

U.C.L.A. Law Review

Say Their Names, Support Their Killers: Police Reform After the 2020 Black Lives Matter Uprisings

Naomi Murakawa

ABSTRACT

Since the unprecedented Summer 2020 uprisings against policing and racism, many elites have embraced an “anti-woke” politics that openly celebrates law-and-order authoritarianism, heteropatriarchy, and white nationalism. This Article attends to a different but reinforcing response to the George Floyd uprisings: repression through a politics of recognition, as elites fortified policing while chanting “Black Lives Matter.” By casting a selective spotlight on certain Black victims, pro-police Black mayors, and Black police chiefs, reformers have marketed pro-police and pro-Black policies as one and the same. Lawmakers have enacted reforms named in honor of Breonna Taylor, Eric Garner, Emmett Till, and other victims of state and extralegal violence, all while protecting police funding and deferring to police interests behind the scenes. In sum, these reformers use gestures of mourning and respect for Black people to refurbish the system that kills them.

This Article suggests that pro-Black, pro-carceral stances appeal to many through an ideologically ambiguous cocktail, an old politics of centering the crime victim mixed with a dash of leftist rhetoric about centering the most marginalized. In short, many elites are attempting to reduce Black Lives Matter to a victim rights campaign.

AUTHOR

Associate Professor of African American Studies, Princeton University. I am grateful to Ashley Smith and Onnesha Roychoudhuri for insightful feedback on earlier drafts. For being in conversation on this topic I thank Anthony Arnone, Donna Murch, Keeanga-Yamahtta Taylor, and generous interlocutors when I presented partial drafts of this Article at two conferences, *Socialism 2022* and *Freedom is a Place: Celebrating the Scholarship, Writing, and Organizing of Ruth Wilson Gilmore*. I owe special thanks to the editorial team of the *UCLA Law Review* and the conveners of the *Toward an Abolitionist Future Symposium*, including and especially Terry Allen, Hope Bentley, Danielle Garcia, Alanna Kane, Bella Lee, Kelly Matthews, Jamelia Morgan, Leslie Poston, Jasmine Robinson, Chloe Lau, Shara Burwell, Naomi Caldwell, and India Thusi.



TABLE OF CONTENTS

INTRODUCTION.....	1432
I. SUMMER 2020 UPRISINGS AND ANTI-WOKE REPRESSION.....	1435
II. FUND THE POLICE <i>BECAUSE</i> BLACK LIVES MATTER.....	1446
A. Defund is White, Policing is Black.....	1449
B. Eclipsing the Racism of the Antistate State.....	1454
III. REDUCING BLACK LIVES MATTER TO A VICTIM RIGHTS CAMPAIGN.....	1463
A. The Politics of Victim Rights.....	1463
B. Say Their Names, Rebuild the Carceral State.....	1468
1. Jail Surveillance, or the So-Called Sandra Bland Act.....	1468
2. Regulations on No-Knock Warrants, Sometimes Called Breonna's Law.....	1470
3. Chokehold Bans, Sometimes Called the Eric Garner Act or the George Floyd Act.....	1475
4. Criminalizing Bigotry: the Emmett Till Antilynching Act.....	1479
5. The George Floyd Justice in Policing Act (Failed).....	1482
IV. CONCLUSION: STOP HUSTLING BLACK DEATH, PLEASE.....	1483

INTRODUCTION

Police killings continue like clockwork. In fact, police killed more people in 2021 than in 2020, and more still in 2022.¹ And how often do police kill? Abolitionists Craig Gilmore and Ruth Wilson Gilmore answer: “once every eight hours—all, we might say, in a day’s work.”² Every day, more names. Michael Brown, Akai Gurley, Freddie Gray, Rayshard Brooks, Jayland Walker: the names of Black men killed by police live on because people took to the streets in Ferguson, New York, Baltimore, Atlanta, and Akron. Black girls, women, and femmes killed by police are less likely to be memorialized, and the extent to which this is changing is a credit to surviving family members and the Say Her Name Campaign, organizers of the March for Black Trans Lives, the Movement for Black Lives, and many more.³

That elite lawmakers say their names, too, is a testament to the power of protest. But it is also a testament to crass opportunism. It was more than an insensitive gaff, for example, when, after a Minneapolis jury delivered three guilty verdicts in April 2021 to the cop who killed George Floyd, Speaker of the House Nancy Pelosi took the mic at a Congressional Black Caucus event to deliver this gem of maudlin politicking: “Thank you, George Floyd, for sacrificing your

1. Government data on police violence is unreliable, but Mapping Police Violence and the *Washington Post* have documented increases in police killings since 2020. See *Mapping Police Violence*, CAMPAIGN ZERO (June 30, 2023), <https://mappingpoliceviolence.org> [<https://perma.cc/EL4S-N2ZA>] (finding that police killed 1145 people in 2020, 1163 people in 2021, and 1238 people in 2022); Steven Rich, Andrew Ba Tran & Jennifer Jenkins, *Fatal Police Shootings Are Still Going Up, and Nobody Knows Why*, WASH. POST (Feb. 21, 2023, 6:00 AM), <https://www.washingtonpost.com/investigations/2023/02/21/fatal-police-shootings-increase-2022> [<https://perma.cc/L7RK-VQ53>] (counting fatal police shootings at 1096 people in 2022, the highest number since the *Washington Post* began tracking police killings in 2015, and showing that police shot and kill Black people at a rate 2.5 times higher than their population share); Marisa Iati, Steven Rich & Jennifer Jenkins, *Fatal Police Shootings in 2021 Set Record Since The Post Began Tracking, Despite Public Outcry*, WASH. POST (Feb. 9, 2022, 5:22 PM), <https://www.washingtonpost.com/investigations/2022/02/09/fatal-police-shootings-record-2021> [<https://perma.cc/ZL4G-EW7A>].
2. Craig Gilmore & Ruth Wilson Gilmore, “Beyond Bratton,” in *POLICING THE PLANET: WHY THE POLICING CRISIS LED TO BLACK LIVES MATTER* 197 (Jordan T. Camp & Christina Heatherton eds., 2016).
3. KIMBERLÉ W. CRENSHAW, ANDREA J. RITCHIE, RACHEL ANSPACH, RACHEL GILMER & LUKE HARRIS, *SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN* (2015); DONNA MURCH, *ASSATA TAUGHT ME: STATE VIOLENCE, RACIAL CAPITALISM, AND THE MOVEMENT FOR BLACK LIVES* 146–52 (2022) (highlighting the Black queer feminist lens as central to the work of Black Youth Project 100 (BYP100)).

life for justice . . . For being there to call out to your mom, how heartbreaking was that.”⁴ What a tortured logic, as if George Floyd willingly submitted to his own murder to bequeath a jury the chance to find someone guilty of murder.⁵ In this telling, during Summer 2020 millions of protesters in Australia, Brazil, Canada, India, Japan, New Zealand, Nigeria, the United Kingdom, and the United States risked exposure to COVID-19, and much more, to win the grand justice of sending one cop to prison.⁶ It is absurd.

To students of law-and-order politics, however, there was an eerie familiarity to the spectacle of politicians thanking murder victims and celebrating criminal convictions as a fulfillment of their wishes.⁷ My sense of déjà vu deepened as elites posed for photo ops at funerals, and as politicians proudly announced their contact with surviving family members.⁸ There is a canny similarity to the politics of victim rights that came to dominate the late twentieth century, when the “political imperative” was “that victims must be protected, their voices must be heard, their memory honoured, their anger expressed, their fears addressed,” as sociologist David Garland explains.⁹ And then there were all those state and local police reforms—proposals less prominent than the stalled federal George

4. Chris Cillizza, *Nancy Pelosi’s Stunningly Tone-Deaf Quote on George Floyd*, CNN (Apr. 21, 2021, 4:00 PM), <https://www.cnn.com/2021/04/21/politics/george-floyd-nancy-pelosi-derek-chauvin/index.html> [<https://perma.cc/7C4Z-BG3K>].

5. Without apology or retraction, Pelosi later revised her statement slightly on Twitter, but her Tweet still framed the guilty verdict as a redemption of George Floyd’s murder. *Id.* (quoting Pelosi using the guilty verdict as occasion to tweet that George Floyd “did not die in vain” and “his family’s calls for justice for his murder were heard around the world”).

6. Amy Gunia, Ciara Nugent, Kat Moon, Simmone Shah & Suyin Haynes, *The Racial Reckoning Went Global Last Year. Here’s How Activists in 8 Countries Are Fighting for Justice*, TIME (May 11, 2021), <https://time.com/6046299/fighting-injustice-world> [<https://perma.cc/W6WG-E7ML>].

7. At least 23.2 million people watched the Minneapolis cop receive a guilty verdict for murdering George Floyd. *Nielsen: At Least 23.2 Million Watched Chauvin Verdict*, AP (Apr. 22, 2021, 3:49 PM), <https://apnews.com/article/george-floyd-death-of-george-floyd-arts-and-entertainment-90295405db812108acd9c45433b2a879> [<https://perma.cc/CB7E-C8JJ>].

8. George Floyd’s funeral had a stream of politicians and celebrities eager to pay their respects privately and then announce them publicly. *See, e.g.,* Chris Murphy, *Tiffany Haddish, Kevin Hart and More Attend George Floyd’s Memorial Service in Minneapolis*, VULTURE (June 4, 2020), <https://www.vulture.com/2020/06/celebrities-and-politicians-attend-george-floyd-memorial.html> [<https://perma.cc/UM6T-EBCY>]; Justine Coleman, *Texas Governor Meets With George Floyd’s Family, Signals Support for Police Reforms*, THE HILL (June 8, 2020, 7:08 PM), <https://thehill.com/homenews/state-watch/501742-texas-governor-meets-with-george-floyds-family-signals-support-for> [<https://perma.cc/URP2-SXAQ>] (noting that Texas Gov. Abbott met with reporters to make public his private meeting with George Floyd’s family).

9. DAVID GARLAND, *THE CULTURE OF CONTROL* 11 (2001).

Floyd Justice in Policing Act.¹⁰ In the six months following the murder of George Floyd, state lawmakers enacted nearly one hundred laws addressing use-of-force standards and police accountability, a number that, according to the National Conference of State Legislatures, reflects an “unprecedented high” in legislative attention to policing.¹¹ New York Gov. Andrew Cuomo announced his “Say Their Names” police reform agenda that, like so many other reforms, restricted the police chokehold in the name of Eric Garner and George Floyd.¹² Memorializing the dead with laws in their names is another trademark of the victim-centered political imperative.¹³

The old politics of victim rights has another trademark: it has been reserved almost exclusively for white victims, especially white children and white women deemed respectable and innocent.¹⁴ But the cultural moment is ripe with scenes of aristocrats trying to feel the pain of their subjects, and so, like *Bridgerton*, the politics of victim rights is now open for colorblind casting. It seems like progress when politicians mourn victims of state violence and recognize Black murder victims by name, as if elites are heeding the activist instruction to “center the most marginalized.”¹⁵

10. Justice in Policing Act of 2020, H.R. 7120, 116th Cong. § 363 (2020).

11. From May 25 through the end of 2020, thirty-six states plus Washington, D.C. introduced more than 700 bills and enacted nearly 100 of them. *Law Enforcement Statutory Database*, NAT'L CONF. OF STATE LEGISLATURES (June 30, 2022), <https://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement-statutory-database.aspx> [<https://perma.cc/R3QX-4VLN>]. Proposals pertain to use-of-force standards like chokehold and no-knock warrant regulations, legal duties and liabilities, certification and decertification, community oversight, qualified immunity and use-of-force investigations, collective bargaining, training, data collection, and so-called Law Enforcement Officer Bill of Rights laws. *Id.* In the year following George Floyd's murder, governors collectively signed 243 policing laws; some purported to limit police power, others to expand it. Liz Crampton, *States Passed 243 Policing Bills—and Left Activists Wanting*, POLITICO (May 26, 2021, 4:30 AM), <https://www.politico.com/news/2021/05/26/states-policing-bills-490850> [<https://perma.cc/L4MA-PHUE>].

12. See Matthew Krumholtz, *New York State Passes Sweeping Police Reform Agenda*, N.Y. STATE BAR ASS'N (June 16, 2020), <https://nysba.org/new-york-state-passes-sweeping-police-reform-agenda> [<https://perma.cc/CM53-NRF5>]; see also discussion *infra* Part III.B.C.

13. See discussion *infra* Part III.A.

14. Between 1990 and 2016, state and federal lawmakers enacted fifty-one laws named for sixty-one crime victims, and 83 percent of the memorialized victims were white. See Teresa C. Kulig & Francis T. Cullen, *Where is Latisha's Law? Black Invisibility in the Social Construction of Victimhood*, 34 JUST. Q. 978, 987–89 (2017); see also BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* 123 (2012).

15. OLUFEMI O. TÁFŌ, *ELITE CAPTURE: HOW THE POWERFUL TOOK OVER IDENTITY POLITICS (AND EVERYTHING ELSE)* 70 (2022) (“A prime example of deference politics is the call to ‘listen to the most affected’ or ‘center the most marginalized,’ now ubiquitous in many academic and activist circles.”).

But lawmakers are tailoring this potentially radical lingua franca to make it fit a law-and-order playbook of centering the crime victim. This Article explores the recent Diversity, Equity, and Inclusion (DEI) politics of victim rights, in which elites recognize Breonna Taylor, George Floyd, and unnamed murdered Black people as victims of a not-yet redeemed criminal legal system. This politics attempts to co-opt and pacify the Movement for Black Lives with a sleight of hand twice over: once by swapping out structural oppression for stand-alone victims, and again by recognizing victims only vis-à-vis the criminal legal system. To be remediated, grievances must fit the size of a criminal charge and the shape of a criminal trial. That is, the criminal legal system—the locus of state violence and racism that prompted the 2020 uprising—is marketed as the site for redemption.

I. SUMMER 2020 UPRISINGS AND ANTI-WOKE REPRESSION

The Summer 2020 uprisings were massive in size, duration, and geographic and demographic spread, and they compelled optimism about a racial reckoning.¹⁶ An already classic one-sentence explanation for the uprisings is this: people erupted in outrage after watching a white Minneapolis police officer kill George Floyd by kneeling on the Black man's neck for more than nine minutes on May 25, 2020. This is an accurate but insufficient explanation, and a depoliticizing one at that. People do not erupt like volcanoes. I do not doubt that Darnella Franzier's recording of Floyd's murder ignited individual moral outrage, something deeply private that spilled into the streets. But morality is socially nurtured and structured by ideology.

More than spontaneous moral awakening alone, strength in the streets represented the influence of political education and organizing that connected the electric tripwires of Summer 2020—racism, policing, and COVID-19¹⁷—to a

16. Up to twenty-six million people in nearly half of all U.S. counties joined protests, a number and spread that “dwarfed any previous period of social unrest in American history.” MURCH, *supra* note 3, at 132–33; see also Lara Putnam, Erica Chenoweth & Jeremy Pressman, *The Floyd Protests are the Broadest in U.S. History—and Are Spreading to White, Small-Town America*, WASH. POST (June 6, 2020, 2:10 AM), <https://www.washingtonpost.com/politics/2020/06/06/floyd-protests-are-broadest-us-history-are-spreading-white-small-town-america/> [<https://perma.cc/7NL9-Z3PJ>] (describing the Floyd protests as broad based and spreading through majority white and smaller towns).

