.⁶²

Although the concept of legitimacy has been growing in strength for years, it has emerged post-Ferguson as a leading way of thinking about the purpose of police reform.⁶³ In 2015, the Policing Project at New York University Law School gathered a group of law-enforcement officials together to develop a “Statement of Principles of Democratic Policing.” The Statement concluded, among other things, that “[f]or too long, policing success has been defined almost exclusively by crime and arrest rates. It is necessary to also develop a set of metrics that capture the intangible aspects of policing, like equity and community trust.”⁶⁴ And a 2019 report by scholars who focus on legitimacy—Phillip Atiba Goff, Elizabeth Hinton, Tracey Meares, Caroline Sarnoff, and Tom Tyler—illustrates these goals in the context of a national framework for police reform.⁶⁵ These legitimacy leaders state unequivocally that “the central goal of the criminal justice system must be to increase cooperation and trust between individuals and the state.”⁶⁶ Flowing from this primary goal is a framework that includes not just procedural justice in policing, but also the need to recognize past communal harms and invest in community-level re-

62. See, e.g., Geoffrey P. Alpert, Daniel Flynn & Alex R. Piquero, *Effective Community Policing Performance Measures*, 3 JUST. RES. & POL'Y 79, 91-92 (2001); Phillip Atiba Goff, Elizabeth Hinton, Tracey L. Meares, Caroline Nobo Sarnoff & Tom R. Tyler, *Re-imagining Public Safety: Prevent Harm and Lead with the Truth: A Five-step Policy Plan for Policing in America*, JUST. COLLABORATORY & CTR. FOR POLICING EQUITY 5 (Oct. 2019), https://law.yale.edu/sites/default/files/area/center/justice/document/re-imagining_public_safety_final_11.26.19.pdf [<https://perma.cc/D2DV-MJKF>] (“[L]aw enforcement agencies must track the level of trust in police by their communities just as they measure changes in crime.”); see also Goff, Hinton, Meares, Nobo Sarnoff & Tyler, *supra*, at 7 (describing how to measure pro-social measures like fairness and trust).

63. It was the central goal articulated in President Obama’s Task Force on 21st Century Policing, among other high-profile efforts at articulating reform principles. See President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, OFF. COMMUNITY ORIENTED POLICING SERV. 1, 56-57 (2015), <https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf> [<https://perma.cc/X8EY-RFXV>] (recommending building trust between communities and the police as they “co-produce” safety); see also Megan Quattlebaum, Tracey Meares & Tom Tyler, *Principles of Procedurally Just Policing*, JUST. COLLABORATORY (2018), https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf [<https://perma.cc/Z4VU-Q79G>].

64. *Statement of Principles of Democratic Policing*, POLICING PROJECT (2015), https://staic1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/59dfa277a803bb57bb93252e/1510756941918/Democratic+Policing+Principles+9_26_2017.pdf [<https://perma.cc/8M2L-J3B5>].

65. Goff, Hinton, Meares, Nobo Sarnoff & Tyler, *supra* note 62.

66. *Id.* at 5.

sources outside of the criminal legal system.⁶⁷ These scholars encourage police departments to “measure what matters” by shifting away from the traditional CompStat metrics of crime reduction and toward what they term “CompStat for Justice,” which combines reports of crime and violence with reports about police use of force and results of community surveys and enables police departments to measure “fairness” at the neighborhood level.⁶⁸

The legitimacy approach to police reform comes closer than other instrumental approaches to getting at ideas of power. Legitimacy theory adds a distinctive way of thinking about the purpose of reform, one that turns the focus of evaluating success toward people who are subject to policing. Its measurements of success are about what groups of people think and say, because the goal is for people to trust the police and to be motivated to obey the law and proactively cooperate with the police. For this reason, Tracey Meares has argued that procedural justice can help transform people’s understandings of their own citizenship in productive ways that enhance democracy,⁶⁹ and Tom Tyler has emphasized that procedural justice can lead to “community identification and engagement.”⁷⁰ Under even these conceptions of the citizenship-enhancing benefits of legitimacy, though, the central goal is not to shift power; rather, the goal is that people will perceive the police as fair and therefore live more peacefully together, in part, perhaps, because they have been given some power.

3. *The Move to Power and Democracy*

Some recent scholarship has begun to move away from the above approaches to police reform, focusing on goals outside of legitimacy, crime con-

67. *Id.* at 3 (“To build a legitimate system we need to invest in resources that prevent people from becoming entangled in the criminal justice system, such as mental health assistance, substance abuse treatment, and public health more generally.”).

68. *Id.* at 7; see also *What We Do: COMPSTAT for Justice*, CTR. FOR POLICING EQUITY, <https://policingequity.org/what-we-do/compstat-for-justice> [<https://perma.cc/83ST-D5XN>] (“In addition to crime data, we will also track police stops, use of force data, and survey data. By combining these data with census data and other geographic markers, we will be able to pinpoint and differentiate the portion of racial disparities police cannot control (e.g., poverty) and the portion they can (e.g., trainings, policies).”).

69. See Tracey Meares, *Policing and Procedural Justice: Shaping Citizens’ Identities to Increase Democratic Participation*, 111 NW. U. L. REV. 1525, 1534-35 (2017) (describing “suggestive evidence that what police do impacts how people think of themselves, especially how they think of themselves as citizens . . . [which in turn makes it more] possible to ensure that all will be able to participate as equal valued members of society”).

70. Tyler, *supra* note 60, at 1552.

trol, or harm reduction. This trend in scholarship does not always explicitly name power as a goal, but it is implied in the rejection of traditional means of achieving reform.⁷¹ As legal scholars have increasingly recognized the structural nature of police violence, they have begun to turn toward alternative, disruptive frameworks⁷²: abolition,⁷³ transformation,⁷⁴ resistance.⁷⁵ And there is a burgeoning reckoning with the racialized history of policing and its potentially inextricable connections to the social control of—and denial of political power to—poor and Black Americans.⁷⁶ For instance, Amna Akbar advances a conception of policing born within abolitionist social movements that rejects most traditional police-reform efforts as “tinkering,” in favor of reform efforts that reduce the footprint of policing and find other methods of supporting people in efforts to “reconceiv[e] modes of collective life.”⁷⁷ And Monica Bell has recently advocated for an approach to policing that looks beyond instrumental and legitimacy concerns to think also about what she calls the “mobilizing capacity of the justice system,” which includes questions of the relative democratic power of communities more broadly.⁷⁸ In the work of these scholars, there is

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71. Cf. Benjamin Levin, *The Consensus Myth in Criminal Justice Reform*, 117 MICH. L. REV. 259, 268–69, 272–73 (2018) (describing one scholarly approach to reform, the *mass* approach, that concerns itself with systemic consequences of the carceral state and is concerned when “aggressive or intrusive police tactics systematically inconvenience or marginalize certain members of the community”).
72. Akbar, *supra* note 20, at 1789–1802 (collecting citations of legal scholars increasingly taking a structural approach to thinking about police violence).
73. See, e.g., Levine, *supra* note 34 (manuscript at 1, 50–54) (describing a “recent swell of prison abolitionist scholarship”); McLeod, *supra* note 36, at 1617; Roberts, *supra* note 36, at 4–5 (“Many individuals have therefore concluded that the answer to persistent injustice in criminal law enforcement is not reform; it is prison abolition.”).
74. See, e.g., BUTLER, *supra* note 22, at 238–43.
75. See, e.g., Eric J. Miller, *Encountering Resistance: Contesting Policing and Procedural Justice*, 2016 U. CHI. LEGAL F. 295, 342–43; Alice Ristroph, *Regulation or Resistance? A Counter-Narrative of Constitutional Criminal Procedure*, 95 B.U. L. REV. 1555, 1558–60 (2015).
76. See, e.g., I. Bennett Capers, *Criminal Procedure and the Good Citizen*, 118 COLUM. L. REV. 653, 654–57 (2018); Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 127–31 (2017); cf. Khalil Gibran Muhammad & Chenjerai Kumanyika, *The Origins of Policing in America*, WASH. POST at 1:02 (Sept. 24, 2020), https://www.washingtonpost.com/video/history/perspective--the-origins-of-policing-in-america/2020/09/24/2c36ea1c-1da0-4911-bb27-fdbfb70f24bo_video.html [https://perma.cc/38YZ-RG2R] (“The idea of keeping track of the most valuable asset in the United States, that is, enslaved Africans, animated much of what we’d recognize today as law enforcement.”).
77. Akbar, *supra* note 20, at 1800–11, 1826 (“[A]bolitionist organizers are thinking about how to contest the scale and power of police, and [how] to reconceive modes of collective life.”).
78. Bell, *supra* note 32, at 211.

a shift toward focusing on the ability of people to engage in self-governance, or at least to reduce the subjugating effects of policing itself—both of which require subjects of policing to have some kind of collective power.

There is also an increasing number of scholars calling for the “democratization” of the criminal legal system, including policing.⁷⁹ The relationship of this literature to the redistribution of political power is fraught and uneven.⁸⁰ A call for democracy in the criminal system is often a call for an increase in lay participation at multiple points in that system⁸¹—a goal that might, in theory, shift political power. But the actual proposals of many advocates of “democratic criminal justice” do not reveal a desire for profound shifts in the balance of political power.⁸² Rather, they often track the goals and reform proposals of scholars who focus on legitimacy and aim for democratic consensus: they advocate for procedural justice,⁸³ for community policing,⁸⁴ or for notice-and-

79. See *supra* note 21 and accompanying text; see also SKLANSKY, *supra* note 45 at 66-105 (arguing that recent criminal-procedure scholarship has exhibited “an enthusiasm for community participation”); Kleinfeld, *supra* note 45, at 1371, 1374-77 (describing series of symposium essays on “democratizing” criminal justice).

80. Cf. Akbar, *supra* note 20 (manuscript at 1802-05) (arguing that “democratic”-leaning scholars can sometimes be on the side of repair).

81. See, e.g., LAURA I. APPLEMAN, *DEFENDING THE JURY: CRIME, COMMUNITY, AND THE CONSTITUTION* 3-4 (2015); STEPHANOS BIBAS, *THE MACHINERY OF CRIMINAL JUSTICE*, at xxvi (2012) (calling for “bottom-up populism” throughout the system); WILLIAM J. STUNTZ, *THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE* 244-81 (2011); Bierschbach, *supra* note 21, at 1452-53 (“Pushing more criminal justice power—legislative, enforcement, adjudicative, and penal—down to directly affected communities and neighborhoods could enhance representativeness and sharpen lines of authority.”); Kleinfeld, *supra* note 21, at 1483 (“[T]he administration and enforcement of criminal law should be *by* and *of* the people—that is, solidaristic, public, embedded in local communities, . . . primarily under lay rather than official control . . .”).

82. See, e.g., SKLANSKY, *supra* note 45, at 68-105; Bell, *supra* note 18, at 741 n.447 (citing Joshua Kleinfeld, Laura I. Appleman, Richard A. Bierschbach, Kenworthy Bilz, Josh Bowers, John Braithwaite, Robert P. Burns, R. A. Duff, Albert W. Dzur, Thomas F. Geraghty, Adriaan Lanni, Marah Stith McLeod, Janice Nadler, Anthony O’Rourke, Paul H. Robinson, Jonathan Simon, Jocelyn Simonson, Tom R. Tyler & Ekow N. Yankah, *White Paper of Democratic Criminal Justice*, 111 NW. L. REV. 1693, 1699-1700 (2017) [hereinafter *White Paper*]); Rappaport, *supra* note 28, at 716 (describing the focus of “democratizers” on, inter alia, procedural justice and civilian review boards). Although I was one of the co-authors of the *White Paper*, I do not subscribe to all of its recommendations. See *White Paper*, *supra*, at 1695 (“[T]he policy proposals below do not reflect and should not be taken to reflect any individual author’s views in full.”).

83. See *White Paper*, *supra* note 82, at 1699 (listing a series of proposed reforms under the heading “[p]rocedural [j]ustice and [p]olicing”).

84. See SKLANSKY, *supra* note 45, at 97-105 (critiquing the focus on community policing in arguments for democracy in policing).

comment rulemaking.⁸⁵ As Stephen Schulhofer has noted, even Bill Stuntz, a modern champion of “local criminal justice,” tended to propose solutions such as expert commissions that “leave decisionmaking power where it is now—with police chiefs, district attorneys, and judges who are accountable to citywide or countywide constituencies.”⁸⁶

The reform proposals from these “democratizer” scholars underscore David Sklansky’s seminal observation that, in the context of policing, different conceptions of democracy will lead to different proposals for change.⁸⁷ The consensus-based proposals for reform from most democratizers do not come with a stated aim of shifting political power; indeed, they may run the danger of reinscribing, rather than shifting, power imbalances.⁸⁸ There are certainly some exceptions; for example, Rick Bierschbach has explicitly called for governance arrangements and constitutional understandings that shift power “down to directly affected communities and neighborhoods,”⁸⁹ and Sunita Patel has argued for democratizing police consent decrees with the aim of “us[ing] . . . reform tool[s] . . . to shift power between the police and the communities they serve.”⁹⁰ However, there is no guarantee that a “democratizing” approach to police reform will entail power shifting down to those directly affected by everyday policing.⁹¹

85. See, e.g., Richard A. Bierschbach & Stephanos Bibas, *Notice-and-Comment Sentencing*, 97 MINN. L. REV. 1 (2012); Friedman & Ponomarenko, *supra* note 21; Slobogin, *supra* note 21.

86. Stephen J. Schulhofer, *Criminal Justice, Local Democracy, and Constitutional Rights*, 111 MICH. L. REV. 1045, 1080–81 (2013) (reviewing STUNTZ, *supra* note 81). Schulhofer notes that one important exception is Stuntz’s recommendation that juries be drawn from local neighborhoods. *Id.* at 1080.

87. See SKLANSKY, *supra* note 45, at 68–105 (contrasting the view of legal scholars who focus on a consensus-based view of democracy with Sklansky’s own view of a more pluralist conception of democracy with respect to policing); cf. Kleinfeld, *supra* note 21 (describing different conceptions of democracy in relation to the criminal system); Rappaport, *supra* note 28, at 719 (noting “the fragility of the democratizers’ big-tent coalition”).

88. See SKLANSKY, *supra* note 45, at 68–105; Rahman & Simonson, *supra* note 10, at 689–92 (contrasting consensus-based governance proposals with institutional designs that focus on contestation and shifting political power); Rappaport, *supra* note 28, at 720 (“[M]any of the democratizers’ own proposals are not only consistent with top-down, expert-driven reforms, but also are more plausibly viewed as such.”); Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 401–08 (2016) (critiquing community policing and its consensus-based conception of democracy in contrast to the conception of grassroots groups who seek to contest dominant practices in policing); see also *infra* notes 112, 255–259 and accompanying text.

89. Bierschbach, *supra* note 21, at 1452–53.

90. Patel, *supra* note 21, at 798.

91. Cf. Miller, *supra* note 75, at 298, 332–34 (suggesting that a republican view of democracy that values contestation clashes with the reforms focused on procedural justice that encourage

In Section III.C, I return to the concept of democratization and argue that the power lens is part of a particular theoretical conception of democracy that values contestation and agonistic participation over consensus-based forms of lay participation. For now, the point is that in recent years, as legal scholars are increasingly recognizing the structural and historical problems inherent in our institutions of policing and questioning whether policing can ever be divorced from its white-supremacist roots, they are seeking out new, different, and sometimes more radical ways of envisioning police “reform,” sometimes urging more popular influence, and at times questioning whether the police can be reformed at all.

B. The Goal of Power Shifting

The rich conversations about police reform described above are exciting. They are also necessary in our present moment. All told, though, there is one objective largely missing from these discussions, even if it sometimes makes an appearance in more recent pushes for transformation and democracy: the goal of shifting governance and policymaking power from the police to policed populations. As I argue in Part II, this particular idea—what I call the power lens—emerges from examining the ideas of a number of groups and social movements crafting their own proposals for police policy and governance. The power lens gets at a separate objective, broadly stated as shifting power away from the police and toward the populations who are policed, people who are often poor and Black, Latinx, or Indigenous. This goal stands separate and apart from traditional goals oriented at instrumental outcomes or legitimacy. While it is not necessarily in conflict with these traditional goals, it is in a different register. Rather than aspiring toward an increase in trust of the police or a reduction in violence by police and nonpolice alike, as a legitimacy-oriented or instrumentalist approach might, the power lens takes a step back and asks, as a preliminary matter, whether the governance or reform arrangements at issue change the balance of actual power in decisions about whether and how to police.

A focus on power in police reform asks whether directly impacted people have real influence on the scope and policies of policing in their neighborhoods, counties, cities, and states. The power lens does not merely ask whether voices are heard. Instead, it is concerned with relatively direct political power:

cooperation); Jocelyn Simonson, *The Place of “the People” in Criminal Procedure*, 119 COLUM. L. REV. 249, 288–90 (2019) (distinguishing a contestatory view of democracy from how many criminal scholars think of democracy).

the ability of a person, or a group of people,⁹² to influence policy outcomes (e.g., use of force policies) and control the distribution of state resources (e.g., funding for the police). Power in this reading requires the ability to make decisions with observable results,⁹³ whether it is through the power to enact policy⁹⁴ or the power to check state actors.⁹⁵

To be clear, this does not mean that the power lens understands power, more broadly, to be something that only flows through official channels of governance. Indeed, the power lens is not necessarily wed to any one particular definition of power as a general matter; one might adopt the power lens and still recognize that power flows in multiple directions and sometimes counter-intuitive ways—inside and outside the state and in the shadow of racism, heteropatriarchy, and precarity.⁹⁶ As critical theorists emphasize, and as social movement activists recognize,⁹⁷ to shift governance arrangements alone does not, on its face, address the power of ideology⁹⁸ or the further dimension of power in which knowledge itself is produced and made true.⁹⁹ These facets of power are especially salient in the criminal legal system, which is itself main-

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92. Cf. Michael Grinthal, *Power with: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25, 36 (2011) (“We each have in our bodies the power to move stones, but if we can coordinate our bodies with other bodies, we have the power to build cities. This, crudely, is why power comes from organizing people.”).
93. STEVEN LUKES, *POWER: A RADICAL VIEW* (2d ed. 2005) (distinguishing between decisionmaking and non-decisionmaking power).
94. Daryl Levinson calls this “capacity.” Daryl J. Levinson, *The Supreme Court 2015 Term—Foreword: Looking for Power in Public Law*, 130 HARV. L. REV. 31, 46-47 (2016).
95. Levinson calls this “control.” *Id.*
96. Cf. LUKES, *supra* note 93, at 13-15 (differentiating between different views of power); Grinthal, *supra* note 92, at 34 (describing how power can be generated through organizing outside of the state); Bernard E. Harcourt, *Rethinking Power with and Beyond Foucault*, 9 CARCERAL NOTEBOOKS 79, 81 (2013) (summarizing the Foucauldian idea that power is “always and constantly at play, always in struggle, producing momentary, local victories and defeats at a micro level”).
97. See, e.g., Mariame Kaba & John Duda, *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*, NEXT SYS. PROJECT (Nov. 9, 2017), <https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba> [<https://perma.cc/N9LB-VRHZ>] (describing the layers of ideological struggle in abolitionist organizing).
98. See LUKES, *supra* note 93, at 143-49 (describing his third dimension of power, in which there is struggle over ideology).
99. See BERNARD E. HARCOURT, *CRITIQUE & PRAXIS: A CRITICAL PHILOSOPHY OF ILLUSIONS, VALUES, AND ACTION* 181-83 (2020) (describing Foucauldian ideas of knowledge-power and the production of “regimes of truth”).

tained by longstanding understandings and ideologies of racialized penalty.¹⁰⁰ This is why social movements are not content to focus only on “police reform,” but also engage in political education, in organizing, in mutual aid beyond policing. But while the power lens doesn’t address power in all its forms, by naming power it does implicate a goal of policing one can point to, name, and analyze; it allows someone looking at reform choices to articulate differences between various governing and lawmaking arrangements that place decisionmaking authority in distinct hands.¹⁰¹

The power lens depends on an understanding that the mass criminalization of the last century has had racialized, community-level effects in neighborhoods that are most heavily targeted for policing and from which the most people have been incarcerated.¹⁰² The neighborhoods subject to these more punitive forms of law enforcement are what political scientists call “race-class subjugated communities” – neighborhoods in which the majority of residents are poor Black, Latinx, or Indigenous people.¹⁰³ Punitive law-enforcement

100. See generally MICHEL FOUCAULT, *THE PUNITIVE SOCIETY: LECTURES AT THE COLLÈGE DE FRANCE 1972-1973*, at 233-39 (Bernard E. Harcourt ed., Graham Burchell trans., Palgrave Macmillan 2015) (2013) (describing the methods of knowledge production leading to the “punitive society”); KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS* 277 (2010) (telling the history of the “invisible layers of racial ideology packed into the statistics, sociological theories, and the everyday stories we continue to tell about crime in modern urban America”).

