Police Reform through a Power Lens

130 YALE LAW JOURNAL (forthcoming 2021)

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Abstract

Scholars and reformers alike have in recent years begun to imagine new and different configurations for how the state can design institutions of policing. 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, 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 policing—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 antisubordination, 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 have emerged amid the 2020 uprisings against police violence and white supremacy have brought into the national consciousness radical ideas for change in how the state should provide safety and security: defund the police; have the people decide how budgets are allocated; give communities control over how to define public safety. To look back just one year before the 2020 protests is to see these ideas as 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 Chicago 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 30 days. The activists placed a call to action, summarized in this tweet: “Defund, Disarm, Disrupt CPD and business as usual. #FightBack #CPACNow.”  The last hashtag is a

2. See Black Lives Matter Chicago, @BLMChi (Jun. 12, 2019),
   https://twitter.com/BLMChi/status/1138875087577387009; see also MacArthur Justice Center,
   Press Release, Coalition of Community and Civil Rights Groups Call on the City Attorney
   General to Address Escalating Police Violence (June 13, 2019),
   https://www.macarthurjustice.org/coalition-of-community-and-civil-rights-groups-call-on-the-
reference to 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. 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.” 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, often placed or chanted in tandem with a demand to defund the Chicago Police Department.

Meanwhile, 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 Crime Bill. The bill would require the federal government to reduce spending on the criminal legal system and invest instead in health, education, housing, and infrastructure. 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.” The result is a call for a “People’s Process,” in which legislators in Congress 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 94 Crime Bill; and, in the

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4 See Black Lives Matter Chicago, @BLMChi (June 19, 2019), https://twitter.com/BLMChi/status/1141377967484002304.

5 See, Curtis Black, *Community Oversight or Control*, CHICAGO REPORTER (July 1, 2020) https://www.chicagoreporter.com/community-oversight-or-control-coalitions-meet-on-competing-police-accountability-proposals/ (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.”).


7 See Hoskins et. al., *supra* note 6.

8 Id.
end, draft legislation based on the priorities of directly impacted people. These ideas then 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.

These two long-term collective efforts—locally, in Chicago, for community control of the police; and nationally, via the People’s Coalition, for a new national “Crime Bill”—represent two different scales of a growing emphasis within social movements on reckoning with police violence by imagining new forms of governance and policy-making in which power is shifted to those who have been most harmed by mass criminalization and mass incarceration. These movement pushes 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, 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 on the antidemocratic structures of law themselves. 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. They ask that we concentrate on power arrangements and on a particular form of contestatory democracy. And by doing so, they open up the possibility, though certainly not the inevitability, of “reforms” that have the potential to facilitate the defunding and even abolition of policing as we know it.

Underlying the contemporary movement pushes 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. In the first traditional way of thinking about police reform, reformers maintain a focus on designing instrumental reforms that they hope will lead to particular outcomes traditionally associated with policing success—for example, a reduction in reports of violent crime or a reduction in police use of unconstitutional excessive force. A second leading way of conceptualizing police reform focuses on building trust
between the police and communities so as to enhance the legitimacy of the police.\textsuperscript{13} Often, the instrumentalist and the legitimacy approaches are combined in some way that aims to strike a balance between the two goals, or to weave them together into one coherent method.\textsuperscript{14} In contrast to the instrumentalist approach or the legitimacy approach, the movement focus on governance and policy-making in police reform adds a different idea about what it means to effectively regulate the police. The reform proposals from movement groups surface the specific role that policing plays in denying people in highly policed neighborhoods their democratic standing and their collective political impact. They urge reform efforts to counteract the antidemocratic nature of policing. They focus on power.

Since the uprisings in Ferguson and Baltimore intersected with the formation of the Movement for Black Lives, the last six years have seen far-reaching changes in how the public and legal scholars alike think about policing,\textsuperscript{15} changes that are only intensifying in the wake of the 2020 uprisings.\textsuperscript{16} These changes would not have been

\begin{itemize}
\item Samuel Walker, “Not Dead Yet”: The National Police Crisis, A New Conversation About Policing, and the Prospects to 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” in police reform in both academic and professional circles).
\item For just a small sample of legal scholars engaging with new ideas around police reform in the summer of 2020, see, e.g., Monica Bell, Black Security and the Conundrum of Policing, JUST SECURITY (July 2020), https://www.justsecurity.org/71418/black-security-and-the-conundrum-of-policing/; Barry Friedman et. al., Changing the Law to Change Policing, (July 2020), https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf; Beyond Reform Webinar, University of Pennsylvania (with Dorothy Roberts, Monica Bell, Jocelyn Simonson & Amna Akbar) (June 25, 2020), https://www.youtube.com/watch?v=qGXV5Ejdl&feature=youtu.be; Defunding the Police: a
possible without the push from movement actors to recognize the racialized and subordinating history of policing in the United States.¹⁷ A number of legal scholars have 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,”¹⁸ 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,¹⁹ for Friedman, it requires disaggregating and then reducing the roles that we ask police officers to play,²⁰ and for Akbar, it requires the reduction and elimination of the police footprint altogether.²¹ 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.²²

¹⁷ 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.”).
Even if these scholars disagree on what that “reconstruction,” “transformation,” or “democracy” would look like, and especially whether the institution of policing can ever be compatible with racial justice or public safety, there is a tentative agreement from many corners that largescale 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 imaginings of social movements, a vast range of possibilities stretches out before us, from cementing our current policing practices with more and better resources all the way to abolishing our institutions of policing altogether. It is within this range of possibility 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: calls to defund the police; efforts to institute people’s budgets; calls for community control; demonstrations of long-term mutual aid as an alternative to policing. In many of these pushes, one central goal of the “reform” is to shift power away from the police and toward communities who are policed.

In this Article, I identify the movement focus on power-shifting in the governance of the police and provide a normative 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, 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 might be a means of promoting antisubordination, based on the principle that “it is wrong for the state to engage in practices that enforce the inferior social status of historically oppressed


23 Compare, e.g., Paul Butler, Chokehold: Policing Black Men 229-47 (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 (2019) (describing how policing can be transformed to serve as a legitimate public good using principles of procedural justice).


25 See generally Amy Lerman & Vesla Weaver, Arresting Citizenship: The Democratic Consequences of American Crime Control 58-195 (2014); 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.”).
groups.”26 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. This view is anchored to a larger belief that direct forms of agonistic contestation are crucial for democratic justice,27 in part because it is our criminal legal system itself that, by definition, yields forms of domination and violence.28

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 critical layers to 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 the results of community surveys measuring 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 today. It asks scholars and reformers to imagine what it would mean to temporarily set aside a desire for traditional “experts”29 and even “evidence-based”30 practices—for it might very well be true that lay people are not well equipped to form policies and distribute resources in a way that leads to traditional optimal outcomes like crime rates or trust in the police. Divorced from this focus on customary outcomes, the power lens brings a critical eye to the ways in which the

26 Reva B. Siegel, Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over Brown, 117 Harv. L. Rev. 1470, 1547 (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 “perpetuate...the subordinate status of a specially disadvantaged group.”).


29 See, e.g., RACHEL ELISE BARKOW, PRISONERS OF POLITICS 165-86 (2019); Maria Ponomarenko, Rethinking Police Rulemaking, 114 NW. U. L. Rev. 1, 38-42 (2019); John Rappaport, Some Doubts About Democratizing Criminal Justice, 87 U. CHICAGO L. REV. (forthcoming 2020) (collecting studies showing that lay people can be punitive, in contrast to the view that democratizing criminal adjudication will lead to leniency).

30 ANTHONY A. BRAGA & DAVID L. WEISBURD, POLICING PROBLEM PLACES 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.”).
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 policy-making proposals being put forth by social movements actors—people traditionally thought of as “non-experts”—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. 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 we should be taking this approach seriously and weaving it into existing scholarly accounts of the regulation of policing. When this view “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.

The power lens is rarely going to be, on its own, a complete way of looking at the reform of the criminal legal system. Instead, it is 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 policy-making arrangements rather than “outcomes” or policies themselves.

Indeed, there is no guarantee that a power-shifting arrangement in policing would lead to any particular outcomes in the traditional sense. Communities, after all, are not monolithic, 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. 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 two main examples of the power lens in this Article. Community control of the police, for instance, might lead

31 For more on this methodology, see Amna Akbar, Sameer Ashar, & Jocelyn Simonson, Movement Law, 73 STAN. L. REV. (forthcoming 2021) (draft on file with author).
a particular police district to encourage more police patrols, more arrests, more stops-and-frisks, and other tactics that are seen as “tough on crime.” Moreover, changes in top-level policies in police departments have no guaranteed effect on the behavior of police officers; the result of changes in police department policies or even resources might not lead to widespread change on the ground. These results would be important, and would surely frustrate activists who aimed to reduce or defund policing in their neighborhoods. But it 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, although shifting power will not inherently lead to any particular outcome, it has the potential to be profoundly destabilizing to the status quo. Because of this, it may be essential for any social movement effort to push for abolition of the police. It is no coincidence that the movement pushes for power-shifting that this Article describes comes from abolitionist grassroots organizations, many of which organize under the banner of the Movement for Black Lives, 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 keep us safe” in a world without police. The analysis by these groups of the ways in which policing in the United States has mediated

34. See Rappaport, supra note 29 (collecting studies of lay opinions of punishment questioning the lenience of lay people); cf. Kate Levine, Police Prosecutions and Punitive Instincts, 98 Wash. U. L. Rev. __ (forthcoming 2021) (draft on file with author) (describing how Black Lives Matter and other movement groups do not speak with one voice); JAMES FORMAN, JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA (2017) (documenting how residents of Washington, D.C., promoted “tough on crime” policies when faced with a lack of other options).
37. See Movement for Black Lives, About Us, https://m4bl.org/about-us/.
38. See, e.g., ZACH NORRIS, WE KEEP US SAFE: BUILDING SECURE, JUST, AND INCLUSIVE COMMUNITIES (2020) (describing these efforts over years in Oakland); People’s Budget LA, About People’s Budget LA, https://peoplesbudgetla.com/about/ (describing how a coalition of organizations in LA has been fighting for five years to present an alternative vision of public safety in which the city spends money on “Care, not Cops”).
the oppression of Black, Latinx, and Indigenous people, women, trans, and disabled people, throughout the history of the country is deeply intertwined with an analysis of power, and of structural impediments to self-governance.\textsuperscript{39} Indeed, although there are plenty of disagreements between individual abolitionist groups about which method of power-shifting is the best road to abolition;\textsuperscript{40} there is a seeming consensus that power-shifting is important and necessary to the larger abolitionist project, and should be a part of “non-reformist” or “transformative” reforms.\textsuperscript{41} This is because abolitionist 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 as follows: 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

\textsuperscript{39} See, e.g., Movement for Black Lives, Vision for Black Lives (connecting demands for community control of both policing and schools to the push to equalize political power); BYP 100, Agenda to Build Black Futures, https://www.agendatobuildblackfutures.com/solutions, (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); MPD 150, People’s History of the Minneapolis Police Department (2017), https://www.mpd150.com/wp-content/themes/mpd150/assets/mpd150_report.pdf; see also Rahman and Simonson, supra note 10 (describing how contemporary movement visions of change concentrate on countering long-term structural inequalities created by or facilitated by the state).