17. In 2020 a record-breaking 493 people joined *Forbes'* List of the World's Billionaires, while nearly one-third of U.S. Black and Latinx households weathered shelter in place orders with zero or negative net wealth. See Nancy Krieger, *Enough: COVID-19, Structural Racism, Police Brutality, Plutocracy, Climate Change—and Time for Health Justice, Democratic Governance, and an Equitable, Sustainable Future*, 110 AM. J. PUB. HEALTH 1620 (2020); see also MARTHA ROSS & NICOLE BATEMAN, BROOKINGS METRO. POL'Y PROGRAM, MEET THE LOW-WAGE

systemwide circuitry of oppression and exploitation. It is impossible, of course, to identify the motivations for more than 20 million people in the streets. But survey research suggests that Summer 2020 protesters were motivated by racial justice *and* overlapping concerns about women's rights and reproductive justice, LGBTQ+ liberation, environmental justice, immigration and labor rights, and social welfare and healthcare.¹⁸

Such capacious analysis is certainly evident in the Movement for Black Lives and its many antecedents.¹⁹ As an umbrella group of more than fifty Black-led organizations, the Movement for Black Lives developed its divest-invest framework in its 2016 *Vision for Black Lives* and its 2020 BREATHE Act. Sometimes referenced simply as defund the police, the divest-reinvest framework calls for ending the war on Black people by funding, for example, healthcare, employment, and reparations with resources divested from police, prisons, military, and fossil fuel subsidies.²⁰ As a sweeping but immediately

WORKFORCE (2019) (noting that in 2019 roughly fifty-three million U.S. workers earned a median wage of \$10.22 per hour, about \$18,000 per year).

18. In-person crowd surveys of Summer 2020 antiracism protesters in Washington, D.C. ($n = 534$) found that nearly all (94 percent) said they were motivated by racial justice, police brutality, and Black Lives Matter, and many identified overlapping motivations to protest for women's rights and reproductive justice (39 percent); LGBTQ+ rights (36 percent); environmental justice (29 percent); immigration rights (29 percent); labor rights (21 percent); and social welfare including healthcare and guns (43 percent). See Dana R. Fisher & Stella M. Rouse, *Intersectionality Within the Racial Justice Movement in the Summer of 2020*, 119 PNAS 1, 1–3 (2022); Dana R. Fisher & Stella M. Rouse, *Supplementary Information for Intersectionality Within the Racial Justice Movement in the Summer of 2020*, 119 PNAS 1, 4 (2022); see also Tabitha Bonilla & Alvin B. Tillery Jr., *Which Identity Frames Boost Support for and Mobilization in the #BlackLivesMatter Movement? An Experimental Test*, 114 AM. POL. SCI. REV. 947, 950 (2020) (finding through a survey experiment that identifying with Black nationalism, feminism, or LGBTQ+ rights tends to generate mobilization for Black Lives Matter).
19. The enduring influence of anti-capitalist Black feminist organizing, and Black women's internationalist political labor more generally, stretches into present day abolitionist work from the Combahee River Collective Statement of 1977 to Sisters Uncut, Sisters Inside, the Audre Lorde Project, INCITE!, Critical Resistance, Survived & Punished, BYP100, and many more. ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, ABOLITION. FEMINISM. NOW. xii, 44–46, 84–87, 118–19 (2022); *Historian Robin D.G. Kelley: Years of Racial Justice Organizing Laid Groundwork for Today's Uprising*, DEMOCRACY NOW! (June 11, 2020), https://www.democracynow.org/2020/6/11/robin_dg_kelley_social_movements [<https://perma.cc/9R4H-SF5D>] (extending the timeline of Black Lives Matter organizing back more than a decade to groups like the Malcolm X Grassroots Movement, Copwatch, Dignity and Power, Critical Resistance, We Charge Genocide, Dream Defenders, and Showing Up for Racial Justice).
20. See *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms> [<https://perma.cc/7HS8-NF3A>] (last visited Mar. 21, 2023); *The Breathe Act*, MOVEMENT FOR BLACK LIVES, <https://breatheact.org> [<https://perma.cc/A8ST-XZ86>]; see also Allegra McLeod, *An Abolitionist Critique of Violence*, 89 U. CHI. L. REV. 525, 554–55 (2022) (characterizing the

actionable platform, divest-reinvest obviates nonsensical divisions of recognition versus redistribution, of race and gender versus class. As such, the scholar-organizer Barbara Ransby characterizes the Movement for Black Lives as “Black-led class struggle—informed by, grounded in, and bolstered by Black feminist politics.”²¹ Organizations that are perhaps discounted as single-issue or distant from the Movement for Black Lives also tilled the soil for broad-based rebellion. Summer 2020 uprisings reflected the previous and ongoing work of Indigenous liberation and Red Nation,²² of Abolish ICE campaigns and the Detention Watch Network,²³ of environmental justice and the Sunrise Movement.²⁴ Radical students and teachers’ unions also fueled Black Lives Matter (BLM) and the Summer 2020 uprisings because they know all too well the racism of austerity, the way police and prisons trump other public investment.²⁵ All of this in the

BREATHE Act as “reparations in abolitionist terms—ending resource extraction from Black communities” and providing robust support for high-quality public education and health care).

21. BARBARA RANSBY, *MAKING ALL BLACK LIVES MATTER: REIMAGINING FREEDOM IN THE 21ST CENTURY* 159 (2018) (citing, for example, BYP100’s collaboration with the Fight for 15 and the Dream Defenders’ opposition to capitalism as evidence that BLM organizers continually insist that racial and economic justice are inextricably linked).
22. See *THE RED NATION, THE RED NEW DEAL* (2020) (calling for “divestment away from police, military, prisons, and fossil fuels (four of the biggest drains on public spending) and reinvestment in common humanity . . . as well as the restoration of Indigenous lands, waters, airs, and nations”).
23. See Amna A. Akbar, *Our Reckoning with Race*, *THE N.Y. REV.* (Oct. 31, 2020), <https://www.nybooks.com/online/2020/10/31/our-reckoning-with-race> [<https://perma.cc/Y7P7-B92C>] (discussing the gathering force of abolitionist resistance through Detention Watch Network, a coalition of hundreds of organizations working to end immigrant detention).
24. See *If You Care About the Green New Deal, We Need You to Join the Movement for Black Lives*, *SUNRISE MOVEMENT* (June 20, 2020), <https://www.sunrisemovement.org/theory-of-change/if-you-care-about-the-green-new-deal-we-need-you-to-join-the-movement-for-black-lives-7d4395918408> [<https://perma.cc/CZ6Z-K9TT>] (showing that the Sunrise Movement urged 2020 protest participation by connecting BLM to the Green New Deal).
25. Sometimes called the Black Lives Matter at Schools campaign, students and teachers’ unions in Chicago, Newark, Boston, Baltimore, Washington, D.C., Milwaukee, Los Angeles, Minneapolis-St. Paul, Seattle and many more have fought zero-tolerance discipline policies, mandated Black history and ethnic studies, and challenged city leadership that prioritizes police and profits at the expense of schools, especially those in poorer neighborhoods with more Black and Brown students. See generally *BLACK LIVES MATTER AT SCHOOL* (Jesse Hagopian and Denisha Jones, eds., 2020); DAVIS ET AL., *supra* note 19, at 148–49 (elevating the Chicago Teachers Union for rejecting privatization, demanding sanctuary schools, and “center[ing] the needs and visions of workers and communities of color”); Samantha Winslow, *Teachers Arrested Protesting Police Brutality in the Twin Cities*, *LABOR NOTES* (July 21, 2016), <https://labornotes.org/2016/07/teachers-arrested-protesting-police-brutality-twin-cities> [<https://perma.cc/93TK-VLPH>] (explaining that, after the murder of the union Teamster and elementary school cafeteria worker Philando Castile, hundreds of union teachers protested police killings and divestment from Black communities). Other public-sector workers have also invoked defund-reinvest logics. See, e.g., Daniel Reyes, *Safety and Justice for Philly*

context of COVID-19, plus the memory of superficial police reforms tossed to Black Lives Matter protesters after the uprisings of 2014 through 2016, led many to embrace the seemingly new radical vocabulary of Summer 2020: defund the police, care not cops, and abolition.

Repression came at whiplash force and speed. Since mid-2020, lawmakers have been remarkably prolific in delivering new legislation, executive orders, and judicial holdings to restrict and criminalize dissent, reproductive autonomy, transgender visibility and healthcare, voting, and teaching the truth. But the way I just described repression gives it too much order. Repression is bloody business. Politicians, police, paramilitary groups, and vigilantes have collectively taken up the work of enforcing white supremacy, nativism, misogyny, transphobia, and heteronormativity; that is, the distinction between legal and extralegal violence is a matter of badges and uniforms, not weapons and ideology.²⁶ So rather than collecting repression into neat paragraphs, I present the post-uprising backlash

Sanitation Workers, ACTION NETWORK, <https://actionnetwork.org/petitions/safety-justice-for-philly-sanitation-workers> [<https://perma.cc/29XX-LE8X>] (noting that Philadelphia sanitation workers petitioned the city for N-95 masks and prick-proof gloves, calling out the Philadelphia mayor for threatening to cut eighteen million dollars from city sanitation while increasing police funding by fourteen million dollars).

26. This Article emphasizes what amounts to party complementarity in repression; that is, unflagging Democratic support for police sharpens the blade for Republican-spearheaded criminalization of dissent, reproductive autonomy, and gender-affirming health care. That said, it is important to recognize that the Republican Party has courted and normalized extralegal violence against abortion clinics, HBCUs, school and election boards, and migrants, people of color, and trans and gender nonconforming people. *See generally* BRENDAN O'CONNOR, BLOOD RED LINES: HOW NATIVISM FUELS THE RIGHT (2023) (documenting the Republican Party's strategic and ideological alignment with white nationalists who terrorize Planned Parenthood, people crossing the southern border, and more); Keeanga-Yamahtta Taylor, *The Bitter Fruits of Trump's White-Power Presidency*, NEW YORKER (Jan. 12, 2021), <https://www.newyorker.com/news/our-columnists/the-bitter-fruits-of-trumps-white-power-presidency> [<https://perma.cc/522V-GG2S>]; Vanessa Williamson & Dana R. Fisher, *It's Time for Democrats to Stop "Clapping for Tinkerbelle"*, NATION (June 10, 2022), <https://www.thenation.com/article/politics/democrats-clapping-tinkerbelle> [<https://perma.cc/UR7W-2VBR>]. By contrast, Democratic leadership prefers to usher disruptive activism into elections, fundraising, and permit-approved protests. *See id.* (criticizing Democrats for closing the door on confrontational activism and "ced[ing] a whole range of demonstrably effective tactics to their opponents"). For example, after the *Dobbs* decision, some defenders of reproductive freedom protested at the houses of U.S. Supreme Court justices, but the White House and Nancy Pelosi scolded this as incivility and offered two alternatives: vote for Democrats in 2022 and donate to Democratic candidates and Planned Parenthood. *Id.*; *see also* Stephanie Attar, *Voting for Democrats has Been a Dead-End for Abortion Justice*, TEMPEST (June 21, 2022), <https://www.tempestmag.org/2022/06/voting-for-democrats-has-been-a-dead-end-for-abortion-justice> [<https://perma.cc/9DCE-K45F>] (arguing that organizations like NARAL and Planned Parenthood "cling to lukewarm tactics like fundraising or phoning legislators even when a national emergency calls for a more militant mobilizing strategy").

through bullet-points. The point, the challenge, is to see that each bullet connects to every other.²⁷

- Within the first two weeks of uprisings after Floyd's murder, police arrested more than 17,000 people, the largest wave of arrests since anti-Vietnam War protests.²⁸ In that same two weeks, police in twelve cities arrested at least sixty-five journalists covering the uprisings.²⁹ Through June and July of 2020, police blinded at least thirty BLM protesters with rubber bullets or beanbag rounds.³⁰
- After protesters occupied the Tennessee Capitol for sixty-two days in Summer 2020, Tennessee lawmakers criminalized the act of camping on Capitol grounds.³¹ After 2020 protesters toppled statues of Robert E. Lee, Arkansas, Florida, and Iowa created new penalties for damaging a public monument, and Arkansas defined

27. Legal and extralegal violence bleed into each other; the agents of repression are many and overlapping. The targets of repression are also many and overlapping, which is why I resort to lists that run long but always seem to fall short—racism, sexism, ableism, nativism, transphobia, colonialism, heteronormativity, Christian supremacy. Perhaps a less hypnotic method is Mari Matsuda's call to ask the other question: "When I see something that looks racist, I ask, 'Where is the patriarchy in this?' When I see something that looks sexist, I ask, 'Where is the heterosexism in this?' When I see something that looks homophobic, I ask, 'Where are the class interests in this?' Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone." Mari Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STANFORD L. REV. 1183, 1189 (1991); see also DAVIS ET AL., *supra* note 19, at 2, 3 (interpreting and endorsing Matsuda's practice of asking the other question as a way of anticipating change and embracing a both/and perspective).

28. The estimate of 17,000 arrests from May 25 to June 8, 2020 is conservative; it is based on the fifty largest cities with organized protests, but more than 350 cities had protests in that time period. See Meryl Kornfield, Austin R. Ramsey, Jacob Wallace, Christopher Casey & Del Valle, *Swept up by Police*, WASH. POST (Oct. 23, 2020), <https://www.washingtonpost.com/graphics/2020/investigations/george-floyd-protesters-arrests> [<https://perma.cc/3J2G-J5F7>]. Most arrests were on misdemeanor charges like violating curfew or emergency orders. *Id.*

29. See The U.S. Press Freedom Tracker, U.S. PRESS FREEDOM TRACKER, <https://pressfreedomtracker.us> [<https://perma.cc/CDW8-KFAS>].

30. Scott Reynhout, Rohini Haar & Michele Heisler, *Shot in the Head*, GUARDIAN (Sept. 14, 2020), <https://phr.org/our-work/resources/shot-in-the-head> [<https://perma.cc/R5KB-Y5FY>] (noting that from May 26 to July 27, 2020, at least thirty protesters suffered permanent ocular loss from police rubber bullets or beanbag rounds); see also Wil Sands, 'Blinded by the Police': My Search for Fellow Survivors of an Alarming Trend, GUARDIAN (Sept. 2, 2021), <https://www.theguardian.com/us-news/2021/sep/02/police-shootings-less-lethal-eye-vision> [<https://perma.cc/V2YL-73HJ>].

31. See Sophie Quinton, *Republicans Respond to Black Lives Matter with Anti-Protest Bills*, STATELINE (Feb. 4, 2021, 12:00 AM), <https://stateline.org/2021/02/04/republicans-respond-to-black-lives-matter-with-anti-protest-bills> [<https://perma.cc/8TM4-NAFE>].

“substantial damage” to a monument as an “act of terrorism.”³² Since May 2020, at least four states have expanded the definitions and penalties for “rioting.”³³ At least eight states have created or enhanced penalties for protesters who obstruct streets, sidewalks, or the so-called critical infrastructure of gas and oil pipelines.³⁴

- Between May 27 and September 5, 2020, at least ninety-six civilian drivers and eight police drivers hit protesters with their cars.³⁵ Since then, three states have extended immunity to drivers who run over protesters.³⁶
- As measured by a 2020 survey, a slim majority of Republicans agree that “[t]he traditional American way of life is disappearing so fast that we may have to use force to save it,” and 73 percent agree that “[i]t is hard to trust the results of elections when so many people will vote for anyone who offers a handout.”³⁷ These antidemocratic sentiments are not attributable to economic conservatism, cultural conservatism, and pro-Trump enthusiasm. Rather, the strongest predictor for antidemocratic sentiment is ethnic antagonism.