101. Cf. Rahman & Simonson, *supra* note 10, at 733-38 (analyzing different ways in which governance arrangements can facilitate power shifting in the local-government context).

102. See generally TRACI BURCH, *TRADING DEMOCRACY FOR JUSTICE: CRIMINAL CONVICTIONS AND THE DECLINE OF NEIGHBORHOOD POLITICAL PARTICIPATION* 75-104 (2013) (discussing the neighborhood criminal-justice context and political participation); LERMAN & WEAVER, *supra* note 24, at 199-230 (describing the alienation from political life experienced by custodial citizens); STUNTZ, *supra* note 81, at 244-81 (charting structural causes and consequences of the “punitive turn” in criminal justice in the late twentieth century); Bell, *supra* note 18, at 651-729 (providing an account of residential segregation and identifying six mechanisms through which American policing perpetuates residential segregation); Jeffrey Fagan, Valerie West & Jan Holland, *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods*, 30 *FORDHAM URB. L.J.* 1551, 1554 (2003) (highlighting the reciprocal dynamics of crime, incarceration, and aggressive enforcement); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 *STAN. L. REV.* 1271, 1291-97 (2004) (explicating mass incarceration’s role in controlling the social, economic, and political engagement of Black communities).

103. Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 *ANN. REV. POL. SCI.* 565, 565 (2017) (defining “race-class subjugated communities,” and explaining “the ways ‘race-class subjugated communities’ are governed through coercion, containment, repression, surveillance, regulation, predation, discipline, and violence”); see also *id.* at 567 (“The recognition that policed com-

practices in these neighborhoods become self-reinforcing, independent of “crime rates,”¹⁰⁴ with a direct impact on political power.¹⁰⁵ Policing causes communal, democratic harms. This has led Janet Moore, Dorothy Roberts, and others to argue that the criminal legal system is itself *antidemocratic*: by inflicting punishment and mass enforcement and surveillance, the criminal legal system takes away political power through a variety of simultaneous and complementary means.¹⁰⁶ The antidemocratic work of the criminal legal system happens on multiple levels,¹⁰⁷ but in policing it is especially acute because of the domination inherent in the everyday nature of modern policing.¹⁰⁸ The

munities are coproduced by race and class may be obvious to some, but in most of the scholarship in our subfield, the tendency to treat race and class as distinct variables continues.”).

104. See Fagan, West & Holland, *supra* note 102, at 1554 (“We . . . show that neighborhoods with high rates of incarceration invite closer and more punitive police enforcement and parole surveillance . . . even as crime rates fall.”).
105. See HARCOURT, *supra* note 54, at 160-80 (describing the disempowering nature of broken-windows policing); LERMAN & WEAVER, *supra* note 24, at 139-56 (describing how interacting with the criminal process affects political engagement); JONATHAN SIMON, GOVERNING THROUGH CRIME 4-5 (2007) (arguing that an overemphasis on crime and fear of crime has distorted American governance); STUNTZ, *supra* note 81, at 255 (noting that “voters with the largest stake [in the process of building and filling prisons] – chiefly African American residents of high-crime city neighborhoods – had the smallest voice in the relevant decisions”); Bell, *supra* note 24, at 2067 (“[A]t both an interactional and structural level, current regimes can operate to effectively banish whole communities from the body politic.”); Capers, *supra* note 76, at 654-57 (describing how constitutional criminal-procedure doctrine constitutes exclusionary meanings of who is a “good citizen”); Fagan, West & Holland, *supra* note 102, at 1563 (describing these punitive practices as the “political economy of law enforcement”); Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 159, 161-73 (2014) (describing how the criminal-justice system educates individuals in “anticitizenry”).
106. See Janet Moore, *Democracy Enhancement in Criminal Law and Procedure*, 2014 UTAH L. REV. 543; Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 NW. U. L. REV. 1597 (2017) (arguing that American systems of law enforcement are by their nature antidemocratic, so that democratizing criminal law requires looking beyond increasing public participation in criminal justice in the conventional sense); see also Simonson, *supra* note 26, at 1610-13 (describing three levels of the antidemocratic nature of the criminal-justice system).
107. Cf. Alexandra Natapoff, *Speechless: The Silencing of Criminal Defendants*, 80 N.Y.U. L. REV. 1449, 1452 (2005) (describing the “expressive disempowerment of those disadvantaged groups who tend to become defendants: racial minorities, the poor, the undereducated or illiterate, juveniles, the unemployed, or people with criminal histories, mental health or substance abuse problems”).
108. See *infra* notes 305-312 and accompanying text (arguing that policing is an acute form of domination at the community level).

laws and everyday practices of policing preclude poor people of color from being full democratic subjects.¹⁰⁹

Reckoning with this aspect of the harms of policing requires reckoning with the antidemocratic nature of contemporary police governance.¹¹⁰ Policing priorities are rarely responsive to the marginalized populations who are most likely to be arrested and prosecuted.¹¹¹ Contributing to this antidemocratic nature of policing is the fact that when marginalized populations *do* participate in democratic processes meant to facilitate their input, their participation is often muted by those very processes, reinscribing rather than dismantling existing power imbalances.¹¹² This layer of democratic exclusion reinforces the others, reproducing and legitimizing an unequal and racialized system of justice.¹¹³

Approaching police reform through a power lens means paying attention to each layer of antidemocratization. But the fact that reforms aiming to encourage participation have led to further political subordination and alienation in the past does not mean that we should give up on political participation and

109. See Bell, *supra* note 24, at 2065-67, 2100 (demonstrating the ways in which “collective symbolic and structural exclusion” in how poor people of color experience contemporary methods of policing combine together to create “legal estrangement,” or a profound alienation from the police).

110. Cf. DANIELLE SERED, *UNTIL WE RECKON* 178 (2019) (arguing that reckoning with the harms of police violence requires more than naming that harm; “[t]here will also have to be a shift in power”); Friedman & Ponomarenko, *supra* note 21 (detailing the ways in which police policies are crafted without popular input).

111. Bell, *supra* note 18, at 750 (“For race- and/or class-marginalized neighborhoods and places, external stakeholders, or stakeholders who are relatively powerful individual or organizational brokers between the community and political officials, determine the priorities of local government agencies, including their police.” (footnote omitted)).

112. See, e.g., SKLANSKY, *supra* note 45, at 68-105 (describing these dangers in the context of participation and policing). For particular studies of this phenomenon playing out, see, for example, LUIS DANIEL GASCÓN & AARON ROUSSELL, *THE LIMITS OF COMMUNITY POLICING: CIVILIAN POWER AND POLICE ACCOUNTABILITY IN BLACK AND BROWN LOS ANGELES* (2019), which argues that community policing is not the solution it seems to be; STEVE HERBERT, *CITIZENS, COPS, AND POWER: RECOGNIZING THE LIMITS OF COMMUNITY* (2006); Tony Cheng, *Input Without Influence: The Silence and Scripts of Police and Community Relations*, 67 *SOC. PROBS.* 171, 172, 184 (2019), which describes how police use of silence and control over speaker time during community-board meetings impacted residents’ participation; and Julian Clark & Barry Friedman, *Community Advisory Boards: What Works and What Doesn’t* 3 (Apr. 13, 2020) (unpublished manuscript) (on file with author), which states: “Too often, Community Advisory Boards (CABs) represent a pro forma effort by policing agencies to signal a commitment to working with the public, without really working with the public.” See also Simonson, *supra* note 88, at 401-08 (2016) (collecting citations and examples).

113. See IRIS MARION YOUNG, *Inclusive Political Communication*, in *INCLUSION AND DEMOCRACY* 52, 57 (2000) (describing the process of “internal exclusion”).

turn toward technocratic solutions.¹¹⁴ Instead, there are other paths: paths that do not reach full-blown enfranchisement but rather seek to build political power through intermediary tactics of collective resistance and changes in power relations within smaller governance arrangements. This means that one axis of change in the institutions of policing should be a shift in governance and policymaking power down to the populations who have been policed, surveilled, and incarcerated, whose democratic standing has been taken from them. This power, moreover, must take on actual, observable heft.

Power shifting might be difficult to measure, but it would not be impossible.¹¹⁵ Sociologists have measured power in police reform in other circumstances. For example, Steve Herbert has demonstrated how power can be traced through a combination of sociological methods in the context of community policing in the city of Seattle;¹¹⁶ and in more recent work, Tony Cheng uses transcripts of police-community meetings in Chicago to trace power relationships through the scripts and narratives of community complaints and police responses.¹¹⁷ Therefore, there might be ways to gather data that measure and track whether there has been any power handed to the people who live in the neighborhoods where street-level policing is concentrated. There is CompStat (which provides the ability to measure instrumental outcomes like reports of crime),¹¹⁸ and there is “CompStat for Justice” (which provides the ability to add additional metrics such as use of force statistics and the results of community surveys).¹¹⁹ Perhaps there may also be a way to build CompStat for Power—or rather, to bring the measurement of power into the larger calculus used to evaluate the success of reform efforts.

114. Cf. HANNAH L. WALKER, *MOBILIZED BY INJUSTICE: CRIMINAL JUSTICE CONTACT, PARTICIPATION, AND RACE* 5 (2020) (“While it is true that punitive policy communicates to those it targets that they are second-class citizens, it does not follow that individuals surrender a desire to create change.”).

115. Cf. Patel, *supra* note 21, at 815-16 (“[B]ecause . . . research is limited to community perception, it does not inform the larger debate about the formal shifting of power from police departments to community members in the reform process.”).

116. HERBERT, *supra* note 112, at 7-12 (describing police-community interactions in three Seattle neighborhoods).

117. Cheng, *supra* note 112, at 176. According to Cheng, the participation of the public in community policing becomes “input without influence,” and community meetings become “a mechanism of legitimating the input process, but only further reinforcing the social order.” *Id.*

118. *Compstat: A Crime Reduction Management Tool*, GOV’T INNOVATORS NETWORK, <https://www.innovations.harvard.edu/compstat-crime-reduction-management-tool> [https://perma.cc/JTE4-FJ4Y].

119. See CTR. FOR POLICING EQUITY, *supra* note 68.

At the same time, the power lens calls into question traditional assumptions about the need for technocratic experts to conduct precise measurements of the success of various reform efforts.¹²⁰ Bernard Harcourt has argued that, in criminal law and procedure, measuring costs and benefits within a perceived “criminal justice system” results in troubling limits on what we can measure and how we can conceive of success.¹²¹ The scope of what social scientists and public-policy professionals choose to study has “deep political implications that are masked precisely by the purported scientific nature of the method.”¹²² In other words, deciding to measure the costs and benefits of certain policy choices is itself a political choice—one that will be undemocratic unless and until we can open it up to first-order questions about what it is we want the state to do when we ask it to provide safety and security. Indeed, this decision requires debate over the meaning of safety itself. The power lens implicates these political questions as a preliminary matter, requiring an analyst to take a step back and ask how and why we have decided to prioritize the provision of “safety” through the police at all, let alone through traditional policing methods and metrics. It demands that we pause our measuring for a moment, to ask bigger questions first.

Power shifting in policing might therefore be destabilizing, in part because it opens up institutional goals previously taken for granted to contestation and replacement. More centrally, in the context of policing, power shifting opens up the question of how and if we should continue to operate the police as we know it. The idea of power shifting is not inherently abolitionist, or even left-leaning; community control, for instance, could be an institution that people who want more policing take up in the name of public safety. But a power-shifting analysis does open up the terrain of police reform to contestation and exploration of ideas that are excluded from other kinds of reform efforts. It makes abolition possible, creating space for visions that would divest from policing altogether through noncarceral methods of providing security—

120. See *infra* Part IV (exploring the notion of expertise in relation to the power lens); cf. E. Christi Cunningham, *A Hopeless Case?: Escaping the Proof Pitfall in Power-Dependent Paradigms*, 20 CUNY L. REV. 481, 484 (2017) (“[T]he search for proper evidence, proof of oppression in power-dependent relationships, is a trap to ensnare the oppressed in their condition.”).

121. See Bernard E. Harcourt, *The Systems Fallacy: A Genealogy and Critique of Public Policy and Cost-Benefit Analysis*, 47 J. LEGAL STUD. 419, 432–33, 437 (2018).

122. *Id.* at 433.

changing, perhaps, the meaning of “reform” itself.¹²³ And in this way, it promotes a more inclusive vision of the possible ways that the state can promote public safety, a view that takes into account voices and ideas that have traditionally been excluded from public discourse.¹²⁴

At the same time, the power lens can potentially exist alongside traditional police-reform goals, such as reducing conduct that we label as criminal or as excessive force. Proponents of the power lens may share some of the goals of the legitimacy or instrumental approaches—for instance, they may share a desire to reduce violence overall or to promote fairness in police interactions—even if at the same time they approach reform with a different idea of how productive change happens. And they may also recognize that to shift power in governance will not necessarily lead to profound changes in political power absent other, more structural reforms.¹²⁵ This is why the power lens is a lens through which to look, rather than a complete theory of reform. One can place additional lenses on top of or alongside the power lens, reflecting one’s own allegiances to particular instrumental or legitimacy outcomes. To believe in the power lens is simply, but crucially, to believe that we must account for power and process in designing police reform.

In the next Part, I demonstrate how the power lens emerges from social movement visions of police reform, in particular from Black-led abolitionist movements. I flesh out two examples of social movement visions of reform—locally, for community control of the police, and nationally, for a “People’s Process” for public-safety legislation. When these proposals are viewed collectively, an underlying and coherent conception emerges, focusing on shifting power through police reform itself.

123. Cf. Stahly-Butts & Akbar, *supra* note 41 (manuscript at 2-3) (explaining how for abolitionist social movements, one of the five requirements of a transformative reform—a reform that supports the goal of abolition—is “whether the reform builds or shifts power”).

124. See Simonson, *supra* note 91, at 299 (arguing for the importance of “opening up a closed and alienating criminal justice system to a set of beliefs in the need for decarceration and even abolition held by subsets of the public that have for too long been excluded from public discourse”).

125. Cf. BUTLER, *supra* note 22, at 238 (“Until we address the larger structural issues, racial subordination will just reproduce itself . . .”); Bell, *supra* note 18, at 734 (“[M]eaningful power building is extremely difficult to achieve and maintain in the context of socioeconomic isolation and economic deprivation.”).

II. SOCIAL MOVEMENT VISIONS OF POWER OVER POLICING

At the center of the push for police accountability post-Ferguson are social movement actors calling for the formation of new institutions that create bottom-up power over policing policies and decisions. This push for police accountability has gained incredible momentum as national attention to police violence against people of color, especially African Americans, has sparked a public debate about police policies such as the use of deadly force¹²⁶ and police surveillance of Black and brown people.¹²⁷ Unlike most legal scholars, movement actors are not just focused on changing policing policies, procedures, or laws; they are equally focused on transforming the landscape of power in policing. Marbre Stahly-Butts and Amna Akbar, in laying out the vision of “transformative reform” put forth by contemporary abolitionist social movements today, explain it this way: “In a system plagued by profound power differentials between those who control the system and those who are subject to its power, transformative reforms cannot be top down: they must be bottom up.”¹²⁸ Movement actors connect the history of policing and criminalization to the subjugation of people who were formerly enslaved. They seek out reforms that counteract that history and result in tangible shifts in power.

In this Part, I highlight this motif in social movement demands for institutional change in recent years. Movement actors are calling for direct power shifts over criminal legal institutions toward traditionally powerless populations. This demand comes in different forms, but it carries with it a series of consistent ideas: that the history of policing has been one of subordination and racialized violence; that prior police reforms have left the power in the hands of elites who have always controlled policing; and that those who come from neighborhoods that have been targets of policing in recent decades have developed their own expertise based on their experiences. For police reform to be productive, movement actors want us to engage with *this* expertise: the expertise developed from on-the-ground experience and collective action. To be sure, these groups do not always seek the same outcomes; sometimes they disagree, and their demands change over time. But when the idea of power shifting is distilled out from movement reform proposals, what emerges is a distinctly

126. See, e.g., Phillip Atiba Goff, Tracey Lloyd, Amanda Geller, Steven Raphael & Jack Glaser, *The Science of Justice: Race, Arrests, and Police Use of Force*, CTR. FOR POLICING EQUITY (July 2016), <https://www.issuelab.org/resources/25200/25200.pdf> [<https://perma.cc/2QGK-XFSG>].

127. See, e.g., Timothy Williams, *Can 30,000 Cameras Help Solve Chicago's Crime Problem?*, N.Y. TIMES (May 26, 2018), <https://www.nytimes.com/2018/05/26/us/chicago-police-surveillance.html> [<https://perma.cc/875V-NZR6>].

128. See Stahly-Butts & Akbar, *supra* note 41 (manuscript at 3).

different way of thinking about police reform, one that centers power as much as it does instrumental or legitimacy goals.

The power lens suggests that power in governance and policymaking should be shifted away from the police and traditional experts, and toward people and groups whose political standing have been eroded by institutions of policing and criminal law. However, there is not one, consistent definition of the specific population to whom power should be shifted. Often, organizers refer to “directly impacted” people and communities, and they recognize in practice that people can be directly impacted in multiple ways: sometimes through contact with the system, sometimes through other forms of systemic neglect, and sometimes through familial or collective experiences of trauma or political powerlessness. When social movement groups delineate methods for identifying directly impacted people, their methods vary. Sometimes they focus on geographical boundaries,¹²⁹ while sometimes they look at individual indicators of past interactions with the criminal legal system, either personally or through a family member.¹³⁰ Often, movement actors refer in structural terms to populations who have been collectively harmed by policing and mass incarceration.¹³¹ This Article does not attempt to smooth out these differences into a coherent definition of which people or “communities” should receive power. There is no one perfect definition of “directly impacted people.” Any definition would ex-

129. For example, activists in Nashville crafted a winning referendum for a Community Oversight Board with required representation from people in “economically distressed communities,” a definition that was then carved out in geographic segments. See *Charter Referendum Petition*, CMTY. OVERSIGHT NASHVILLE, <https://communityoversightnashville.wordpress.com/charter-referendum-petition-available-for-download> [<https://perma.cc/P43J-Q7MQ>]. In political science, this mirrors the concept of “race-class subjugated communities.” See Soss & Weaver, *supra* note 103, at 567 (defining the term).

130. See Rahman & Simonson, *supra* note 10, at 723-25 (describing how activists in Oakland have fought to specifically recruit individuals with criminal records to Oakland’s new oversight board).

131. For example, the People’s Coalition for Safety and Freedom asks that decisionmaking power be given to “[c]ommunities who are closest to the problem – currently incarcerated, formerly incarcerated people, communities who are surveilled and criminalized under these policies, and other directly impacted people.” *Our Values*, PEOPLE’S COALITION FOR SAFETY & FREEDOM, <http://safetyandfreedom.org/our-values> [<https://perma.cc/JLG6-JDGU>]. In some ways, this mirrors the approach of political scientist Hannah Walker, who studies the political participation of people with contact with the criminal legal system. Walker uses survey and interview data that measures both “personal contact” (whether people have been stopped, questioned, arrested, or convicted of a crime) and “proximal contact” (whether this has happened to a family member or a loved one). See WALKER, *supra* note 114, at 17-19 (summarizing this methodology).

clude some people—for example, people with disabilities or trauma,¹³² people without stable housing (perhaps because of the criminal system),¹³³ or people who are marginalized in other, intersectional ways. To use the power lens is to ask which of these definitions should work best, and, iteratively, it is to ask this question in collaboration with movement actors who are actively generating these ideas and definitions.

Below I describe two examples of social movement actors using the power lens—one of a local-governance structure, and one of a national legislation-making structure.¹³⁴ In each of these examples, social movements are putting forth proposals for how people who are directly affected by mass incarceration can in turn become the experts in charge of how the state aims to “fix” it—or, because these are largely abolitionist social movements, challenging whether it can be fixed at all. In the first example, local grassroots coalitions are demanding “community control” of the police through direct-neighborhood or precinct-level institutions independent from police or mayoral leadership. In the second example, a national coalition of groups organized against police violence have proposed a “People’s Process” to develop national priorities for legislation to promote public safety outside of policing. A theme runs through these proposals: a push to shift power downward to the people most harmed by mass criminalization. This theme is not always explicit within the proposals themselves, but when these proposals are placed alongside each other, the power lens emerges as a coherent and novel view of how to think about police governance.

A. *Local Governance: Community Control of the Police*

Local activists focused on police violence have in recent years returned to ideas of “community control of the police” as a way to approach large-scale re-

132. See *infra* notes 353-356 and accompanying text.

133. See Deborah N. Archer, *Exile from Main Street*, 55 HARV. C.R.-C.L. L. REV. 788, 819-23 (2020) (describing the collective housing precarity of people with criminal records and law-enforcement contact, and their families).