\textsuperscript{40} See, e.g., Max Rameau & Netfa Freeman, Community Control Vs. Defunding the Police: A Critical Analysis, Black Agenda Report (Jun. 10, 2020), https://www.blackagenda.com/community-control-vs-defunding-police-critical-analysis (arguing that defunding the police will not shift power in the way that instituting community control of the police would).

\textsuperscript{41} See 8 to Abolition coalition, #8toAbolition Demands (June 2020), https://static1.squarespace.com/static/5edbf321b6026b073fe97d4/t/5ee0817c955eaa484011b8f/1591771519433/8toAbolition_V2.pdf (“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. Marbre Stahly-Butts & Amna A. Akbar, Transformative Reforms, Abolitionists Demands, STANFORD J. C.R.-C.L. (forthcoming) (draft 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”).
theoretical account of the importance of the power lens, focusing on three justifications for it: a reparative view, an anti-subordination 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, moving us closer to a real “transformation” in policing and in the criminal legal system more broadly.

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 police regularly engage in today. Instead, as Markus Dubber has written, it is and has been “a body of state action enormous in scope as well as in variety.” When it comes to the purpose of the forms of state action that we call policing, we have come to assume a rather uniform set of goals. These goals are relatively consistent, even if particular experts do not embrace all of them: that policing practices should reduce crime, make people feel safe, limit the harms of policing, such as police violence, as much as possible, and promote trust between police officers and communities so that they can work together to co-produce safety. 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 lay out, 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. I then contrast these traditional metrics of success to the focus on power that emerges from an examination of social movement actors’ proposals for reform.

a. Traditional Ideas of Policing Success

42 Cf. Friedman, supra note 20, draft 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).


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. Rachel Harmon, The Problem of Policing, 110 Mich. L. Rev. 761 809-16 (2012) (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.
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 power to policed populations as one of their goals. My purpose is not to provide a taxonomy of scholarly approaches to policing but rather to notice an absence of a focus on power within the multiple frameworks of the police reform literature that look outside constitutional law and litigation to advocate for police reforms to governance and policy.

1. Instrumental approaches

One central and ongoing way of thinking about the purpose of policing and police reform focuses on instrumental outcomes that center around the reduction of crime. The primary goal of policing, here, is to contribute to low levels of violence and victimization and make people “safer,” with “safety” defined in a traditional manner as an absence of physical violence or property intrusion. 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 reduction in fear of crime or evidence of


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? (May 2020 draft) (“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 definition of public safety is contested, especially in movement spaces. See ZACH NORRIS, WE KEEP US SAFE: BUILDING SECURE, JUST, AND INCLUSIVE COMMUNITIES (2020) (“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 et al., Reclaiming Safety (draft on file with author) (describing participatory action research in which community members in Cincinnati are collectively redefining public safety for themselves).
“disorder.”\(^{48}\) Beginning in the 1990s, police departments themselves increasingly measured their own success this way, for example through the use of 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 spots policing, broken windows policing, and “community-oriented policing.”\(^{50}\) In most of these studies by social scientists and legal scholars, the outcomes measured are the same: police statistics on the occurrence of certain felony crimes as reported by the police; and survey results in which people report whether they have been victims of crimes or whether they feel safe and secure in their neighborhoods.\(^{51}\) The goal is for there to be less “civilian” violence and for people to feel safe, but the goal is to not to have people who are policed 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 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

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\(^{48}\) See Wesley Skogan and Kathleen Frydl, “The Effectiveness of Police Activities in Reducing Crime, Disorder, and Fear,” 217-52 in FAIRNESS AND EFFECTIVENESS IN POLICING: THE EVIDENCE (2003) (summarizing this literature); see also Tracey L. Meares, The Good Cops: Knowing the Difference Between Lawful or Effective Policing and Rightful Policing and Why It Matters, 54 Wm. & Mary L. Rev. 1865, 1873 (2013) (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?’”).


\(^{50}\) See, e.g., ANTHONY A. BRAGA & DAVID L. WEISBURD, POLICING PROBLEM PLACES 99-151 (2010) (summarizing this literature); Cynthia Lum et. al., The Evidence-Based Policing Matrix, 7 J. Experimental Criminology 3, 7-8 (2011) (describing the rise of “evidence-based policing” and introducing a “matrix” through which to analyze police strategies along multiple dimensions).


\(^{52}\) See, e.g., Friedman, supra note 20 at 8-17 (discussing multiple levels of 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).
rules. 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.” This instrumental balancing of harms and goods in policing has grown in prominence since 2015, when leaders at all levels of government have pushed for police reforms by, for example, revisiting their use of force policies and strengthening disciplinary processes for officers who use deadly force. It has also grown with the advent of federal structural reform litigation, under which consent decrees have been able to pursue a host of different ways of measuring and incentivizing police lawfulness. Here, then, measurements of the success of policing tend to analyze both crime rates and rates of harms such as, but not limited to, unconstitutional policing. Note, again, that 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.

2. Legitimacy approaches

53 C.f. Aziz Z. Huq, The Consequences of Disparate Policing: Evaluating Stop and Frisk As A Modality of Urban Policing, 101 Minn. L. Rev. 2397, 2417-2443 (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 Cal. L. Rev. 263, 295-310 (2017) (laying out a range of harms that can be measured, including unlawful stops & seizures, incidents of excessive force, and evidence of racial profiling).

54 Rachel A. Harmon, The Problem of Policing, 110 Mich. L. Rev. 761, 792 (2012); see also id. at 792 (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 us as subjects).


56 See Walker, supra note 15 at 1791-95 (summarizing this trend and scholarship about it); Stephen Rushin, Structural Reform Litigation in American Police Departments, 99 Minn. L. Rev. 1343 (2015) (describing how structural reform litigation operates and analyzing its benefits and its limits).

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).
There is a separate but complementary view of the objective of police reform: the objective of legitimacy, or to use Tracey Meares’ term, “rightfulness.” 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. One, though not the only, focus of the legitimacy approach becomes to bring in principles of procedural justice, wherein police departments engage in practices that people who they interact with perceive to be fair and just. A legitimacy-focused reform might also work to train police officers to prioritize “police-community relations” as a long-term goal. Success of such approaches can then be measured through social science instruments that measure trust, including surveys of community members.

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. In 2015, the Policing Project at NYU Law School gathered a group of law

58 See Meares, supra note 48 at 1873-76 (contrasting “rightfulness” to traditional police reform goals of “effectiveness” and “lawfulness”).
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.”).
62 See, e.g., Geoffrey Alpert et. al., Effective Community Policing Performance Measures, 3 Justice Research and Policy 79 (2001); Goff et al., supra note 65, at 5 (“Law enforcement agencies must track the level of trust in police by their communities just as they measure changes in crime.”); see also id. 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 The President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing 1, 46 (2015) (Recommendation 4.5) (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, The Justice Collaboratory at Yale Law School (2018), https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf.

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enforcement officials together to develop a “Statement on the Principles of Democratic Policing,” which 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 in 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 resources 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

66 Id. at 5.
67 Id. (“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 Policing Equity, What we Do: Compstat for Justice, https://policingequity.org/what-we-do/compstat-for-justice (“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., policies.”).
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 focusing on 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 control, 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 Amna Akbar, for instance, defines and self-identifies within a group of “abolish-shrink-contest-oriented scholar[s who] reject[] tinkering [with the police,] seeing the police as a violent force within an undemocratic society, not a departure from an otherwise healthy, decently working system.”72 Most centrally, Akbar herself 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 “remak[e] our collective life.”73 In another vein, Monica Bell has recently advocated for an approach to policing that looks beyond its relationship to crime and disorder and instead seeks to minimize the contribution of policing to structural inequalities such as racial segregation.74 In the work of both Akbar and Bell, there is 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 that they need to have some kind of power.

There are also an increasing number of scholars calling for the “democratization” of the criminal legal system, including policing.75 The relationship of the “democratization” literature to the redistribution of political power is fraught and

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70 Tyler, supra note 60 at 1552.
71 Cf. Benjamin Levin, The Consensus Myth in Criminal Justice Reform, 117 Mich. L. Rev. 259, 269 (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 See Akbar, supra note 21 at 6, 40-50. These scholars include myself, Allegra McLeod, Dorothy Roberts, Paul Butler, Angelica Chazaro, Dean Spade, Priscilla Ocen, Monica Bell, and Andrea Ritchie. Id.
73 Id. at 9 (“[A]n abolitionist frame . . . fundamentally remakes agendas for police reform as central to confronting historically rooted political, economic, social crises and remaking our collective life.”).
74 See Bell, Anti-Segregation Policing, supra note 21.
uneven. A call for democracy in the criminal system is often a call for an increase in lay participation at multiple points in that system—a goal that might, in theory, shift political power. William Stuntz, an early and prominent advocate of increasing lay participation in response to the rise of mass incarceration, maintained that “those who bear the costs of crime and punishment alike must exercise more power over those who enforce the law and dole out punishment.” However, actual proposals of many advocates of “democratic criminal justice” do not reveal a desire for profound shifts in the balance of political power. 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, for community policing, or for notice-and-comment rule-making. As Stephen Schulhofer has noted, even Bill Stuntz, our modern champion of “local criminal justice,” in the end has tended to propose solutions such as expert commissions that “leave decision-making power where it is now—with police chiefs, district attorneys, and judges who are accountable to citywide or countywide constituencies.