-
32. See, e.g., *U.S. Protest Law Tracker*, INT’L CTR. FOR NOT-FOR-PROFIT L. (Mar. 7, 2023), <https://www.icnl.org/usprotestlawtracker> [<https://perma.cc/Q4CR-8PZD>]; H.B. 1508, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); S.B. 484, Sen., Reg. Sess. (Fla. 2021) (creating a new third degree felony offense, punishable by up to five years in prison, against anyone who “willfully and maliciously defaces, injures, or otherwise damages” a statue, flag, or public memorial, causing more than \$200 worth of damage); Sen. File 342, Gen. Assemb. (Iowa 2021) (creating a new Class D felony offense, punishable by up to five years in prison, for “defacing” public property “including a monument or statue”).
 33. See H.B. 1508, *supra* note 32 (creating a new mandatory minimum of thirty days in jail for rioting, defined as two or more people engaging in “tumultuous” conduct that creates “substantial risk” of “public alarm”); see also S.B. 484, *supra* note 32 (creating, e.g., a new first-degree misdemeanor offense called “mob intimidation,” defined as a group of three or more people with a “common intent” to compel a person to “assume or abandon a particular viewpoint” against their will); Sen. File 342, *supra* note 32 (raising the offense of “riot” from aggravated misdemeanor to felony punishable by up to five years in prison); S.B. 300, Gen. Assemb., 2021 Sess. (N.C. 2021).
 34. H.B. 1508, *supra* note 32; H.B. 1321, 93rd Gen. Assemb., Reg. Sess. (Ark. 2021); Sen. File 342, *supra* note 32; S.B. 172, Leg., 2021 Sess. (Kan. 2021); S.B. 26, 101st Gen. Assemb., 1st Sess. (Mo. 2021); H.B. 481, 67th Leg., Reg. Sess. (Mont. 2021); H.B. 1674, 58th Leg., 1st Sess. (Okla. 2021); H.B. 5, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021); H.B. 9, 87th Leg., Reg. Sess. (Tex. 2021).
 35. KELLY HAYES & MARIAME KABA, *LET THIS RADICALIZE YOU* 112 (2023).
 36. See S.B. 484, *supra* note 32; Sen. File 342, *supra* note 32; H.B. 1674, *supra* note 34; see also HAYES & KABA, *supra* note 35, at 112–13 (explaining that hitting protesters with cars has become a right-wing meme, popularized after a white supremacist ran over and killed Heather Heyer as she and others demonstrated against the 2017 Unite the Right racist rally in Charlottesville).
 37. Larry Bartels, *Ethnic Antagonism Erodes Republicans’ Commitment to Democracy*, 117 PNAS 22752, 22752 (2020).

Ethnic antagonism is measured by agreement with statements like “discrimination against whites is as big a problem today as discrimination against [B]lacks and other minorities”; “things have changed so much that I often feel like a stranger in my own country”; speaking English is “essential for being a true American”; and Black people “need to stop using racism as an excuse.”³⁸

- Armed far right groups like the Oath Keepers or the Three Percenters came to at least 100 of the Summer 2020 BLM protests. The professional violence workers, the police, either ignored or openly welcomed these *anti*-antiracism forces.³⁹ Calling white vigilantes and far right paramilitary organizations “armed friendlies,” police also welcomed “Back the Blue” rallies sponsored by organizations like the Proud Boys.⁴⁰
- The year 2021 was the deadliest year for Black and Brown transgender people since Human Rights Watch began tracking such murders in 2013.⁴¹
- In 2021, Arkansas was the first state to ban gender-affirming medical care for young people, and ten more states piled on through 2022 and 2023.⁴² Proposed and enacted anti-trans bills

38. *Id.* at 22756.

39. Stella Cooper, Evan Hill, Dmitriy Khavin, Arielle Ray & Drew Jordan, ‘*I Am on Your Side*’: *How the Police Gave Armed Groups a Pass in 2020*, N.Y. TIMES (Nov. 2, 2020), <https://www.nytimes.com/video/us/100000007424380/police-black-lives-matter-protests.html> [<https://perma.cc/4J5N-U4UL>] (finding that “the most common” police response was “a permissive attitude to armed groups”); *see generally* MICOL SEIGAL, VIOLENCE WORK 7–13 (2018) (defining police as “violence workers” because much of what they do could and should be delegated to doctors or EMTs, traffic directors, counselors, or neighbors; what remains as the irreducible core of police work is violence and threat of violence).

40. Jarrod Shanahan & Tyler Wall, ‘*Fight the Reds, Support the Blue*’: *Blue Lives Matter and the US Counter-Subversive Tradition*, 63 RACE & CLASS 70, 71 (2021); Cooper et al., *supra* note 39.

41. Roderick Ferguson, *The Surplus Populations of Black Lives Matter*, 74 AM. Q. 623, 624 (2022) (citing data from the Human Rights Campaign); Sam Levin, *Mapping the Anti-Trans Laws Sweeping America*, GUARDIAN (June 14, 2021), <https://www.theguardian.com/society/2021/jun/14/anti-trans-laws-us-map> [<https://perma.cc/EX2X-CSND>] (counting at least 110 anti-trans bills introduced in thirty-seven states in 2021, noting that the most common anti-trans proposals targeted children, and documenting that in 2021, Alabama, Arkansas, Florida, Mississippi, Montana, Tennessee, and West Virginia enacted laws to bar trans children from sports).

42. From 2021 through March 2023, nine states enacted legislative bans on gender-affirming care (Arkansas, Arizona, Alabama, Georgia, Iowa, Mississippi, South Dakota, Tennessee, Utah), and two states used the executive branch to restrict access to gender-affirming care (Florida and Texas). *See* Elana Redfield, Kerith Conron, Will Tentindo & Erica Browning, *Prohibiting Gender-Affirming Medical Care for Youth*, UCLA SCHOOL OF LAW WILLIAMS INSTITUTE (Mar. 2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Youth-Health-Bans-Mar-2023.pdf> [<https://perma.cc/6DCR-5VPX>].

include criminal penalties against parents and professionals who connect trans youth with appropriate care.⁴³

- In 2021, nineteen states passed thirty-four restrictive voting laws, making 2021 the most prolific year for disenfranchisement laws since the U.S. Supreme Court effectively gutted federal oversight in the 2013 *Shelby County v. Holder* decision.⁴⁴ In 2022, at least eight states enacted eleven restrictive voting laws.⁴⁵
- In 2022 *Dobbs v. Jackson Women's Health* ended the already limited federal protection of reproductive autonomy, and since then lawmakers in fourteen states have banned abortion.⁴⁶
- According to data from the Armed Conflict Location and Event Data Project (ACLED), there were 142 anti-LGBTQ+ demonstrations in 2022, up from fifty-six in 2021 and six in 2020.⁴⁷ The Proud Boys and other far right groups participated in at least one-third of the

43. Redfield et al., *supra* note 42, at 2, 4; Eric Maroney, *Protect Trans Kids: Unraveling the Neoliberal Logic of the Anti-Trans Attack*, TEMPEST (Mar. 24, 2022), <https://www.tempestmag.org/2022/03/protect-trans-kids> [<https://perma.cc/MP8N-EKKL>] (arguing that medical providers have long had a gatekeeping role in “evaluating the authenticity of a person’s trans experience,” but recent enactments conscript a vast network of teachers, social workers, nurses, and doctors into aggressive gender policing).

44. See *Voting Laws Roundup: December 2021*, BRENNAN CTR. FOR JUST. (Jan. 12, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021> [<https://perma.cc/6S72-G4WS>]. In *Shelby County v. Holder*, the Supreme Court invalidated the Voting Rights Act’s pivotal Section 4(b), which set a formula for determining which states and localities must seek federal preclearance before changing their voting procedures. *Shelby County v. Holder*, 570 U.S. 529 (2013). While imperfect and vulnerable to administrative whims, the preclearance requirement did indeed deliver some protection in jurisdictions covered by 4(b): from 1982 to 2006, the Justice Department blocked over 700 proposed voting restrictions after deeming the proposals discriminatory. CAROL ANDERSON, ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY 63, 64 (2018). Rhetorical justifications for disenfranchisement pull from a buffet of lies and racist stock characters: Chinese tech conspirators, allegedly illegal votes from immigrants derided as illegal, and allegedly stolen votes from Black voters derided as criminals. *Id.* at 29–35, 50–54, 65–66, 71, 93–94.

45. *Voting Laws Roundup: December 2022*, BRENNAN CTR. FOR JUST. (Feb. 1, 2023), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2022> [<https://perma.cc/T4Y3-A7QW>].

46. *Dobbs v. Jackson Women's Health*, 142 S. Ct. 2228 (2022); *Tracking the States Where Abortion Is Now Banned*, N.Y. TIMES (June 30, 2023), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> [<https://perma.cc/4FBV-8WX8>].

47. These numbers include only demonstrations and exclude what ACLED calls political violence, which is defined as physical violence that is politically motivated. Acts of anti-LGBTQ+ political violence tripled from 2021 to 2022. See *Fact Sheet: Anti-LGBT+ Mobilization in the United States*, ACLED (Nov. 23, 2022), <https://acleddata.com/2022/11/23/update-fact-sheet-anti-lgbt-mobilization-in-the-united-states/#s3> [<https://perma.cc/UW7W-SJRA>].

anti-LGBTQ+ demonstrations of 2022.⁴⁸ Armed and organized, groups like the Proud Boys, Patriot Front, and the American Identity Movement (formerly Identity Evropa) train and recruit under an ideology well summarized by the *Daily Stormer*'s influential Andrew Anglin: "The core concept of the movement, upon which all else is based, is that [w]hites are undergoing an extermination, via mass immigration into [w]hite countries which was enabled by a corrosive liberal ideology of [w]hite self-hatred, and that the Jews are the center of this agenda."⁴⁹

- Combined with organized transphobic white supremacy, rising gun sales mean that premature death casually haunts child-friendly events like school board meetings and Drag Queen Story Hour.⁵⁰
- On September 2, 2020, Christopher Rufo appeared on Fox News and called "Critical Race Theory" (CRT) an "existential threat" to "core American values," and he instructed President Trump to "abolish critical-race-theory training from the federal

48. *Id.* (noting that far right militias and extremists participated in fifty-two of the 142 anti-LGBTQ+ demonstrations in 2022, up from their participation in sixteen of such demonstrations in 2021).

49. O'CONNOR, *supra* note 26, at 86 (quoting Andrew Anglin). Groups like Patriot Front maintain that white Europeans conquered and then bequeathed America to their white descendants, but dead serious nativism also recruits through jokes, feigned irony, and even symbols of multiculturalism. O'CONNOR, *supra* note 26, at 97. The proto-fascist Proud Boys have become "a hegemonic force on the far right," as O'Connor explains, through a campy "patriotic individualism" that appeals to the Republican Party, small business owners, and white nationalists—all with the reassurance that people of color are welcome. O'CONNOR, *supra* note 26, at 97–99, 105–07. In effect, the Proud Boys have fueled the far right by populating "the liminal space in which white supremacy and multiculturalism interact." DANIEL MARTINEZ HOSANG & JOSEPH E. LOWNDES, PRODUCERS, PARASITES, PATRIOTS: RACE AND THE NEW RIGHT-WING POLITICS OF PRECARIETY 124–25 (2019).

50. Guns sales jumped by 64 percent from 2019 to 2020, and more than 7.5 million adults bought their first gun between January 2019 and April 2021. See Lindsay J. Young & Henry Xiang, *US Racial and Sex-Based Disparities in Firearm-Related Death Trends from 1981-2020*, 17 PLOS ONE 1, 2–3 (2022); Matthew Miller, Wilson Zhang & Deborah Azrael, *Firearm Purchasing During the COVID-19 Pandemic: Results from the 2021 National Firearms Survey*, 175 ANN INTERN MED. 219 (2022); Francis Clarke, *Storytime Is Dragged Into the Guns Row*, 52 INDEX ON CENSORSHIP 50, 51 (2023) (noting that Drag Queen Story Hours and other drag events faced at least 141 documented hostile demonstrations or significant threats in 2022, according to GLAAD).

government.”⁵¹ After working with Rufo, Trump did exactly that.⁵² Executive Order 13950 forbade agencies and contractors from teaching federal employees about “divisive concepts,” including, for example, the concept that “the United States is fundamentally racist or sexist.”⁵³ President Biden rescinded the Executive Order on January 20, 2021, but since then anti-CRT measures have proliferated.⁵⁴

- In 2021 and 2022, federal, state, and local government officials introduced 563 anti-CRT measures, of which 241 have been enacted.⁵⁵ Most of the enacted measures target K-12 education.⁵⁶ As of early 2023 half of all public school students, a whopping twenty-two million children, learn from teachers who risk reprimand, unemployment, or worse if they discuss systemic racism, settler colonialism and slavery, sexism, white privilege, transphobia, and god knows what else.⁵⁷ Ambiguity serves the chilling effect. Like the term intersectionality, Critical Race Theory is maligned as divisive and unAmerican but otherwise undefined. And this is the point.⁵⁸ In recent prohibitions, the analytically essential concepts of intersectionality and Critical Race Theory have been appropriated

51. Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict Over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory> [<https://perma.cc/CG3N-9R7G>].

52. TAIFHA ALEXANDER, LATOYA BALDWIN CLARK, KYLE REINHARD & NOAH ZATZ, UCLA SCHOOL OF LAW CRITICAL RACE STUDIES PROGRAM, TRACKING THE ATTACK ON CRITICAL RACE THEORY 10–11 (2023) (tracing the sequence of events: from Rufo’s July 2020 Twitter screed against an anti-bias training session planned by Seattle’s Office of Civil Rights, to Rufo’s Fox News tirade on September 2, to Trump’s Chief of Staff contacting Rufo the next day, to Rufo and his team flying to D.C. to help draft the executive order).

53. Exec. Order No. 13950, 85 Fed. Reg. 60683, 60685 (Sept. 22, 2020).

54. Like Trump’s original executive order, Biden’s recension applies only to trainings for federal employees and subcontractors. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

55. ALEXANDER ET AL., *supra* note 52, at 4.

56. ALEXANDER ET AL., *supra* note 52, at 5–6.

57. ALEXANDER ET AL., *supra* note 52, at 5–6. Measures are notoriously vague about prohibited content. Of the 241 adopted anti-CRT measures, 108 measures prohibit “Critical Race Theory”; sixty measures prohibit content that make individuals feel guilt, anguish, or psychological distress on account of their race or sex; fifty measures prohibit teaching on “divisive concepts” or “controversial issues.” ALEXANDER ET AL., *supra* note 52, at 18.

58. Conservative activist Christopher Rufo explained that CRT is the “perfect villain” because it is three bad words. “Strung together, the phrase ‘critical race theory’ connotes hostile, academic, divisive, race-obsessed, poisonous, elitist, anti-American,” said Rufo. Wallace-Wells, *supra* note 51.

as containers “to denounce the wider project of antiracism and social justice writ large,” as Kimberlé Crenshaw explains.⁵⁹

In various wars U.S. elites have threatened to bomb the people of Vietnam or Pakistan or Afghanistan “back into the Stone Ages,” a phrase that prompted the poet Ocean Vuong to observe: “To destroy a people, then, is to set them back in time.”⁶⁰ In the war against antiracism and the radical awakenings of Summer 2020, how far back in time will the backlash go? Before *Roe*, before the 1965 Voting Rights Act, to some fictional white heteronormative 1950s? This is a counterinsurgency of repressive violence and enforced forgetting.⁶¹ It is a frontal attack on the Movement for Black Lives in its fullest terms, meaning, as Crenshaw writes, a denunciation of antiracism and social justice writ large.⁶² I say this not to counsel despair but to ring the alarm.

The remainder of this Article attends to counterinsurgency of another kind.⁶³ Rather than a frontal attack on the Movement for Black Lives, elites are fortifying the criminal legal system through a politics of recognition. The anti-woke repression outlined in this Part is the foil against which recognition of Black victims seems enlightened by comparison. But comparing Republican-spearheaded anti-woke repression to Democratic-spearheaded DEI repression misses the shared baseline—repression. In the same vein, comparing Republicans versus Democrats assumes that parties are independent rather than mutually

59. Kimberlé W. Crenshaw, *This Is Not a Drill: The War Against Antiracist Teaching in America*, 68 UCLA L. REV. 1702, 1713–14 (2022) (explaining that the CRT panic is a response to the 2020 uprisings and “an attempt to whitewash U.S. history and to cut off necessary classroom discussion of racial justice”). True to Crenshaw’s analysis, conservative activist Christopher Rufo has stated, “The goal is to have the public read something crazy in the newspaper and immediately think ‘critical race theory.’ We have decodified the term and will recodify it to annex the entire range of cultural constructions that are unpopular with Americans.” ALEXANDER ET AL., *supra* note 52, at 10.