134. This is not to say that all reforms fall neatly into categories of “local” or “national,” but rather to demonstrate that the power lens spans this range of levels of reform. Cf. Trevor George Gardner, *Right at Home: Modeling Sub-Federal Resistance as Criminal Justice Reform*, 46 FLA. ST. U. L. REV. 527, 540-60 (2019) (describing the interaction between state and local governance and federal criminal-justice reform).

form of police departments.¹³⁵ Unlike policies associated with traditional notions of community policing—such as civilian review boards that recommend discipline of individual officers or civilian advisory boards that make nonbinding resolutions¹³⁶—the idea of community control as articulated by these activists requires “civilian” controlled bodies with the power to set binding policies and priorities of police departments.¹³⁷ The central move is from popular input to popular control. One activist in Oakland explained their new civilian-police commission this way: “The [new] commission will not recommend. It will impose . . .”¹³⁸ This idea has been taken up around the country. From D.C. to Chicago to Atlanta to Los Angeles to Houston to Nashville, activists have homed in on the potential of popular control of policing to shift power directly to those who are policed rather than simply giving them advisory roles.¹³⁹

135. See generally Olúfẹ́mi O. Táíwò, *Power Over the Police*, DISSENT (June 12, 2020), https://www.dissentmagazine.org/online_articles/power-over-the-police [https://perma.cc/4D3P-L6S4] (describing varieties of proposals for community control of the police).

136. On the history of civilian oversight of the police, see generally SAMUEL WALKER, *POLICE ACCOUNTABILITY: THE ROLE OF CIVILIAN OVERSIGHT* (2001).

137. Cf. M Adams & Max Rameau, *Black Community Control over Police*, 2016 WIS. L. REV. 515, 530-38 (laying out the idea of community control); Akbar, *supra* note 16, at 434 (“The demand for community control is a rejection of the community policing frame.”).

138. J.B. Wogan, *The New, More Powerful Wave of Civilian Oversight of Police*, GOVERNING (Feb. 27, 2017), <https://www.governing.com/topics/public-justice-safety/gov-police-civilian-oversight-oakland-seattle.html> [https://perma.cc/T87S-S68F].

139. For example, in Houston, a call for a civilian review board with subpoena power is part of the new Right2Justice Coalition. See Brian Rogers, *Houston Activists Call for Criminal Justice Reform*, HOUS. CHRON. (Aug. 16, 2016, 2:18 PM CDT), <https://www.chron.com/news/houston-texas/houston/article/Houston-activists-call-for-criminal-justice-reform-9145919.php> [https://perma.cc/MF6K-G29B] (describing how “more than a dozen activists called a press conference to demand independent prosecutors to investigate police shootings overseen by civilian review boards with subpoena power”); see also *Community Oversight Now Launches Charter Referendum Petition for a Community Oversight Board 50 Years After the Death of Dr. Martin Luther King, Jr.*, CMTY. OVERSIGHT NASHVILLE (June 6, 2018), <https://communityoversightnashville.wordpress.com/2018/06/06/community-oversight-now-launches-charter-referendum-petition-for-a-community-oversight-board-50-years-after-the-death-of-dr-martin-luther-king-jr> [https://perma.cc/8MMK-CTW9] (describing the launch of a winning “petition drive for a charter referendum to create an independent Community Oversight Board (COB) with compulsory and investigative powers” in Nashville). In Atlanta, movement actors have consistently put forward a strong critique of a local civilian review board that had been given subpoena power—a power seen by some as progressive. See Gloria Tatum, *Atlanta Citizens Review Board Gets on Activists’ Last Nerve*, ATL. PROGRESSIVE NEWS (May 15, 2015), <http://atlantaprogressivenews.com/2015/05/15/atlanta-citizens-review-board-gets-on-activists-last-nerve> [https://perma.cc/6DVV-8C8J]. In Los Angeles, the local Black Lives Matter chapter has worked to call attention to the potential problem that recent reforms re-entrench inequalities. See David Zahniser, *After Election Loss*,

There are three central moves that social movement actors tend to make in recent proposals to institutionalize community control of the police in Chicago, Oakland, Nashville, D.C., and elsewhere.¹⁴⁰ First, these newer proposals for community control often shift the nature of authority that civilians have over policing, moving away from mere input into policy decisions and toward direct power over those decisions. This means, for example, that decisions over policing policies or disciplinary decisions should be binding rather than advisory. Second, these institutions are designed to give power to civilians who are independent of police departments and contain at least some representation from populations who have traditionally been the targets of policing.¹⁴¹ And third, these institutions often have power over *ex ante* policing decisions and priorities rather than simply *ex post* disciplinary or review decisions. By moving relatively upstream in the decisionmaking process governing policing policy, institutions of community control have a greater ability to take up first-order questions about the nature and value of policing itself.¹⁴² If they wish, they can contest and resist previous ways of defining and providing public safety.¹⁴³

A demand for community control is a demand for power. According to the Vision for Black Lives, written by a coalition of organizations that make up the Movement for Black Lives,¹⁴⁴ the purpose of “community control” is not to revise police policies, or to push for constitutional policing, but rather to ensure

Critics of Charter Amendment C Call for Sweeping Review of LAPD Discipline, L.A. TIMES (May 17, 2017), <https://www.latimes.com/local/lanow/la-me-ln-lapd-discipline-measure-20170517-story.html> [<https://perma.cc/97CW-GYF9>].

140. For a detailed explanation of these three dimensions of the institutional design of community control and their implications, see Rahman & Simonson, *supra* note 10, at 699-732.
141. See, e.g., Community Oversight Board, *Potential Definitions of “Economically Distressed Communities,”* NASHVILLE METRO PLANNING DEP’T (NOV. 19, 2018), <https://www.nashville.gov/Portals/0/SiteContent/MetroClerk/docs/boards-commissions/CommunityOversight/Economically%20Distressed%20Communities%20Infographics.pdf> [<https://perma.cc/8QXG-8K3P>] (discussing how to define “economically distressed” for the purposes of reviewing nominations to the COB); Rahman & Simonson, *supra* note 10, at 723-24 (describing the dispute in Oakland over whether there would be a criminal-record check for members of the oversight commission).
142. On *ex ante* democratic decisionmaking in policing, see Friedman & Ponomarenko, *supra* note 21, at 1893-1907; and Slobogin, *supra* note 21, at 91-98.
143. In this way, community control somewhat resembles what Heather Gerken calls “dissenting by deciding,” in which local groups such as juries resist mainstream politics through smaller, local decisions that “stick.” See Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745, 1746-49 (2005).
144. For a history of the formation of the Movement for Black Lives and the other organizations that make up the Black Lives Matter Movement, see BARBARA RANSBY, *MAKING ALL BLACK LIVES MATTER: REIMAGINING FREEDOM IN THE TWENTY-FIRST CENTURY* 1-10 (2018).

“[d]irect democratic community control” of law enforcement by “communities most harmed by destructive policing.”¹⁴⁵ In Washington, D.C., the group Pan-African Community Action, founded in 2015 following the murder of Alonzo Smith by the city’s Special Police, similarly advocates for community control. They write: “The core issue is POWER, not racism. We cannot change our reality by ending ‘racism,’ or the attitudes and opinions others hold of us. Our conditions will only change when we shift power into our own hands and exercise self-determination, thereby rendering the opinions of racists irrelevant.”¹⁴⁶

This call for power shifting via community control of the police is not new; it was part of the call by the Black Panthers and other radical activists of color in the 1960s to reclaim control of their local governments.¹⁴⁷ The heart of this historical push for Black community control was the idea that local police precincts should be independent of elites who are elected or appointed at the city or county level, transferring power over policing to the people who interact with police officers every day in the streets and on the roads.¹⁴⁸ In the decades

145. *Community Control*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/community-control> [https://perma.cc/U94Z-B2XR].

146. Max Rameau & Netfa Freeman, *A Critical Analysis of the Demand to Defund the Police*, PAN-AFR. CMTY. ACTION (June 2020), <https://pacapower.org/uploads/Documents/A%20Critical%20Analysis%20of%20Defunding%20the%20Police.pdf> [https://perma.cc/2RXP-57NX]; see *PACA Tools of Analysis*, PAN-AFR. CMTY. ACTION, <https://www.pacapower.org/index.php/tools-of-analysis> [https://perma.cc/NNA6-JN4U].

147. See, e.g., Black Panther Party, *Berkeley Petition for Community Control of Police*, BERKELEY MONITOR 12 (Aug. 8, 1970), http://www.itsabouttimebpp.com/Community_Control/pdf/Community_Control_Police_No1.pdf [https://perma.cc/NY6X-E8CF]; Bobby Seale, *Community Control of Police Was on the Berkeley Ballot in 1969*, S.F. BAY VIEW (Aug. 13, 2015), <https://sfbayview.com/2015/08/bobby-seale-community-control-of-police-was-on-the-berkeley-ballot-in-1969> [https://perma.cc/DHH7-S45Y]. Like the Movement for Black Lives, the idea of community control in the Black Panther philosophy was not just about community control of the police, but also schools and other local-government services. See Glen Ford, *The Complexities of Black Community Control of Police*, TRUTHOUT (Feb. 13, 2015), <http://www.truth-out.org/news/item/29100-the-complexities-of-black-community-control-of-police> [https://perma.cc/K8AQ-XKMD] (connecting current demands for community control of the police to the history of similar demands raised by social movements in the 1960s).

148. See generally Rita Mae Kelly, *Sources of the Community Control Over Police Movement*, J. VOLUNTARY ACTION RES. 25 (1978) (linking demand for community control to the value of democratic self-governance); Elinor Ostrom & Gordon Whitaker, *Does Local Community Control of Police Make a Difference? Some Preliminary Findings*, 17 AM. J. POL. SCI. 48 (1973) (comparing police performance in community-controlled versus city-controlled police forces in and near Indianapolis). Although few local jurisdictions in the 1960s actually implemented true community control, a weaker form of “civilian review” of police disciplinary decisions did spread as a method of police reform. In Berkeley, California, for instance, voters in 1971 rejected a community-control referendum by a 2-1 margin, but two years later approved

that followed this push, however, localities did not implement “community control”; instead, they created institutions of “civilian review” or “community advisory boards” that largely kept power in the hands of the police and city or county officials.¹⁴⁹ In recent years, though, many jurisdictions have placed renewed emphasis on reforming or designing new police-accountability institutions with civilians at their helm, focusing on “control” over policing rather than input into it.

This renewed conception of “community control” is not wed to any vision of a coherent or monolithic “community.” Indeed, the word “community” in the context of local governance carries with it serious dangers of vagueness, co-optation, and exclusion.¹⁵⁰ But by using the word “community” in their demands for power over policing, social movement actors are both nodding to past struggles against racialized police violence and claiming inclusion in systems of local governance from which they feel excluded. With respect to policing in particular, movement actors make a deliberate attempt to reclaim the notion of “community” as one of bottom-up power, in contrast to the dominant concept of “community policing” in mainstream police reform. These groups have diagnosed community policing as a dangerous “misnomer” that “provide[s] a façade of legitimacy that allows policing to continue as usual.”¹⁵¹ In

a referendum for a “Police Review Commission” with independent authority to investigate police complaints. See WALKER, *supra* note 136, at 32-33; see also Larry Redmond, *Why We Need Community Control of the Police*, 21 PUB. INT. L. REP. 226, 229-31 (2015) (discussing this Berkeley history); Seale, *supra* note 147 (describing the community-control referendum in Berkeley).

149. See Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1041-42 (2016) (finding that, of the nation’s fifty largest police departments, only twenty-four have a form of civilian oversight of the police; and of those, all but nine have a majority of the board nominated or controlled by the mayor or the police chief); Samuel Walker, *Governing the American Police: Wrestling with the Problems of Democracy*, 2016 U. CHI. LEGAL F. 615, 637 (“Other than the Berkeley effort, . . . community control proved to be too radical an idea about the proper form of governing the police and gained no traction in other communities.”); Clark & Friedman, *supra* note 112 (manuscript at 3) (surveying community advisory boards around the country and concluding that “[t]oo often, CABs represent a pro forma effort by policing agencies to signal a commitment to working with the public, without really working with the public”).
150. See Weisberg, *supra* note 32, at 343-49 (critiquing the idea of community in the context of the restorative justice and “community justice” movements); cf. APPLEMAN, *supra* note 81, at 70-87 (discussing the difficulties with defining community in relation to criminal justice); Ford, *supra* note 32, at 1870-74 (describing dangers of oppression and exclusion when using local geography in legal analysis).
151. *Counter-CAPS Report: The Community Engagement Arm of the Police State*, WE CHARGE GENOCIDE 3, 6 (Oct. 28, 2015) [hereinafter *Counter-CAPS Report*], <http://wechargegenocide.org/wp-content/uploads/2015/10/CAPSreport-final.pdf> [<https://perma.cc/FG39-QT55>]

contrast to the consensus-based model of community policing which they feel has failed them, social movement actors demand a contestatory model of police governance in which “communities most harmed by destructive policing” are given power *over* policing, rather than denied input into it.¹⁵²

Chicago activists’ ongoing efforts to achieve community control of the police is illustrative of this push for local power shifting. In 2016, when the debate in Chicago over police reform gained political salience, movement actors, along with progressive allies in City Council, proposed an ordinance to create a Civilian Police Accountability Council (CPAC) in which civilians had control over police departments at the neighborhood level. Those activists explained: “We believe democratic civilian control of the police means the community tells the police what to do.”¹⁵³ The main grassroots group behind the push for CPAC is the Chicago Alliance Against Racist and Political Repression (CAARPR), a group founded in 1973 as part of the mass movement to free Angela Davis.¹⁵⁴ Building on the group’s longstanding presence organizing in largely Black neighborhoods, CAARPR now works with Black Lives Matter-Chicago, the Black Youth Project 100, and other local groups to advocate for community control over the police.¹⁵⁵ Their 2016 proposed bill, then sponsored by only the most progressive members of the city council,¹⁵⁶ would have created a new police-accountability council with elected positions drawn from each district, for-

(“These programs result in neither democratic accountability of police agencies nor meaningful changes in police practices. Instead, they . . . provide a façade of legitimacy that allows policing to continue as usual.”).

152. *Community Control*, *supra* note 145.

153. *The People’s Guide to an Elected Civilian Police Accountability Council*, *supra* note 2.

154. See CHI. ALLIANCE AGAINST RACIST & POL. REPRESSION, <https://www.caarpr.org> [<https://perma.cc/RC8G-9KBX>]; see also Redmond, *supra* note 148, at 232-33 (detailing the history of Chicago Alliance Against Racist and Political Repression and its current push for community control).

155. See, e.g., Press Release, We Charge Genocide, Chicago Alliance Against Racist and Political Repression, Black Lives Matter-Chicago, Black Youth Project 100 & Showing Up for Racial Justice-Chicago, Community Policing Is Not the Answer (Oct. 28, 2015), <http://wechargegenocide.org/press-release-community-policing-is-not-the-answer-countercaps-report> [<https://perma.cc/LWW9-GZA5>] (listing organizations working together on the Counter-CAPS (Chicago Alternative Policing Strategy) report to expose the limits of community policing in Chicago).

156. See D.D. Guttenplan, *This Chicago Politician Is Showing How to Govern from the Left*, NATION (July 13, 2017), <https://www.thenation.com/article/meet-chicagos-movement-politician> [<https://perma.cc/54QC-MBBE>] (describing progressive councilman Carlos Ramirez-Rosa’s support of the Civilian Police Accountability Council (CPAC) proposal).

bidding individuals with personal or professional connections to police officers from serving on the council.¹⁵⁷

The proposed CPAC ordinance has changed slightly over the intervening years, but it remains in play in local Chicago politics.¹⁵⁸ In 2020, for example, with protesters around the city holding up signs that say “CPAC Now!” and the City Council facing pressure to react,¹⁵⁹ the revised ordinance once again gained steam.¹⁶⁰ The ordinance would create an elected board with the authority to select the person in charge of investigating officers, hire and fire the police superintendent, and help create – and have veto power over – rules and policies governing police conduct.¹⁶¹ Notably, there is also a competing proposal, which would maintain the CPD’s existing review agency but create a new “Community Commission for Public Safety and Accountability” as well as local district councils that would run community meetings in their police districts.¹⁶²

157. *The People’s Guide to an Elected Civilian Police Accountability Council*, *supra* note 2.

158. For example, in 2019, the movement-driven ordinance was once again before the Chicago City Council, this time with twice the number of cosponsors as it had in 2016. Masterson, *supra* note 2. This time, however, there was a competing community-driven proposal for civilian oversight from the Grassroots Alliance for Police Accountability (GAPA). See Aneel Chablani, *Community Police Oversight Is Long Past Due*, CRAIN’S CHI. BUS. (June 10, 2019, 3:00 PM), <https://www.chicagobusiness.com/lightfoot-100/community-police-oversight-long-past-due> [<https://perma.cc/3E9Z-7X5X>] (describing some differences between GAPA and CPAC); Annie Sweeney, *First Public Hearing on Civilian Oversight Abruptly Breaks Up Amid Protest*, CHI. TRIB. (May 16, 2018, 5:30 PM), <http://www.chicagotribune.com/news/local/breaking/ct-met-community-oversight-commission-hearing-20180516-story.html> [<https://perma.cc/U7R8-ZTBV>] (describing how two movement-written proposals for a police-review agency are now being debated in the Chicago City Council, along with a different Emmanuel-backed plan).

159. See Black, *supra* note 4 (describing “thousands of Chicagoans in the streets in recent weeks demanding community control of police in the form of an elected Civilian Police Accountability Council”).

160. Claudia Morrell & Patrick Smith, *After Decades of Police Corruption, Can Chicago Finally Reform Its Force?*, WBEZ (June 13, 2020, 6:00 AM CT), <https://www.wbez.org/stories/after-decades-of-police-corruption-can-chicago-finally-reform-its-force/c3cbe83f-3291-4be1-b977-8c70d431b921> [<https://perma.cc/K8BA-856S>] (describing how, in June 2020, CPAC was “gaining serious legs” politically in the City Council).

161. *Id.*

162. See Craig B. Futterman & Sheila A. Bedi, *Communities Need Control over Police if Justice Is to Prevail*, CHI. SUN TIMES (Mar. 9, 2020, 5:40 PM CDT), <https://chicago.suntimes.com/2020/3/9/21172211/communities-need-control-over-police-if-justice-is-to-prevail> [<https://perma.cc/UH4W-BPEH>] (arguing in favor of CPAC over GAPA and contrasting the two). *But see* Fran Spielman, *Lightfoot’s Civilian Police Review Ordinance Hits Snag*, CHI. SUN TIMES (Mar. 10, 2020, 11:49 AM CDT), <https://chicago.suntimes.com/city-hall/2020/3/10/21173377/lightfoots-civilian-police-review-ordinance-hits-snag> [<https://perma.cc/26DF->

This proposed ordinance came from the Grassroots Alliance for Police Accountability (GAPA), a counter group made up of a combination of police-reform experts and community-based organizations¹⁶³—demonstrating that different movement configurations can lead to different governance proposals. GAPA’s proposal does transfer some power to city residents: among other things, the all-civilian Commission would, with enough City Council support, have the ability to fire the police superintendent for cause and draft nonbinding police department policies.¹⁶⁴ But because there are no binding, unreviewable powers in the proposed GAPA commission, advocates for CPAC have described the GAPA proposal as a “watered down” version of reform that elides community control or “genuine community based accountability.”¹⁶⁵ The difference, for these advocates, is centrally about both the amount and nature of the power shift entailed in the structure of the new council.

The call in Chicago for “community control of the police” is echoed in other parts of the country as well, from cities as small as Evanston, IL¹⁶⁶ and Rochester, NY,¹⁶⁷ to those as large as Minneapolis, MN,¹⁶⁸ Washington, D.C.,¹⁶⁹ and

MCTL] (describing a rift between Lightfoot and the GAPA coalition over the power of the new civilian council to impose binding policies).