76 Cf. Akbar, supra note 21 at 22-30 (arguing that “democratic” leaning scholars can sometimes be on the side of repair, and sometimes on the side of more radical contestation).
77 See, e.g., Laura I. Appleman, Defending the Jury: Crime, Community, and the Constitution (2015); Stephanos Bibas, The Machinery of Criminal Justice 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 20 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.”); Joshua Kleinfeld, Three Principles of Democratic Criminal Justice, 111 NW. U. L. Rev. 1455, 1483 (2017) (“[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 . . .”).
78 Stuntz, supra note 77 at 39.
79 See generally Sklansky, supra note 45 at 68–105; Bell, Anti-Segregation Policing, supra note 21 at 72 (citing Joshua Kleinfeld et al., White Paper of Democratic Criminal Justice, 111 NW.L.REV. 1693, 1699–1700 (2017)); Rappaport, supra note 29 at 5 (same) (describing the focus of “democratizers” on, inter alia, procedural justice and civilian review boards). NB: The author was one of the co-authors of the “White Paper,” although, as should be clear from this paper, I do not subscribe to all of its recommendations. Cf. Kleinfeld et. al., 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.”).
80 See Kleinfeld et al. at 1699 (listing a series of proposed reforms under the heading “procedural justice and policing”).
81 See Sklansky, supra note 45 at 68–105 (critiquing the focus on community policing in arguments for democracy in policing).
82 See, e.g., see, e.g., Richard A. Bierschbach & Stephanos Bibas, Notice-and-Comment Sentencing, 97 Minn. L. Rev. 1 (2012); Friedman & Ponomarenko, supra note 20; Slobozin, supra note 20.
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.84 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.85 There are certainly some exceptions; for example, 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.”86 However, there is no guarantee that a “democratizing” approach to police reform will entail power-shifting down to those directly affected by everyday policing.87

In Part III(c) below 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, they are seeking out new, different, and sometimes more radical ways of envisioning police “reform,” sometimes urging more popular influence, and at times even 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 the work

84 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, Three Principles, supra note 20 (describing different conceptions of democracy in relation to the criminal system); Rappaport, supra note 29 at 10 (noting “the fragility of the democratizers’ big tent coalition”).
85 See generally SKLANSKY, supra note 45 at 68–105; Rahman & Simonson, Institutional Design of Community Control, supra note 11 (contrasting consensus-based governance proposals with institutional designs that focus on contestation and shifting political power); Rappaport, supra note 29 at 11 (arguing that “many 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 104, 235-239 and accompanying text.
86 See Patel, supra note 21 at 798.
of “democratizers” and “abolish-shrink-contest scholars”: the goal of shifting 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. It is not in conflict with these traditional goals, but 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 non-police 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 into the scope and policies of policing in their neighborhoods, counties, cities, and states. It is not an “input lens” in the sense of asking whether voices are heard; instead, it asks about relatively direct political power: the ability of a person, or a group of people, 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, whether it is through the power to enact policy or the power to check state actors. The power lens is not necessarily wed to any one particular definition of power; one might adopt the power lens and still recognize that power flows in multiple directions, inside and outside the state, in the shadow of racism, heteropatriarchy, and precarity, moving in complicated and sometimes counterintuitive ways. But the power lens does implicate a goal of policing one can point to, name, and analyze; it allows someone looking at reform choices to articulate differences between different governing and law-making

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88 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.”).
91 Levinson calls this “control.” Id. at 46-48.
92 Cf. L ukes, supra note 89, at 7-8 (differentiating between different forms of power); Grinthal, supra note 88, at 34 (describing how power can be generated through organizing outside of the state); Bernard Harcourt, Rethinking Power With and Beyond Foucault, 9 Carceral Notebooks 79, 81 (2013) (summarizing one of Michael Foucault’s ideas as that power is “always and constantly at play, always in struggle, producing momentary, local victories and defeats at a micro level.”).
arrangements that place decision-making authority in distinct hands and through distinct processes.  

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 measures and from which the most people have been incarcerated. The neighborhoods subject to these more punitive forms of law enforcement are “race-class subjugated communities”—neighborhoods in which the majority of residents are poor Black, Latinx, or Indigenous people. Punitive law enforcement practices in these neighborhoods become self-reinforcing, independent of crime rates, with a direct impact on political power. Policing causes communal,

93 Cf. Rahman & Simonson, Institutional Design of Community Control, supra note 11 (analyzing different ways in which governance arrangements can facilitate power-shifting in the local government context).
95 Joe Soss & Vesla Weaver, Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities, 20 Annual Review of Political Science 565, 566 (2017) (defining “race-class subjugated communities” and explaining how they are “the ways “race-class subjugated communities” are “governed through coercion, containment, repression, surveillance, regulation, predation, discipline, and violence”); see also id. at (“The recognition that policed communities 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.”).
96 See Fagan et. al, supra note 94 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.”).
97 See Bernard E. Harcourt, Illusion of Order: The False Promise of Broken Windows Policing 160-80 (2001) (describing the disempowering nature of broken windows policing); Lerman & Weaver, supra note 94, at 139-56 (describing how interacting with the criminal process affects political engagement); Jonathan Simon, Governing Through Crime (2007) (arguing that an overemphasis on crime and fear of crime has distorted American democracy); Stuntz, supra note 94, 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”); 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.”); I. Bennett Capers, Criminal Procedure and the Good Citizen, 118 Colum. L. Rev. 653, 654-57 (2018) (describing how constitutional criminal procedure doctrine constitutes exclusionary meanings of who is a “good citizen”); Jeffrey Fagan et. al., supra note 94 at 1563 (describing this as the “political economy of law enforcement”).
democratic harms. This has lead Janet Moore, Dorothy Roberts, and others to argue that the criminal legal system is itself anti-democratic in inflicting punishment and mass enforcement and surveillance, it takes away political power through a variety of simultaneous and complementary means. The anti-democratic work of the criminal legal system happens on multiple levels, but in policing it is especially acute because of the domination inherent in the everyday nature of modern policing. The laws and everyday practices of policing preclude poor people of color from being full democratic subjects.

Reckoning with this aspect of the harms of policing requires reckoning with the anti-democratic nature of contemporary police governance. Policing priorities are rarely responsive to the marginalized populations who are most likely to be arrested and prosecuted. Contributing to this anti-democratic 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. This layer of democratic exclusion


99 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.”).

100 See infra notes 284-291 and accompanying text (arguing that policing is an acute form of domination at the community level).

101 See Monica C. Bell, Police Reform and the Dismantling of Legal Estrangement, 126 YALE L.J. 2054, 2065-67 (2017) (demonstrating the ways in which “collective symbolic and structural exclusion” in how poor people of color experience contemporary methods policing combine together to create “legal estrangement,” or a profound alienation from the police).

102 Cf. DANIELLE SERED, UNTIL WE RECKON (2019) (arguing that reckoning with the harms of police violence requires more than naming that harm; “there will also have to be a shift in power”); Friedman & Ponomarenko, supra note 22 (detailing the ways in which police policies are crafted without popular input).

103 Monica Bell, Anti-Segregation Policing, supra note 21 at 87 (“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.”).

104 See, e.g., SKLANSKY, supra note 75 at 68-105 (describing these dangers in the context of participation and policing). For particular studies of this phenomenon playing out, see, e.g.,
reinforces the others, reproducing and legitimizing an unequal and racialized system of justice.\textsuperscript{105}

Approaching police reform through a power lens means paying attention to each layer of anti-democratization. And, as a remedy for the multi-layered ways in which policing drains and denies political power, it means that one axis of change in the institutions of policing should be a shift in 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.\textsuperscript{106} 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;\textsuperscript{107} 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.\textsuperscript{108} There might therefore be ways to gather data that measure and track whether there has been any power handed to the people who live in neighborhoods where street-level policing is concentrated. There is Compstat (which provides the ability to measure instrumental outcomes like reports of crime);\textsuperscript{109} 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).\textsuperscript{110} Perhaps there may also be a way to bring in Compstat for Power—or rather, to bring the measurement of power into the larger calculus used to evaluate the success of reform efforts.

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\textsuperscript{105} See IRIS MARION YOUNG, INCLUSION AND DEMOCRACY 52-57 (2000) (describing the process of “internal exclusion”).
\textsuperscript{106} Cf. Patel, supra note 22 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.”).
\textsuperscript{107} STEVE HERBERT, CITIZENS, COPS, AND POWER (2006).
\textsuperscript{108} Tony Cheng, Input without Influence: The Silence and Scripts of Police and Community Relations, SOCIAL PROBLEMS (2019). 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.
\textsuperscript{110} See Policing Equity, What we Do: Compstat for Justice, supra note 68.
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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.\(^{111}\) 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.\(^{112}\) 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.”\(^{113}\) In other words, deciding to measure the costs and benefits of certain policy choices is itself an anti-democratic process, 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, it requires debate over the meaning of safety itself. The power lens implicates these political questions as a preliminary matter, requiring an analyst to stake 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, and in part because no one likes to be on the losing end of a power-shift—a situation in which police leaders would find themselves. 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 opens up “police reform” to visions that would divest from policing altogether through abolitionist methods of providing security—changing, perhaps, the meaning of “reform” itself.\(^{114}\) 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.\(^{115}\)

\(^{111}\) 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.”).


\(^{113}\) Id. at 433.

\(^{114}\) Cf. Marbre Stahly-Butts & Amna A. Akbar, *Transformative Reforms, Abolitionists Demands*, STANFORD J. C.R.-C.L. (forthcoming) (draft 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”).

\(^{115}\) See Simonson, *The Place of “the People”*, supra note 243 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
At the same time, the power lens can potentially exist alongside traditional police reform goals, such as promoting legitimacy or reducing conduct that we label as criminal. Proponents of the power lens may share any or all of the goals of the legitimacy or instrumental approaches—for instance, they may share a desire to reduce violence overall or to promote dignity and fairness in police interactions. 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. 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, and especially 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.

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 force and police surveillance of black and brown people. 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

116 Cf. Bell, Anti-Segregation Policing, supra note 21 at 68 (“[M]eaningful power-building is extremely difficult to achieve and maintain in the context of socioeconomic isolation and economic deprivation.”); Butler, supra note 23 at 239 (“Until we address the larger structural issues, racial subordination will just reproduce itself . . .”).