60. OCEAN VUONG, ON EARTH WE’RE BRIEFLY GORGEOUS 60 (2019).

61. The CRT panic makes it clear that enforced forgetting is the cornerstone of jingoistic patriotism. Sam Adler-Bell calls this a patriotism premised on “collective acts of amnesia—*ex obliivis unum*.” Sam Adler-Bell, *Behind the Critical Race Theory Crackdown*, AAPF (Jan. 13, 2022), <https://www.aapf.org/theforum-critical-race-theory-crackdown> [<https://perma.cc/AXV7-9EHG>] (“Indigenous genocide, the subjugation of women, the enslavement of Africans, the plantation regime, coerced ‘free’ labor, the mine wars and anti-union terror, the criminalization of sexual minorities, nativist violence, lynching, and Jim Crow apartheid: all of these, at various times, have been consigned to common oblivion—ennobling omissions that undergird a vague but encompassing national pride.”).

62. Crenshaw, *supra* note 59, at 1714.

63. In addition to overt repressive force, counterinsurgency also takes the form of scrambling reformism that “attempts to solicit, pacify, and discipline the gathering force so it better comports with the progressivist narrative of ‘America.’” Dylan Rodríguez, *Weaponized Study in a Moment of (Counter)Insurgency: The Gathering Anti-“American” of American Studies*, 74 AM. Q. 199, 200 (2022).

reactive, and, at the end of the day, both parties are beholden to the same wealthy interests.⁶⁴

II. FUND THE POLICE *BECAUSE* BLACK LIVES MATTER

Defund the police was the breakout demand of Summer 2020, and in June 2020 mayors and city council members in twenty cities pledged to reduce police budgets.⁶⁵ But two years later it was clear that cities in the aggregate have not reduced policing as a share of city budgets.⁶⁶ Austin, Minneapolis, Albuquerque, and Portland reduced police funding in 2021, but mostly restored it in 2022.⁶⁷ By the March 2022 State of the Union address, President Biden won chamber-wide applause for expressing what seemed to be the restored conventional wisdom: “[T]he answer is not to defund the police. It’s to fund the police.”⁶⁸ The biting and brilliant Mike Davis captured the moment with a gut punch sentence: “Trayvon Martin and George Floyd are now just roadkill rapidly vanishing from sight in

64. See KIM MOODY, *BREAKING THE IMPASSE* 26–39 (2022) (showing that the Democratic Party prioritizes wealthy suburbs over electorally secured urban districts, and concluding that, like its Republican rival, the Democratic Party is “by every measure a capitalist political organization financially dominated by major sectors of capital, run by professional politicians and operatives mostly drawn from the professional upper and upper-middle reaches of society whose political careers were heavily funded by business and the rich, and ideologically committed to capitalism. It is by any reasonable definition a capitalist party”).

65. See Fola Akinnibi, Sarah Holder & Christopher Cannon, *Cities Say They Want to Defund the Police. Their Budgets Say Otherwise.*, BLOOMBERG (Jan. 12, 2021), <https://www.bloomberg.com/graphics/2021-city-budget-police-funding/#:~:text=Their%20Budgets%20Say%20Otherwise.&text=The%20rallying%20cry%20to%20defund,unwilling%20to%20make%20meaningful%20cuts> [<https://perma.cc/LH6V-F9ZJ>] (identifying more than twenty cities where mayors or city council members committed to reducing police budgets in June 2020, but finding little change after six months).

66. See Andy Friedman & Mason Youngblood, *Nobody Defunded the Police: A Study*, REAL NEWS NETWORK (Apr. 18, 2022), <https://therealnews.com/nobody-defunded-the-police-a-study> [<https://perma.cc/55VW-5QLW>] (analyzing 419 city budgets and finding that police departments received the same average share of city budgets in 2021 as they did in 2018, 2019, and 2020).

67. See *id.* (showing that, from 2020 to 2021, Austin cut police funding by 32.5 percent, and Minneapolis, Albuquerque, and Portland cut in the range of 10 to 15 percent, but in 2022 these cities restored police funding).

68. In his February 2022 public meeting with N.Y.C. Mayor Eric Adams and his subsequent State of the Union Address, Biden urged cities and states to use up to 350 billion dollars in federal pandemic aid to fund policing. See Joseph R. Biden, President of the United States, State of the Union Address (Mar. 1, 2022); Brian Dolinar, *‘It’s a Money Grab’: Billions in COVID Relief Going to Fund Police and Prisons*, APPEAL (Mar. 23, 2022), <https://theappeal.org/covid-funds-police-prisons-arpa> [<https://perma.cc/6MJ5-EPCA>].

the rear-view mirror of the presidential limousine as Biden rushes around reassuring the cops that he's their best friend."⁶⁹

What explains the hardened consensus to maintain and even increase police funding? And if policing is essentially and idiosyncratically local—as federal officials insist, usually while shrugging off pressure to intervene when local cops kill—then why do cities huddle in a tight cluster to maintain police funding? A common answer is that the midsummer dream of defunding awoke to a cold reality of rising crime, and therefore all those cities ridiculed as *Portlandia* liberal retreated behind the thin blue line.⁷⁰ But this focus on freshly minted crime rates makes it seem like defund just got an unlucky roll of the dice. In fact, national party elites preemptively attacked defund before giving divest-reinvest experiments a chance.

Since Summer 2020, Republican and police-sponsored ads against “Defund the Police Democrats” blamed defund for higher homicide rates,⁷¹ even in cities where neither or only one occurred,⁷² and even in races where the Democratic

69. Mike Davis, *Thanatos Triumphant*, NEW LEFT REVIEW (Mar. 7, 2022), <https://newleftreview.org/sidecar/posts/thanatos-triumphant> [<https://perma.cc/PG87-6L4F>].

70. The crime-killed-police-defunding story is commonplace. See, e.g., Alex Seitz-Wald, *How Democrats Went From Defund to Refund the Police*, NBC (Feb. 6, 2022, 1:30 AM), <https://www.nbcnews.com/politics/politics-news/democrats-went-defund-refund-police-rcna14796> [<https://perma.cc/W3WK-94N4>].

71. Trump's 2020 reelection campaign falsely accused Biden of supporting defund, and by mid-2021 the National Republican Congressional Committee spokesperson insisted that “every voter knows that Democrats are the party of Defund the Police.” James Oliphant & Nathan Layne, *As Murders Surge, Democrats Find a New Message: Fund the Police*, REUTERS (Aug. 17, 2021, 1:20 PM), <https://www.reuters.com/world/us/murders-surge-democrats-find-new-message-fund-police-2021-08-17/> [<https://perma.cc/V8PS-BJU3>]. Through the 2022 midterms Republican ads consistently took aim at so-called Defund the Police Democrats. Daniel Dale, *Fact Check: The GOP's Dishonesty-Filled Barrage of 'Defund the Police' Attack Ads*, CNN (Oct. 23, 2022, 8:07 AM), <https://www.cnn.com/2022/10/23/politics/fact-check-defund-the-police-ads-2022-midterms/index.html> [<https://perma.cc/W4XD-9VYB>].

72. Consider police and Republican campaigns in Austin, Texas, the only U.S. city, I believe, that reduced its police budget by more than 30 percent from 2020 to 2021. In August 2020, the Austin City Council voted to reallocate \$153 million from policing to buy two hotels for homeless services and to increase health care, but by September, before the new budget took effect, the Texas Municipal Police Association posted billboards saying “Warning! Austin Police Defunded, Enter at Your Own Risk.” Sam Levin, *These US Cities Defunded Police: 'We're Transferring Money to the Community'*, GUARDIAN (Mar. 11, 2021), <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community> [<https://perma.cc/3AQR-XU3Z>]. By October 2020, Texas Republican leadership, Gov. Greg Abbott, Lt. Gov. Dan Patrick, and U.S. Senator John Cornyn, hosted a “Back the Blue” news conference where they falsely christened Austin “one of the most dangerous cities in America.” Brandon Mulder, *Fact Check: Is Austin One of the Most Dangerous Cities in the U.S.?*, AUSTIN-AM. STATESMAN (Nov. 6, 2020, 12:37 PM), <https://www.statesman.com/story/news/politics/elections/2020/11/06/fact-check-is-austin->

candidate was loud and proud in pledging to maintain or increase police funding.⁷³ In addition to the millions sunk into deceptive ads, the fiction that Democrats defunded police is sustained by an associational web that connects the Democratic Party to allegedly pro-Black policies and therefore, for many, fears of catastrophic social disruption.⁷⁴ Through this web, the alleged Democratic defunding of police shares something with President Barack Obama's alleged socialism: there is a very real backlash against a fictional radical change.⁷⁵

In navigating this backlash, Democratic leadership has embraced the motto "Black Lives Matter" but rejected the anti-carceral, reparative agenda that gives the motto meaning. In an attempted inversion of the racial associations of divest-reinvest, Democratic leadership has affirmed police funding as good for securing justice and jobs for Black people.

one-of-most-dangerous-cities-in-us/43010523 [https://perma.cc/BB82-8LG7] (reporting "Austin's violent crime rate . . . ranked 28th among the 30 largest U.S. cities").

73. To give a few examples from the 2022 midterm campaigns, Republican ads mischaracterized all of the following as "Defund the Police Democrats": Joe Biden, Nancy Pelosi, Kermit Jones (CA-3), Abigail Spanberger (VA-7), Steven Horsford (NV-4), Andrea Salinas (OR-6), Wiley Nickel (NC-13), and Liz Mathias (IA-2). *See* Dale, *supra* note 71.
74. *See generally* STEPHEN STEINBERG, COUNTERREVOLUTIONS: THE CRUSADE TO ROLL BACK THE GAINS OF THE CIVIL RIGHTS MOVEMENT 236–41 (2022) (describing President Lyndon Johnson's signing of the 1965 Voting Rights Act as the final straw breaking the "unholy alliance" between Northern Democrats and Southern Dixiecrats, thereby widening opportunities for Republican strategists to wed Democrats to welfare, affirmative action, busing, and other allegedly pro-Black policies).
75. The Obama administration did little to improve material conditions for Black and working-class people; in fact, Black median income fell by 10.9 percent during the Obama presidency, compared to a 3.6 percent drop for whites. KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 11–12 (2016) ("At a time when the entire Western world was pointing to corrupt practices on Wall Street and illicit gambling in global financial markets as the causes of the global slump, there was Obama blaming Black fathers, 'Cousin Pookie,' families' eating habits, ESPN's *SportsCenter*, and Black parents not reading to their children at night for the absence of secure work and stable home lives in Black communities."). Despite his allegiance to Wall Street and culture-of-poverty rhetoric, Obama nonetheless became a symbol that invigorated racist antigovernment politics. *See* STEINBERG, *supra* note 74, at 225–26 (noting that from 2008 to 2009 the number of nativist extremist groups grew by 80 percent and the number of antigovernment Patriot groups and militias grew by 244 percent, according to Southern Poverty Law Center data). For wild mischaracterizations of Obama's allegedly radical socialist politics, *see, e.g.*, Jennifer Epstein, *Obama Scoffs at People Who Call Him a 'Socialist': 'You Gotta Meet Real Socialists'*, POLITICO (Nov. 19, 2013, 4:33 PM), <https://www.politico.com/blogs/politico44/2013/11/obama-scoffs-at-people-who-call-him-a-socialist-you-gotta-meet-real-socialists-177886> [https://perma.cc/7N53-Z6GN].

A. Defund is White, Policing is Black

To liberal pundits and Democrats anxious about the 2020 elections, defund the police was a terribly rude surprise, a stupid slogan born and baptized in the burning Minneapolis police precinct set aflame on May 28, 2020, after the murder of George Floyd. Even though divest-reinvest has obvious roots in Black freedom struggles, elites treated defund the police like an obnoxious teenager who just showed up angry and confused, shouting obscenities to make the grownups uncomfortable. Democratic operatives started answering a question too strange to be asked aloud: *is defund the police even Black?* Newark's Democratic Mayor Ras Baraka called defund "bourgeois liberal" nonsense.⁷⁶ In August 2020, the *New York Times* gave this asked-and-answered headline: "Who Opposes Defunding the N.Y.P.D.? These Black Lawmakers."⁷⁷ The paper of record reported: "[A] Black councilwoman from Brooklyn . . . compared calls to defund the police to 'colonization' pushed by white progressives . . . [A] Black councilman . . . called the movement 'political gentrification.'"⁷⁸ Reverend Al Sharpton called defund "something a latte liberal may go for as they sit around the Hamptons discussing this as an academic problem."⁷⁹ In case anyone missed the implicit white wealth of lattes, beach houses, and academia, the MSNBC commentator added that "Blacker and poorer" folks know that "people on the ground need proper policing."⁸⁰ Police defunders and abolitionists were limousine liberals and Ivory Tower theorists; according to a 2022 Manhattan Institute report, they were wealthy white and Asian American Democrats who could afford the newest "luxury belief" as a

76. Sam Sutton, *Newark Mayor: Dismantling Police a 'Bourgeois Liberal' Solution for a Much Deeper Problem*, POLITICO (June 12, 2020, 11:19 AM), <https://www.politico.com/states/new-jersey/story/2020/06/11/newark-mayor-dismantling-police-a-bourgeois-liberal-solution-for-a-much-deeper-problem-1292674> [<https://perma.cc/P5PP-HLVQ>].

77. Jeffery C. Mays, *Who Opposes Defunding the N.Y.P.D.? These Black Lawmakers*, N.Y. TIMES (Aug. 10, 2020), <https://www.nytimes.com/2020/08/10/nyregion/defund-police-nyc-council.html> [<https://perma.cc/KLC8-DYYM>] ("Laurie Cumbo, a Black councilwoman from Brooklyn who is majority leader, compared calls to defund the police to 'colonization' pushed by white progressives. Robert Cornegy Jr., a Black councilman also from Brooklyn, called the movement 'political gentrification.'").

78. *Id.*

79. Joe Concha, *MSNBC's Sharpton: Defunding Police 'Something a Latte Liberal May Go For'*, THE HILL (Sept. 8, 2020, 11:16 AM), <https://thehill.com/homenews/media/515448-msnbcs-sharpton-defunding-police-something-a-latte-liberal-may-go-for> [<https://perma.cc/EQ9B-N29L>].

80. *Id.*

“status symbol,” as if defund were a new Fendi bag.⁸¹ By contrast, Blacker and poorer people on the ground wanted proper policing.

In short, pro-police politics came with a certificate of Black authenticity. This is partially analysis by association: defund as a redistributive demand is invalidated by association with white people, while policing is validated by Black representatives already in the corridors of power.⁸² This later phenomenon is an example of what the philosopher Olúfemi Táíwò calls “deference politics.” As a manifestation of the elite capture of identity politics, deference politics entails “handing conversational authority and attentional goods to whoever is already in the room and appears to fit a social category associated with some form of oppression—regardless of what they have or have not actually experienced, or what they do or do not know about the matter at hand.”⁸³ In the context of the Democratic police agenda, deference politics means handing conversational authority to pro-police Black members of Congress, Black mayors, Black police chiefs, and—when they have name recognition and grieve in certain ways—the surviving family members of Black people killed by police.

The post-2020 pro-Black pro-police stance is like a cut-and-paste collage, with quotes from and images of certain Black people mixed with taglines about Black public opinion and truisms that Black people want safety. This pro-Black pro-police collage holds a mélange of overlapping claims.