163. See *Our Coalition*, GAPA (2021), <http://chicagogapa.org/our-coalition> [<https://perma.cc/9M2A-D9R5>] (“The Grassroots Alliance for Police Accountability (GAPA) is a broad-based coalition of community organizations committed to making our neighborhoods safer, improving police practices and accountability, and transforming the relationship between the Chicago Police Department and the communities it serves.”).
164. See Chi., Ill., Ordinance to Amend Municipal Code ch. 2-82-125(b) (proposed Mar. 28, 2018) (unenacted), <http://chicagogapa.org/wp-content/uploads/2018/09/O2018-2389-V2.pdf> [<https://perma.cc/Q9HM-WPC6>].
165. Futterman & Bedi, *supra* note 162.
166. See, e.g., *Proposal for an Evanston Board of Police Oversight, Accountability, and Transparency*, CITIZENS’ NETWORK PROT. (Apr. 2, 2018), <https://www.citizensnetworkofprotection.com/wp-content/uploads/2019/11/Citizens-Network-of-Protection-Proposal-updated-April-2018.pdf> [<https://perma.cc/EQS4-A3N4>].
167. See POLICE ACCOUNTABILITY BOARD ALLIANCE, <https://pabnow.github.io> [<https://perma.cc/EM6W-5WQH>]; see also Jennifer Lewke, *City Voters to Be Asked About Police Accountability Board*, WHEC (Oct. 18, 2019, 5:21 PM), <https://www.whec.com/news/city-voters-to-be-asked-about-police-accountability-board/5528598> [<https://perma.cc/TGV7-W75L>] (describing a police-accountability board referendum in the City of Rochester).
168. See Glen Ford, *The Minneapolis Police Name-Change Con*, LA PROGRESSIVE (Aug. 15, 2020), <https://www.laprogressive.com/minneapolis-police> [<https://perma.cc/85J7-JWFN>] (describing the Twin Cities Coalition for Justice for Jamar, which advocates for community control under the CPAC model in Minneapolis).
169. See PAN-AFR. COMMUNITY ACTION, <https://www.pacapower.org> [<https://perma.cc/9SHJ-6RSZ>].

New York City.¹⁷⁰ And these campaigns have sometimes gained political traction, from the CPAC in Chicago,¹⁷¹ to the winning movement-driven referenda in Nashville in 2018¹⁷² and Oakland in 2016¹⁷³ to establish new institutions of civilian oversight.¹⁷⁴ In many instances, social movement actors connect the design of institutions of “community control” to concerns with larger structural and historical inequities with respect to policing. In particular, activists who have designed local proposals for community control claim that their proposals themselves are a way to “deconstruct[] the historic relationship between the police and the Black community, and re-imagin[e] a social force designed to actually protect and serve its population.”¹⁷⁵

The demand for community control from local activists is far from universal. Some activists against police violence want to improve institutions of community policing, involving communities in coproducing safety alongside police officers.¹⁷⁶ Meanwhile, for some abolitionist groups, there is a worry

170. See, e.g., *Peoples’ Justice for Community Control and Police Accountability*, FACEBOOK, <https://www.facebook.com/peoplesjustice> [<https://perma.cc/EX2C-WZR6>] (advocating for a New York City community-control reform proposal).

171. See *Stop Police Crimes – Enact CPAC for Community Control*, CHI. ALLIANCE AGAINST RACIST & POL. REPRESSION, <https://www.caarpr.org/stop-police-crimes> [<https://perma.cc/NA48-K3KU>].

172. See *Community Oversight Board*, METROPOLITAN GOV’T NASHVILLE & DAVIDSON COUNTY, TENN., <https://www.nashville.gov/Government/Boards-and-Committees/Committee-Information/ID/132/Community-Oversight-Board.aspx> [<https://perma.cc/79U8-GNX6>]; see also *Metropolitan Charter Amendment No. 1*, METROPOLITAN GOV’T NASHVILLE & DAVIDSON COUNTY, TENN. (Nov. 6, 2018), <https://www.nashville.gov/Portals/o/SiteContent/MetroClerk/docs/boards-commissions/CommunityOversight/Community%20Oversight%20Board%20-%20Amendment%201.pdf> [<https://perma.cc/5BYE-HLA4>] (providing the text of the amendment to the Nashville and Davidson County Charter that would establish the Community Oversight Board).

173. See *Oakland, California, Civilian Police Commission, Measure LL (November 2016)*, BALLOTPEdia, [https://ballotpedia.org/Oakland,_California,_Civilian_Police_Commission,_Measure_LL_\(November_2016\)](https://ballotpedia.org/Oakland,_California,_Civilian_Police_Commission,_Measure_LL_(November_2016)) [<https://perma.cc/R7W2-N8KW>].

174. Although neither Nashville nor Oakland created institutions of community control, they did successfully shift governance arrangements along other axes of power that are important to the social movement push for power in governance. For an analysis of these governance arrangements, see Rahman & Simonson, *supra* note 10, at 709-10, 719-32.

175. Adams & Rameau, *supra* note 137, at 538; see also Rahman & Simonson, *supra* note 10, at 723-24 (discussing how to ensure the representation of systematically excluded groups on local bodies).

176. See *Leadership, Partnership, and Trust: A Community Plan for a Safer Chicago*, GRASSROOTS ALLIANCE FOR POLICE ACCOUNTABILITY 4 (Mar. 2018), <http://chicagogapa.org/wp-content/uploads/2018/03/GAPA-Report-2018.pdf> [<https://perma.cc/DE2Q-ZFGF>] (“This proposal seeks to increase public safety; foster and create trust and improve interactions be-

that even strong civilian oversight institutions can be coopted by more powerful interests, or by reigning ideologies that infect the institution of policing itself.¹⁷⁷ To these groups, to fiddle with the strings of power within a current institution of policing is in some ways to legitimize that institution.¹⁷⁸ And, to the extent that a new policing institution concentrates resources in policing at the expense of other social supports, it may also legitimate the use of the criminal legal system to solve social problems more broadly.¹⁷⁹ Indeed, although the Vision for Black Lives, written in 2016 by the M4BL coalition, embraced community control of the police, more recent platforms from some of these same organizations have not.¹⁸⁰ Some of these platforms have not mentioned community control of the police at all,¹⁸¹ while others have stressed community control more broadly. The Movement for Black Lives took this latter approach

tween and among police officers and Chicago residents; ensure that police policies and reform plans reflect community values and are informed by residents' experience; and establish an accountability system that operates independently and without bias.”).

177. See, e.g., Kaba & Duda, *supra* note 97 (interviewing Mariame Kaba, who explains this ambivalence as follows: “[H]ere’s where I’m stuck: what is different about community members being elected to be on boards – we have elected officials in other places, right? We still internalize particular ideologies about policing, we still have the police in our heads and our hearts. Is it the oversight body itself that makes the difference? Why wouldn’t those oversight bodies just adopt the existing ideology that is already in circulation?”); Richie, Rodríguez, Kaba, Burch, Herzing & Agid, *supra* note 40, at 1 (“If we invest in an oversight body that is meant to work toward the goal of ending ‘bad’ policing, we simultaneously invest in the resources, rhetoric, and power of policing and the possibility of police reform.”).
178. See *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE (2020), https://static1.squarespace.com/static/59ead8f9692eb25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf [https://perma.cc/AJZ7-PEP7] (stating that pushing for community oversight boards “further entrenches policing as a legitimate, reformable system, with a ‘community’ mandate. Some boards, tasked with overseeing them, become structurally invested in their existence”); cf. ALEX S. VITALE, *THE END OF POLICING* 24 (2017) (“Policing will never be a just or effective tool for community empowerment, much less racial justice.”).
179. See Richie, Rodríguez, Kaba, Burch, Herzing & Agid, *supra* note 40, at 1 (“[B]uilding trust in the institution of policing tends to legitimize . . . the role police play in our daily lives.”).
180. See *Vision for Black Lives*, *supra* note 39, (highlighting the Movement for Black Lives’ (M4BL) 2016 platform on community control and explaining the revisions in the 2020 platform).
181. The Dream Defenders’ 2018 Freedom Papers, for example, hold out that “[p]olice and prisons have no place in ‘justice.’” *Freedom Papers*, DREAM DEFENDERS 5 (2018), <https://drive.google.com/file/d/1JmqXaK9HUTfT01uRB5rw6e9AgxDPVFnk> [https://perma.cc/39U8-L8ML]; see also *Agenda to Build Black Futures*, BLACK YOUTH PROJECT 100 (2016), http://agendatobuildblackfutures.org/wp-content/uploads/2016/01/BYP_AgendaBlackFutures_booklet_web.pdf [https://perma.cc/8SZS-YHB5] (making no mention of community control and only passing mention of police reform).

in its 2020 Week of Action to Defend Black Lives, which demanded community control but placed policing last in a list of other forms of community control: schools, budgets, and economies.¹⁸² And in their account of abolitionist transformative reforms, movement leaders and scholars Marbre Stahly-Butts and Amna Akbar describe power shifting as a form of change that for the most part occurs outside of state processes, so as “to decrease reliance on harmful state institutions.”¹⁸³

At the same time, many larger coalitions of grassroots organizations focused on police violence do explicitly support community control¹⁸⁴ and issues of community control have become part of the national debate over reform following the 2020 uprisings.¹⁸⁵ These groups sometimes combine calls for community control with larger demands of divesting from policing or abolishing it altogether.¹⁸⁶ In Los Angeles, for example, Black Lives Matter-LA activists succeeded in gathering signatures for a winning 2020 referendum that will simultaneously bolster the powers of the Civilian Review Commission and require “community reinvestment” by transferring resources from local jails to community services.¹⁸⁷ This campaign combined demands for power shifting in police accountability with demands for divesting from the criminal legal system. Similarly, Black Lives Matter Chicago, one of the central supporters of community control of the police in Chicago, has for years listed CPAC as just

182. See *Atlanta, Defend Black Lives*, DEFENDING BLACK LIVES, <https://www.defendingblacklives.org/atlanta-defend-black-lives> [https://perma.cc/955M-5LY6] (“The most impacted in our communities need to control the laws, institutions, and policies that are meant to serve us—from our schools to our local budgets, economies, and police departments.”).

183. Stahly-Butts & Akbar, *supra* note 41, at 6.

184. See, e.g., Terrance Laney & Janaé Bonsu, *Agenda to Keep Us Safe*, BLACK YOUTH PROJECT 100, at 9 (2016) <https://agendatobuildblackfutures.org/wp-content/uploads/2016/01/BYP100-Agenda-to-Keep-Us-Safe-AKTUS.pdf> [https://perma.cc/KVF4-2AFA] (listing the Chicago CPAC as model legislation for democratic policing).

185. See, e.g., Morrell & Smith, *supra* note 160 (describing how in June 2020 CPAC is “gaining serious legs” politically in the City Council); Rameau & Freeman, *supra* note 40 (describing the differences between community control and defunding the police).

186. See generally Táiwò, *supra* note 135 (“A community in control of how order is maintained does not have to grin and bear the decisions of its police. It has the power to hire officers, fire them, fund department initiatives, or abolish policing altogether.”).

187. The referendum was on the ballot in 2020. See Jeffrey Cawood, *Black Lives Matter Leader’s Referendum Qualifies for Presidential Primary Ballot in 2020*, DAILY WIRE (Sept. 13, 2018), <https://www.dailywire.com/news/black-lives-matter-leaders-referendum-qualifies-jeffrey-cawood> [https://perma.cc/Q3LY-DWDP].

one of its ten demands, with other demands including “defund the police” and “invest in community resources.”¹⁸⁸

Whether it is because social movement actors want *less* policing, because they want *better* policing, or both, overlying their demands for popular control over policing is a broader—and separate—demand for power and democratic rule. This call for power shifting in local police governance is of course a separate question from whether new institutions of governance will be designed in a way that is otherwise effective—with adequate resources, training, and institutional protections from capture from other interests.¹⁸⁹ But drawing out the specific focus on power shifting helps illuminate the different perspective that calls for local community control bring to police reform. In an article focused on Black community control of the police, two activist thinkers, M. Adams and Max Rameau, put it this way: “Policies and specific laws conspire to make up the details of social order and daily life. However, the truly important aspect is the underlying power relationship among the individual and collective social actors.”¹⁹⁰ For Adams and Rameau, because the underlying power relationships are ones rooted in white supremacy, wealth extraction, and the marginalization of women and trans people, “the only way to alter police behavior is to alter the underlying power dynamic between the police and our communities.”¹⁹¹ As the next Section will show, this call for a shift in the “power dynamic” is echoed in national calls for police reform as well.

B. Federal Policy: A People’s Process for Drafting Federal Legislation

At the federal level, the People’s Coalition for Safety and Freedom (People’s Coalition) proposes new legislation that would shift investment in “public safety” away from local policing by using a “People’s Process” that emphasizes the priorities of people living in communities most affected by mass incarceration.

188. 10 *Demands of BLMCHI*, BLACK LIVES MATTER CHI., <https://www.blacklivesmatterchicago.com/10-demands-of-blmchi> [<https://perma.cc/D2W8-BXGA>].

189. See Clark & Friedman, *supra* note 112, at 13-14, 16-17 (describing how many community advisory boards suffer from a lack of resources, adequate training, or structures to prevent burnout); Rahman & Simonson, *supra* note 10, at 691-705; cf. Joanna C. Schwartz, *Who Can Police the Police?*, 2016 U. CHI. LEGAL F. 437, 443-44 (using the public-defender system to illustrate resource constraints on reformers).

190. Adams & Rameau, *supra* note 137, at 522-23.

191. *Id.* at 529; see also Rameau & Freeman, *supra* note 40 (“[Washington, D.C. group Pan-African Community Action] is intentional about the need to build campaigns rooted in the objective of shifting power to the Black working class masses, with a particular emphasis on empowering women and queer folk as a counterbalance to patriarchy.”).

tion and policing. The People’s Coalition, made up of grassroots organizations that include BYP 100, the Dream Defenders, the Center for Popular Democracy, and the National Council of Incarcerated and Formerly Incarcerated Women, engaged in a year-long process of workshops and focus groups with formerly incarcerated and directly impacted people to generate a legislative response to the 25th Anniversary of the 1994 Crime Bill. Like movement visions of community control, the People’s Coalition demands a shift in which groups and interests determine how the state provides safety and security. The Coalition explains: “For far too long . . . federal legislation has been driven by powerful interests and drafted in opaque ways. By bringing a transformative approach to building consensus . . . for a transformative legislative outcome, we seek to change the way—and for whom—policy and budgeting operates.”¹⁹²

The People’s Coalition’s analysis of the possibilities of transforming federal spending on public safety begins with a critique of past reform initiatives. The starting point of the analysis is a belief that the 1994 Crime Bill, while targeted at reducing violence,¹⁹³ has caused significantly more harm than good to “an entire generation of families in the United States, with particularly destructive impact on Black communities.”¹⁹⁴ This harm, in the view of the Coalition, came from federal investment in local policing initiatives that increased surveillance and everyday violence, and, in turn, discouraged the federal government from investing in disadvantaged communities in other ways.¹⁹⁵ In the context of policing, the coalition focuses on the establishment of the Community Oriented Policing Services (COPS) arm of the Department of Justice, which was granted \$8.8 billion in funding by the ’94 Crime Bill. COPS has granted over \$14 billion to local law-enforcement agencies since that time.¹⁹⁶

192. *Reckoning with Mass Criminalization*, *supra* note 8, at 5.

193. *See id.* at 1 (“While everyone supports violence reduction—the purported goal of the 94 Crime Bill—several of the provisions included in the 94 Crime Bill to achieve this goal have been proven ineffective and harmful.”). *But see* Bruce Shapiro, *Nothing About the 1994 Crime Bill Was Unintentional*, *NATION* (Apr. 11, 2016), <https://www.thenation.com/article/archive/nothing-about-the-1994-crime-bill-was-unintentional> [<https://perma.cc/4TMH-JX72>].

194. *Reckoning with Mass Criminalization*, *supra* note 8, at 1.

195. For a detailed history of federal divestment from communities and investment in law enforcement instead, see ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA* 134-79 (2016).

196. *See* Cmty. Oriented Policing Servs., *Grants*, U.S. DEP’T JUST., <https://cops.usdoj.gov/grants> [<https://perma.cc/BKG9-BS34>] (“As the leading community policing experts at the U.S. Department of Justice, we’ve invested over \$14 billion in community policing since Congress established our office in 1994.”); Naomi Murakawa, *Police Reform Works—for the Police*, *LEVEL* (Oct. 21, 2020), <https://level.medium.com/why-police-reform-is-actually-a-bailout-for->

In the view of the Coalition, this focus on federal investment in community policing harmed communities in at least three ways: First, it legitimized the expansion of local police departments and facilitated everyday police violence; second, community-policing initiatives excluded the most marginalized from their participatory mechanisms;¹⁹⁷ and third, it used federal resources that might have otherwise been designated for community supports outside of the criminal legal system.¹⁹⁸

The harm of the '94 Crime Bill, according to these activists, was about ideology as much as it was about the distribution of federal resources: indeed, they recognize that other federal legislation and policies can simultaneously be blamed for the harms that they name.¹⁹⁹ Three of their leaders wrote: "The '94 Crime Bill endorsed a false view that punitive and retributive systems of policing and incarceration can advance public safety. In reality, both perpetuate racial disparities, family separation, community destabilization, voter disenfranchisement, misdirected spending of limited public resources and systemic state violence."²⁰⁰

In envisioning a replacement for the '94 Crime Bill, the Coalition's focus groups and broader discussions tried to reimagine what it means for national legislation to promote public safety. The resulting vision insists on the reduction of spending on the criminal legal system, instead advocating for direct spending and investment in health, education, housing, and infrastructure. The key policy insight here—the invest/divest framework—comes from decades of local organizing focused on advocating for divestment from prisons and policing, paired with resource investment in other means of giving communities the ability to support each other and to thrive.²⁰¹ The Coalition insists that

cops-ecf2dd7b8833 [https://perma.cc/PUD3-KYJ4] (describing federal investment in Community Oriented Policing Services in 1994 and continually since then).

197. See *Counter-CAPS Report*, *supra* note 151, at 3 (expressing these critiques in the context of an empirical study of community policing in Chicago); Simonson, *supra* note 26, at 1616 (describing this Counter-CAPS report and its analysis of community policing).

198. *Reckoning with Mass Criminalization*, *supra* note 8, at 1-2.

199. The Coalition recognizes that the '94 Crime Bill was neither the exclusive cause of the expansion of policing, nor of the carceral state. See Hoskins, James & Rao, *supra* note 5; cf. John Pfaff, *Bill Clinton Is Wrong About His Crime Bill. So Are the Protesters He Lectured*, N.Y. TIMES MAG. (Apr. 12, 2016), <https://www.nytimes.com/2016/04/12/magazine/bill-clinton-is-wrong-about-his-crime-bill-so-are-the-protesters-he-lectured.html> [https://perma.cc/S5GA-TGNN] (arguing that the impact of the 1994 Crime Bill is not as immense as Black Lives Matter activists claim).

200. Hoskins, James & Rao, *supra* note 5.

201. See Kate Hamaji, Kumar Rao, Marbre Stahly-Butts, Janaé Bonsu, Charlene Carruthers, Roselyn Berry & Denzel McCampbell, *Freedom to Thrive: Reimagining Safety & Security in*

the details of these new national policies be generated not by looking to experts already in power, but rather by “join[ing] forces with the people most harmed by policing, criminalization and incarceration.”²⁰²

The Coalition demands that this grassroots reimaging of public safety be an ongoing process. The Coalition calls for Congress to engage in a long-term “People’s Process”: an iterative sequence of town halls, assemblies,²⁰³ and in-district Congressional hearings that together connect the idea of public safety to the need for federal investment in programs that prevent violence and interpersonal harm. The legislation itself would then be drafted with input from organizations working at the local level. The “People’s Process” relies on the idea that wisdom can be generated when we allow communities and individuals to use their experiences with the carceral state and policing as a way of generating insight into pathways for reform. It is the same race- and class-subjugated American communities that have been destabilized by policing and mass incarceration that have also been ravaged by the lack of funding for forms of support—such as housing, education, and health—that are directly linked to the prevention of violence. It is within these communities, often composed of poor people of color, that movements have met the urgency of their situations by collectively redefining the very ideas of “safety”²⁰⁴ and “freedom.”²⁰⁵

In November 2019, in advance of the Coalition’s release of its platform, Representative Ayanna Pressley introduced a resolution in Congress, titled the “People’s Justice Guarantee.”²⁰⁶ It is modelled after the Coalition’s ideas and in-

Our Communities, CTR. FOR POPULAR DEMOCRACY, L. FOR BLACK LIVES & BLACK YOUTH PROJECT 100 (July 4, 2017), <https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf> [<https://perma.cc/EDH9-FFAW>] (documenting how grassroots organizations across the United States have advocated for invest/divest strategies locally).

202. See Hoskins, James & Rao, *supra* note 5.

203. See Makani Themba-Nixon, *The City as Liberated Zone: The Promise of Jackson’s People’s Assemblies*, in JACKSON RISING: THE STRUGGLE FOR ECONOMIC DEMOCRACY AND BLACK SELF-DETERMINATION IN JACKSON, MISSISSIPPI (Kali Akuno & Ajamu Nangwaya eds., 2017), <https://jacksonrising.pressbooks.com/chapter/the-city-as-liberated-zone-the-promise-of-jacksons-peoples-assemblies> [<https://perma.cc/RGN4-QRKH>] (describing people’s assemblies as “part of a long democratic tradition in progressive movements worldwide”).