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.” Movement actors connect the history of policing and criminalization to the subjugation of people who were formerly enslaved and the denial of political power, and seek out reforms that counteract that history, that push for tangible shifts in power.

In this Part, I highlight this motif in social movement demands for institutional change in recent years, in which they 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 about efforts to change how policing works in the United States: 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, anti-police violence 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 different way of thinking about police reform, one that centers power as much as it does instrumental or legitimacy goals.

Below I describe two examples of this approach—one of a local governance structure, and one of a national legislation-making structure. In each of these, 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. A theme runs through these proposals—of 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.

119 See Stahly-Butts & Akbar, supra note 114 at 3.
120 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 (2019) (describing the interaction between state and local governance and federal criminal justice reform).
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 largescale reform of police departments. The idea of community control is to move beyond traditional notions of community policing, civilian review boards that recommend discipline of individual officers, or civilian advisory boards that make non-binding resolutions, and toward “civilian” controlled bodies with the power to set binding policies and priorities of police departments. 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 . . . .” This idea has been taken up around the country. From DC 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.

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121 On the history of civilian oversight of the police, see generally SAMUEL WALKER, POLICE ACCOUNTABILITY THE ROLE OF CIVILIAN OVERSIGHT (2001).
124 For example, in Houston, a call for a civilian review board with subpoena power is part of new Right2Justice Coalition. See Brian Rogers, Houston Activists Call for Criminal Justice Reform, HOUS. CHRON., Aug. 16, 2016, https://www.chron.com/news/houston-texas/houston/article/Houston-activists-call-for-criminal-justice-reform-9145919.php (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 Demands, FERGUSON ACTION, http://fergusonaction.com/demands/ (last visited Jan. 26, 2019) (demanding community oversight of policing and discipline); Community Oversight Now Launches Charter Referendum Petition for a Community Oversight Board 50 Years after the Death of Dr. Martin Luther King, Jr., NASHVILLE COMMUNITY OVERSIGHT NOW (June 6, 2018), https://communityoversightnashville.wordpress.com/ (launching a winning a petition drive for a charter referendum to create an independent Community Oversight Board (COB) with compulsory and investigative powers). In Atlanta, movement actors have consistently put forward a strong critique of a local civilian review board hailed as progressive by others, see Gloria Tatum, Atlanta Citizens Review Board Gets on Activists’ Last Nerve, ATL. PROGRESSIVE NEWS, May 15, 2015, http://atlaproservenews.com/2015/05/15/atlanta-citizens-review-board-gets-on-activists-last-nerve/; and in Los Angeles, local Black Lives Matter chapter has worked to call attention to the potential of recent reforms to reentrench inequalities, see David Zahniser, After Election Loss, 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-in-lapd-discipline-measure-20170517-story.html.
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, DC, and elsewhere. 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. So, for example, in Oakland activists have fought to specifically recruit individuals with criminal records to its new oversight board, and in Nashville activists crafted the winning referendum for a new Community Oversight Board with required representation from people in “economically distressed communities.” 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 decision-making 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. If they wish, they can contest and resist previous ways of defining and providing public safety.

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, the purpose of “community control” is not to revise police policies, or push for constitutional policing, but rather to ensure “direct democratic community control” of law enforcement by “communities most harmed by

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125 For a detailed explanation of these three dimensions of the institutional design of community control and their implications, see Rahman & Simonson, Institutional Design of Community Control, supra note 11, Parts II & III.

126 See Rahman & Simonson, Institutional Design of Community Control, supra note 11, draft at 29-31 (describing dispute in Oakland over whether there would be a criminal record check for members of the oversight commission).

127 See Nashville Community Oversight Board, https://communityoversightnashville.wordpress.com; see also Nashville Community Oversight Board, Potential Definitions of “Economically Distressed Communities,” https://www.nashville.gov/Portals/0/SiteContent/MetroClerk/docs/boards-commissions/CommunityOversight/Economically%20Distressed%20Communities%20Infographics.pdf

128 On ex ante democratic decision-making in policing, see Friedman & Ponomarenko, supra note 22, Slobogin, supra note 22.

129 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 (2005).

130 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).
destructive policing.”

In Washington, D.C., the group Pan-African Community Action (PACA), founded in 2015 following the murder of Alonzo Smith by Washington, DC 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.”

This call for power-shifting via community control of the police is not new; it was the center of the call by the Black Panthers and other radical activists of color in the 1960s to reclaim control of their local governments. 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. In the decades 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. In recent years, though, many jurisdictions...

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131 Community Control, THE MOVEMENT FOR BLACK LIVES, https://policy.m4bl.org/community-control/.
133 See, e.g., Black Panther Party, Petition for Community Patrol of the Police, BERKELEY MONITOR, Aug. 8, 1970, at 12,
134 See generally Rita Mae Kelly, Sources of the Community Control Over Police Movement, J. VOLUNTARY ACTION RESEARCH (1978); see also Elinor Ostrom & Gordon Whitaker, Does Local Community Control of Police Make a Difference? Some Preliminary Findings, 17 AM. J. POL. SCI. 48 (1973). 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 a referendum for a “Police Review Commission” with independent authority to investigate police complaints. See Walker, supra 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 133 (describing the community control referendum in Berkeley).
135 See Julian Clark & Barry Friedman, Community Advisory Boards: what Works and What Doesn’t (April 2020 draft on file with author) (surveying community advisory boards around the country
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 and cooptation. But by using the word “community” in their demands for power over policing, social movement actors are both nodding to past struggles against 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.” In 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.

Chicago activists’ ongoing efforts to create community control of the police exemplifies these efforts. 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

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”); 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 24 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, 636–37 (2016) (“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.”).


activists explained: “we believe democratic civilian control of the police means the community tells the police what to do.” The main grassroots group behind the push for CPAC a 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. Building on the group’s longstanding presence organizing in largely African-American 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. Their 2016 proposed bill, then sponsored by only the most progressive members of the city council, would have created a new police accountability council with elected positions drawn from each district, forbidding individuals with personal or professional connections to police officers from serving on the council.

The text of the CPAC ordinance has changed slightly over the intervening years, but it remains in play in local Chicago politics, gaining momentum in both 2019 and 2020. In 2019, the movement-drive ordinance was once again before the Chicago City Council, this time with twice the number of co-sponsors as it had in 2016. And in 2020, with protesters around the city holding up signs that say “CPAC Now!” and the

City Council facing pressure to react, \(^{145}\) a revised CPAC ordinance is gaining steam. \(^{146}\) 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. \(^{147}\) Notably, there is also a competing proposal, tentatively backed by Mayor Lori Lightfoot, that 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. \(^{148}\) 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 organizations \(^{149}\)—demonstrating, among other things, that different grassroots-based efforts and different movement configurations can lead to different governance proposals. Although GAPA does transfer some power to city residents: among other things, the all-civilian Commission would potentially have the ability to fire the Police Commissioner for cause and draft non-binding police department policies. \(^{150}\) But because there are no direct, binding powers in the proposed GAPA commission, advocates for CPAC have described the GAPA/Lightfoot proposal as a “watered down” version of reform that elides community control or “true accountability.” \(^{151}\) 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.

\(^{145}\) See, Curtis Black, Community Oversight or Control?, CHICAGO REPORTER (July 1, 2020) https://www.chicagoreporter.com/community-oversight-or-control-coalitions-meet-on-competing-police-accountability-proposals/ (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.”).

\(^{146}\) Claudia Morrell & Patrick Smith, After Decades of Police Corruption, Can Chicago Finally Reform Its Force?, WBEZ Chicago (June 13, 2020) (describing how in June 2020 CPAC is “gaining serious legs” politically in the City Council).

\(^{147}\) Id.

\(^{148}\) See Craig B. Futterman and Sheila A. Bedi, Communities need control over police if justice is to prevail, Chicago Sun Times (March 9, 2020), https://chicago.suntimes.com/2020/3/9/21172211/communities-need-control-over-police-if-justice-is-to-prevail (arguing in favor of CPAC over GAPA and contrasting the two); but see Lightfoot’s Civilian Police Review Ordinance Hits Snag, Chicago Sun Times (Mar. 10, 2020), https://chicago.suntimes.com/city-hall/2020/3/10/21173377/lightfoots-civilian-police-review-ordinance-hits-snag (describing a rift between Lightfoot and the GAPA coalition over the power of the new civilian council to impose binding policies).

\(^{149}\) See GAPA: Our Coalition, http://chicagogapa.org/our-coalition/ (“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.”).


\(^{151}\) Futterman & Bedi, supra note 148.
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, IL, and Rochester, NY, to those as large as Minneapolis, MN, Washington, D.C., and New York City. And these campaigns have sometimes gained political traction, whether it is the CPAC in Chicago that is back in play in 2019 and 2020, to the winning movement-driven referenda in Nashville in 2018 and Oakland in 2016 to establish new institutions of civilian oversight, even if they are not full-blown instantiations of community control. In many instances, social movement actors connect the design of institutions of “community control” to concerns with larger structural and historical inequalities 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.”

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 “co-producing” safety alongside police officers. Meanwhile, for some abolitionist groups, there is a worry that even strong civilian

160 M Adams & Max Rameau, Black Community Control over Police, 2016 Wis. L. Rev. 515, 530-38 (2016); Community Control, supra note 3.
161 See Grassroots Alliance for Police Accountability, A Community Plan for a Safer Chicago (2018), http://chicagogapa.org/wp-content/uploads/2018/03/GAPA-Report-2018.pdf (“This proposal seeks to increase public safety; foster and create trust and improve interactions between 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.”).
oversight institutions can still be coopted by more powerful interests, or by reigning ideologies that infect the institution of policing itself. To fiddle with the strings of power within a current institution of policing is in some ways to legitimize that institution. 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. Indeed, although the Vision for Black Lives, written in 2016 by the M4BL coalition, embraced community control of the police, recent platforms from some of these same organizations have either not mentioned community control of the police or stressed community control more broadly. The Movement for Black Lives took this latter approach 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. 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.”