The first claim is that Black people want more and better police because they are distinctly vulnerable to criminal victimization. Black victimization is so substantively important yet so opportunistically distorted that I address it here

81. ZACH GOLDBERG, MANHATTAN INST., IS DEFUNDING THE POLICE A “LUXURY BELIEF”? ANALYZING WHITE VS. NONWHITE DEMOCRATS’ ATTITUDES ON DEPOLICING (2022) (measuring support for depolicing (fewer police) and defunding (less money), without asking about reallocation of funds).

82. Other battles use racial representation as a proxy for racial justice. For example, Georgia’s pro-reproductive rights and anti-abortion groups both claimed to truly represent Black women, and competing groups vied for authenticity by, one, pointing out all the white advocates on the other side, and two, pointing to all the Black women representatives on one’s own side. Zakiya Luna, *Who Speaks for Whom? (Mis)Representation and Authenticity in Social Movements*, 22 MOBILIZATION: AN INT’L Q. 435, 435–50 (2017). These two associational tactics register in fights over the Blackness of abolition. See, e.g., Michelle S. Phelps, Anneliese Ward & Dwjuan Frazier, *From Police Reform to Police Abolition? How Minneapolis Activists Fought to Make Black Lives Matter*, 26 MOBILIZATION: AN INT’L Q. 421, 436 (2021) (finding that reformist and abolitionist groups in Minneapolis both claimed to represent “the authentic Black voice on public safety questions”); André-Naquian Wheeler, *San Francisco Mayor London Breed on Defunding the Police, White Activism, and Fighting for Her Community*, VOGUE (July 9, 2020), <https://www.vogue.com/article/london-breed-san-francisco-mayor-defunding-the-police-activism> [<https://perma.cc/6JLA-2E4G>].

83. Táíwò, *supra* note 15, at 70.

and throughout the next Part. Major mainstream media outlets routinely announced that Black people reject defund, reporting, as just one example from August 2020, Gallup survey findings that “Black Americans Want Police to Retain Local Presence.”⁸⁴ The White House rolled out its road map for 2022 midterm crime messaging in New York City,⁸⁵ where Mayor Eric Adams rules as the paradigmatic Black elite who instrumentalizes Black victimization to justify nearly fascistic expansion of police powers. Invoking his own experiences of being beaten by NYPD officers as a teenager and then becoming an NYPD officer, Adams offers the truism that ordinary Black New Yorkers want to feel safe, implying that safety means more police, stricter bail policy, reinstating the notoriously lethal NYPD plainclothes unit, trying teens as adults for gun possession, reinstituting stop-and-frisk, and overseeing austerity cuts for most agencies except police.⁸⁶ According to Adams and other prominent Black mayors, law-and-order austerity is for and by Black people.⁸⁷

After the January 6, 2021 storming of the Capitol, the idea that police protect Black people stretched into the leitmotiv that police protect multiracial

84. Lydia Saad, *Black Americans Want Police to Retain Local Presence*, GALLUP (Aug. 5, 2020), <https://news.gallup.com/poll/316571/black-americans-police-retain-local-presence.aspx> [<https://perma.cc/NBE4-7HFS>].

85. Insisting that “the answer is not to defund the police,” Biden delivered what White House officials called a road map for midterm crime messaging in New York City, where there was a trifection of Black carceral leadership: the first Black woman NYPD commissioner Keechant Sewell, Black district attorney Alvin Bragg, and former NYPD officer Mayor Eric Adams. See Zeeshan Aleem, *Joe Biden Talking Crime with Eric Adams is Bad News for Police Reformers*, MSNBC (Feb. 4, 2022, 2:32 AM), <https://www.msnbc.com/opinion/joe-biden-talking-crime-eric-adams-bad-news-police-reformers-n1288584> [<https://perma.cc/EV3Y-KDVP>].

86. *Id.*; see, e.g., Emma G. Fitzsimmons, *Eric Adams Proposes a \$98 Billion Budget With No Cuts for N.Y.P.D.*, N.Y. TIMES (Feb. 16, 2022), <https://www.nytimes.com/2022/02/16/nyregion/budget-adams-police-nyc.html> [<https://perma.cc/4F5R-JWWN>]. When some New York State Democrats challenged Adams’s fearmongering tactics, he recast policing as the way to discuss crime, and crime as the way to discuss Black and Brown communities. See, e.g., Emma G. Fitzsimmons & Jeffrey C. Mays, *N.Y. Democrats Blame Adams for Election Losses. He Doesn’t Care.*, N.Y. TIMES (Nov. 18, 2022), <https://www.nytimes.com/2022/11/18/nyregion/eric-adams-midterms-democrats-crime.html> [<https://perma.cc/49EQ-PHL7>] (quoting Adams as saying, “I think those who stated, ‘Don’t talk about crime,’ it was an insult to Black and [B]rown communities where a lot of this crime was playing out”).

87. In a prominent example of reversing course, San Francisco Mayor London Breed has come to champion surveillance, aggressive prosecution, and displacing unhoused people in the name of defending San Francisco from crime—and from outsider white radicals who have no business discussing policing and racial justice. The Ed. Bd., *Refunding the San Francisco Police*, WALL ST. J. (Dec. 16, 2021, 6:48 PM), <https://www.wsj.com/articles/refunding-the-san-francisco-police-london-breed-crime-11639696468> [<https://perma.cc/M9P6-BPF8>] (noting that Mayor London Breed championed cuts to police budgets in Summer 2020, but by December 2021 San Francisco’s first Black woman mayor pushed for more spending on policing, police overtime, and police-academy classes).

democracy. Even though 15 percent of those charged in the Capitol insurrection have a background in policing and/or the military, and despite that fact anti-BLM “Back the Blue” and “Blue Lives Matter” campaigns bled into “Stop the Steal” rallies, President Biden and others routinely insist that police are first-line guardians against insurrectionist and white supremacist threats.⁸⁸ And if there is a single January 6 hero it is probably Eugene Goodman, the Black cop who lured the mob away from senators’ chambers in a scene that some likened to a lynch mob targeting its victim, this time a Black man in blue.⁸⁹

A second claim is that a pro-police stance serves Democratic electoral prospects and Black interests, presumed to be one and the same. Elites of the national Democratic Party attacked defund as nutty leftwing extremism that fed Republican electoral prospects. Announcing in June 2020 that “Nobody is going to defund the police,” House Majority Whip James Clyburn (D-SC) criticized defund advocates, all but urging them to close ranks in support of Biden.⁹⁰ Storylines that defund is toxic radicalism grew stronger after November 2021, when pro-police Democratic Black mayors won elections in Seattle (Bruce Harrell), Atlanta (Andre Dickens), and New York (Eric Adams), joining the

88. Meg Anderson & Nick McMillan, *1,000 People Have Been Charged for the Capitol Riot. Here’s Where Their Cases Stand*, NPR (Mar. 25, 2023, 5:00 AM), <https://www.npr.org/2023/03/25/1165022885/1000-defendants-january-6-capitol-riot> [<https://perma.cc/S62N-WZW8>] (counting that 15 percent of the 1000 people charged have a background in police or military, but only 1 percent and 7 percent of the U.S. population are police or military veterans); Shanahan & Wall, *supra* note 40, at 72 (“Building off its presence in the anti-lockdown movement and rightwing backlash to BLM, ‘Blue Lives’ was an important presence in the organizing around Trump’s ill-fated attempt to overturn the 2020 presidential election through ‘Stop the Steal’ campaigning”); Ja’han Jones, *Biden Sends Message to Insurrectionist Cops in Speech to Black Police*, MSNBC (July 26, 2022, 11:13 AM), <https://www.msnbc.com/the-reidout/reidout-blog/biden-police-jan-6-insurrection-rcna40009> [<https://perma.cc/EG9V-NRMZ>] (quoting Biden’s message that being “pro-insurrection” means “you can’t be pro-cop,” “pro-democracy,” or “pro-American”).

89. The U.S. Capitol police officer was a likely pick for *Time*’s 2021 Person of the Year, but the magazine honored Elon Musk instead. See, e.g., Eugene Robinson, *Eugene Goodman Should be Time’s Person of the Year*, DAILY CAMERA (Dec. 19, 2021, 5:50 PM), <https://www.dailycamera.com/2021/12/19/opinion-eugene-robinson-eugene-goodman-should-be-times-person-of-the-year> [<https://perma.cc/83E9-EXTE>].

90. Chandelis Duster, *Clyburn Says He Does Not Support Defunding the Police*, CNN (June 14, 2020, 2:16 PM), <https://www.cnn.com/2020/06/14/politics/james-clyburn-defund-police-cnn/index.html> [<https://perma.cc/8ZBT-P8VX>] (quoting Clyburn as saying that “defund the police” gives “cover” to Trump and opponents of police reform). Failed 1988 presidential contender Michael Dukakis, the Democratic Party’s living cautionary tale whose prison furlough program inspired the Republican’s infamous Willie Horton campaign ad, called the defund movement “nuts.” Niall Stanage, *The Memo: Michael Dukakis Warns Democrats on Crime*, THE HILL (June 28, 2021, 6:00 AM), <https://thehill.com/homenews/the-memo/560351-the-memo-michael-dukakakis-warns-democrats-on-crime> [<https://perma.cc/UP63-TMK2>].

ranks of other pro-police Black mayors in Chicago (Lori Lightfoot), Charlotte (Vi Lyles), and San Francisco (London Breed).⁹¹ Wins for Black pro-police mayors led some to speculate that “pro-police candidates of color may be the future of the Democratic Party.”⁹²

A third claim is that policing is a good job for Black people. Defund’s invisible victims would be Black and Brown police staff, the last hired and first fired in those ever-disappearing government jobs. Personnel is the largest expense in police budgets, and, in the words of Chicago Mayor Lori Lightfoot, police defunding would mean “eliminating one of the few tools that the city has to create middle-class incomes for [B]lack and [B]rown folks.”⁹³ The claim that policing propels Black people into the middle class has been bolstered by a stark but unrepresentative new trend: the rise of Black police chiefs. By February 2022, Black police chiefs led twenty-six of the fifty largest police departments.⁹⁴ It is nothing new for cities to attempt to placate protesters by appointing a Black police chief, but Black chiefs are now prominent at a scale previously unseen.⁹⁵ Their

91. See Jay Caspian King, *In Big City Politics, a Call to Fund the Police*, N.Y. TIMES (Dec. 20, 2021), <https://www.nytimes.com/2021/12/20/opinion/mayors-fund-police.html> [https://perma.cc/6EL4-9PQ3].

92. *Id.*

93. “In our Police Department, about 90 percent of the budget is personnel,” said Mayor Lori Lightfoot. “So when you’re talking about defunding the police, you’re talking about doing it in a context of a collective-bargaining agreement that requires you to go in reverse seniority, which means you’re getting rid of the younger officers. Which means you’re getting rid of [B]lack and [B]rown people. Which means you are eliminating one of the few tools that the city has to create middle-class incomes for [B]lack and [B]rown folks. Nobody talks about that in the discussion to defund the police.” David Marchese, *Lori Lightfoot, Mayor of Chicago, on Who’s Hurt by Defunding Police*, N.Y. TIMES (June 22, 2020), <https://www.nytimes.com/interactive/2020/06/22/magazine/lori-lightfoot-chicago-police.html> [https://perma.cc/8RJN-WLZQ].

94. Tamar Sarai Davis, *The False Promise of the Black Police Chief*, CAPITAL B (Jan. 30, 2022, 5:05 PM), <https://capitalbnews.org/black-police-chiefs-reform-racism> [https://perma.cc/SL5L-8Q9N]; see also Ashley Collman, *Sellouts to the Black Community. Traitors to Fellow Officers. Black Police Chiefs are Caught Between 2 Worlds After George Floyd’s Killing*, INSIDER (Oct. 4, 2020, 2:58 AM), <https://www.insider.com/black-police-chiefs-challenges-after-george-floyd-killing-2020-9> [https://perma.cc/K7CA-LQ9D].

95. Los Angeles appointed its first Black police chief after the 1992 Rodney King uprisings, and Ferguson appointed its first Black police chief after the 2014 Michael Brown uprisings. Davis, *supra* note 94; Collman, *supra* note 94. But even in 2016, four years after the murder of Trayvon Martin and three years after the creation of the #BlackLivesMatter hashtag, white police chiefs led 90 percent of all local police departments. In 2016 leadership was more diverse in cities with more than 250 thousand people: white chiefs led 65 percent of city departments while Black, Latinx, and Indigenous or AAPI chiefs led 19, 13, and 2 percent of those departments, respectively. SHELLEY S. HYLAND & ELIZABETH DAVIS, LOCAL POLICE DEPARTMENTS, 2016: PERSONNEL 8 (2019). By end of 2020, however, white police chiefs led 47 percent of departments in cities with more than 250 thousand people, while Black, Latinx, and Indigenous or AAPI chiefs led 38, 13, or 1 percent of city departments. SEAN GOODISON, LOCAL POLICE DEPARTMENTS PERSONNEL, 2020, at 7 (2022).

figurehead status distorts the underlying trend of stagnation in hiring Black police officers.⁹⁶

B. Eclipsing the Racism of the Antistate State

There are two obvious retorts to the suggestion that defund the police is some white distant relative to Black Lives Matter. First, calls to defund state violence are deeply rooted in Black freedom struggles, and, for anyone fixated on testing the racial DNA of ideas, connections between defund and Black organizing are readily apparent. Since at least 2015 organizations such as Black Youth Project 100 and Million Hoodies have organized, chanted, and tweeted #DefundthePolice and #FundBlackFutures, and the Movement for Black Lives detailed its divest-reinvest agenda in its 2016 *Vision for Black Lives* and its 2020 BREATHE Act.⁹⁷

Second, Black public opinion is complicated but largely supportive of defund. When surveys ask about the dual process of divest-reinvest—that is, when questions probe support for defund as it is actually defined by organizations and protesters who chanted the slogan—then Black majorities do indeed support it. Interview data found that 2020 protesters defined and endorsed defund as a two-step process, reducing police budgets and reallocating resources to serve poor and minoritized communities.⁹⁸ But politicians and mainstream news sources tend to misrepresent defund as a one-step process, just divest without reinvest. Headlines therefore deliver the shocking news that people reject something that was never proposed. For example, as Mariame Kaba and Andrea Ritchie point out, *USA Today* delivered the misleading but not outright false headline “Fewer than 1 in 5 support ‘defund the police’ movement.” This headline represents support for a survey question about “defund the police,” but in fact this same survey shows that a majority of Black respondents (63 percent), as well as a majority of Democratic

96. The proportion of Black police chiefs doubled from 2016 to 2020, with Black chiefs jumping from 19 to 38 percent in cities of more than 250 thousand people. Compare HYLAND & DAVIS, *supra* note 95, with GOODISON, *supra* note 95. But the percent of Black officers has barely budged in three decades. Out of all local police departments, Black people comprised 9 percent of all officers in 1987, and from 1993 through 2020 this figure has held steady between 11–12 percent. BRIAN REAVES, LOCAL POLICE DEPARTMENTS, 2007 14 (2010); see also BRIAN A. REAVES, LOCAL POLICE DEPARTMENTS, 2013: PERSONNEL, POLICIES, AND PRACTICES 5 (2015); GOODISON, *supra* note 95, at 5.