204. See, e.g., Jocelyn Simonson, *Bail Nullification*, 115 MICH. L. REV. 585, 615, 628 (2017) (describing how community bail funds contest larger ideas about the meaning of public safety); *Night Out for Safety and Liberation*, ELLA BAKER CTR. FOR HUM. RTS., <https://ellabakercenter.org/night-out-for-safety-and-liberation> [<https://perma.cc/9GHX-ZZVU>].

205. See, e.g., *Freedom Papers*, DREAM DEFENDERS, <https://dreamdefenders.org/freedom-papers> [<https://perma.cc/WY2T-CHYS>].

206. H.R. Res. 702, 116th Cong. (2019); see Press Release, Ayanna Pressley, U.S. Congresswoman, Rep. Pressley Launches a Bold, Progressive Criminal Legal Reform Resolution: The

fluenced by conversations with activists from the Coalition. Congresswoman Pressley describes the resolution as “tak[ing the] lead” from on-the-ground conversations by directly impacted people.²⁰⁷ She has repeatedly said: “There are co-sponsors. It’s the people.”²⁰⁸ The People’s Justice Guarantee sweeps across policy areas, while centering its purpose on repairing the harms of mass incarceration and mass criminalization. Recognizing a “moral obligation to meet [the] foundational promise of guaranteed justice for all,” the People’s Justice Guarantee fits within the invest/divest framework, calling for Congress to meet a crisis of mass incarceration by shifting federal resources “away from criminalization and incarceration and toward policies and investments that fairly and equitably ensure that all people can thrive.”²⁰⁹ It demands legal changes in the criminal system that reduce the reach of policing, criminalization, and incarceration, along with federal investments in jobs, housing, health care, transportation, infrastructure, and clean water that would allow people who live in impacted communities to support each other and craft their own remedies for disorder and violence.²¹⁰

The People’s Justice Guarantee also adopts the idea of the “People’s Process” from the People’s Coalition for Safety and Freedom. Indeed, Congresswoman Pressley has stressed in interviews that the resolution itself arose from the preceding, year-long process of the People’s Coalition in which grassroots groups met with directly impacted people to imagine what federal legislation that guarantees safety and freedom could look like.²¹¹ The resolution sponsored by Pressley states that Congress would “support and commit to a participatory people’s process that recognizes directly impacted people as experts on transforming the justice system, who speak from experience about the devastation of criminalization and incarceration and offer community-oriented solutions.”²¹² This “People’s Process” would include “people’s assemblies, town-halls, listening sessions, and workshops” in which “directly impacted commu-

People’s Justice Guarantee (Nov. 14, 2019), <https://pressley.house.gov/media/press-releases/rep-pressley-launches-bold-progressive-criminal-legal-reform-resolution-people> [<https://perma.cc/GU3X-HG9R>].

207. Kira Lerner, *Ayanna Pressley Hopes the U.S. Can Reduce Its Prison Population by over 80 Percent*, APPEAL (Nov. 19, 2019), <https://theappeal.org/ayanna-pressley-hopes-the-u-s-can-reduce-its-prison-population-by-over-80-percent> [<https://perma.cc/G2B8-9ERK>].

208. *Id.*

209. *See* H.R. Res. 702.

210. *Id.*

211. *See* Lerner, *supra* note 207.

212. *See* H.R. Res. 702.

nities” would help draft legislation to create a holistic federal agenda to promote public health and safety.²¹³

Both the Coalition’s platform and the People’s Justice Guarantee lack specificity in their initial proposals for a “People’s Process.” Where, how, and when these local forms of engagement such as townhalls and workshops could happen are left unstated. One possibility, suggested by the organizers, is that it could resemble participatory budgeting, but on a national level. Despite this imprecision, the Coalition’s demand for a federal “People’s Process” is centered on a key idea: that directly impacted people are themselves the policy experts on “public safety” to whom we should be listening for specific, grounded proposals for change. The Coalition has tried to demonstrate the beginnings of that process through the generation of their legislative proposal itself and introduction of the People’s Justice Guarantee in Congress. The result has been the most far-reaching and transformative proposal in recent memory for federal legislation that seeks to provide security and safety through means other than policing, criminalization, and incarceration.²¹⁴ Power shifting that would result from the “People’s Process” is not as direct as in a local-governance arrangement like community control of the police, but its scope is bigger: it asks directly impacted people to articulate visions of public safety that go beyond policing and toward a transformative idea of how the state can keep people secure.²¹⁵ In doing so, it demands that we all reexamine the idea of “public safety” itself.²¹⁶

Both the “People’s Process” to craft national legislation and the local push for community control over policing demand large-scale restructuring of institutional processes for generating policing policy. They share a focus on power, although that vision of power looks very different: in community control, it is about direct power *over* local policies, whereas in the national context, the input they demand is more diffuse but covers more ground. Both forms of power

213. *Id.*

214. *Cf.* Nik DeCosta-Klipa, *Ayanna Pressley Releases a Sweeping Vision for Criminal Justice Reform*, BOSTON.COM (Nov. 14, 2019), <https://www.boston.com/news/politics/2019/11/14/ayanna-pressley-criminal-justice-reform> [<https://perma.cc/42JE-HULV>] (“Rep. Ayanna Pressley is unveiling what she characterizes as the most progressive and comprehensive plan for overhauling the legal system.”).

215. *Cf.* Rahman & Simonson, *supra* note 10, at 719-32 (arguing that the scope of power and the nature of authority are two different dimensions along which to think about power shifting in governance arrangements).

216. *Cf.* Friedman, *supra* note 47, at 7 (“Wherever one ultimately comes out on what public safety entails, what seems unacceptable is to not to ask the question, to fail to be clear in our own mind about why some governmental functions are privileged over others that seem just as vital.”).

shifting are also ripe for criticism along multiple axes: Will they be feasible? Will they lead to change or will they just result in gridlock? Will they be co-opted by more powerful interests? Will police resistance make any changes unworkable?

How one goes about responding to these questions and criticisms, however, depends on a background understanding of the purpose of police reform. Embedded in the larger social movement demand for power shifting is an underlying demand that the purpose of police reform itself include the goal of shifting power to people and populations who have historically been subject to police violence. In the next Part, I explore and defend this idea.

III. A THEORETICAL DEFENSE OF THE POWER LENS

The power lens encourages reform efforts that shift power to populations who have historically been subject, and are currently subject, to the violence and control of everyday policing. Below I present three possible ways to think about the power lens with respect to police reform: as reparation, as antisubordination, and as necessary for contestatory democracy. Although I discuss these three justifications separately, they are certainly related—in particular, reparations theory and antisubordination theory have at times shared ideas and proponents.²¹⁷ Nonetheless, I describe them separately because they arise from distinct ways of thinking about why it is important to pay attention to power in policing alongside other objectives of reform.

A. *Reparation*

The reparative argument for power shifting comes down to a simple idea: we must take historical wrongs into account when thinking about reform in the present. In the context of governance and policymaking, the implication is something more specific, centering on the need to transfer ownership over politics and the workings of the law down to the people who are directly oppressed by the law. Within police reform, this means recognizing that the denial of citizenship by everyday policing requires repair through deliberate efforts to shift political power downward.²¹⁸ The argument here is not that a new form of governance that shifts power downward would itself constitute a com-

217. See Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1398-99 (1991) (describing reparations as a subset of antisubordination theory).

218. On the antidemocratic nature of policing, see *supra* notes 102-109 and accompanying text.

plete plan for reparations; it would certainly not be a form of payback, economic or otherwise. Rather, the theories and narratives around reparations for collective state harms support a stance on police reform that encourages power shifting as a way to account for, and seek to remedy, past harms in political power and democratic citizenship that have resulted from decades of policing policies. Reform of governance arrangements can be a form of social and political repair. As the debate over reparations for slavery reemerges in mainstream discourse,²¹⁹ so too might a way of thinking about policing going forward that focuses on repairing the harms of policing on communities of color and other disadvantaged groups.

Reparations theory is far-ranging and heterogeneous. One broad concept of reparations from Alfred Brophy is that reparation is appropriate in “cases where there is [a need for] repair for past crimes against groups,”²²⁰ such that reparations “are justified because past harm is causing current inequality.”²²¹ Uniting this and other theories of reparations, in the context of state obligations, is the idea that the legitimacy of the state is bolstered when it recognizes that past harms are causing current group harms and seeks to remedy those harms explicitly.²²² Charles Ogletree has identified four central ideas in the debate over reparations: First, “a focus on the past to account for the present”; second, “a focus on the present, to reveal the continuing existence of race-based discrimination”; third, “an accounting of past harms or injuries that have not been compensated”; and fourth, “a challenge to society to devise ways to respond *as a whole* to [those] uncompensated harms.”²²³ This challenge means looking beyond individual acts that have caused harm to identify, name, and remedy larger sets of state practices that have caused group harms.²²⁴ And, as Ogletree im-

219. See Edwin Rios, *150 Years Later, Slavery Reparations Are on the Agenda Again*, MOTHER JONES (Aug. 2, 2019), <https://www.motherjones.com/politics/2019/08/150-years-later-slavery-reparations-are-on-the-agenda-again> [<https://perma.cc/RD6P-9WZR>].

220. Brophy, *supra* note 23, at 835.

221. *Id.* at 823.

222. See Lawrie Balfour, *Reparations After Identity Politics*, 33 POL. THEORY 786, 787 (2005) (describing “the tenor of an age in which victims of identity-based injustices around the world were demanding and receiving both symbolic and material redress, in which states’ claims to democratic legitimacy in the present were increasingly connected to a willingness to confront the crimes of the past”). *But see* Eric A. Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689, 693 (2003) (critiquing reparations theorists for failing to ground their legal theories in cognizable legal claims).

223. Charles J. Ogletree, Jr., *The Current Reparations Debate*, 36 U.C. DAVIS L. REV. 1051, 1055 (2003).

224. See Eric J. Miller, *On Juneteenth, Demanding that Reparations Be More than Lip Service*, HILL (June 19, 2019, 5:30 PM EDT), <https://thehill.com/opinion/campaign/449392-on->

plies, it requires that we accept the challenge of imagining and creating new state responses to inequality.

Legal scholars often focus on achieving reparation through litigation,²²⁵ but many recognize that legislation and policymaking can be forms of reparation.²²⁶ For example, the Voting Rights Act operates as a reparative piece of legislation, aimed at righting the past and ongoing harms of Jim Crow by protecting and promoting the ability of Black people to vote.²²⁷ So too is the legislation in President Johnson's Great Society, aimed at using antipoverty programs to improve the lives of poor people, and especially Black Americans in urban areas.²²⁸ And in a recent piece of public reparative lawmaking, when the City of Chicago admitted wrongdoing for its role in facilitating decades of torture of police suspects by Detective Jon Burge and his deputies, the City not only compensated the victims but also passed legislation to require that public schools teach about the history of police torture.²²⁹ In the words of the Nation-

juneteenth-demanding-that-reparations-be-more-than-lip-service [https://perma.cc/QH7A-E7AY] ("A full accounting of the institutional wrongs requires that state institutions develop specific, social and institutional remedies to rebuild and restore the African American people and communities singled out for these race-targeted dignity harms.").

225. See, e.g., BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* 68 (1973) (arguing that a statute's potential reparative impact "would have to be clarified by protracted litigation"). But see *id.* at 128-37 (describing how under a legal theory of reparations in which the state is liable, settlement money can be used for public projects).
226. See, e.g., ALFRED L. BROPHY, *REPARATIONS PRO & CON* 173-74 (2006) (describing "community-building legislation as reparations" (capitalization altered)); Jeffery M. Brown, *Deconstructing Babel: Toward a Theory of Structural Reparations*, 56 RUTGERS L. REV. 463, 473 (2004) ("Black Reconstruction remains the paradigm exemplar of so-called structural reparations."); Lee A. Harris, *Political Autonomy as a Form of Reparations to African-Americans*, 29 S.U. L. REV. 25, 56 (2001) (arguing that reparations to African Americans can and should include political autonomy).
227. See BROPHY, *supra* note 226, at 172-73 (describing civil-rights legislation over American history as a form of reparations, including the Voting Rights Act of 1965).
228. See Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279, 317 (2003) ("[President Johnson] explicitly recognized that reparations required whites and blacks to face America's history of oppression and take positive action in order to overcome that history.").
229. See G. Flint Taylor, *The Long Path to Reparations for the Survivors of Chicago Police Torture*, 11 NW. J.L. & SOC. POL'Y 330, 338-52 (2016); *Reparations Won: A Case Study in Police Torture, Racism, and the Movement for Justice in Chicago*, CHI. PUB. SCH. 1 (2017), https://blog.cps.edu/wp-content/uploads/2017/08/ReparationsWon_HighSchool.pdf [https://perma.cc/UD6P-SKXX].

al Coalition of Blacks for Reparations in America (N'COBRA), “reparations means full repair” – repair that can include legislative or other policy actions.²³⁰

In recent decades, scholarly and public attention to the idea of Black reparations has resurfaced.²³¹ Most recently, the idea of financial reparations for African Americans for the harms of slavery and its aftermath have reemerged in mainstream American political discourse. Congressional Representative John Conyers introduced H.R. 40, a bill to fund a federal study of reparations, for 30 consecutive years in Congress.²³² It was not until 2019 that Congress for the first time held public hearings on the legislation,²³³ and in the 2020 Democratic primary it was an issue at debates and on the campaign trail.²³⁴ This political shift comes after decades of organizing from longstanding groups like N'COBRA,²³⁵ writing and theorizing about the concept of reparations for African Americans in America after slavery,²³⁶ as well as the influential 2014 essay, “The Case for Reparations” by Ta-Nehisi Coates.²³⁷ The debate that has

230. *Reparations Means Full Repair*, NAT'L COALITION BLACKS FOR REPARATIONS AM. (Mar. 2019) (capitalization altered), <https://www.ncobraonline.org/wp-content/uploads/2019/03/Reparations-Means-Full-Repair-2.pdf> [<https://perma.cc/55MC-HKGL>].

231. See Ogletree, *supra* note 223, at 287 (noting the general lack of popular and academic discussion of reparations from the late 1970s to the 1990s).

232. *Id.* at 290 (describing the genesis and early history of H.R. 40).

233. See Sheryl Gay Stolberg, *At Historic Hearing, House Panel Explores Reparations*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19/us/politics/slavery-reparations-hearing.html> [<https://perma.cc/NAE9-XSNR>].

234. See Rios, *supra* note 219 (“The idea of reparations [is] on the national agenda in a way it has not been since Reconstruction.”).

235. See Terrance Laney, *Pay for Generational Oppression: Reparations Revisited*, in BLACK YOUTH PROJECT 100, at 13, 13-15 (2016), http://agendatobuildblackfutures.org/wp-content/uploads/2016/01/BYP_AgendaBlackFutures_booklet_web.pdf [<https://perma.cc/8SZS-YHB5>] (describing this history); see also Adam Simpson & Carla Skandier, *For Reparations: A Conversation with William A. Darity, Jr.*, NEXT SYS. PROJECT (Mar. 10, 2017), <https://thenextsystem.org/for-reparations> [<https://perma.cc/6ZSL-X4E9>] (discussing the history of reparations).

236. See, e.g., BITTKER, *supra* note 225, at 8-29. On this intellectual history, see BROPHY, *supra* note 226, at 62-74; Brown, *supra* note 226, at 478-81, which argues that Black Reconstruction involved the original theorizing of reparations through structural transformation; Kaimipono David Wenger, *From Radical to Practical (and Back Again?): Reparations, Rhetoric, and Revolution*, 25 J. CIV. RTS. & ECON. DEV. 697, 698-704 (2011); and Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 16-24 (2007).

237. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631> [<https://perma.cc/BX87-FC4A>]; see also Ta-Nehisi Coates *Revisits the Case for Reparations*, NEW YORKER (June 10, 2019), <https://www.newyorker.com/news/the-new-yorker-interview/ta-nehisi-coates->

emerged from recent congressional hearings and public conversations involves not just reparations for slavery, but also reparations for broader patterns of laws and policies that have systemically denied Black Americans equal footing economically, socially, and politically.²³⁸

Reparative state policy can, and has, included pushing for shifts in political power. The Voting Rights Act is perhaps the most direct example of this: promoting the voting rights of one group (African Americans) because of historical and ongoing state participation in the suppression of those voting rights.²³⁹ Mari Matsuda, in her canonical article about reparations, describes an expansive view of reparations for Native Hawaiians for the United States takeover of Hawaiian land, including implementing a legal presumption of Hawaiian rule over certain lands.²⁴⁰ In a similar vein, Katherine Franke's recent work on reparations has shown the promise of Black self-governance during the early years of Reconstruction and connected the goal of reparations today to that promise of self-governance.²⁴¹ In both of these cases, the group harm at issue included the denial of citizenship in geographically or racially distinct areas.

One important idea in reparative theory is that the forms of reparations should be determined by groups who have been harmed. For instance, Matsuda has included within her critical theory of reparations the requirement that victims have full power to decide the form and substance of those reparations.²⁴² N'COBRA's most recent statement about reparations, in response to the 2019 congressional hearings, states clearly: "The forms and to what extent [reparations take place] will be determined by us."²⁴³ The Movement for Black Lives echoes this idea in its *Reparations Now Toolkit*, stating that the "form and manner" of reparations for slavery and other injustices—including racialized

revisits-the-case-for-reparations [<https://perma.cc/ZQ6P-V8B6>] ("It's not often that an article comes along that changes the world, but that's exactly what happened with Ta-Nehisi Coates, five years ago, when he wrote 'The Case for Reparations' in *The Atlantic*.").

238. See Stolberg, *supra* note 233 (describing a range of possible means of reparations).

239. See BROPHY, *supra* note 226, at 172-73.

240. Matsuda, *supra* note 23, at 371-72.

241. See KATHERINE FRANKE, REPAIR: REDEEMING THE PROMISE OF ABOLITION 81-101 (2019).

242. See Matsuda, *supra* note 23, at 397 ("To avoid . . . corruption, victims must define the remedies, and the obligation of reparations must continue until all vestiges of past injustice are dead and buried.").

243. *Reparations Means Full Repair*, NAT'L COALITION BLACKS FOR REPARATIONS (Mar. 16, 2019), <https://www.ncobraonline.org/reparations-means-full-repair-for-400-years-of-terror-and-other-egregious-crimes> [<https://perma.cc/M6ZL-T8DA>].

policing—should be determined by Black people.²⁴⁴ As a result, groups affiliated with M4BL have begun participating in townhall meetings throughout the country to discuss their own reparations proposals.²⁴⁵

The recent ordinance in Chicago is itself an example of harmed groups playing a part in designing the forms of relief: after years of collective protests, litigation, and political discussions, a grassroots coalition put together the package of reparations for decades of police torture.²⁴⁶ Movement actors deliberately framed their proposed legislation to compensate victims of police torture as “reparations,” connecting racialized police violence in the twentieth century to the histories of slavery, Jim Crow, residential segregation, and policing targeted at Black neighborhoods.²⁴⁷ This led, in the end, to a settlement and city ordinance in which the City of Chicago agreed to pay reparations to the victims of police torture through free tuition and counseling. As part of that deal, the City also agreed to issue an apology, erect a memorial, and include study of police violence in Chicago as part of the public-school curriculum for eighth and tenth graders.²⁴⁸ This ordinance was a form of reparations because it meant more than individual reckoning—more than the criminal conviction of the offending police detective, Burge, himself.²⁴⁹ Instead, it required a broader public reckoning of the City’s role in perpetuating police violence.²⁵⁰

244. *Reparations Now Toolkit*, MOVEMENT FOR BLACK LIVES 17 (2019), <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf> [<https://perma.cc/K8S4-8SYM>].

245. See, e.g., *Community Engagement—Evanston Reparations Dialogues 2020*, CITY EVANSTON, <https://www.cityofevanston.org/home/showdocument?id=55325> [<https://perma.cc/3LMD-5M3B>].

246. For an extended history of the activism and the reparations legislation in Chicago, see McLeod, *supra* note 36, at 1623-28, which describes the push for reparations for torture as a kind of “abolition democracy;” and Taylor, *supra* note 229, at 338-40. For the text of the ordinance, see *The Reparations Ordinance*, CHI. TORTURE JUST. MEMORIALS PROJECT, <https://chicagotorture.org/reparations/ordinance> [<https://perma.cc/2UBS-ZEH6>].

247. Sandhya Somashekhar, *Why Chicago Used the Word ‘Reparations,’* WASH. POST (May 8, 2015, 2:29 PM EDT), <https://wapo.st/1EijFwO> [<https://perma.cc/QJN2-7N76>].