162 See, e.g., Mariame Kaba & John Duda, Towards the horizon of abolition: A conversation with Mariame Kaba, The Next System Project (Nov. 9, 2017), https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba. Mariame Kaba explains this ambivalence this way: “Here’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?”
163 See Critical Resistance, Reforming Reforms Versus Abolitionist Steps in Policing, https://static1.squarespace.com/static/59ead8f9692cebec25b7f2f1f7/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRSide.pdf (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.”).
164 The Dream Defenders’ 2018 Freedom Papers, for example, hold out that “Prisons and police have no place in ‘justice.’” See Dream Defenders, Freedom Papers (2018), https://drive.google.com/file/d/1jmqXaK9HUTfT01uRB5rw6e9AgxDPVFnk/view. See also Black Youth Project 100, Agenda to Build Black Futures (2018), http://agendatobuildblackfutures.org/wp-content/uploads/2016/01/BYP_AgendaBlackFutures_booklet_web.pdf (no mention of community control or police reform).
165 See Movement for Black Lives, Defending Black Lives, Demands (June 2020), https://www.defendingblacklives.org/demands/ (“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.”).
166 Stahly-Butts & Akbar, supra note 114 at 6-7.
At the same time, many larger coalitions of grassroots organizations focused on police violence do explicitly support community control, and it has become part of the national debate over reform following the 2020 uprisings, especially but not only in Chicago. And they sometimes combine calls for community control with larger demands of divesting from policing or abolishing it altogether. In Los Angeles, for example, Black Lives Matter 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. This campaign combined demands for power-shifting in police accountability with demands for divesting from the criminal 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 one of its ten demands, with other demands including “defund the police” and “invest in community resources.”

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. But drawing out the specific focus on power-shifting helps illuminate the different focus that calls for local community control bring to police reform. In an article about 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

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See, e.g., Rameau & Freeman, supra note 38 (describing national movement conversations); Claudia Morrell & Patrick Smith, After Decades of Police Corruption, Can Chicago Finally Reform Its Force?, WBEZ Chicago (June 13, 2020) (describing how in June 2020 CPAC is “gaining serious legs” politically in the City Council).


relationship among the individual and collective social actors.”172 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.”173 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.


At the national level, the People’s Coalition for Safety and Freedom (“People’s Coalition”) proposes new federal legislation that would shift federal investment in “public safety” away from policing by using a “People’s Process” that defers to the priorities of people who live in communities most affected by mass incarceration. 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 response to 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. They explain: “For far too long and in far too many ways, federal legislation has been driven by powerful interests and drafted in opaque ways. By bringing a transformative approach to building consensus and content for a transformative legislative outcome, we seek to change the way—and for whom—policy and budgeting operates.”174

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,175 has caused more harm than good to “an entire generation of families in the United States, with a particularly distributive impact on Black Communities.”176 This harm, in the view of the coalition, came from federal investment in policing initiatives that increased surveillance and everyday violence, and, in turn, discouraged the federal

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172 Adams and Rameau, supra note 122 at 523-24.
173 Id. at 529; see also Rameau & Freeman, supra note 38 “[Washington, D.C. group] PACA 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.”).
175 But see Bruce Shapiro, Nothing About the 1994 Crime Bill Was Unintentional, The Nation (Apr. 11, 2016).
176 Peoples Coalition for Safety and Freedom, supra note 174 at 1 (citing Justice Policy Institute, Rethinking the Blues: How We Police in the US and at What Cost (2012)).
government from investing in disadvantaged communities in other ways. In the context of policing, the coalition focuses in particular on the founding of the Community Oriented Policing Services arm of the Department of Justice, which was granted $8.8 billion in funding by the 94 Bill. COPS, in turn, has granted over $14 billion to local law enforcement agencies since that time.

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, the community policing initiatives that resulted excluded the most marginalized from their participatory mechanisms; and third, it used federal resources that might have otherwise been designated for community supports outside of the criminal legal system.

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. 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.

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177 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 (2016).
178 See Community Oriented Policing Service: Grants, https://cops.usdoj.gov/grants (“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.”).
180 See Peoples Coalition for Safety and Freedom, supra note 174 at 1-2.
181 The Coalition recognizes that the 94 Crime Bill was not the exclusive cause of the expansion of policing, or of the carceral state. See Hoskins et. al., supra note 6; cf. John Pfaff, Bill Clinton Is Wrong About His Crime Bill, So Are the Protesters He Lectured, N.Y. Times (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. (arguing that the impact of the 1994 Crime Bill is not as immense as Black Lives Matter activists claim).
182 Hoskins et. al., supra note 6.
In envisioning a replacement for the Crime Bill, the coalition in its focus groups and meetings over the year 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 and the 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, and investment in other means of giving communities the ability to support each other and to thrive.183 The People’s Coalition insists that 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.”184

The People’s Coalition demands that this grassroots reimagining of the meaning 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, people’s assemblies,185 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 local organizations. The “People’s Process” relies on the idea that wisdom can be generated when we allow impacted populations to use their experiences being subject to the control of the carceral state as a way of generating insight into pathways for reform. For it is the same race-class subjugated American neighborhoods that have been destabilized by overpolicing and mass incarceration that have also been ravaged by the lack of funding for housing, education, and health—forms of support that are directly linked to the prevention of violence. And it is within these communities, often made up of poor people of color, that groups have met the urgency of their situations by collectively redefining the very ideas of “safety”186 and “freedom.”187

In November 2019, in advance of the coalition’s release of its platform, Congressional Representative Ayanna Pressley introduced a resolution in Congress modelled after the coalition’s ideas and based on conversations with activists from the

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184 See Hoskins et. al., supra note 6.


coalition. Congresswoman Pressley describes the resolution, the “People’s Justice Guarantee,” as “taking the lead” from on-the-ground conversations by directly impacted people. She has repeatedly said: “There are no co-sponsors. It’s the people.” The People’s Justice Guarantee sweeps across policy areas, while centering its purpose on repairing the harms of mass incarceration and mass criminalization. In recognition of a “moral obligation to meet [the] foundational promise of guaranteed justice for all,” the resolution calls 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.”

The People’s Justice Guarantee demands both legal changes in the criminal system that reduce the reach of policing, criminalization, and incarceration; and federal investments in jobs, housing, health care, transportation, infrastructure, and clean water that would allow people who live in impacted neighborhoods to support each other and craft their own remedies for disorder and violence.

The People’s Justice Guarantee also adopts the idea of the “People’s Process” from the People’s Coalition for Safety and Freedom. Indeed, Congresswomen Pressley stresses in interviews that the resolution itself comes from a kind of People’s Process—the 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. 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…” This “People’s Process” would include “people’s assemblies, townhalls, listening sessions, and workshops” in which “directly impacted communities” would help draft legislation to create a holistic federal agenda to promote public health and safety.

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 is left unstated. One possibility, suggested by the organizers, is that it could resemble participatory budgeting, but on a national level. But despite this imprecision, the Coalition’s demand

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190 Id.
191 See H.R. 702, supra note 188.
192 Id.
193 See Lerner, supra note 189.
194 See H.R. 702, supra note 188.
195 Id.
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. They have 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 perhaps 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.196 The power-shift in 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.197 And in doing so, it demands that we all reexamine the idea of “public safety” itself.198

Both the “People’s Process” to craft national legislation and the local push for community control over policing demand largescale 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-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 coopted 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, 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

197 Cf. Rahman & Simonson, Institutional Design of Community Control, supra note 11 at 191-205 (arguing that scope of power and nature of authority are two different dimensions along which to think about power-shifting in governance arrangements).
198 Cf. Barry Friedman, What is Public Safety? (May 2020 draft), draft at 7 (“Wherever one ultimately comes out on what public safety entails, what seems unacceptable 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.”).
to police reform: as reparation, as anti-subordination, 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. But I describe them separately because they bring with them 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: that we must take historical wrongs into account when thinking about reform in the present. In the context of governance and policy-making, 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. The argument, here, is not that a new form of governance that shifts power downward would itself constitute a complete plan for reparations. 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. As the debate over reparations for slavery reenters mainstream discourse, so too might a way of thinking about policing 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 repair for past crimes against groups,” such that reparations “are justified because past harm is causing current inequality.” 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 disparities and seeks to remedy those harms explicitly. 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.” 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. And, as Ogletree implies, 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; but many recognize that legislation and policy-making can be forms of reparation. For example, the Voting Rights Act acts as a reparative piece of legislation, aimed at righting the past and ongoing harms of Jim Crow by protecting and promoting the ability of African-Americans to vote. So too is the legislation in President Johnson’s Great Society, aimed at using anti-poverty programs to improve the lives of poor people, and especially African-Americans in urban areas. And in a recent piece of public reparative law-making, 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. In the words of the National

205 Eric J. Miller, On Juneteenth, demanding that reparations be more than lip service, THE HILL (June 19, 2019), https://thehill.com/opinion/campaign/449392-on-juneteenth-demanding-that-reparations-be-more-than-lip-service. (“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.”).
206 See, e.g., BORIS BITTKER, THE CASE FOR BLACK REPARATIONS (1973) (analyzing legal theories behind litigation for black reparations for slavery, Jim Crow, and other historical injustices); but see id. at 128 (describing how under a legal theory of reparations in which the state is liable, settlement money can be used for public projects and legislation).
209 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) (“The President 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.”).
Coalition of Blacks for Reparations in America (N’COBRA), “reparations means full repair”—repair that can include legislative or other policy actions.\textsuperscript{211}

In recent decades, scholarly and public attention to the idea of Black reparations has resurfaced.\textsuperscript{212} 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 HR 40, a bill to fund a federal study of reparations, for 30 consecutive years in Congress.\textsuperscript{213} It was not until 2019 that Congress for the first time held public hearings on the legislation,\textsuperscript{214} and in the 2020 Democratic primary it was an issue at debates and on the campaign trail.\textsuperscript{215} This political shift comes after decades of organizing from longstanding groups like N’COBRA and American Descendants of Slavery (ADOS),\textsuperscript{216} as well as the influential 2014 Essay, “The Case for Reparations” by Ta-Nehisi Coates.\textsuperscript{217} It also follows centuries of writing and theorizing about the concept of reparations for African-Americans in America after slavery.\textsuperscript{218} The debate that has emerged from recent

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\textsuperscript{212} Ogletree, Jr., \textit{Repairing the Past}, supra note 209, at 287-88 (discussing the general gap in popular or academic discussion of reparations from the 1970s to the 1990s).

\textsuperscript{213} \textit{Id.} at 290 (describing genesis and early history of HR 40).