97. See *Vision for Black Lives*, *supra* note 20; BREATHE Act, *supra* note 20.

98. Jennifer Cobbina-Dungy, Soma Chaudhuri, Ashleigh LaCourse & Christina DeJong, “Defund the Police:” *Perceptions Among Protesters in the 2020 March on Washington*, 21 CRIMINOLOGY & PUB. POL’Y (SPECIAL ISSUE) 147, 147 (2022).

respondents across racial self-identifications (67 percent), support redistributing police funds to public services.⁹⁹

Distorted and flatfooted representations of Black pro-police attitudes are neither isolated nor new. Black Americans have complex views about crime and violence and tend toward an “all-of-the-above strategy” that supports rebuilding housing, schools, and police in nothing less than a full-fledged “Marshall Plan for urban America.”¹⁰⁰ But politicians and mass media tend to practice “selective hearing,” trumpeting Black preferences for better policing while ignoring all their accompanying preferences for full employment, healthcare, and quality public schools.¹⁰¹

Additional evidence could fortify the preceding points that Black-led organizations advocate defund and Black public opinion largely supports it. For the purposes of this Article, however, I worry that piling on such evidence means sinking deeper into analysis by association, a practice that makes people vulnerable to deference politics. Black political thought is complex, fluid, and permeated by class divisions, and too many armor themselves with ironclad answers to the question *What do Black people really want?* or, with the quiet gatekeeping said loud, *What do real Black people really want?* Observe that Ras Baraka, Al Sharpton, and the Manhattan Institute all imply that defund is bourgeois nonsense, a luxury belief that most Black and working-class people simply cannot afford.¹⁰² The point here is not to smirk at similarities between the three. The point is that obvious dissimilarities should announce an equally obvious warning: pronouncements that Black people want more and better policing might sound like hard evidence to which any antiracist should submit, but such declarations have proven to be bendable to suit a range of evidence, interests, and competing

99. MARIAME KABA & ANDREA RITCHIE, NO MORE POLICE 11, 303 n.48 (2022); Sarah Elbeshbishi & Mabinty Quarshie, *Fewer Than 1 in 5 Support ‘Defund the Police’ Movement*, USA Today/Ipsos Poll Finds, USA TODAY (Mar. 8, 2021, 6:10 PM), <https://www.usatoday.com/story/news/politics/2021/03/07/usa-today-ipsos-poll-just-18-support-defund-police-movement/4599232001> [<https://perma.cc/X3CV-2ZT7>]. Other polls also show that Black majorities do indeed support divest-reinvest, even when the headline suggests otherwise. See, e.g., Eric Roper, *Poll: Cuts to Minneapolis Police Ranks Lack Majority Support*, STAR TRIB. (Aug. 15, 2020, 3:26 PM), <https://www.startribune.com/poll-cuts-to-minneapolis-police-ranks-lack-majority-support/572119932> [<https://perma.cc/7YUA-M2SN>] (showing that 76 percent of Black voters say Minneapolis should redirect some funding from police to social services like mental health and drug treatment).

100. JAMES FORMAN, JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 12 (2017).

101. Elizabeth Hinton, Julilly Kohler-Hausmann & Vesla M. Weaver, *Did Blacks Really Endorse the 1994 Crime Bill?*, N.Y. TIMES (Apr. 13, 2016), <https://www.nytimes.com/2016/04/13/opinion/did-blacks-really-endorse-the-1994-crime-bill.html> [<https://perma.cc/T2UK-48AJ>].

102. See *supra* notes 76, 79, 81.

ideologies. And the bigger point is this: polls and personalities are no substitute for political analysis.

The Democratic pro-Black case for policing is a myopic and mutilated analysis, one that severs race from the economic realities of policing. But there is an indivisibility to economic, racial, and gender justice, as the Movement for Black Lives has repeatedly emphasized, and divest-reinvest simultaneously challenges austerity, gendered racism, and the planetary threats of unbridled capitalist extraction.¹⁰³ And beyond assurances about the Blackness of divest-reinvest, the racism of austerity is worth understanding on its own terms.

Pro-Black pro-police rationalizations are simply refreshed idioms that sit atop federally orchestrated abandonment, as wealth was redistributed up while cuts were disciplined down, leaving localities to use policing to contain austerity's carnage.¹⁰⁴ Consider that in 1977, municipalities received 31 percent of their revenue from federal and state transfers, but by 2017 these transfers accounted for a meager 16 percent of municipal revenues.¹⁰⁵ The Reagan, Bush, and Clinton administrations cut direct federal transfers to municipalities, which provided 12 percent of the average city's revenue in 1977, but merely 5 percent in 2012.¹⁰⁶ Taking away federal lifeboats and redistributive funds, federal lawmakers left

103. See *Vision for Black Lives*, *supra* note 20; *BREATHE Act*, *supra* note 20; MURCH, *supra* note 3, at 131–56; RANSBY, *supra* note 21, at 158–61.

104. Jamie Peck, *Situating Austerity Urbanism*, in *CITIES UNDER AUSTERITY: RESTRUCTURING THE US METROPOLIS* xi, xv (Mark Davidson & Kevin Ward eds., 2018) (explaining that the “disciplining down” of austerity urbanism entrenches “a predisposition to privatized, outsourced, and small(er)-state strategies, based on the embedded principles of tax aversion, restrained public spending, workforce trimming and deunionization, (barely) alleviated by episodic, project-based, and competitively selective models of federal- or state-financed programming”).

105. Megan Randall, *Census of Governments Illustrates Declining Aid to Localities, Other Trends in State and Local Finance*, TAX POL’Y CTR. (Apr. 21, 2020), <https://www.taxpolicycenter.org/taxvox/census-governments-illustrates-declining-aid-localities-other-trends-state-and-local-finance> [https://perma.cc/R8XQ-G8LL].

106. MEGAN RANDALL, TRACY GORDON, SOLOMON GREENE & ERIN HUFFER, URBAN INST., *FOLLOW THE MONEY: HOW TO TRACK FEDERAL FUNDING TO LOCAL GOVERNMENTS* 13 (2018). The Reagan Administration cut many federal place-based programs, and in 1987 it repealed direct federal revenue sharing. Initiated in 1972, the federal revenue sharing program enabled LA County to finance health care for the poor, Buffalo to improve street lighting, and small and mid-sized cities to fund libraries, sanitation, and health and human service programs. Lindsey Gruson, *End of Federal Revenue Sharing Creating Financial Crisis in Many Cities*, N.Y. TIMES (Jan. 31, 1987), <https://www.nytimes.com/1987/01/31/us/end-of-federal-revenue-sharing-creating-financial-crisis-in-many-cities.html#:~:text=The%20end%20of%20a%20Federal,cutting%20services%20and%20raising%20taxes.> [https://perma.cc/PB3G-3NRM]; see generally BRUCE WALLIN, BROOKINGS INST. METRO. POL’Y PROGRAM, *BUDGETING FOR BASICS: THE CHANGING LANDSCAPE OF CITY FINANCES* (2005).

localities to sink or swim with little more than unpredictable state aid, property taxes diminished by tax revolts, and regressive sales taxes and user fees.¹⁰⁷

The manufactured imperative of state and local self-sufficiency has entrenched a politics of downsizing and privatizing public goods, and the 2008 Great Recession accelerated this downward spiral. Elites refused to recover lost revenue by taxing corporations, and from 2007 to 2012 corporate tax revenues to states and localities fell by about 20 percent.¹⁰⁸ Instead of taxing corporations, lawmakers took the hatchet to public provisions and public sector workers. Between 2007 and 2011, state and local governments eliminated 765,000 jobs.¹⁰⁹ African Americans held two in ten of these eliminated jobs; women held seven in ten.¹¹⁰ Local governments delivered the deepest cuts to public schools. After the 2008 economic collapse, the number of students rose but the number of teachers fell.¹¹¹

To argue that Black people need police for safety treats violence and punishment as naturally occurring phenomenon when they are co-engineered through structural inequality. Wherever inequality is deepest, prisons and police prevail as the “catchall solution to social problems,” Gilmore and Gilmore tell us.¹¹² Across states within the U.S., social welfare divestment is tightly coupled with carceral investment, and across U.S. cities, less spending on social services accompanies more spending on police budgets.¹¹³ As historian Donna Murch

107. Cities cannot run budget deficits, and since the late 1970s all but four states have restricted local tax-raising powers. Jamie Peck, *Pushing Austerity: State Failure, Municipal Bankruptcy and the Crises of Fiscal Federalism in the USA*, 7 CAMBRIDGE J. REGIONS, ECON. & SOC’Y 17, 28–29 (2014).

108. KIM MOODY, ON NEW TERRAIN 96–97 (2017) (citing a fall in corporate tax revenue from sixty-one billion dollars in 2007 to forty-nine billion dollars in 2012).

109. Jennifer Laird, *Public Sector Employment Inequality in the United States and the Great Recession*, 54 DEMOGRAPHY 391, 394 (2017).

110. HO SANG & LOWNDES, *supra* note 49, at 29.

111. See PEW CHARITABLE TRUSTS, THE LOCAL SQUEEZE 2 (2012) (showing that, of the 500 thousand jobs cut from local governments, about half were teachers and educational staff); see also MOODY, *supra* note 108, at 98 (showing that the number of students rose by 804 thousand from 2008 to 2015, but the number of teachers fell by 297 thousand); William N. Evans, Robert M. Schwab & Kathryn L. Wagner, *The Great Recession and Public Education*, 14 EDUC. FIN. & POL’Y 298, 299 (2019) (finding that from 2008 to 2012, K-12 public education lost nearly 350 thousand jobs).

112. Gilmore & Gilmore, *supra* note 2, at 189, (explaining that “[w]orldwide today, wherever inequality is deepest, the use of prisons as a catchall solution to social problems prevails”); see generally Arjun Jayadev & Samuel Bowles, *Guard Labor*, 79 J. OF DEV. ECON. 328, 336, 337, 342 (2006) (comparing eighteen national economies and finding that the proportion of “guard labor” is positively correlated with income polarization and negatively correlated with social welfare spending).

113. Katherine Beckett & Bruce Western, *Governing Social Marginality: Welfare, Incarceration, and the Transformation of State Policy*, 3 PUNISHMENT & SOC’Y 43, 47–48 (showing state-level

writes of the Reagan, Bush, and Clinton administrations, austerity and devolution meant that “incarceration became de facto urban policy for impoverished communities of color in America’s cities.”¹¹⁴ Without adequate social provisions, cities double down on social control. This is the brutal reality of what Ruth Wilson Gilmore has long called “the antistate state.”¹¹⁵ Built on the foundations of prisons, the antistate state dismisses any possibility that state capacities might be put to life-enhancing use.¹¹⁶

To argue that policing is a good job for Black people is a claim that must be understood through the big picture of the racism of austerity. Historically, public sector employment has been an engine of modest upward mobility for Black people, for women, and for Black women in particular.¹¹⁷ In 1970, a majority of Black college graduates secured government jobs; federal, state, or municipal governments employed 57 percent of Black men college graduates and 72 percent of Black women college graduates.¹¹⁸ Life-enhancing government jobs and services were hard-won if very partial concessions and, like other victories of the Black freedom, feminist, and antipoverty struggles, government jobs and services were targeted for demolition.¹¹⁹ Black women were doubly disadvantaged, as

inverse correlations between welfare and prison spending); Brenden Beck & Adam Goldstein, *Governing through Police? Housing Market Reliance, Welfare Retrenchment, and Police Budgeting in an Era of Declining Crime*, 96 SOC. FORCES 1183, 1204 (2018) (finding that, in 171 cities of at least 90 thousand residents, from 1992 through 2006 overall local police spending grew “as a compensatory response to the weakening capacity of local social service programs”).

114. MURCH, *supra* note 3, at 81 (“Clinton imposed a toxic mix of punishment and withdrawal of social welfare . . . on a much larger scale than the Republican New Right.”).

115. RUTH WILSON GILMORE, *GOLDEN GULAG* 245 (2007) (defining the antistate state as built on prison foundations and dependent on the “ideological and rhetorical dismissal of any agency or capacity that ‘government’ might use to guarantee social well-being”).

116. *Id.*

117. See Michael B. Katz, *Why Don’t American Cities Burn Very Often?*, 34 J. URB. HIST. 185 (2008); Laird, *supra* note 109, at 393 (“[u]ntil the recent past, working for the government often meant having a pension, long-term job security, and regularly scheduled opportunities for upward mobility”).

118. Katz, *supra* note 117, at 193.

119. That is, austerity agendas use racism to attack both sides of the coin: on one side are the so-called recipients, e.g., the derisively referenced welfare queen or affirmative action beneficiary, and on the other side are the public-sector workers, e.g., the allegedly lazy postal worker or retired teacher on a bloated pension. “Racialized anti-statism,” write HoSang & Lowndes, means attacking government workers and so-called recipients as “parasites of government.” HO-SANG & LOWNDES, *supra* note 49, at 19, 23, 36, 38, 79, 96, 98. Roughly one-fifth of all Black workers are government employees, a fact that Koch-backed politicians exploited to “feed the image of government workers as inefficient and unproductive and thereby use racism to justify the privatization of government services.” STEINBERG, *supra* note 74, at 19–20; see also MOODY, *supra* note 108, at 97 (showing that between 1990 and 2010, the federal government cut 285,124 jobs, many (173,466) in the U.S. Postal Service where people of color comprised over half of the mail sorting and processing staff); Katz, *supra* note 117, at 193 (explaining that when the

sociologist Jessica Laird notes, because they worked in a shrinking government system while facing higher barriers to private-sector employment.¹²⁰ Government downsizing likely contributed to the widened Black-white unemployment gap after the Great Recession.¹²¹

To assume that Black and Democratic interests are one and the same requires disciplined obliviousness toward bipartisan austerity politics—and the special way that the national Democratic Party has advocated austerity combined with federal outlays for police and prisons. While the Clinton administration shut down funding crucial to local governments and low-income people, it opened federal revenue streams for policing and incarceration.¹²² Working with a majority Democratic Congress, President Clinton’s Violent Crime Control and Law Enforcement Act of 1994 created a 30.2-billion-dollar Crime Trust Fund. The 1994 Crime Act established the Community Oriented Policing Services (COPS) hiring program to meet Clinton’s campaign pledge to put 100,000 more cops on the street. From 1995 to 2000, COPS hiring spent close to five billion dollars to subsidize municipalities to hire approximately 64,000 cops.¹²³ Clinton’s 1994 Crime Act also incentivized states to enforce longer prison sentences and incarcerate undocumented immigrants.¹²⁴

Following Clinton’s model, President Obama and the Democratic-controlled Congress entrenched policing and prisons as its “de facto urban policy for impoverished communities of color.”¹²⁵ After the 2008 Great Recession, Obama’s American Recovery and Reinvestment Act of 2009 threw a lifeline to state and local governments—and to police, specifically.¹²⁶ As political scientist Marie

Reagan administration abolished the Community Service Administration in 1981, roughly 60 percent of the 9000 workers who lost their jobs were Black).

120. See Laird, *supra* note 109, at 394.

121. Laird, *supra* note 109, at 392, 397, 406, 408.

122. MOODY, BREAKING THE IMPASSE, *supra* note 64, at 74–75 (discussing the Clinton administration’s decision to shutter federal-to-city lifelines like Urban Development Action Grants, Local Public Works, and Anti-Recession Fiscal Assistance).

123. William N. Evans & Emily G. Owens, *COPS and Crime*, 91 J. PUB. ECON. 181 (2007).

124. Robert Vargas & Philip McHarris, *Race and State in City Police Spending Growth: 1980 to 2010*, 3 SOCIO. RACE & ETHNICITY 96, 107 (2017) (arguing that such federal aid may incentivize cities to increase police spending, and noting that Clinton’s Crime Act provided localities with financial assistance to incarcerate undocumented immigrants); PAULA M. DITTON & DORIS JAMES WILSON, U.S. DEP’T OF JUST., TRUTH IN SENTENCING IN STATE PRISONS (1999) (showing that many states adopted harsh “truth-in-sentencing” mandates, set at the 85 percent time-served benchmark specified in the 1994 Crime Act, to receive federal money for prison construction); HEATHER SCHOENFELD, BUILDING THE PRISON STATE 128, 301 (2018) (pointing out that proposals for federal subsidies for prison construction originated with Sunbelt Republicans in Texas, Florida, and New Mexico).