248. See Hal Dardick, John Byrne & Steve Mills, *Mayor Backs \$5.5 Million Reparations Deal for Burge Police Torture Victims*, CHI. TRIB. (Apr. 14, 2015, 7:54 PM), <https://www.chicagotribune.com/news/ct-burge-reparations-emanuel-met-20150414-story.html> [<https://perma.cc/U4X2-URNG>].

249. Burge served four-and-a-half years in prison for obstruction of justice and perjury. See Taylor, *supra* note 229, at 340.

250. See McLeod, *supra* note 36, at 1628 (“Instead of the typical calls for punitive responses to harm, participants engaged in a broad and deep democratic process to contemplate how to make amends. They then sought redress and repair in a form that would begin to make the survivors whole, prevent future harm, and educate young people . . .”).

Similarly, power shifting in police reform can be a kind of reparation.²⁵¹ The identifiable group is what political scientists call “race-class subjugated communities.” The groups have experienced everyday policing and surveillance that deprive them of political participation and full democratic citizenship.²⁵² Political scientists have documented how “race-class subjugated communities,” the places where policing has increased in recent decades, are governed through the coercion, control, and violence of policing.²⁵³ As a result, such communities experience both a reduction in political power and pervasive alienation from the state.²⁵⁴

It is not that police departments have not tried to increase everyday participation from these race-class subjugated groups; but when they have, that participation has not led to actual shifts in governing power. Community policing is a prime example of this. Community policing often includes the goal of generating nonbinding popular input through regular community meetings. Police departments engaging in community policing may attempt to seek out community participation and cooperation, but they do so without giving residents authority over policies or discipline, without including members of the community who are cynical about friendly cooperation (thus excluding large swaths of people who interact regularly with the police) and without including residents in big-picture policymaking or budget distribution.²⁵⁵

251. Although not necessary for a claim of reparations, some scholars have argued that police violence is a direct result—and has the “incidents and badges”—of slavery. See *The Civil Rights Cases*, 109 U.S. 3, 20 (1883) (“[I]t is assumed that the power vested in Congress to enforce the [Thirteenth Amendment] by appropriate legislation, clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States.”); see also Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 68 UCLA L. REV. DISCOURSE 200, 200 (2020) (arguing that policing is “a badge and incident of slavery that Congress should abolish under the Thirteenth Amendment”); Cedric Merlin Powell, *The Structural Dimensions of Race: Lock Ups, Systemic Chokeholds, and Binary Disruptions*, 57 U. LOUISVILLE L. REV. 7, 34 (2018) (“The modern carceral state has all of the badges and incidents of slavery The chains are simply invisible now.”).

252. See LERMAN & WEAVER, *supra* note 24, at 199–231.

253. See, e.g., Fagan, West & Holland, *supra* note 102, at 1554 (describing how through “social, economic, legal, and political mechanisms . . . spatial concentration transforms a spike in incarceration from an acute external shock into an enduring internal feature of the neighborhood fabric”); Soss & Weaver, *supra* note 103, at 567 (describing “the term race-class subjugated (RCS) communities”).

254. See BURCH, *supra* note 102, at 75–104; LERMAN & WEAVER, *supra* note 24, at 199–231; STUNTZ, *supra* note 81, at 244–81; Roberts, *supra* note 102, at 1291–98; *infra* notes 280–282 and accompanying text.

255. See Simonson, *supra* note 88, at 398–407.

Indeed, activists pushing for community control bring in sophisticated critiques of community policing when they advocate for power shifts in governance. In 2015, for example, the Chicago social movement group We Charge Genocide conducted a study of community policing in its city by monitoring community meetings over a period of six months. After studying the results, the group issued a report concluding that “community policing’ is the superficial involvement of select community members in providing police with legitimacy.”²⁵⁶ These on-the-ground findings echo a recent study of community policing in Chicago during the same period by sociologist Tony Cheng, who demonstrates that community policing meetings rarely incorporate community views, even when they receive input from community members who genuinely want to cooperate with the police.²⁵⁷ According to Cheng, the participation of the public becomes “input but without influence,” and community meetings become “a mechanism legitimating the input process, but only further reinforcing the existing social order.”²⁵⁸ Community policing, then, often has the tendency to exclude local residents (both cynics and noncynics) from meaningful participation, while reinforcing existing power imbalances between the police and policed populations.²⁵⁹

Social movement actors often argue the following: if current policing practices, even those that encourage participation, have had the effect of denying people who live in race-class subjugated neighborhoods political power, then political repair must follow. Recall that the People’s Coalition’s proposal for a replacement to the ’94 Crime Bill begins with a call for “a piece of 21st century legislation that acknowledges and begins to repair the harmful, ineffective, and wasteful aspects of policing, criminalization, and incarceration.”²⁶⁰ Similarly, the National African American Reparations Commission has stated that reparations must include reckoning with “repairing the damages of the criminal injustice system.”²⁶¹ In political terms, this might mean directly re-enfranchising people with criminal records and eliminating prison gerrymandering, which

256. *Counter-CAPS Report*, *supra* note 151, at 3.

257. Such community members are often referred to as “non-legal cynics.” Cheng, *supra* note 112, at 175.

258. *Id.* at 176, 184.

259. See generally SKLANSKY, *supra* note 45, at 66-105 (describing these dangers); Simonson, *supra* note 88 (same).

260. *Reckoning with Mass Criminalization*, *supra* note 8, at 1.

261. NAARC Rolls Out Preliminary 10 Point Reparations Plan, IBW21 (Apr. 16, 2015) <https://ibw21.org/initiative-posts/naarc-posts/naarc-rolls-out-preliminary-10-point-reparations-plan> [<https://perma.cc/2HED-PS2F>].

are group-based political harms.²⁶² But it also might mean designing institutions that give, or at least share, governing power with the people who are targeted by the criminal system's institutions—the people who become arrestees, who are designated victims, who live in buildings and housing developments with a high police presence.²⁶³

B. Antisubordination

Shifting power in police reform is also consistent with an antisubordination view of lawmaking and legal change. The legal theory of antisubordination was generated amidst debates over the interpretation of the Equal Protection Clause in the 1970s and 1980s.²⁶⁴ In the words of Owen Fiss, the underlying normative thrust of antisubordination theory is that laws should not “perpetuate[] . . . the subordinate stature of a specially disadvantaged group.”²⁶⁵ Antisubordination theory therefore rests on the conviction that “it is wrong for the state to engage in practices that enforce the inferior social status of historically oppressed groups.”²⁶⁶ In the context of constitutional jurisprudence, this means interpreting the Constitution to express an idea of equality that centers the need to dismantle unequal status relations and especially to reduce and elimi-

262. *Reparations Now Toolkit*, *supra* note 244, at 13 (“The legal end of slavery was followed by 100 years of racial terror, disenfranchisement, abuse, and exclusion . . .”); Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate over Felon Disenfranchisement*, 56 STAN. L. REV. 1147, 1161 (2004) (“Criminal disenfranchisement laws . . . operate as a kind of collective sanction: They penalize not only actual wrongdoers, but also the communities from which incarcerated prisoners come and the communities to which ex-offenders return . . .”).

263. See Simonson, *supra* note 91, at 255 (arguing that these populations are currently shut out of public participation in criminal legal institutions and in their governing ideology).

264. See generally Jack M. Balkin & Reva B. Siegel, *The American Civil Rights Tradition: Anticlassification or Antisubordination?*, 58 U. MIAMI L. REV. 9 (2003) (surveying the development and application of the two principles).

265. See Fiss, *supra* note 25, at 108, 157. The antisubordination tradition was first described by Owen Fiss but has been elaborated on and extended by many scholars including, but not limited to, Reva Siegel, Jack Balkin, Catharine MacKinnon, Laurence Tribe, and Derrick Bell. See Balkin & Siegel, *supra* note 264, at 9.

266. Siegel, *supra* note 25, at 1472-73; see also CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 117 (1979) (proposing that courts determining whether a practice discriminates on the basis of sex inquire “whether the policy or practice in question integrally contributes to the maintenance of an underclass or a deprived position because of gender status”); Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 N.Y.U. L. REV. 1003, 1007 (1986) (“Under the anti-subordination perspective, it is inappropriate for certain groups in society to have subordinated status because of their lack of power in society as a whole.”).

nate racial subordination—whether that subordination is deliberate or not.²⁶⁷ Although antisubordination was born in the context of constitutional interpretation, the legal theory is not limited to constitutional interpretation: it implicates a broader state obligation to shift affirmatively the subordinate status of certain groups. When applied to policing, antisubordination theory unearths the need to structure policing in a way that takes account of, and minimizes, the group harms that result from everyday policing practices.²⁶⁸ If policing itself drives and creates disparities of political economy and social life by relegating people who interact with police officers to less than full citizenship,²⁶⁹ then shifting power to those subject to this subordination promotes equality and democracy.

Antisubordination theory implicates a state obligation to promote equality in a way that recognizes and pushes back against structural forms of subordination. Mari Matsuda has described antisubordination theory as inherently counter to dominant ideologies that sustain subordination.²⁷⁰ It simultaneously makes legal and ideological claims. It is active, demanding that “law work

267. See Balkin & Siegel, *supra* note 264, at 9 (“Antisubordination theorists contend that guarantees of equal citizenship cannot be realized under conditions of pervasive social stratification and argue that law should reform institutions and practices that enforce the secondary social status of historically oppressed groups.”); Genevieve Lakier, *Imagining an Antisubordinating First Amendment*, 118 COLUM. L. REV. 2117, 2139-40 (2018) (describing an antisubordinating jurisprudence in the context of the First Amendment as “one that reduces, rather than reinforces, the inequalities in expressive opportunity that are a consequence of the highly, and increasingly, unequal distribution of economic and political power in the United States”); R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. REV. 803, 925 (2004) (describing the purpose of antidiscrimination law as including the elimination of “racially stigmatic harm—its subordinating effects, as well as the negative expressive message it carries”); Siegel, *supra* note 25, at 1500-47 (fleshing out a theory of anti-subordination in detail).

268. See Bell, *supra* note 18, at 687-705 (describing the subordinating effects of policing practices that create and perpetuate racial segregation).

269. See, e.g., Bell, *supra* note 32, at 199-203 (collecting sources and describing the subordination of Black communities as a result of law-enforcement and criminal legal institutions, as well as the related subordination of Latinx, Indigenous, Muslim, and Asian and Pacific Islander communities); Butler, *supra* note 17, at 1425 (“The most far-reaching racial subordination stems not from illegal police misconduct, but rather from legal police conduct.”); Capers, *supra* note 76, at 700-01; Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 797 (2000) (“[P]olice brutality is not random. It follows the vectors of power established in the larger society in which white dominates nonwhite and rich dominates poor.”); Justice & Meares, *supra* note 105, at 161-66, 172-73 (describing how the criminal-justice system educates individuals in “anticitizenry”); Roberts, *supra* note 102, at 1291-97.

270. Matsuda, *supra* note 217, at 1398-1401.

against subordination and not for it.”²⁷¹ For example, in Equal Protection jurisprudence, antisubordination theory requires attention not just to whether groups are being treated similarly, but also to whether the groups being treated less fairly are also groups with less power;²⁷² and in First Amendment jurisprudence, antisubordination theory might lead a court to consider social and economic inequalities that structure and limit the ability of people to speak and to be heard.²⁷³

The state’s obligation to promote antisubordination extends beyond constitutional interpretation to policymaking and governance more broadly.²⁷⁴ In the realm of governance, for example, Christopher Tyson has recently argued that “[a]ntisubordination theory can . . . be instrumental in redirecting considerations of racial disparities away from individualized, intentional harm and toward historically traceable and measurable group-based harms.”²⁷⁵ Under this strain of antisubordination theory, we might think not just formally about the mechanisms of democratic participation for individuals—for example, by making sure that every person is permitted to participate in elections equally—but also structurally about the ways in which participation is muted for marginalized groups. To remedy that set of structural harms, creating and expanding different forms of political participation may be necessary.

The antisubordination tradition is linked and indebted to the visions of justice that emerged within the civil-rights movement in the mid-twentieth century. In explaining the origins of antisubordination in the work of Owen Fiss, Jack Balkin and Reva Siegel put it this way:

Equality, Fiss reminded us, is not just the Aristotelian insistence that like cases be treated alike. It is about the struggle against subordination in societies with entrenched social hierarchies. It is about the lived ex-

271. *Id.* at 1406.

272. Siegel, *supra* note 25, at 1472–78.

273. See Lakier, *supra* note 267, at 2127 (describing antisubordination in mid-twentieth-century First Amendment jurisprudence as “free speech jurisprudence that was sensitive to economic and political inequality—that assessed the constitutionality of state action by examining the context in which it operated, and its effects, as well as its motivations and its form”).

274. See Sergio J. Campos, *Subordination and the Fortuity of Our Circumstances*, 41 U. MICH. J.L. REFORM 585, 589 (2008) (“[U]nder the antisubordination principle, the obligation of the state is . . . predicated . . . on a commitment by society to eradicate all structures of subordination . . .”); see also Balkin & Siegel, *supra* note 264, at 9 (“Antisubordination theorists contend that . . . law should reform institutions and practices that enforce the secondary social status of historically oppressed groups.”).

275. Christopher J. Tyson, *From Ferguson to Flint: In Search of an Antisubordination Principle for Local Government Law*, 34 HARV. J. RACIAL & ETHNIC JUST. 1, 29 (2018).

periences of people on the bottom who strive for dignity and self-respect. And it is about the structures and strategies, institutions and practices that continually deny them this prize all the while professing to bestow it.²⁷⁶

And when Mari Matsuda famously pleaded for critical legal scholars to “look to the bottom” when thinking about state remedies for injustice, she argued that “adopting the perspective of those who have seen and felt the falsity of the liberal promise . . . can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice.”²⁷⁷ The implication is that members of subordinated groups are themselves the ones we should listen to when trying to understand ideas like “equality” and “democracy.”

American policing is, and has always been, a subordinating force to certain populations, especially poor people of color, and particularly Black, Latinx, and Indigenous people. This has not been because of illegal or unconstitutional conduct – harms fashioned as legal claims – although such conduct has certainly occurred. Rather, our constitutional rules and policing structures often set up a system that facilitates policing practices that target certain neighborhoods and populations, creating collective racialized harms in the process of everyday policing.²⁷⁸ Moreover, policing itself drives and creates disparities of social life and political economy by relegating people who interact with police officers to

276. Balkin & Siegel, *supra* note 264, at 31.

277. Matsuda, *supra* note 23, at 324, 344; cf. Gowri Ramachandran, *Antisubordination, Rights, and Radicalism*, 40 CONN. L. REV. 1045, 1059-60 (2008) (“We should not forget that social cognitivists, law professors, and public administrators do not exist outside the culture that has produced unconscious prejudice, and that indeed, they have quite successfully adjusted themselves to that culture.”).

278. See, e.g., Butler, *supra* note 17, at 1425 (“The most far-reaching racial subordination stems not from illegal police misconduct, but rather from legal police conduct.”); Capers, *supra* note 76, at 700-01 (arguing that Supreme Court doctrine creates a landscape in which ordinary citizens must cede their constitutional rights in order to be perceived as “good citizen[s]”); Carbado, *supra* note 76, at 128 (“Americans tend to think of police killings of African Americans as aberrant and extraordinary, failing to see their connections to the routine, to the everyday, and to the ordinary.”); Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” from Emmett Till to Trayvon Martin*, 102 IOWA L. REV. 1113, 1120 (2017) (describing the continuity in American policing of “racism (and thus the protection of whiteness as a privilege and benefit)”); Aya Gruber, *Police and “Blue-Lining”* 14-21 (Nov. 2020) (unpublished manuscript) (on file with author) (describing how, through geographic targeting of poor and Black neighborhoods, American policing is “essential to maintaining White nonpoor citizens’ dominion”).

less than full citizenship.²⁷⁹ Monica Bell’s recent work illustrates these subordinating effects in detail: everyday interactions with police officers, as well as larger policies and practices of policing, lead to “collective symbolic and structural exclusion.”²⁸⁰ These combine together to produce both “legal estrangement,” or a profound alienation from the police,²⁸¹ as well as a larger collective harm where police practices create and reinforce residential segregation and unequal opportunity.²⁸² To be clear, seemingly rational reasons exist for such subordination—for example, the drive to use “hot spots” policing²⁸³ to reduce violence in urban neighborhoods is connected to social science demonstrating that the tactic may lead to a reduction in reports of violence.²⁸⁴ But such justifications do not negate the subordinating nature of practices like hot spots and broken-windows policing. When the police target and surveil a neighborhood, their practices strip the people who live there of some of their dignity and citizenship.²⁸⁵

If policing is subordinating in this way, then shifting power to those who are subject to this subordination promotes equality and democracy, especially when that power is over the very levers of policymaking that control those subordinating systems. Consequently, when the Movement for Black Lives demands “a world where those most impacted in our communities control the laws, institutions, and policies that are meant to serve us,”²⁸⁶ their call for more

279. See Justice & Meares, *supra* note 105, at 672-73 (discussing the socializing effects of the “curriculum of policing”); cf. Roberts, *supra* note 102, at 1291-97 (discussing the harms that mass incarceration inflicts on communities).

280. Bell, *supra* note 24, at 2100.

281. *Id.* at 2066-67.

282. Cf. Bell, *supra* note 18, at 687-728 (detailing the ways in which modern policing practices operate to further segregation).

283. See, e.g., Nat’l Inst. of Justice, *Practice Profile: Hot Spots Policing—Program Description*, U.S. DEP’T JUST. OFF. JUST. PROGRAMS, <https://www.crimesolutions.gov/PracticeDetails.aspx?ID=8> [<https://perma.cc/7SZU-8YPE>] (“Used by a majority of U.S. police departments, hot spots policing strategies focus on small geographic areas or places, usually in urban settings, where crime is concentrated.”).

284. See generally BRAGA & WEISBURD, *supra* note 29, at 99-149 (documenting the “substantial support for the crime prevention effectiveness of hot spots policing”).

285. See, e.g., HARCOURT, *supra* note 54, at 162-80 (discussing the ways in which broken-windows policing influences subject formation); LERMAN & WEAVER, *supra* note 24, at 199-230 (cataloguing how “punishment and surveillance themselves activate a process of political withdrawal, alienation, and fear of government”); cf. Harmon, *supra* note 46, at 892-939 (describing how federal policing programs do not take into account the harms of policing such as injury, suffering, and fear and so exacerbate these problems).

286. *Community Control*, *supra* note 145; see also *Political Power*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/political-power> [<https://perma.cc/HVC3-369X>] (“We

control over the criminal legal system is more than a naked power grab. It is a demand that connects a shift in power to the everyday subordination of Black people through the institution of policing itself. Similarly, when the People's Coalition states that it is "seek[ing] to change the way – and for whom – policy and budgeting operates,"²⁸⁷ its vision of transformative reform is one that doesn't just shift budgeting priorities from the top down, but rather shifts them from the bottom up in a way that simultaneously supports communities and builds their collective power.²⁸⁸ The point is not more funding full stop, but rather more power over the buckets of funding that the coalition has connected to long-term communal subordination.²⁸⁹ In these ways, movement visions of power shifting reflect a goal of antistatist theory: countering subordination through the structure of state policymaking itself.

C. Contestatory Democracy

The power lens in police reform is also supported by a theory of democracy that values contestation and resistance as necessary parts of a healthy state. This concept of contestatory democracy means that a healthy state will recognize that some forms of state power are subordinating and will set up institutions or legal structures to facilitate resistance to those forms of power.²⁹⁰ Power shifts, in the frame of contestatory democracy, are not just desirable, but also necessary, for a legitimate governance arrangement.²⁹¹ This view of democratic

envision a remaking of the current U.S. political system in order to create a real democracy where Black people and all marginalized people can effectively exercise full political power.”).

287. *Reckoning with Mass Criminalization*, *supra* note 8, at 5.

288. Cf. Stahly-Butts & Akbar, *supra* note 41, at 2-3 (noting that “[t]ransformative reforms seek to transform the social, economic, and political sphere,” and that “[b]ottom-up change can be transformative in part because it reflects attempts to build and redistribute power among those historically excluded from access to social, economic, and political power”).

289. Cf. Hoskins, James & Rao, *supra* note 5 (charting a path for reform that centers around “address[ing] the decades of harm” caused by the ’94 Crime Bill by calling on legislators to “join forces with the people most harmed by policing”).

290. Cf. CHANTAL MOUFFE, *THE DEMOCRATIC PARADOX* 33-34 (2000) (“Instead of trying to erase the traces of power and exclusion, democratic politics requires us to bring them to the fore, to make them visible so that they can enter the terrain of contestation.”).