\textsuperscript{215} \textit{Cf.} Rios, supra note 200 (“The idea of reparations [is] on the national agenda in a way it has not been since Reconstruction.”).


\textsuperscript{217} \textit{See} Ta-Nehisi Coates, \textit{The Case for Reparations}, \textit{THE ATLANTIC} (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/; see also Ta-Nehisi Coates \textit{Revisits the Case for Reparations}, \textit{THE NEW YORKER} (June 10, 2019) (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 \textit{The Atlantic}).

\textsuperscript{218} \textit{See}, e.g., \textit{BORIS BITTKE}, \textit{THE CASE FOR BLACK REPARATIONS} (1973). On this intellectual history, \textit{see} ALFRED L. BROPHY, \textit{REPARATIONS PRO & CON} 62-74 (2006); Brown, supra note 206 (arguing that Black Reconstruction involved the original theorizing of reparations through structural transformation); Eric K. Yamamoto et. al., \textit{American Reparations Theory and Practice at the
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. 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 that includes implementing a legal presumption of Hawaiian rule over certain lands. 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 themselves be determined by groups who have been harmed, or at least with their input. For instance, Mari Matsuda has included within her critical theory of reparations the requirement that victims have full power to decide the form and content of those reparations. And 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.” The Movement for Black Lives echoes this idea in its “Reparations Toolkit,” stating that the “form and manner” of reparations for slavery and other injustices—including racialized policing—should be determined by Black people. As a result, groups affiliated with M4BL have begun by holding town meetings throughout the country to discuss their own reparations proposals.

The recent reparations ordinance in Chicago is itself an example of harmed communities playing a part in designing the forms of relief: after years of collective


219 See Stolberg, supra note 214 (describing range of possible means of reparations).

220 See Brophy, supra note 218 at 172-73.

221 Matsuda, supra note 32 at 371-72.

222 Cf. Katherine Franke, Repair: Redeeming the Promise of Abolition (2019) (describing African-American self-governance during the early years of Reconstruction, and connecting the goal of reparations today to that promise of self-governance).

223 See Matsuda, supra note 32 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.”).


protests, litigation, and political discussions, it was a grassroots coalition that put together the package of relief for decades of police torture. Movement actors deliberately framed their proposed legislation to compensate victims of police torture as “reparations,” connecting racialized police violence in the 20th Century to the histories of slavery, Jim Crow, residential segregation, and policing targeted at African-American neighborhoods. 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 Burge and police violence in Chicago as part of the public school curriculum for 8th and 10th graders. This ordinance was a form of reparations because it meant more than individual reckoning – more than the criminal conviction of the main police detective, Burge, himself. Instead, it required a broader public reckoning of the role of the state in perpetuating police violence.

Similarly, power-shifting in police reform can be a kind of reparations. The identifiable group harm has been in what political scientists call “race-class subjugated communities,” which have experienced everyday policing and surveillance that take away political participation and democratic citizenship from people who live in those...

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229 Burge served four and a half years in prison for obstruction of justice and perjury. See Taylor, supra note 226.

230 See McLeod, supra note 226 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 . . .”).

231 Although not necessary for a claim of reparations, some scholars have argued police violence is a direct result of slavery – having the “incidents and badges,” in the words of the Thirteenth Amendment. See Cedric Merlin Powell, *The Structural Dimensions of Race: Lock Ups, Systemic Chokeholds, and Binary Disruptions*, 57 U. Louisville L. Rev. 7, 35 (2018) (book review) (“The modern carceral state has all of the badges and incidents of slavery. . . . The chains are simply invisible now.”).
areas. Political scientists have documented how “race-class subjugated communities,” the places where policing has been targeted in recent decades, are governed through the coercion, control, and violence of policing. The result of these policies and forms of governance are both a reduction in political power and pervasive alienation from the state.

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 non-binding popular input through regular community meetings. Police departments engaging in community policing may genuinely 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 policy-making or budget distribution.

Indeed, activists pushing for community control bring in sophisticated critiques of community policing when they advocate for stronger power shifts in governance. In 2015, for example, social movement actors in Chicago in the group We Charge Genocide conducted a study of community policing in their 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

235 See generally Jocelyn Simonson, Copwatching, 104 Calif. L. Rev. 391, 398-407 (2016); cf. David Alan Sklansky, Private Police and Democracy, 43 Am. CRIM. L. Rev. 89, 90 (2006) (“The phrase “community policing” remains notoriously ill-defined, but one thing it has almost never meant is giving the “community” true control over law enforcement.”).
select community members in providing police with legitimacy." 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 “non-legal cynics”—community members who genuinely want to cooperate with the police. According to Cheng, the participation of the public becomes “input without influence,” and community meetings become “a mechanism of legitimating the input process, but only further reinforcing the social order.” Community policing, then, often has the tendency to exclude local residents (both cynics and non-cynics) from meaningful participation, while reinforcing existing power imbalances between the police and policed populations.

If this is true—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 reparations might follow. This is certainly how social movement actors think of it. Recall that the People Coalition’s proposal for a replacement to the 94 Crime Bill begins with a call for “a 21st Century legislation that acknowledges and begins to repair the harmful, ineffective, and wasteful aspects of over policing, mass criminalization, and mass incarceration . . . .” Similarly, N’COBRA has stated that black reparations must include reckoning with the “criminal punishment system” and “repair[ing] the damage of the criminal injustice system.” In political terms, this might mean directly reenfranchising people with criminal records and eliminating prison gerrymandering, which are group-based political harms. 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.

b. Anti-subordination

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238 Id. at 5-6.
239 See generally SKLANSKY, supra note 45 (describing these dangers); Jocelyn Simonson, Copwatching, 104 CALIF. L. REV. 391 (2016) (same).
240 Peoples Coalition for Safety and Freedom, supra note 174 at 1.
241 N’COBRA, supra note 224.
243 See Jocelyn Simonson, The Place of “the People” in Criminal Procedure, 119 COLUM. L. REV. 249 (2019) (arguing that these populations are currently shut out of public participation in criminal legal institutions and in their governing ideology).
Shifting power in police reform is also consistent with an ant subs ordination view of law-making and law-changing. The legal theory of ant subs ordination was generated amidst debates over the interpretation of the Equal Protection Clause in the 1970s and 1980s. In the words of Owen Fiss, the underlying normative thrust of ant subs ordination theory is that laws should not “perpetuate . . . the subordinate stature of a specially disadvantaged group.” Ant subs ordination 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.” In the context of constitutional jurisprudence, this means interpreting the Constitution in the context of an idea of equality that centers the need to dismantle unequal status relations, and especially to reduce and eliminate racial subordination—whether that subordination is deliberate or not.

Although ant subs ordination was born in the context of constitutional interpretation, the legal theory is not limited to constitutional interpretation, but instead implicates a broader state obligation to affirmatively shift the subordinate status of historically oppressed groups.

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245 See 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 “perpetuate...the subordinate status of a specially disadvantaged group.”). The ant subs ordination tradition was first described by Owen Fiss, but has been elaborated on and extended by many scholars in the next two decades, including but not limited to Reva Siegel, Jack Balkin, Catharine MacKinnon, Lawrence Tribe, and Derrick Bell. See Jack M. Balkin & Reva B. Siegel, The American Civil Rights Tradition: Anticlassification or Antisubordination?, 58 U. MIAMI L. REV. 9, 10 (2003) (citations omitted).
246 Reva B. Siegel, Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over Brown, 117 Harv. L. Rev. 1470, 1547 (2004); see also CATHERINE 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 deprived position because of gender status”); Ruth Colker, Anti-subs ordination Above All: Sex, Race, and Equal Protection, 61 N.Y.U. L. Rev. 1003, 1007 (1986) (“Under the ant subs ordination perspective, it is inappropriate for certain groups in society to have subordinated status because of their lack of power in society as a whole.”).
247 See Jack M. Balkin & Reva B. Siegel, The American Civil Rights Tradition: Anticlassification or Antisubordination?, 58 U. MIAMI L. REV. 9 (2003) (“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”); Siegel, supra note 246 at 1500–49 (fleshing out a theory of antisubordination in detail); 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”).
certain groups. When applied to policing, antisubordination theory unearths the need to structure policing in a way that accounts for, and minimizes, the group harms that result from everyday policing practices.\textsuperscript{248} If policing itself drives and creates disparities of political economy by relegating people who interact with police officers to less than full citizenship,\textsuperscript{249} then shifting power to those who are 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-ideological—it pushes back against dominant ideologies that sustain subordination.\textsuperscript{250} It simultaneously makes legal and ideological claims. It is active, demanding that “law work against subordination and not for it.”\textsuperscript{251} So that, in Equal Protection, antisubordination theory requires attention not just to whether groups are being treated similarly, but also whether the groups being treated less fairly are also groups with less power;\textsuperscript{252} and in First Amendment jurisprudence, a jurisprudence of antisubordination might lead a court to consider social and economic inequalities that structure and limit the ability of people to speak and to be heard.\textsuperscript{253}

The state obligation to promote antisubordination extends beyond constitutional interpretation, to policy-making and governance more broadly.\textsuperscript{254} In the realm of governance, for example, Christopher Tyson has recently argued that

\textsuperscript{248} See Bell, Anti-Segregation Policing, supra note 21 at 22-27 (describing the subordinating effects of policing practices that create and perpetuate racial segregation).


\textsuperscript{251} Id. at 1406.

\textsuperscript{252} See Sergio J. Campos, Subordination and the Fortuity of Our Circumstances, 41 U. Mich. J.L. Reform 585, 588 (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 Balkin & Siegel, note 247 at 9 (“Antisubordination theorists contend that . . . law should reform institutions and practices that enforce the secondary social status of historically oppressed groups.”).
“[a]ntisubordination theory can . . . be instrumental in redirecting considerations of racial disparities away from individualized, intentional harm and towards historically traceable and measurable group-based harms.”

255 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 equally—but also structurally about the ways in which participation is muted for marginalized populations. 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-20th Century. Jack Balkin and Reva Siegel put it this way, in explaining the origins of antisubordination in the work of Owen Fiss:

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 experiences 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 while professing to bestow it.”

256 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.”