125. MURCH, *supra* note 114, at 81.

126. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115, 129–30.

Gottschalk explains, the 2009 Recovery Act resuscitated two controversial police funding programs: the Edward Byrne Justice Assistance Grant (Byrne-JAG) program and the COPS program.¹²⁷ Both funding programs were widely criticized and on the Bush administration's chopping block.¹²⁸ At the urging of police unions, however, Democrats used the Recovery Act to increase Byrne-JAG funding, using the justification that police funding means crime reduction and job creation.¹²⁹ Over the years, conservatives and Republicans have called for phasing out COPS, as Gottschalk explains, but Obama's Recovery Act replenished the COPS hiring program to Clinton-level highs.¹³⁰ U.S. Senate Judiciary chair Patrick Leahy (D-VT) promoted COPS because it would jumpstart the economy "as fast, or faster than, other spending."¹³¹ Ultimately the 2009 Recovery Act allocated roughly four billion dollars in federal aid for policing, prosecutions, and prisons.¹³² By way of comparison, note that the 2009 Recovery Act earmarked money for school construction but not teachers' salaries, a devastating omission given that hundreds of thousands of public school employees lost their jobs after the Great Recession.¹³³

127. MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 33 (2015).

128. In December 2007, Congress "unexpectedly slashed" Byrne-JAG grants to a record low allocation of 170 million dollars. GOTTSCHALK, *supra* note 127, at 34. Widely reviled, much of the Byrne-JAG program asked police grantees to report accomplishments through crass metrics like the number of people arrested and the quantities of seized drugs; these metrics further incentivized the quick and dirty drug sweeps of the kind seen in Tulia, where a Byrne-JAG funded police unit sent dozens of Black Texans to prison on bogus drug charges. *Id.* at 33–34. From 1995 through 1999 the COPS allocation was more than one billion dollars per year, but allocations fell to under 200 million dollars in 2003 and 2004, and then to less than twenty million dollars in 2005 through 2008. Steven Mello, *More COPS, Less Crime*, 172 J. PUB. ECON. 174, 175–76 (2019).

129. GOTTSCHALK, *supra* note 127, at 34 (explaining that the 2009 Recovery Act included more than two billion dollars in new Byrne funding, more than double the amount provided in any single year until then).

130. *Id.* at 33 (noting that the Recovery Act pumped one billion dollars into COPS).

131. *Id.*

132. U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-517, JUSTICE GRANT PROGRAMS: DOJ SHOULD DO MORE TO REDUCE THE RISK OF UNNECESSARY DUPLICATION AND ENHANCE PROGRAM ASSESSMENT 1 (2012) (noting that the Recovery Act appropriated four billion dollars to Department of Justice administered grants for fiscal year 2009 alone); GOTTSCHALK, *supra* note 127, at 33–34 (explaining that, in addition to two billion for Byrne-JAG and one billion for COPS, the Recovery Act included an additional 600 million dollars "to increase state and local law enforcement across the country").

133. Matthew A. Kraft & Joshua F. Bleiberg, *The Inequitable Effects of Teacher Layoffs: What We Know and Can Do*, 17 ED. FIN. & POL'Y 367, 368 (2022) (showing that K–12 public schools lost 350,000 jobs between 2008 and 2012, including 120,000 elementary and secondary teachers); MOODY, ON NEW TERRAIN, *supra* note 108, at 159 (showing that the 2009 Recovery Act invested heavily in infrastructure and transportation to support the logistics economy, and it

With the help of the Democratic Party, police achieved the impossible after the Great Recession: while state and city officials served other public sector workers pink slips and contempt, police gained a greater portion of a shrinking pie.¹³⁴ At the same time, Republican governors took the lead in attacking public-sector unions, especially teachers' unions, while gifting police unions special protections and exemptions.¹³⁵ If police are the last respected public employees, then their sacred cow status confirms the stripped bare notion of public goods and services. When strapped city officials did the unthinkable by laying off police after the Great Recession, they offered assurances that police jobs were not eliminated but only temporarily unfilled, and sometimes they added the plaintive cry that police were the only service left to cut.¹³⁶ This pattern—city revenue down and services slashed, policing as share of expenditures up—is no paradox. It is consistent with the ongoing construction of the antistate state.¹³⁷

When Democrats claim to fund the police because Black Lives Matter, they sustain their historic role in building the antistate state. President Biden deepened

hence allocated some money for school construction as opposed to teachers' salaries. Further still, Obama's Recovery Act "allotted almost nothing for inner-city neighborhoods and populations," where overwhelmingly Democratic support "could be taken for granted").

134. A study of 425 cities found that total general expenditures declined by 4 percent in real dollars from 2008 to 2012, but over that same period city-level police expenditures grew by 4 percent. SARA HINKLEY, *Austerity as the New Normal: The Fiscal Politics of Retrenchment in San Jose, California*, in CITIES UNDER AUSTERITY: RESTRUCTURING THE US METROPOLIS 59, 61–62, 68 (Mark Davidson & Kevin Ward eds., 2018) ("Public safety spending (police and fire, and, in some cities, corrections and the courts) has been protected better than any other category of operating expenditures through the past decades of austerity."); see also Beck & Goldstein, *supra* note 113, at 1204 (finding that cities tend to spend more on police when tax revenue falls).
135. Magic M. Wade, *Targeting Teachers While Shielding Cops? The Politics of Punishing Enemies and Rewarding Friends in American State Collective Bargaining Reform Agendas*, 21 J. LAB. & SOC'Y 137, 143–44 (2018) (coding 1195 state-level anti-union bills introduced from 2007 to 2014 and finding that legislators targeted K–12 teachers in labor restrictive bills). From 2011 through 2015, Wisconsin, Michigan, and Oklahoma enacted union restrictions that specifically exempted police and firefighters. *Id.* at 139–41 (demonstrating, for example, that Wisconsin banned automatic dues collection for all public employees except police unions; Michigan exempted only police and firefighters from right-to-work restrictions; and Oklahoma barred teachers' unions from automatic dues collection but exempted police and firefighter unions from such restrictions).
136. HINKLEY, *supra* note 134, at 68 ("[Policing] cuts are nearly always made with assurances that they are temporary, with positions remaining unfilled rather than eliminated."); see, e.g., Jesse McKinley & Malia Wollan, *Facing Deficit, Oakland Puts Police Force on Chopping Block*, N.Y. TIMES (June 25, 2010), <https://www.nytimes.com/2010/06/26/us/26oakland.html> [<https://perma.cc/QHL3-VUCF>] (quoting Oakland's City Council president after the city of laid off eighty cops (less than 10 percent of the force): "[e]ven if we wanted to, and we don't want to, if we closed every senior center, every library, every park and rec and city hall, we could not balance the budget without going to police and fire").
137. GILMORE, GOLDEN GULAG, *supra* note 115, at 245.

this tradition when he urged states and localities to fund policing through the American Rescue Plan Act (ARPA) of 2021, the few-strings-attached federal aid package allocating 350 billion to states and localities.¹³⁸ Biden's fund the police directive might be interpreted as defensive maneuvering, but fixation on electoral strategy misses the immediate material significance of funding. During a sustained crisis of police legitimacy, federal aid helped police to secure what they need to exert force: personnel and hardware. In terms of personnel, roughly one billion in ARPA funds went to police hiring and retention bonuses.¹³⁹ In the first round of federal pandemic aid, Chicago spent more than one fifth of its aid on police personnel, while Los Angeles spent roughly half of its aid on the LAPD.¹⁴⁰ In terms of hardware, cities have used ARPA money to buy police drones, automated license plate readers, armored vehicles, patrol cars, surveillance cameras, SWAT rifles with night vision, body cameras, tasers, and ShotSpotter, the highly criticized gunshot detection device.¹⁴¹

138. American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (allocating 350 billion dollars in federal aid to subnational units, of which 195 billion went to states, sixty-five billion dollars to counties, and the remainder divided between cities, tribal nations, and U.S. territories for their allocation). Biden's spend-it-all-on-police suggestion was somewhat disingenuous given that much of the aid had been spent by the time of the State of the Union address, with sizeable amounts spent on unemployment insurance, cash aid, and public and mental health care. IRIS HINH, CTR. ON BUDGET & POL'Y PRIORITIES, HOW STATES CAN BEST USE FEDERAL FISCAL RECOVERY FUNDS: LESSONS FROM STATE CHOICES SO FAR 1, 4, 7 (2022), <https://www.cbpp.org/sites/default/files/11-29-21sfp.pdf> [<https://perma.cc/2P3R-3GNE>] (showing that one year after ARPA, states, Puerto Rico, and Washington, D.C., had spent 173 of their combined 198 billion dollar allocation. Of this spending, roughly 13 percent replaced lost revenue; another 26 percent covered unemployment insurance, cash aid, food assistance, and other human services; and about 10 percent to health care).

139. Shannon Pettypiece, *Biden Urges Cities to Spend Covid Relief Money on Police, Crime Prevention*, NBC (May 13, 2022, 1:02 PM), <https://www.nbcnews.com/politics/white-house/biden-urge-cities-spend-covid-relief-money-police-crime-prevention-rcna28656> [<https://perma.cc/4HSU-N55Y>].

140. McLeod, *supra* note 20, at 537; Lexis-Olivier Ray, *Update: At the Peak of the Defund Era, L.A. Received \$600 Million in Covid Relief, Half Went to LAPD*, L.A. TACO (Mar. 23, 2022), <https://www.lataco.com/covid-relief-fund-paid-lapd> [<https://perma.cc/DF7V-XNMM>].

141. Anastasia Valeeva, Weihua Li & Susie Cagle, *Rifles, Tasers and Jails: How Cities and States Spent Billions of COVID-19 Relief*, MARSHALL PROJECT (Sep. 7, 2022, 6:00 AM), <https://www.themarshallproject.org/2022/09/07/how-federal-covid-relief-flows-to-the-criminal-justice-system> [<https://perma.cc/L93K-VMC5>]; Dolinar, *supra* note 68; Ella Fassler, *Police Are Buying Drones and Armored Vehicles With COVID Relief Funds*, VICE (Mar. 29, 2022, 6:00 AM), <https://www.vice.com/en/article/pkp8zg/police-are-buying-drones-and-armored-vehicles-with-covid-relief-funds> [<https://perma.cc/2PW3-TXY5>]; see also Mark Zaretsky, *New Haven to Spend \$12 Million for 500 New Surveillance Cameras, ShotSpotter Expansion*, NEW HAVEN REG. (Dec. 22, 2021), <https://www.nhregister.com/news/article/New-Haven-to-spend-12-million-for-500-new-16722043.php> [<https://perma.cc/LF9U-LDR5>]. Biden all but endorsed ShotSpotter by name, even as organizers have amassed more and more evidence against it. Remarks by President Biden at a Gun Violence Prevention Task Force

When reformers use Black victimization to justify policing, they attempt to sever race from the political economy of austerity and racism. Severing injury from structural conditions is a signature move in the politics of victim rights, as I explore in the next Part.

III. REDUCING BLACK LIVES MATTER TO A VICTIM RIGHTS CAMPAIGN

A. The Politics of Victim Rights

Since President Lyndon B. Johnson's declaration of the war on crime, government funding opportunities have subsidized victim organizations and channeled them toward pro-carceral ends, making it difficult to identify anything that might be called a grassroots "victim rights movement."¹⁴² Instead of

Meeting (Feb. 3, 2022) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/03/remarks-by-president-biden-at-a-gun-violence-prevention-task-force-meeting/#:~:text=You%20know%2C%20I%20want%20more,technologies%2C%20like%20technologies%20that%20hears%2C> [https://perma.cc/DDH5-Z9GV] ("I want more cities and states to use some of the \$350 billion we sent them on the American Rescue Plan to fight crime . . . purchas[e] gun-fighting technologies, like technology that hears, locates gunshots so there can be immediate response because you know exactly where it came from."). For a trenchant critique of ShotSpotter, see NYU's Ending the Prison Industrial Complex (EPIC) and National Lawyers Guild Statement on NYU Policing Project's Complicity in Perpetuating Harm (Apr. 15, 2022), <https://docs.google.com/document/d/1qHWVP2gPqirTFQDXhd4schKiJU9EAYiKsQqOkmC1Vns/edit> [https://perma.cc/BXT4-2C9D]; Ruqiyah Zarook, *The NYU Policing Project's Dirty Money Dilemma*, NATION (June 27, 2022), <https://www.thenation.com/article/politics/nyu-policing-project-funding/> [https://perma.cc/K96J-NAR8]. Finally, while ARPA represents the most substantial federal aid in decades, it is an emergency provision that lends itself toward revenue replacement and one-off expenses, not a recovery from the public-sector devastation after 2008. See Louise Sheiner, *Lessons Learned From Support for the State and Local Sector During COVID-19*, in RECESSION REMEDIES: LESSONS LEARNED FROM THE U.S. ECONOMIC POLICY RESPONSE TO COVID-19 215, 247 (Wendy Edelberg, Louise Sheiner & David Wessel eds., 2022) (observing that government officials prefer to spend one-off federal money on one-off expenses, not new government jobs that will require ongoing funding).

142. KATHERINE BECKETT & THEODORE SASSON, *THE POLITICS OF INJUSTICE: CRIME AND PUNISHMENT IN AMERICA* 156 (2000) (arguing that government aid and policies have "profoundly shaped" the goals of victim organizing, and therefore using the term "victim rights movement," which "implies both cohesiveness and a grassroots foundation," is probably an inaccurate way of naming "the complex of social forces and actors that have worked to put victims at the center of criminal justice policy"). A prime example of government-subsidized organizing is the National Organization for Victims Assistance, created in 1975 by volunteers but transformed into a professionally staffed organization with federal grants from the LEAA. MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS* 87–90 (2006). President Reagan's Victims of Crime Act of 1984 delivered little material aid to victims but funded victim organizations, the number of which soared from 200 in the early 1980s to more than 8000 by

attempting to characterize victims and their organizing, I focus on the politics of victim rights, meaning how and why elites have been well served by claiming to put victims at the center of carceral policy. Drawing on a rich secondary literature, I briefly sketch how elites have used crime victims as political capital to (1) ignore people's material needs and increase economic inequality; (2) build the criminal legal system; and (3) recast oppression as interpersonal crime. The three are connected and reinforcing, but I separate them out below to give discrete examples. In the politics of victim rights, elites purport to center the crime victim in order to:

(1) *Ignore and increase economic inequality.* Dwelling in victimization and enacting pro-carceral policies helps elites to appear efficacious as they ignore the material needs of crime victims and sustain structural poverty and unemployment. This general lesson is evident in two foundational moments of the politics of victim rights, one from the Johnson administration and another from the Reagan administration. When crime victims sought care and compensation in the late 1960s and 1970s, they found few institutional outlets interested in their needs; instead, they encountered federal programming through the Law Enforcement Assistance Administration (LEAA), established during the Lyndon B. Johnson administration.¹⁴³ Like prosecutors, the LEAA had the overarching goal of coaxing victims into cooperating with criminal proceedings.¹⁴⁴ This early episode delivered a harsh message: take your day in court, because little else is on offer.¹⁴⁵

The Reagan administration took this message to a new extreme. Reagan's 1982 Task Force on Victims of Crime recommended amending the Sixth Amendment to guarantee crime victims or surviving family members "the right to be present and to be heard at all critical stages of [criminal] judicial proceedings."¹⁴⁶ The Sixth Amendment remains unamended, but lawmakers formalized the right to be heard with the victim impact statement. Attached to presentencing

the early 1990s. *Id.*; see also ROBERT ELIAS, VICTIMS STILL: THE POLITICAL MANIPULATION OF CRIME VICTIMS (1993) (arguing that the stated concerns of victims differ from politicians' ventriloquizing thereof).