291. See, e.g., Miller, *supra* note 75, at 332-43 (arguing for a contestatory, republican view of democracy with respect to policing); Patel, *supra* note 21, at 805, 807-16 (arguing for an agonistic approach to integrating community members into consent decrees); Simonson, *supra* note 91, at 288-90 (2019) (arguing for a view of democracy with respect to the criminal legal system that values contestation and resistance over consensus); cf. SKLANSKY, *supra* note 45,

policing differs from consensus-based or legitimacy-based views, in which seeking input and consensus is the clearest path to a healthy citizenry.²⁹² Indeed, police reform that centers the value of contestation requires opening up the methods of public participation to processes that move beyond the consensus-based nature of reforms like community policing and provide room to contest the dominant ideas in policing today.²⁹³ This, in turn, requires the creation of new institutions of governance or forms of policymaking that facilitate countervailing power, allowing people to challenge the state's current approaches to providing safety and security.²⁹⁴

Contestation is necessary for democracy. By contestation, I mean any form of political action that involves direct opposition to reigning laws, policies, or state practices. But I also mean to focus in on contestation from populations and communities that have historically had a reduced voice in generating reigning ideas about how to govern and provide security. This account of contestation comes close to what Chantal Mouffe terms “agonistic” politics in that it involves political opposition to hegemonic ideas that uphold dominant and oppressive political structures.²⁹⁵ Mouffe's account of agonism emphasizes that political action happens in an adversarial manner but within the bounds of cur-

at 104 (calling for a “spirit of democratic oppositionalism” so that democracy is understood to involve ongoing opposition to patterns of unjustifiable hierarchy).

292. See Simonson, *supra* note 88, at 429-38 (contrasting consensus- and contestation-based theories of democracy with respect to policing).
293. Cf. SKLANSKY, *supra* note 45, at 86-97 (describing the dangers of the preoccupation with consensus-based reform); Miller, *supra* note 75, at 298 (arguing that theories of policing must include the importance of contestation). In this way, it underscores David Sklansky's argument that how we think of democracy in turn affects how we think of policing, even when we do not articulate our theories of democracy out loud. See SKLANSKY, *supra* note 45, at 66-105.
294. See HERBERT, *supra* note 112, at 138-40 (arguing that police accountability must be pursued outside of existing forms of community policing); Eric J. Miller, *Challenging Police Discretion*, 58 HOW. L.J. 521, 538 (2015) (“[O]ne goal of constructing political institutions for a given polity, for republicans, is to develop political processes that permit the public to participate in official decision-making by challenging it.”); Roberts, *supra* note 106, at 1604-07 (arguing that American systems of law enforcement are by their nature antidemocratic, so that democratizing criminal law requires looking beyond increasing public participation in criminal justice in the conventional sense); cf. K. SABEEL RAHMAN, *DEMOCRACY AGAINST DOMINATION* 131-56 (2017) (describing the need to build institutions to facilitate countervailing power).
295. CHANTAL MOUFFE, *AGONISTICS: THINKING THE WORLD POLITICALLY* 1-19 (2013); see also Patel, *supra* note 21, at 807-18 (using the concept of agonism to argue for the robust participation of community groups in the iterative process of Department of Justice consent decrees); Simonson, *supra* note 88, at 435-38 (using the lens of agonism to argue for the importance of respecting the practice of organized copwatching by marginalized populations).

rent political structures. This respect for existing rules and structures is part of what makes the participation agonistic rather than antagonistic.²⁹⁶ This view of democracy requires, and embraces, collective resistance to dominant ideas and policies within existing institutions.

For agonistic contestation to thrive, however, institutional and policymaking processes must be structured to facilitate collective resistance.²⁹⁷ This view of institution building is rooted in the necessity of counteracting the inequities of modern-day democracy, in which some constituencies already possess a greater capacity for power and influence. The task of democratizing reform, then, is to better enable countervailing interests and community groups to assert their views, hold governments and other actors to account, and claim a share of governing power.²⁹⁸ In the parlance of neorepublican political theory, the goal is to counter domination²⁹⁹ – a goal that K. Sabeel Rahman has recently brought to legal theory and analysis as well.³⁰⁰ Contestation becomes essential to the goal of countering domination because it enables dominated groups to share governing power and hold government and elites accountable.³⁰¹

An ideal of contestatory democracy should not be confused with a populist vision of control of policy and governance. In particular, a populist view would

296. MOUFFE, *supra* note 290, at 99-105; *see also* Simonson, *supra* note 88, at 437 (describing how agonistic contestation happens “through civic engagement with the processes in place”). Agonism takes an adversarial stance towards practices and ideologies of institutions in power, but it does so through engagement with those institutions rather than withdrawal, by acknowledging intractable differences but respecting the adversary who disagrees. *See* MOUFFE, *supra* note 290, at 100-05.

297. *See* HOLLIE RUSSON GILMAN & K. SABEEL RAHMAN, *CIVIC POWER: REBUILDING AMERICAN DEMOCRACY IN AN ERA OF CRISIS 169-202* (2020) (arguing that democratic contestation can build durable power and redress power imbalances by establishing more effective civil-society organizations and more participatory governance institutions).

298. *See* K. Sabeel Rahman, *Policymaking as Power-Building*, 27 *S. CAL. INTERDISC. L.J.* 315, 339-40 (2018) (describing a theory of institutional design in which “[t]he goal . . . is not necessarily to prioritize institutional designs for their epistemic, deliberative, or technocratic values (though we may of course still hope to promote such values)” but rather to “focus on facilitating countervailing power and checks and balances”).

299. *See* PHILIP PETTIT, *REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT* 21-27 (2002).

300. *See, e.g.*, RAHMAN, *supra* note 294, at 116 (“The democratic response to domination can manifest through the expansion of democratic capacities for political action and contestation . . .”).

301. *See, e.g.*, MOUFFE, *supra* note 295, at 1-19 (arguing that contestation is necessary to overcome dominant, elite, and hegemonic ideas and social arrangements); PETTIT, *supra* note 299, at 63 (articulating a modern theory of republicanism where political legitimacy and freedom are premised on the ability of citizens to contest the actions of the state).

conceive of only one version of “the people”³⁰² and only one group to whom power should be shifted. Instead, this ideal is a pluralist conception of the demos in which there is no one “people” or “community” to whom the state should be beholden, but rather multiple publics with contrasting ideas about justice (and policing) that cannot be easily reconciled.³⁰³ Indeed, it is precisely because these ideas cannot easily be reconciled that contestation, rather than consensus, is desirable. Unlike traditional pluralist theory, however, the power lens does not encourage elites to represent pluralist, popular interests, but rather encourages more direct forms of participation and contestation.³⁰⁴ The idea of contestation as necessary for a legitimate democracy therefore requires governance arrangements that facilitate collective contestation and, when appropriate, subject reigning ideas to direct collective resistance.

Policing is as much a form of domination as any other realm of state action: it involves the exercise of dominion and violence in the name of the state.³⁰⁵ In the United States, the history of policing is one that can be traced back to slave patrols and later to the formation of professional police patrols tasked with surveilling and subordinating Black communities.³⁰⁶ The governance of policing is therefore a central place to interrogate power relationships and look for guarantees that peaceful resistance to state practices is possible. Such contestation can happen in many ways. As Eric Miller and Alice Ristroph have separately argued, encouraging contestation might mean, at a minimum, that people interacting with the police at an individual level should be able to resist the

302. See JAN-WERNER MÜLLER, *WHAT IS POPULISM?* 3-4 (2016) (describing a core belief of populism that only some of the people are truly “the people”).

303. See, e.g., ROBERT A. DAHL, *A PREFACE TO DEMOCRATIC THEORY* 134-45 (1956) (describing American democracy as a political struggle among different groups); SKLANSKY, *supra* note 45, at 23-28 (summarizing the ways in which the pluralists saw group conflict as the essence of politics).

304. Cf. Simonson, *supra* note 91, at 287-90 (describing this vision of contestatory democracy).

305. See Bell, *supra* note 18, at 684-87 (describing policing practices that contribute to segregation as a form of domination); Miller, *supra* note 294, at 540-45 (describing policing as a form of dominion in republican terms); Alice Ristroph, *The Constitution of Police Violence*, 64 *UCLA L. REV.* 1182, 1194-98 (2017) (describing the development of the “restraint of freedom” standard that allows police officers to dominate civilians physically).

306. See Roberts, *supra* note 36, at 20-29 (describing the origins of policing in slave patrols and how “[m]odern police forces are descendants of armed urban patrols . . . which [were] established . . . to constantly monitor and inspect both enslaved and free black residents . . . ‘to prevent the growth of an organized colored community’” (quoting ALEX S. VITALE, *THE END OF POLICING* 47-48 (2017))).

domination of the police by contesting the lawfulness of those encounters.³⁰⁷ Contestation can also happen collectively, including through bottom-up participation in everyday adjudication,³⁰⁸ large-scale litigation,³⁰⁹ and communal forms of organization and protest outside of formal state channels.³¹⁰ In addition to these forms of contestation, the state has an obligation to ensure that its broader democratic processes do not close off collective resistance to dominant ideas about policing and the provision of public safety.

This commitment to protecting contestation means that, for police reform, people must be able to engage in collective contestation over the scope and methods of policing, rather than simply provide input into (or merely observe) those methods.³¹¹ Ideally, this will give historically disempowered populations power over the very levers of decisionmaking that control the distribution of policing and police violence, even the decision whether or not to maintain the institutions of policing as we know them. The contestation over ideas of how

307. See, e.g., Eric J. Miller, *Police Encounters with Race and Gender*, 5 U.C. IRVINE L. REV. 735, 744-48 (2015) (applying the republican ideal of “contestatory citizenship” to the practices of policing, and arguing that “[f]rom a republican perspective, robust, on-the-street challenges to police authority and legitimacy are one way in which . . . the public can engage in the political process”); see also Miller, *supra* note 294, at 538 (“[R]epublicanism extends the right to contest the exercise of public authority to any member of the public and relocates the challenging public officials from formal institutional settings, such as the legislative chamber or the courtroom, into the street.”); Ristroph, *supra* note 75, at 1558-60, 1599 (arguing for an understanding of the value of constitutional criminal procedure based on resistance and stating that a central purpose of criminal procedure should be to “enable and embrace . . . resistance” from those subject to police conduct).

308. See, e.g., Simonson, *supra* note 91, at 266-70, 287-97 (describing communal forms of contestation in everyday criminal adjudication).

309. See, e.g., Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 945-48, 969-1011 (2011) (describing how losing litigation may be beneficial for social movements); Patel, *supra* note 21, at 878 (suggesting that agonistic community participation in consent decrees may help shift power when litigation outcomes fail to reform police-community relations).

310. See, e.g., Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57, 62-66 (2011) (describing forms of communal governance outside of the state); Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2762-77 (2014) (describing how Fannie Lou Hamer and other activists with the Mississippi Freedom Democratic Party engaged in collective contestation over the meaning of political representation); Simonson, *supra* note 88, at 397, 435-38 (focusing on collective contestation from organized copwatching groups).

311. Cf. Levinson, *supra* note 94, at 83-92 (arguing for the importance of tracing power shifting through institutions).

(and if) policing should happen will take place via the exercise of collective governing power.³¹²

Police reform that invites agonistic participation and contestation welcomes the participation of people who oppose the dominant ideas and policies of their local police departments; indeed, their participation is celebrated. And because their participation is celebrated, a governance arrangement inviting contestation must also be open to ceding ideological ground to visions of change coming from people subject to domination. Recall the tweet from Black Lives Matter Chicago with which this Article opened, in which the group advocated for community control with these words: “Defund, Disarm, Disrupt CPD and business as usual. #FightBack #CPACNow.”³¹³ This short message exhibits a belief in the possibility of collective contestation through police reform: it combines a call for less policing or the abolition of policing (“defund” and “disrupt”) with an explicit focus on contestation (“disrupt” and “#FightBack”)—contestation that happens through the governance of the police itself (“#CPACNow”). People coming from communities who experience the violence of policing seek to play a new and powerful role: not just in small decisions like on which blocks or streets to focus police patrols, but rather in first-order questions about how the state should go about securing the safety of its people. To contest reigning ideas through legitimate political means, these groups are proposing new governance arrangements that shift power in a manner that makes such collective contestation possible.

In this Part, I have argued that there are a variety of ways to theorize and defend the idea that power shifting should be one of a series of goals for people who are interested in changing how policing operates in the United States. Taken together, these three conceptual approaches—power shifting as reparations, as supporting antisubordination, or as facilitating contestatory democracy—provide a theoretical framework to support the power lens. These ideas are also reflected within social movement articulations of their own proposals for police reform, as their proposals seek to shift power as much as they aspire to particular instrumentalist or legitimacy-focused outcomes.

312. Cf. Gerken, *supra* note 143, at 1777 (describing dissent of local decisionmaking bodies as “both an act of affiliation and an act of contestation”).

313. See BLM Chicago (@BLMChi), TWITTER (June 12, 2019, 2:25 PM), <https://twitter.com/BLMChi/status/1138875087577387009> [<https://perma.cc/E99S-WN9X>].

IV. POLICE REFORM REVISITED: ON EXPERTISE

If the power lens is an appropriate addition to discussions of police reform, as I have argued in Part III, then adding it into the mix when discussing reform possibilities shifts the discussion in important ways. In this Part, I focus on just one of those ways: the construction of expertise. What I do not do in this final Part is present a full account of how the power lens can be added to other possible goals—for example, goals of equality, legitimacy, constitutionalism, or violence reduction³¹⁴—and how one might go about weighing and measuring these different possible views on top of or beside one another with respect to particular policy and governance proposals. This is a task too vast for these final pages and deserving of a full article on its own. Instead, I explore one important implication of the power lens: the way that it expands and even inverts traditional notions of expertise. This exploration underscores the impact of the power lens, its potentially disruptive nature, and, ultimately, its necessity for any larger effort at transformative change.

Legal scholars often debate the desirability of “expert” input into policies governing criminal legal institutions such as the police and criminal courts. In these debates, the concept of “expertise” usually takes on one of two distinct meanings.³¹⁵ Sometimes, scholars refer to the expertise of policing professionals: through years of on-the-ground service, training, and supervision, police officers themselves understand the impact of rules and policies on everyday policing in ways that others cannot.³¹⁶ At other times, “experts” are meant to refer to those who have attained advanced degrees and studied the “success” of policing over time—often “criminologists or social scientists who study these issues

314. See *supra* Part I (laying out these various goals of police reform).

315. Cf. Benjamin Levin, Criminal Justice Expertise 15-33 (Nov. 11, 2020) (unpublished manuscript) (on file with author) (describing two “traditional” models of “criminal justice expertise” as based on either vocation or education).

316. See David Alan Sklansky, *The Persistent Pull of Police Professionalism*, HARV. KENNEDY SCH. 2 (Mar. 2011), <https://www.ncjrs.gov/pdffiles1/nij/232676.pdf> [<https://perma.cc/4V4J-Q9KU>] (describing one form of police professionalism as acquiring knowledge and best practices over time and applying those best practices to everyday policing); cf. Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 2003-14 (2017) (describing the rise of police professionalism in the mid-twentieth century and its contribution to the idea of police expertise in courtrooms). Harry Collins and Robert Evans call this form of expertise “contributory expertise,” which is expertise in a particular practice gained through experience, resulting in “tacit-knowledge-laden” expertise that allows the expert to contribute further to the practice itself. HARRY COLLINS & ROBERT EVANS, *RETHINKING EXPERTISE* 14, 17, 26-28, 69 n.38 (2007).

on a regular basis.”³¹⁷ Recently, a number of legal scholars, including Rachel Barkow, Maria Ponomarenko, and John Rappaport, have renewed a call for engaging this second kind of “independent” expert more rigorously in police reform.³¹⁸ These scholars do not eschew the need for democratic participation or accountability. But they believe that everyday decisionmaking powers should be in the hands of social scientists or public-policy “experts,” who may be better suited to resist the pull toward “penal populism”—the tendency of the public to ratchet up criminal responses to harm—and may be better able to withstand what Bill Stuntz has called the “pathological politics” of the criminal law.³¹⁹

The power lens brings a different view of expertise and promotes a different kind of expert.³²⁰ As the discussion in Part III demonstrated, social movement visions of power shifting are not just about taking power away from elite actors. They also come with very specific, even if sometimes contradictory, ideas about to whom power should be given: “directly impacted” people; people who live in particular neighborhoods; people with criminal records; Black, Latinx, and Indigenous People. These are populations who live in “race-class subjugated communities” who not only tend not to have much political power, but who are also consistently excluded from most forms of public participation in the criminal legal system.³²¹ Under the power lens, these people do not just become important subjects of policing governance; they become *experts them-*

317. See BARKOW, *supra* note 28, at 166; see also *id.* at 168 (“[W]hen it comes to public safety and maximizing limited resources, there is such a thing as expertise that can improve decision-making.”). In Collins’s taxonomy, this is “interactional expertise.” See COLLINS & EVANS, *supra* note 316, at 77-81.

318. See BARKOW, *supra* note 28, at 165-85 (describing the importance of engaging experts in reform efforts, describing how the public is guided by “emotions,” and calling for “expert bodies that use empirical data and studies to guide their decisions about criminal justice policy”); Ponomarenko, *supra* note 21, at 38-42 (calling for administrative intermediaries to be in charge of police rulemaking); Rappaport, *supra* note 28, at 810 (arguing for reform that “emphasizes an evidence-based approach to criminal justice problem-solving focused on achieving outcomes consistent with democratic values”).

319. See BARKOW, *supra* note 28, at 5 (“We have these ill-considered policies because we have a pathological political process that caters to the public’s fears and emotions without any institutional safeguards or checks for rationality to make sure these policies work or are the best approach to combating crime.” (citing William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505, 506-11 (2001))).

320. Cf. Schwartz, *supra* note 189 (providing a taxonomy of different questions to ask about the “who” of police reform).

321. See Simonson, *supra* note 91, at 270-86.

selves.³²² This inversion of expertise demonstrates the expansive potential of taking the power lens seriously.

The rising movement claim over expertise, and therefore over the creation of knowledge, of “what works,” is profoundly destabilizing to the status quo of the criminal legal system. This destabilization comes as much from deconstructing the traditional myth of expertise in policing as it does from the generation of a new, collective idea of who should make decisions about how to define and measure concepts like safety and security.³²³ Indeed, claims of expertise within systems can raise existential questions about the systems themselves, as Patricia Hill Collins explores in her theory of Black feminist epistemology: “If the epistemology used to validate knowledge comes into question, then all prior knowledge claims validated under the dominant model become suspect.”³²⁴ Contemporary movement claims over expertise parallel the destabilizing nature of the moves in Critical Race Theory, feminist legal theory, and other forms of “outsider jurisprudence” to center the experiences of the oppressed in generating our understandings about the law.³²⁵

Today’s radical claims over expertise are not coming from scholars, but rather from movement leaders. They write their claims of expertise into the institutional designs of new agencies to control policing and security, as in the example of community control of the police.³²⁶ They are explicitly naming who

322. Cf. HARCOURT, *supra* note 54, at 163 (describing how policing policies such as “broken-windows” turn entire classes of people into “subjects that need to be controlled,” with implications not just for those people but for social meaning more broadly).

323. Cf. Levin, *supra* note 315, at 54-71 (describing both the deconstruction of traditional ideas of expertise and the reconstruction of expertise through concepts like the power lens).

324. PATRICIA HILL COLLINS, *Black Feminist Epistemology*, in BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 271 (2000).

325. Cf. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 MICH. L. REV. 2320, 2322 (1989) (“[O]utsider jurisprudence—jurisprudence derived from considering stories from the bottom—will help resolve the seemingly irresolvable conflicts of value and doctrine that characterize liberal thought.”); Francisco Valdes, *Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 UMKC L. REV. 377, 382 (2002) (describing the “continuing evolution of outsider jurisprudence”). For more on the importance of this tradition for scholarship today, see Akbar, Ashar & Simonson, *supra* note 30, at 11-22.

326. See *supra* Section II.A. Movements search out inversions of expertise in other parts of the carceral state too, including in courtrooms, where movement-driven efforts like participatory-defense campaigns have helped young people with criminal records learn how to act as court-sanctioned “experts” on gangs and testify at criminal trials. See Cynthia Godsoe, *Participatory Defense: Humanizing the Accused and Ceding Control to the Client*, 69 MERCER L. REV. 715, 722-25 (2018); Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform*, 78 ALB. L. REV. 1281, 1281

should be in charge: people with criminal records,³²⁷ directly impacted people, and people who live in “economically distressed communities.”³²⁸ They prefigure their own expertise with detailed people’s budgets³²⁹ and the national push for a “People’s Process.”³³⁰ This is explicit, for example, in the congressional resolution inspired by the People’s Coalition, which states that Congress would “support and commit to a participatory people’s process that recognizes directly impacted people as experts on transforming the justice system, who speak from experience about the devastation of criminalization and incarceration.”³³¹ In laying out these governance demands, movements are claiming their own power to make informed decisions about what “works” and what doesn’t; they demand that we pay attention to the realities they lay before us.