The implication of this stance within antisubordination theory is that members of subordinated groups are themselves the ones to whom we should listen 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 especially Black, Latinx, and Indigenous people. This has not been because of illegal or unconstitutional conduct—although that certainly has 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

256 Balkin & Siegel, supra note 247 at 31.
257 Matsuda, supra note 32 at 324; cf. Gowri Ramachandran, Antisubordination, Rights, and Radicalism, 40 Conn. L. Rev. 1045, 1059–60 (2008) (“We should not forget that social cognitionists, 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.”).
everyday policing. Moreover, policing itself drives and creates disparities of political economy by relegating people who interact with police officers to less than full citizenship. 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, together lead to “collective symbolic and structural exclusion” in how poor people of color experience contemporary methods of policing. These combine together to produce both “legal estrangement,” or a profound alienation from the police, as well as the larger collective harm when police practices create and reinforce residential segregation and unequal opportunity.

To be clear, there might be rational reasons for these forms of subordination—for example, the drive to use “hot spots” policing to reduce violence in urban neighborhoods is connected to social science demonstrating that it may lead to a reduction in reports of violence. But that does not negate the subordinating nature of a practice like hot spots or broken windows policing: when police target and surveil a neighborhood, those practices strip the people who live there of some of their dignity and citizenship.

If policing is subordinating in this way, then shifting power to those who are subject to this subordination promotes equality and democracy, especially when it is power over the very levers of policy-making that control those subordinating systems. So that when the Movement for Black Lives (M4BL) demands “a world where those most impacted in our communities control the laws, institutions, and policies that are

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260 Monica C. Bell, Legal Estrangement, supra note 25 at 2065-67.
261 Id.
262 See Bell, Anti-Segregation Policing, supra note 21 at 22-27
263 National Institute of Justice, Practice Profile: Hot Spots Policing, https://www.crimesolutions.gov/PracticeDetails.aspx?ID=8 “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”.
265 See generally HARCOURT, supra note 97 at 160-80 (on broken windows policing); LERMAN & WEAVER, supra note 94 (on citizenship harms to entire populations); cf. Rachel A. Harmon, Federal Programs and the Real Costs of Policing, 90 N.Y.U. L. Rev. 870, 871 (2015) (describing how federal policing programs do not take into account the harms of policing such as injury, suffering, and fear).
meant to serve us . . .,”266 their call for more control over the criminal legal system is more than an empty 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,”267 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.268 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.269 In these ways, movement visions of power-shifting reflect a goal of antisubordination theory: countering subordination through the structure of state policy-making 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.270 This leads to a particular view of police reform, one in which power shifts are not just desirable, but also necessary, for a legitimate governance arrangement.271 This view of democratic policing differs from consensus-

266 Community Control, THE MOVEMENT FOR BLACK LIVES, https://policy.m4bl.org/community-control/. See also Political Power, MOVEMENT FOR BLACK LIVES, https://policy.m4bl.org/political-power (“We 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.”).
268 Cf. Stahly-Butts & Akbar, supra note 114 at 3 (explaining that the abolitionist movement’s concept of “transformative reform” means 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”).
269 See Hoskins et. al., supra note 6.
270 Cf. CHANTAL MOUFFE, THE DEMOCRATIC PARADOX 33-34 (2005) (“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.”).
271 See Miller, Encountering Resistance, supra note 87 at 310-20, 333–34 (2016) (arguing for a contestatory, republican view of democracy with respect to policing); Patel, supra note 21 (arguing for an agonistic approach to integrating community members into consent decrees); Jocelyn Simonson, The Place of “the People” in Criminal Procedure, 119 COLUM. L. REV. 249, 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 at 109 (calling for a “spirit of democratic oppositionalism ... [so that] democracy is understood to involve ongoing opposition to patterns of unjustifiable hierarchy.”).
based or legitimacy-based views of democratic policing, in which seeking input and consensus is the clearest path to a healthy citizenry.\textsuperscript{272} 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.\textsuperscript{273} This, in turn, requires the creation of new institutions of governance or forms of policy-making that facilitate countervailing power, allowing people to challenge the state’s current approaches to providing safety and security.\textsuperscript{274}

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 to 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.\textsuperscript{275} As in Mouffe’s account of agonism, the action happens in an adversarial manner but within the bounds of current political structures; the respect for existing rules and structures is part of what makes the participation agonistic rather than antagonistic.\textsuperscript{276}

\begin{footnotesize}
\begin{enumerate}
\item See Simonson, \textit{Copwatching}, supra note 239 at 429-36 (contrasting consensus- and contestation-based theories of democracy with respect to policing).
\item Cf. Sklansky, \textit{supra} note 45 at 86-97 (describing the dangers of the preoccupation with consensus-based reform); Eric J. Miller, \textit{Encountering Resistance}, supra note 87 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. Sklansky, \textit{supra}, at 66-105.
\item Mouffe, \textit{supra} note 270 at 1-19; see also Simonson, \textit{Copwatching}, supra note 239 at 435-36 (using the lens of agonism to argue for the importance of respecting the practice of organized copwatching by marginalized populations); Sunita Patel, \textit{Toward Democratic Police Reform: A Vision for "Community Engagement" Provisions in DOJ Consent Decrees}, 51 WAKE FOREST L. REV. 793, 809-18 (2016) (using the concept of agonism to argue for the robust participation of community groups in the iterative process of DOJ consent decrees).
\item See Mouffe, \textit{supra} note 270 at 51 (identifying the preservation of democratic spaces as necessary for agonism); Simonson, \textit{Copwatching}, supra note 239 at 437 (describing how agonistic contestation happens “through civic engagement with the processes in place . . . ”). Agonism
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democracy requires, and celebrates, collective resistance to dominant ideas and policies within existing institutions.

For agonistic contestation to thrive, however, institutional and policy-making processes must be structured so as to facilitate collective resistance. This view of institution-building is rooted in the necessity of counteracting the inequities of modern-day democracy, in which some constituencies already possess 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. In the parlance of neorepublican political theory, the goal is to counter domination—a goal that Sabeel Rahman has recently brought to legal theory and analysis as well. Contestation becomes essential to the goal of countering domination by enabling dominated groups to share governing power and hold government and elites accountable.

An ideal of contestatory democracy should not be confused with a populist vision of who should be in control of policy and governance. In particular, a populist view would conceive of only one version of “the people” and only one group to whom power should be shifted. Instead, this 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 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 270 at 100–105 (2000).

277 See Hollie Russon Gilman & K. Sabeel Rahman, Civic Power (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).

278 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.”).

279 See Philip Pettit, Republicanism: A Theory of Freedom and Government (2002) (putting forth a theory of republicanism that defines freedom as “non-domination”); id. at 22 (“Domination ... means, at the limit, that the dominating party can interfere on an arbitrary basis with the choices of the dominated....”).

280 See, e.g., K. Sabeel Rahman, Democracy Against Domination 154 (2017) (describing how “[t]he democratic response to domination can manifest through the expansion of democratic capacities for political action and contestation...”).

281 See, e.g., Philip Pettit, Republicanism: A Theory of Freedom and Government (2002) (articulating a modern theory of republicanism where political legitimacy and freedom is premised on the ability of citizens to contest the actions of the state); Chantal Mouffe, Agonistics: Thinking the World Politically 1-19 (2013) (arguing that contestation is necessary to overcome dominant, elite hegemonic ideas and social arrangements).

282 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”).
cannot be easily reconciled. Indeed, it is precisely because they cannot easily be reconciled that contestation, rather than consensus, is the aspiration. But, unlike in traditional pluralist theory, the power lens does not encourage elites to represent pluralist, popular interests, but rather encourages more direct forms of participation and contestation. This idea of contestation as necessary for a legitimate democracy therefore requires governance arrangements that facilitate collective contestation and, when appropriate, direct collective resistance to reigning ideas.

Policing is as much a form of domination as any other realm of state action: policing involves the exercise of dominion, of violence, in the name of the state and of protecting others. And in the United States, its history is one that can be traced back to slave patrols, and later to the formation of professional police patrols with the purpose of surveilling and subordinating Black communities. 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. Contestation in policing and throughout the criminal legal system can happen in many ways. As Eric Miller has argued forcefully, the republican tradition of encouraging contestation should mean, at a minimum, that people interacting with the police at an individual level should be able to contest the lawfulness of those encounters. Contestation can also happen collectively, including through bottom-up participation in everyday adjudication, largescale litigation, and communal forms of organization and protest outside of formal state governance arrangements that facilitate collective contestation and, when appropriate, direct collective resistance to reigning ideas.

283 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 75 at 23-28 (summarizing the ways in which the pluralists saw group conflict as the essence of politics).

284 Cf. Simonson, The Place of “the People”, supra note 243 at 287-90 (describing this vision of contestatory democracy).


286 See Dorothy Roberts, Abolition Constitutionalism, 133 Harv. L. Rev. 1, 20-29 (2019) (describing the origins of policing in slave patrols and how “modern police forces are descendants of armed urban patrols … to constantly monitor and inspect both enslaved and free black residents to prevent the growth of an organized colored community.”) (internal quotation omitted).

287 See, e.g., Eric J. Miller, Police Encounters with Race and Gender, 5 UC Irvine L. Rev. 744-748 (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 in which the public can engage in the political process.); see also Miller, Encountering Resistance, supra note 87 at 310-20.

288 See, e.g., Simonson, The Place of “the People”, supra note 243 at 19-23 (describing communal forms of contestation in everyday criminal adjudication).

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, methods of policing governance must account for the abilities of people to engage in collective contestation over the scope and methods of policing, rather than simply input into those methods. Ideally, this will give historically disempowered populations power over the very levers of decision-making that control the distribution of policing and police violence, and even the decision whether or not to maintain the institutions of policing as we know them. The contestation over ideas of how and if policing should happen will take place via the exercise of collective governing power.

Police reform that invites agonistic participation and contestation is reform in which people who oppose the dominant ideas and policies of their local police department are welcome to participate; indeed, their participation is celebrated. And because their participation is celebrated, a governance arrangement that invites 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.” 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 are asking to play a new and powerful role not just in small decisions like 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. And in order to contest these big ideas through legitimate political means, they are proposing consent decrees may help shift power when litigation outcomes fail to reform police-community relations).

290 See, e.g., 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, Copwatching, supra note 239 (focusing on collective contestation from organized copwatching groups); Sheila R. Foster, Collective Action and the Urban Commons, 87 NOTRE DAME L. REV. 57, 62-63 (2011) (describing forms of communal governance outside of the state).