This conception of expertise reverses the claim of many scholars that we should be seeking out independent experts with traditional credentials like advanced degrees or professional experience.³³² Rather than looking for expertise from social scientists or veterans on the police force, the people with expertise on what democratic policing should look like may instead be those who are subject to the domination of the police on a regular basis. Paul Butler, in his explanation of how policing cannot be reformed in a traditional sense,³³³ reminds us³³⁴ of this quotation from James Baldwin: “If one really wishes to

(2015) (“Participatory defense empowers these key stakeholders to transform themselves from recipients of services provided by lawyers and other professionals into change agents who force greater transparency, accountability, and fairness from criminal justice systems.”).

327. See Rahman & Simonson, *supra* note 10, at 709-10 (describing a dispute in Oakland over whether there would be a criminal-record check for members of the institutionalized Civilian Police Commission).
328. See Planning Dep’t, *Community Oversight Board: Potential Definitions of “Economically Distressed Communities,”* METROPOLITAN GOV’T NASHVILLE & DAVIDSON COUNTY (Nov. 19, 2018), <https://www.nashville.gov/Portals/0/SiteContent/MetroClerk/docs/boards-commissions/CommunityOversight/Economically%20Distressed%20Communities%20Infographics.pdf> [<https://perma.cc/GXE3-XJEC>]; see also CMTY. OVERSIGHT NASHVILLE, <https://communityoversightnashville.wordpress.com> [<https://perma.cc/2UJ9-RJTR>] (initially proposing Nashville’s Community Oversight Board before its approval by ballot in 2018).
329. See, e.g., PEOPLE’S BUDGET LA, <https://peoplesbudgetla.com> [<https://perma.cc/6V7X-GF84>] (describing the importance of centering those communities that have been “underserved and marginalized”).
330. See *supra* Section II.B.
331. H.R. Res. 702, 116th Cong. (2019).
332. See *supra* note 318.
333. See BUTLER, *supra* note 22, at 172 (“The idea that the [criminal-justice] system can be reformed is shortsighted. If black lives are to matter, we must dream bigger.”).
334. And Shirin Sinnar, in turn, reminded me to turn to Butler’s use of this Baldwin quotation.

know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected members of the middle class. One goes to the unprotected Ask any Mexican, any Puerto Rican, any black man, any poor person”³³⁵ Baldwin and Butler remind us that those who are harmed or neglected by the system, especially if members of racially or economically subordinated groups, can bring us knowledge that is missing, knowledge that is based on wisdom and experience. If brought into governance and policymaking, these experts might use information from social scientists and police officers to inform their work, and they might also seek data and information from less traditional sources, but they would bring their own experiences to bear on their decisions. Indeed, we might want to let these experts decide for themselves the subjects and methods through which they can be adequately informed and trained.³³⁶ Contestation and agonistic participation would be possible, expected, and encouraged.

Shifting the definition of an expert to include those who are directly impacted by the system also implicates the related definition of what counts as “evidence” or “data” to input into decisionmaking processes.³³⁷ Erin Collins’s recent work explores how the push for “evidence-based” practices in the criminal system reinforces epistemological hierarchies by categorizing as “evidence” forms of knowledge that invalidate the individual and collective lived experiences of those directly impacted by the system, as both so-called victims and defendants.³³⁸ In arguing for democratizing the production of algorithms in the pretrial process, Ngozi Okidegbe has similarly highlighted the expertise of people who are directly impacted by the system, underscoring notions of expertise from both “members from low-income, racially marginalized communities” and those regarded as traditional experts.³³⁹ Although the concept of “evi-

335. BUTLER, *supra* note 22, at 171 (citing JAMES BALDWIN, *NO NAME IN THE STREET* 149 (1972)).

336. *Cf.* Clark & Friedman, *supra* note 112, at 11-12 (describing the limitations of police-led trainings of members of civilian advisory boards).

337. *Cf.* BARKOW, *supra* note 28, at 167 (“The second premise behind this recommendation for expert oversight is that empirically valuable information on criminal law can lead to better decisions.”); Garrett, *supra* note 29, at 1493 (“Evidence-informed practices refer to a family of approaches that have brought greater use of data and science into the criminal justice system.”).

338. *See* Erin R. Collins, *Against the Evidence-Based Paradigm* (July 2020) (unpublished manuscript) (on file with author).

339. Ngozi Okidegbe, *The Democratizing Potential of Algorithms*, 53 *CONN. L. REV.* (forthcoming 2021); *see also* Ngozi Okidegbe, *Discrediting Communal Knowledge Within an Algorithm Epistemology* 5 (May 22, 2020) (unpublished manuscript) (on file with author) (highlighting the importance of recognizing “alternative ways of knowing, particularly those located within and produced and validated by low income racially marginalized communities”).

dence” is separate from that of “expertise,” the issues are related: to shift expertise implies shifting the genesis of data and evidence. As Okidegbe tells us, this, too, would be destabilizing.

The justification for this rethinking of the notion of expertise, and relatedly, of evidence or data, takes on at least two related ideas. First, people who have “experience about the devastation of criminalization and incarceration,” to quote the People’s Justice Guarantee, are able to contribute something *important*, indeed something critically central, to a much-needed rethinking of how we have constructed and maintained the carceral state.³⁴⁰ Second, this perspective would be *different*, and push us toward possibilities of contestation and change in our potentially transformative moment.³⁴¹ Undergirding these ideas—that directly impacted people have something important and different to contribute to how we think about policing—is a concept that goes to the heart of the power lens: that to invert expertise is to begin to reverse the profound power imbalances caused and maintained by policing and the carceral state. As discussed in Part III, the subordinating nature of policing in America—both historically and in the present moment—means that power shifting is morally necessary and is politically required under a certain view of democracy that values contestation. It is why the shift in expertise is an integral implication of the power lens. And it is part of why power shifting, if it is accompanied by a true opportunity for contestation, opens up new and different possibilities for configuring the state’s provision of protection and safety, something we have traditionally reserved for police departments.

Opening the idea of expertise in this way allows “expert opinions” to engage deeper critiques of policing than are ordinarily found in academic or professional conversations. The power lens would encourage us not to think of someone who believes we should reduce the footprint of policing as providing a knee-jerk or unproductive idea. Instead, that person might provide a perspective that gets at something important, new, and even hopeful. Anna Roberts, in writing about the importance of having people with criminal records on juries, has explained why “embitterment toward the system” can be a feature, rather

340. See H.R. Res. 702, 116th Cong. (2019); see also Susan Sturm & Haran Tae, *Leading with Conviction: The Transformative Role of Formerly Incarcerated Leaders in Reducing Mass Incarceration* 15-27 (Colum. Pub. Law Research Paper No. 14-547, 2017), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3034&context=faculty_scholarship [<https://perma.cc/BV7Y-Z6AE>] (describing the experiences of formerly incarcerated people that allow them to bring unique and missing perspectives to the world of criminal-justice policy).

341. That the perspective would be different does not mean that it would be monolithic or its results preordained. See *supra* note 32 and accompanying text.

than a bug, of participation in the criminal system.³⁴² She writes, “Automatic, cost-free exclusions on the basis of assumed embitterment permit the state to avoid the consequences of something potentially very wrong with the state.”³⁴³ In other words, “embitterment” has a source, and that source is worth examining—why does it exist and what does it say about how or if we should police?³⁴⁴ Turning the answers to that question into new ideas for how to provide public safety is one of the goals of the movement push to shift expertise.

An alternate approach, such as procedural justice, would try to encourage policing practices and priorities that reduce embitterment. But the power lens implies something different: someone who is embittered should perhaps be given power over the state institutions about which they have knowledge and experience. In this view, the embittered are neither the objects of study and measurement nor participants in a larger consensus-driven effort at legitimacy, but instead the experts deciding what to measure and how to proceed. This idea also undergirds recent efforts by academic researchers to engage in participatory-action research—to recognize the wisdom of lived experience and incorporate it into knowledge creation, with an aim both to shift power and to create better scholarship.³⁴⁵ Movements are, in a sense, asking us to make a similar move: when we shift power to the people who have been harmed by policing, we are asking them to help us understand it and decide if and how it can be fixed.

Consider how these ideas play out in the debate over whether people with criminal records should be a central part of decisionmaking about policing. In Oakland, for instance, the coalition of activists behind the establishment of the new civilian police commission has fought to ensure that individuals with

342. Anna Roberts, *Casual Ostracism: Jury Exclusion on the Basis of Criminal Convictions*, 98 MINN. L. REV. 592, 629, 631-34 (2013).

343. *Id.* at 632.

344. Susan Sturm and Haran Tae describe this source as a “reservoir of ground truth” that is born from the experience of being directly impacted by the criminal legal system. See Sturm & Tae, *supra* note 340, at 16.

345. Emily M.S. Houh & Kristin Kalsem, *It’s Critical: Legal Participatory Action Research*, 19 MICH. J. RACE & L. 287, 294 (2014) (“[L]egal participatory action research’ . . . makes its most significant and original contribution to legal scholarship not only by ‘looking to the bottom’ in a theoretical sense, but also by treating those ‘at the bottom’ as equal research partners who are presumptively best situated to identify, analyze, and solve the problems that directly affect them.”); Johnson, Pelly, Ruhland, Bess, Dariotis & Moore, *supra* note 47, at 9-12 (describing participatory-action research in which community members in Cincinnati are collectively redefining public safety alongside academic researchers, using a method that “prioritizes shifting research capacities from academic researchers to the communities themselves by focusing on their needs, strategies, and expertise”).

criminal records can serve on the new oversight board.³⁴⁶ These activists succeeded in removing a provision of the new law that would have required criminal background checks of all potential commissioners.³⁴⁷ The presumption, in fact, became reversed: initial flyers recruiting applicants to apply for the commission *encouraged* formerly incarcerated people to apply.³⁴⁸ The reaction of the president of the Oakland Police Officer's Association (OPOA) underscored the destabilizing nature of this move, when he titled an op-ed: "Are you serious, recruiting felons for Oakland Police Commission?"³⁴⁹ What to the OPOA President seemed obvious – that "felons" cannot be trusted with such a task; that it is police who best know how policing works³⁵⁰ – became a contested idea, an idea that ultimately lost out with respect to the new Oakland commission. The rising concept of expertise, instead, was that someone with a criminal record is likely to have useful firsthand knowledge of both interacting with the police and experiencing the harms of everyday police work. This experience, in turn, gives that person a leg up, rather than a leg down, in becoming an expert on how to reform the Oakland Police Department. At the same time, the very purpose of the new commission: to "*impose*,"³⁵¹ rather than recommend, policy and discipline on the police department, gets at a more central idea that people with criminal records, having been harmed by everyday policing practices, deserve power as a collective remedy for that harm.

346. See Rahman & Simonson, *supra* note 10, at 709-11 (describing the dispute in Oakland over whether there would be a criminal-record check for members of the oversight commission).

347. See *Amendments to Enabling Legislation for Police Commission*, COALITION FOR POLICE ACCOUNTABILITY, <https://coalitionforpoliceaccountability.files.wordpress.com/2017/06/proposed-amendments-6-8-rg.doc> [<https://perma.cc/LLM2-6Z42>] (proposing amendments to the ordinance).

348. *Id.*; see also *Application for Commission: Fact Sheet (2019)*, CITY OF OAKLAND POLICE COMMISSION, <https://cao-94612.s3.amazonaws.com/documents/Police-Commission-2019-Application-With-Translations-Due-6.17.19.pdf> [<https://perma.cc/5GWA-GS9W>] (describing the requirements for the application for position of commissioner); David Debolt, *More than 100 Apply for Powerful Oakland Police Commission*, EAST BAY TIMES (July 21, 2017), <http://www.eastbaytimes.com/2017/07/21/hundreds-apply-for-powerful-oakland-police-commission> [<https://perma.cc/K56H-96T8>] ("[A] flier promoting the process encouraged formerly incarcerated individuals to apply").

349. Barry Donelan, Opinion, *Are You Serious, Recruiting Felons for Oakland Police Commission?*, E. BAY TIMES (June 25, 2017), <http://www.eastbaytimes.com/2017/06/25/opinion-convicted-felons-on-new-police-commission-really> [<https://perma.cc/JA5T-N9M2>].

350. *Cf.* Lvovsky, *supra* note 316, at 1997 (describing the history of the "judicial presumption of police expertise: the notion that trained, experienced officers develop insight into crime sufficiently rarefied and reliable to justify deference from courts").

351. Wogan, *supra* note 138 (emphasis added) (quoting a leading activist as saying, "The [new] commission will not recommend. It will impose.").

I do not mean to imply that shifting expertise is simple and devoid of risks, or that the ways to get there are clear. As I explain in Part II, defining the group of people to whom power should be shifted is a complicated task, one to which there is no one right answer. Moreover, a governance arrangement that shifts power on its face could recreate existing power imbalances in new ways, for instance by replicating the existing pathologies of white supremacy, heteropatriarchy, or ableism.³⁵² Take the example of people with disabilities, who represent an enormous percentage of people who are subject to the control of the carceral state, and especially to the violence of policing.³⁵³ The state erects many barriers to full participatory citizenship for people with disabilities,³⁵⁴ including barriers set up by the carceral state. But like so many of our exclusionary pathologies, ableism is not limited to state actions and state structures. Social movements can unwittingly exclude people with disabilities,³⁵⁵ so too could new governance structures that explicitly aim to bring those subject to the carceral state into the polity. These possibilities do not mean that power shifting would leave policing policy to be automatically guided by “emotion” rather than “data,” or that it would automatically revert to the “penal populism” that has characterized so much popular policymaking with respect to the criminal legal system.³⁵⁶ Indeed, the hypothesis of the movement actors who have

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352. See FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* 7 (1977) (arguing that demands for participation from poor people too often lead to elite-designed institutions that mute oppositional politics); see also sources cited *supra* note 112 (collecting sources describing ways in which policing initiatives meant to be participatory can end up excluding some parts of the population).
353. See Camille A. Nelson, *Frontlines: Policing at the Nexus of Race and Mental Health*, 43 *FORDHAM URB. L.J.* 615 (2016); Camille A. Nelson, *Racializing Disability, Disabling Race: Policing Race and Mental Status*, 15 *BERKELEY J. CRIM. L.* 1, 16 (2010); Jamelia N. Morgan, *Policing Under Disability Law* 3 (Aug. 2020) (unpublished manuscript) (on file with author) (“[D]isabled people experience at disproportionate rates more ordinary forms of policing that can lead to deadly police violence.”).
354. See Rabia Belt, *Contemporary Voting Rights Controversies Through the Lens of Disability*, 68 *STAN. L. REV.* 1491, 1493, 1496-98 (2016) (describing the structural difficulties leading to a participation gap for voters with disabilities).
355. See Jamelia N. Morgan, *Disability’s Fourth Amendment* 9-12 (Aug. 2020) (unpublished manuscript) (on file with author) (describing “[t]he erasure of disability in movements” against police violence); see also *Disability Solidarity: Completing the “Vision for Black Lives,”* HARRIET TUBMAN COLLECTIVE, <https://harriettubmancollective.tumblr.com/post/150072319030/htcvision4blacklives> [<https://perma.cc/352A-U4FZ>] (criticizing the Movement for Black Lives’ Vision for Black Lives for “not once mention[ing] disability, ableism, audism or the unspeakable violence and Black death found at the intersection of ableism, audism, and anti-Black racism”).
356. Benjamin Levin, *De-Democratizing Criminal Law*, 39 *CRIM. JUST. ETHICS* 74, 84 (2020) (reviewing BARKOW, *supra* note 28) (“Deciding who gets to claim expertise and who is an ex-

proposed changes such as community control and the “People’s Process” is that the opposite would be true. But nor would it be easy.

Overall, the debate over the role of experts and data in policing cannot be solved with the power lens alone. State officials cannot simply shift all power into the hands of a specific category of people—for example, people with criminal records—walk away, and hope for the best. This would preordain confusion and backlash. Instead, the state can help those it newly recognizes as experts to understand and parse through complicated realities together. Or reformers could engage in tradeoffs, balancing the now-recognized benefits of shifting power alongside other goals and lenses of reform,³⁵⁷ goals that might sometimes clash with the goal of power shifting. Once one accepts the power lens as legitimate and important, the next task emerges: sorting through the various lenses, determining their relative strengths, and bringing that complete analysis to bear on specific reform proposals. This is an analysis for another day.

For now, I conclude by connecting the inversion of our understanding of expertise that comes from the power lens to broader social movement visions of the relationship between the state and marginalized communities. I use the example of the Dream Defenders, a member-based, statewide Florida group focused on abolitionist organizing and mobilizing young people for racial and economic justice. In 2018, the Dream Defenders published the *Freedom Papers*. The *Freedom Papers* is a kind of constitutional document, expressing hopes for a government that respects the freedom of all.³⁵⁸ It begins with the importance of collective self-rule and freedom from oppression. At the end of each page, the refrain “[b]y virtue of being born” is followed with a series of state obligations and positive rights, including rights to voting, healthcare, food, water, shelter, and education, as well as state obligations to foster freedom from state and private violence alike.³⁵⁹ The *Freedom Papers* then stresses the larger belief that if the state facilitates the ability of the most marginalized among us to thrive, we will all thrive.³⁶⁰

A poem at the end of the *Freedom Papers* brings together its themes, and it includes this stanza:

pert necessarily would affect policy outcomes, and rejecting some claims of expertise as too political, too personal, or too divorced from a more easily quantifiable expert model necessarily has a political valence.”).

357. See Part I for a discussion of various goals of police reform.

358. See DREAM DEFENDERS, *supra* note 181.

359. See, e.g., *id.* at 3, 5, 7, 9.

360. *Id.* at 15.

This is the year four time felons,
 Found guilty of falling in traps,
 are found running in Miami,
 and running in Pahokee,
 and running in Duval,
 For Senate, and Mayor, and Governor.³⁶¹

This stanza goes far beyond a demand for the enfranchisement of people with criminal records, or even a requirement to “listen” to those most affected through institutions of community justice. It is not just that people with criminal records should vote, but that they should lead, with a faith in the democratic justice that would flow from that leadership by virtue of their marginality. Its underlying idea—that people with criminal records should lead us and should lead us toward a world in which we do not use criminal law to solve our problems—is destabilizing, transformative, and possible all at once.³⁶² The *Freedom Papers*’s vision of elected officials taking on this new vision of expertise and representation goes a step beyond the power lens in this Article, involving the larger democratic process of electing our leaders. The power lens tells us that in order to get there, we must first alter our power arrangements at a different scale, within the institutions and methods that set our “expert” policies and decide our priorities for providing safety and helping people thrive. The *Freedom Papers* represents the widest potential of the power lens: to transform our ideas of who should craft our visions of public safety and then design institutions to allow them to do so in the most productive ways possible.

CONCLUSION

This Article has argued that the social movement focus on shifting power in police reform creates a lens on policing, the power lens, that adds critical layers to dominant ways of thinking about the objectives of police reform. For those interested in democratic justice, the power lens provides a tool to dig into the levers of control embedded in various police-reform arrangements and to move beyond traditional notions of consensus-based reform. And for those interested in broader transformation, and even abolition, shifting power is a necessary

361. *Id.* at 16.

362. *Cf.* Sturm & Tae, *supra* note 340, at 77 (describing how leaders with criminal records can possess an “alchemy of experience, education, and employment, fueled by deep commitment, [that] equips them to play a crucial role in shifting the public narrative and empowering community leadership”).

beginning, a nonreformist reform³⁶³: without opening up the ability of generally disempowered people, and especially poor Black, Latinx, and Indigenous Americans, to contest big ideas about how and if the state polices its citizens, transformation will be difficult, if not impossible, to achieve. For shifting political power can open up policing to contestation over broader ideas about the existence and form of policing. It can open up governance and policymaking to the possibility of disinvesting from the police and investing in other forms of safety. It can even open it up to discussions of defunding or abolishing the police entirely. This does not mean that contestation will immediately lead to this transformative change; transformation happens slowly. But the view from social movements suggests that it might help us push toward a different way of approaching the state provision of justice and safety.

If we seek the transformation of policing, we should not cling to traditional means of conceptualizing or measuring success in efforts at change. Nor should we look to the usual experts to create roadmaps for transformational change. Today's abolitionist social movement actors do not represent the citizenry, but they do give us new, collective understandings of how we can relate to each other and engage in self-governance. And they help us reinterpret the idea of "reform" itself. We need not limit our horizon of police reform to tinkering with policing as we know it. As today's social movement actors teach us, reform can also mean shifting power arrangements in ways that allow us to question the existence of our institutions of policing themselves.

363. See *supra* note 41 and accompanying text; see also Akbar, *supra* note 41, at 102 ("The non-reformist reform does not aim to create policy solutions to discrete problems; rather it aims to unleash people power against the prevailing political, economic, and social arrangements and toward new possibilities.").