291 Cf. Levinson, supra note 91 at 83-92 (arguing for the importance of tracing power-shifting through institutions).

292 Cf. Gerken, Dissenting by Deciding, supra note 129 at 1777 (describing dissent of local decision-making bodies as “both an act of affiliation and an act of contestation.”).

293 See Black Lives Matter Chicago tweets, @BLMChi (Jun. 12, 2019), https://twitter.com/BLMChi/status/1138875087577387009
new governance arrangements that shift power in big enough ways to make 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—thinking of power-shifting as reparations, as supporting antisubordination, or as facilitating contestatory democracy—provide a theoretical framework for the power lens. And these ideas are also reflected within social movement articulations of their own proposals for police reform, proposals that seek to shift power as much as they aspire to particular instrumentalist or legitimacy-focused outcomes.

IV. Police Reform Revisited: on Expertise

If the power lens is an appropriate addition to police reform discussions, as I have argued in Part III, then adding it into the mix when discussing police reform possibilities shifts the discussion in important ways. In this Part, I focus in 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 reduction, 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 transformative change.

When legal scholars debate the desirability of “expert” input into policies governing criminal legal institutions such as the police and criminal courts, that concept of expertise usually takes on one of two distinct meanings. 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.

294 See Part I, supra (laying out these various goals of police reform).
to refer to those who have attained advanced degrees and studied the “success” of policing over time—“criminologists or social scientists who study these issues on a regular basis.” 296 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. 297 These scholars do not eschew the need for democratic participation or accountability. But they believe that everyday decision-making powers should be in the hands of social scientists or public policy “experts,” who may be better able to resist the pull toward “penal populism,” the tendency of the public to rachet up criminal responses to harm; and may be better able to withstand what Bill Stuntz’s has called the “pathological politics” of the criminal law. 298

The power lens brings a different view of expertise, and promotes a different kind of expert. 299 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 of our forms of public participation in the criminal legal system. 300 Under the power lens, these knowledge-laden” expertise that allows the expert to contribute further to the practice itself. See HARRY COLLINS, RETHINKING EXPERTISE, 26-28 (2007).

296 See BARKOW, supra note 29 at 12; see also id. at [Chapter 5 page] (“[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’ taxonomy, this is “interactional expertise.” See id. at 77-81.

297 See BARKOW, supra note 29 at 165-86 (2019) (describing the importance of engaging experts in reform efforts, describing how the public is guided by “emotion,” and calling for “expert bodies that use empirical data and studies to guide their decisions about criminal justice policy”); Maria Ponomarenko, Rethinking Police Rulemaking, 114 NW. U. L. REV. 1, 38-42 (2019) (calling for administrative intermediaries to be in charge of police rulemaking); John Rappaport, Some Doubts About Democratizing Criminal Justice, at 101 (arguing for reform that “emphasizes an evidence-based approach to criminal justice problem-solving focused on achieving outcomes consistent with democratic values”).

298 See BARKOW, supra note 29 (“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 (2001)).


300 See Simonson, The Place of “the People”, supra note 243 at 270-86; cf. Akbar, supra note 21 at 88 (“We must learn from and collaborate with social movements comprised of the very people—black, brown, poor, immigrant, queer, trans, incarcerated and formerly incarcerated—so often locked out of our politics.”); Patel, supra note 22 at 876 (“[I]ndividuals with direct experience with police brutality must receive an enhanced opportunity to present their experiences within the boundaries established for the deliberative process.”).
people do not just become important subjects of policing governance; they become experts themselves.\textsuperscript{301} This inversion of the construction 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. Claims of expertise within systems can even 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.”\textsuperscript{302} Contemporary movement claims over expertise parallels 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.\textsuperscript{303}

But today’s radical claims are not coming from scholars, but rather from movement leaders. They are writing 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.\textsuperscript{304} They are explicitly naming who should be in charge: people with criminal records,\textsuperscript{305} people who live in “economically distressed communities.”\textsuperscript{306} They are prefiguring their own expertise with detailed people’s budgets

\textsuperscript{301} Cf. HARCOURT, supra note 97 at 160-180 (describing how policing policies such as “broken windows” turns entire classes of people into “subjects that need to be controlled,” with implications not just for those people for but social meaning more broadly).


\textsuperscript{304} See Part II(a), supra. 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, 723-25 (2018); Janet Moore et. al., Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform, 78 Alb. L. Rev. 1281, 1281 (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”).

\textsuperscript{305} See Rahman & Simonson, Institutional Design of Community Control, supra note 11, draft at 29-31 (describing dispute in Oakland over whether there would be a criminal record check for members of the oversight commission).

\textsuperscript{306} See Nashville Community Oversight Board, https://communityoversightnashville.wordpress.com; see also Nashville Community Oversight Board, Potential Definitions of “Economically Distressed Communities,” https://www.nashville.gov/Portals/0/SiteContent/MetroClerk/docs/boards-
and the national push for a “People’s Process.” 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…” In laying out these governance demands, movements are claiming their own power to make informed decisions about what “works” and what doesn’t; and they are demanding that we pay attention to the realities that they lay before us.

This expertise reverses the claim of many scholars that we should be seeking out independent experts with traditional credentials like advanced degrees or professional experience. 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 daily. These experiences give them knowledge of how policing is experienced by the policed. They also may give them opinions about policing that would otherwise be unwelcome in traditional modes of participation. These experts might be given 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 those in charge decide for themselves the subjects and methods through which they can be adequately informed and trained. 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 decision-making processes. Erin Collins’ recent work explores how the push for “evidence-based” practices in the criminal system more broadly reinforces epistemological hierarchies, categorizing as “evidence” forms of knowledge that disqualify the lived experiences of those directly impacted by the system, as both so-called victims and defendants, as well as more collectively. And in arguing for democratizing the production of algorithms in the criminal legal system, Ngozi Okidegbe has similarly highlighted the expertise of people who are directly impacted by

307 See Part II(b), supra.
308 See H.R. 702, supra note 188.
309 Cf. Clark & Friedman, supra note 135 at 11-12 (describing the limitations of police-led trainings of members of civilian advisory boards).
310 Cf. 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.”); Barkow, supra (“The second premise behind this recommendation for expert oversight is that empirically valuable information on criminal law can lead to better decisions.”).
311 See Erin Collins, Against the Evidence-Based Paradigm (draft on file with author).
the system, underscoring both notions of expertise from below: “Because of their experience with the criminal justice system, members from low-income, racially marginalized communities have a unique expertise . . . Working alongside technocrats, racially marginalized groups could name, disrupt, and dismantle assumptions that propagate these systems’ reproduction of the racial inequities present in the pretrial process.”

Although the concept of “evidence” is separate from that of “expertise,” the issues are related, and to shift expertise also means to shift the genesis of data and evidence. As Okidegbe tells us, this, too, would be destabilizing.

Opening up the idea of expertise in this way in turn opens up “expert opinions” to deeper critiques of policing than are ordinarily found in official 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 than a bug of participation in the criminal system. She writes, “[a]utomatic, cost-free exclusions on the basis of assumed embitterment permit the state to avoid the consequences of something potentially very wrong with the state.” 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? 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.

Whereas an alternate approach, such as procedural justice, would try to encourage policing practices and priorities that reduce embitterment, the power lens implies something different: that 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 not the objects of study and measurement, nor even participants in a larger consensus-driven effort at legitimacy, but rather 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 to both shift power and create better scholarship. Movements are, in a sense, asking us

312 Ngozi Okidegbe, The Democratizing Potential of Algorithms, 53 Conn. L. Rev. __ (forthcoming 2021); see also Ngozi Okidegbe, Discrediting Communal Knowledge Within An Algorithm Epistemology (draft 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”).


314 Id. at 632.

315 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
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 decision-making 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 criminal records can serve on the new oversight board. These activists succeeded in removing a provision of the new law that would have required criminal background checks of all potential commissioners. The presumption, in fact, became reversed: initial flyers recruiting applicants to apply for the commission encouraged formerly incarcerated people to apply. 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?” 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 works—became a contested idea. 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—arrests, bookings, and eventually prosecution and incarceration. This experience, in turn, gives that person a leg up, rather than a leg

316 See Rahman and Simonson, supra note 11, draft at 29-31 (describing dispute in Oakland over whether there would be a criminal record check for members of the oversight commission).
317 See Coalition’s Proposed Amendments to the Ordinance, COALITION FOR POLICE ACCOUNTABILITY, https://coalitionforpoliceaccountability.files.wordpress.com/2017/06/proposed-amendments-6-8-rg.doc.
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” 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 some power back as a collective remedy for that harm.

I do not mean to imply that shifting expertise downwards is simple and devoid of risks, or that the ways to get there are clear. A governance arrangement that shifts power on its face could of course recreate existing power imbalances in new ways, for instance by replicating the existing pathologies of white supremacy, of heteropatriarchy, of ableism.322 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.323 The state erects many barriers to full participatory citizenship for people with disabilities,324 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;325 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 automatically be guided by “emotion” rather than “data,” or that it would automatically revert to the “penal populism” that has characterized so much popular policy-making with respect to the criminal legal

Indeed, the hypothesis of the movement actors who have 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 trade-offs, balancing the now-recognized benefits of shifting power alongside other goals and lenses of reform, 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 state-wide 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. It begins with the importance of collective self-rule and freedom from oppression. At the end of each page, the refrain “By 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. The Freedom Papers then stress the larger belief that if the state facilitates the ability of the most marginalized among us to thrive, we will all thrive.

There is a poem at the end of the Freedom Papers that brings together its themes, and includes this stanza:

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.\textsuperscript{330}

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 the criminal law to solve our problems—is destabilizing, transformative, and possible all at once. The Freedom Papers’ 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 represent 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

If we seek the “transformation” of policing—as many legal scholars today do—we should not cling to traditional means of conceptualizing or measuring success in efforts at change. 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. Each of three theoretical accounts of the power lens—as reparations, as a method of antisubordination, or as facilitating contestation necessary for democracy—underscores the theoretical differences between social movement visions of power-shifting reform and more traditional notions of consensus-based police reform. For shifting political power would open up policing to contestation over broader ideas about what policing should look like, or if we should even have the police at all. In this way, the power lens is both destabilizing and a necessary addition to our array of ways of thinking about policing in our current moment.

\textsuperscript{330} \textit{Id.}