143. GOTTSCHALK, *supra* note 127, at 77–114 (arguing that prosecutors and the LEAA were the institutions that answered victim concerns, thereby putting victim rights on a punitive trajectory).

144. BECKETT & SASSON, *supra* note 142, at 157 (showing that the primary goal of LEAA-funded victim and witness assistance programs was to increase conviction rates by coaxing victim cooperation with criminal proceedings); see also Michael Tonry, *The Costly Consequences of Populist Posturing*, 12 PUNISHMENT & SOC'Y 387, 394–95 (2010).

145. Victim financial support is contingent on going to criminal court. *Id.*

146. PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME, FINAL REPORT 114 (1982), *quoted in* Angela P. Harris, *The Jurisprudence of Victimhood*, 1991 SUP. CT. REV. 77, 79 n.9 (1991).

reports and sometimes read aloud in court, victim impact statements ask people to describe their physical and emotional injuries, and some states invite victims to recommend the terms of punishment.¹⁴⁷ By 1990 forty-seven states had formalized the victim impact statement, and by 1991 the U.S. Supreme Court upheld victim impact testimony.¹⁴⁸

The Reagan administration institutionalized victims' voices while simultaneously making more working-class people vulnerable to unemployment and poverty. Unemployment soared through the 1970s, and by 1983 the national Black unemployment rate hit 17 percent. At this point, the Reagan administration eliminated 300,000 jobs financed through a federal jobs program; cut a million people from food stamp eligibility; and slashed funding for Aid to Families with Dependent Children, effectively reducing benefits for 259,000 families and severing another 410,000 families from the rolls.¹⁴⁹ There is an ideological coherence here. The instruction is to be an entrepreneur, to stand alone and be adversarial, to let the court and the market decide the merits of your individual case.

(2) *Build the criminal legal system in the name of pro-victim populism.*¹⁵⁰ New enactments that address victimization, sometimes named for specific crime victims, generate the appearance of grassroots influence, but carceral policy is primarily drafted by police, prosecutors, and other elite insiders.¹⁵¹ Lawmakers have memorialized certain victims with legislation in their name, but victims' laws often disregard or disrespect the people they are meant to recognize.

147. Harris, *supra* note 146, at 79; Maureen McLeod, *An Examination of the Victim's Role at Sentencing: Results of a Survey of Probation Administrators*, 71 JUDICATURE 162, 166 (1987) (finding in a survey of probation administrators that approximately one-fourth required the statement to include the victim's personal recommendation for punishment).

148. A 5–4 majority deemed victim impact testimony unconstitutional in *Booth v. Maryland*, 482 U.S. 496, 509 (1987), and the Supreme Court also rejected victim impact testimony in *South Carolina v. Gathers*, 490 U.S. 805, 811–12 (1989). Then a 5–4 majority upheld victim testimony in *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Jonathan Simon, *Fearless Speech in the Killing State: The Power of Capital Crime Victim Speech*, 82 N.C. L. REV. 1377 (2004).

149. TAYLOR, *supra* note 75, at 93–94.

150. GARLAND, *supra* note 9, at 11 (“Whoever speaks on behalf of victims speaks on behalf of us all—or so declares the new political wisdom of high crime societies.”).

151. RACHEL ELISE BARKOW, *PRISONERS OF POLITICS* 112–15 (2019) (arguing that police and prosecutors dominate carceral policymaking, while victims and private prison companies are merely “supporting players”); Robert Vargas, Chris Williams, Phillip O’Sullivan & Christina Cano, *Capitalizing on Crisis*, 89 U. CHI. L. REV. 405, 437 (2022) (demonstrating that Chicago police and mayors leverage homicide waves and mourn victims to win budget hikes and elections); GILMORE, *GOLDEN GULAG*, *supra* note 115, at 48–52 (showing that incumbent Republican Governor Pete Wilson reenergized his flailing 1994 reelection campaign by propping up three-strikes in the name of Polly Klaas, mourning her murder while doing nothing for the one in four Californian children living in poverty).

Sometimes policies are at odds with the complex and changing preferences of surviving family members.¹⁵² Representations of sexual harm, for example, “are often appropriated and misdirected to build power for systems that themselves have been the cause of or may inflict additional harm,” as Gillian Harkins explains.¹⁵³ Representations of sexual harm are indeed used to build carceral power, as is evidenced in the ways that lawmakers selectively use victims’ names and stories to create and expand massive so-called sex offender registries. Often the law holds little relationship to the case that bears its name, with sweeping punitive measures that do not address the precipitating factors of violence.¹⁵⁴

(3) *Recast oppression as interpersonal criminal victimization.* In line with decades of carceral development alongside civil rights retrenchment, lawmakers have channeled anti-oppression demands into criminalization. Elites answered mainstream antiviolence work with restraining orders, mandatory arrest provisions, and the Violence Against Women Act.¹⁵⁵ Elites propelled carceral feminism in the vision of what Beth Richie calls the white everywoman; that is, women and girls who do not “fit the traditional image of the innocent victim” are likely to experience criminalization rather than protection.¹⁵⁶

152. See, e.g., Annie Nichol & Jess Nichol, *Polly Klaas Was Our Sister. We Don’t Want Unjust Laws to Be Her Legacy*, L.A. TIMES (Oct. 18, 2020) <https://www.latimes.com/opinion/story/2020-10-18/polly-klass-legacy-unjust-laws> [<https://perma.cc/JMB9-VLDH>] (arguing that three-strikes policies insult “the beauty of Polly’s life” by feeding mass incarceration and systemic racism).

153. GILLIAN HARKINS, VIRTUAL PEDOPHILIA 16 (2020) (demonstrating that “[t]he representation of sexual harm is mediated in ways that create power, but infrequently for those who directly experience that harm”).

154. Regarding sex offender registries, for example, at least thirteen states require registration for urinating in public; twenty-nine states require registration for teenagers who have consensual sex with other teenagers; and thirty-two states require registration for people convicted of “flashing” or “streaking.” See generally HUM. RTS. WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US (2007). See BARKOW, *supra* note 151, at 21 (arguing that so-called sex offender laws “go far beyond” the cases that prompted their enactment).

155. Carceral feminism critically names efforts to criminalize away the routine violence of rape, domestic violence, and heteropatriarchy. As a major “lever of legitimacy for expanding the carceral state,” the Violence Against Women Act (VAWA) delivered unprecedented federal funding for sexual and domestic violence prosecution. See, e.g., EMILY THUMA, ALL OUR TRIALS 4 (2019); DAVIS ET AL., *supra* note 19, at 105–06.

156. Antiviolence activists originally insisted that “any woman could be a battered woman” and “rape is a threat to every woman” to underline the social rather than the individual dimensions of gender violence, as Beth Richie explains. RICHIE, *supra* note 14 at 90–91 (detailing that “the everywoman analysis” began as an “early radical campaign” to “make public what for so long had been understood to be a private problem.”). As the antiviolence movement and overall national politics grew more conservative, however, the everywoman analysis “fell right into the vacuum created by a white feminist analysis that could not successfully incorporate an analysis of race and class.” *Id.* at 91. In effect, the policies and implementation of VAWA and rape reform laws tend to criminalize women outside of the traditional boundaries of innocence, namely poor women, sex workers, lesbians, trans women, and Black, Indigenous, and

Symbiotically, mainstream antiviolence organizations learned to reduce political critique to match expectations about victimization.¹⁵⁷

The short history of hate crime legislation manifests this insidious pattern of addressing oppression with criminalization—and the moral superiority that criminalization affords. Elites answer anti-oppression work by sympathizing with a select handful of the dead; they mourn the dead as crime victims; and they use criminalization to disavow the structural inequality that ignited anti-oppression work in the first place. For example, when President George H. W. Bush signed the Hate Crime Statistics Act of 1990, the enactment was lauded as “the first federal law to recognize and name gay, lesbian and bisexual people.”¹⁵⁸ But this celebrated recognition eclipses the way that Bush and his predecessor Reagan actively increased premature death for oppressed groups, including and especially Black and LGBTQ+ people most vulnerable to the HIV/AIDS crisis of the 1980s and 1990s. Through Medicaid cuts, denial of experimental drugs and needle exchange programs, and by politicking on contempt for so-called homosexuals and drug addicts, the Reagan and Bush administrations hastened and normalized mass death, but hate crime legislation allowed them to stand in disavowal of the individual crimes that they licensed at a grander scale.¹⁵⁹ In the same vein, President Obama’s Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009 expanded hate crimes by attaching the statutes to the Department of Defense budget authorization, making antihate loftiness part and parcel of U.S. military force and ongoing drone strikes in Pakistan, Yemen, and Somalia.¹⁶⁰

undocumented women. *Id.* at 123; see also Aya Gruber, *Policing and “Bluelining,”* 58 HOUS. L. REV. 867, 920 (2021) (“the carceral feminist story can serve as a cautionary tale for those who believe prosecuting officers should be a foremost goal of the Black Lives Matter and similar movements.”).

157. GOTTSCHALK, *THE PRISON AND THE GALLOWS*, *supra* note 142, at 132 (“anti-rape activists mimicked some of [the victims’ movement] key tactics in order to secure funding and legislation from state officials”).

158. Chris Johnson, *George H.W. Bush ‘Unsupportive’ on Gay Rights, HIV/AIDS*, WASH. BLADE (Dec. 3, 2018), <https://www.washingtonblade.com/2018/12/03/george-h-w-bush-leaves-unfavorably-legacy-on-gay-rights-hiv-aids> [<https://perma.cc/EV3P-XE3X>].

159. See, e.g., CATHY COHEN, *THE BOUNDARIES OF BLACKNESS* 40–43, 79–85, 143–45 (1999); CHRISTINA HANHARDT, *SAFE SPACE: GAY NEIGHBORHOOD HISTORY AND THE POLITICS OF VIOLENCE* 7–9, 28–33, 119, 162–67 (2013); JONATHAN SIMON, *GOVERNING THROUGH CRIME* 107–09 (2007).

160. CHANDAN REDDY, *FREEDOM WITH VIOLENCE* 4, 17 (2011). For an additional illustration, see Muneer I. Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence as Crimes of Passion*, 92 CALIF. L. REV. 1259, 1287, 1292–93 (2004) (explaining how the devastating war on terror fueled mass destruction and Islamophobia while U.S. elites prosecuted a few hate crimes that are the logical extension of foreign policy).

B. Say Their Names, Rebuild the Carceral State

After mass uprisings, lawmakers step into the spotlight that sometimes shines on surviving family members—if and when, that is, mourning Black families show grief in certain forms.¹⁶¹ This style of political co-mourning makes it seem like new channels of influence have opened. And, given that lawmakers have devoted memorial legislation almost exclusively to white crime victims, it can feel like progress to hear Black murder victims recognized by name.¹⁶² In most instances, however, invoking the names of Black victims of police violence remains a symbolic gesture, a cover for the fact that police reform is in the grips of regulatory capture.

Overall, police write their own regulations, monitor themselves as they choose, and face few consequences for breaking the rules drafted by their own hand.¹⁶³ Police often author their own accountability procedures through union

161. No politician lifted up Michael Brown's stepfather in 2014 when, after a grand jury failed to indict the Ferguson cop who killed his eighteen-year-old son, the grieving parent shouted on live television, "Burn this motherfucker down." That perspective warranted no deference, and in fact police compelled the parent to apologize or face charges of inciting a riot. Ray Sanchez, *Michael Brown's Stepfather at Rally: 'Burn This Bitch Down!'*, CNN, (Dec. 8, 2014, 2:05 PM), <https://www.cnn.com/2014/11/25/us/michael-brown-stepfather-video/index.html> [<https://perma.cc/C3KK-QY9H>]. After Cleveland police killed twelve-year-old Tamir Rice in November 2014, his mother Samaria Rice spoke out against the lawyers who coached her against showing rage. See Imani Perry, *Stop Hustling Black Death*, THE CUT (May 24, 2021), <https://www.thecut.com/article/samaria-rice-profile.html> [<https://perma.cc/K6Q9-KUNF>].

162. Between 1990 and 2016, state and federal lawmakers enacted fifty-one laws named for crime victims; only four laws named a Black victim. Kulig & Cullen, *supra* note 14, at 987–89. In 2019, two more laws were named to honor Black victims: Texas' Lavina Masters Act of 2019 to reduce rape kit backlogs, and Tennessee's JaJuan Latham Act to increase punishment for drive-by shootings. Julie Carr Smyth, *Black Victims Underrepresented in Named Violent Crime Laws*, AP (Dec. 3, 2019, 10:30 AM), <https://apnews.com/article/us-news-ap-top-news-laws-cleveland-crime-30d5a2a0b8464aec9593f4918cfa51d4> [<https://perma.cc/J8LB-L962>].

163. James Baldwin wrote that police assume an "arrogant autonomy," and many scholars characterize policing as autonomous or semi-autonomous violence work. DAVID CORREIA & TYLER WALL, *POLICE: A FIELD GUIDE* 176–78, 206 (2022) (quoting James Baldwin, and explaining that courts refuse to define police discretion on the grounds that scripted regulations cannot anticipate every situation. Discretion "reserves for police an enormous and totalizing authority," making cops "petty sovereigns" and "everyday executives"); see, e.g., KRISTIAN WILLIAMS, *OUR ENEMIES IN BLUE* 230, 233 (2015) (showing that a century of police professionalization reduced police dependence on political machines but increased the "semi-autonomous" power of police unions and reinforced police allegiance to the ruling class); SEIGAL, *supra* note 39, at 8–9 (characterizing police work as "a vast blank" of tasks and powers, with a singular distinction between "work that must be done by police and work that police could pass on to others: work that relies upon violence or the threat thereof."). The rules and

contracts, and many departments simply ignore FBI data collection efforts on police use of force.¹⁶⁴ Police are not alone in this respect, as pharmaceutical, banking, and real estate interests often draft the regulations meant to constrain them.¹⁶⁵ The fact that police find themselves in this company announces their overwhelming heft in the system of capitalism and racism, where they are both autonomous agents and essential violence workers who manage subject populations.¹⁶⁶

Regulatory capture generally means that reforms meant to honor Black victims are, in effect, preapproved by the people who killed them. Consider some examples of proposals and enactments that allegedly honor Black victims of

regulation of policing are often post hoc codification for what police already do. Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1791 n.25 (2020) (arguing that police rules are not “top-down,” with law governing the police, but “bottom-up,” with police driving the law). Fourth Amendment scholarship is especially powerful in demonstrating law’s tendency to affirmatively license already prevalent police practices like racial profiling and pretextual investigatory stops. See, e.g., Devon W. Carbado, *From Stopping Black People to Killing Black People: The Fourth Amendment Pathways to Police Violence*, 105 CALIF. L. REV. 125, 131 (2016) (“Fourth Amendment doctrine expressly authorizes or facilitates the very social practice it ought to prevent: racial profiling”); CHARLES EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKEL, *PULLED OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP* 34–36, 115 (2014) (documenting that the International Association of Police Chiefs and other police organizations celebrated the Supreme Court’s 1996 *Whren v. United States* decision, seeing it as both post hoc validation and an invitation to scale up the use of pretextual traffic stops).

164. Stephen Rushin, *Police Union Contracts*, 66 DUKE L.J. 1191, 1235–36, 1230–31 (2017) (analyzing 178 police union contracts and finding that thirty-two limit investigation of anonymous civilian complaints; forty-six disqualify civilian complaints after a set amount of time; and seventy-eight effectively seal police disciplinary records by limiting public access or mandating their removal from personnel files); U.S. GOV’T ACCOUNTABILITY OFF., GAO-22-104456, *DOJ CAN IMPROVE PUBLICATION OF USE OF FORCE DATA AND OVERSIGHT OF EXCESSIVE FORCE ALLEGATIONS* 81–82 (2021) (showing that police departments representing approximately half of all officers nationwide simply did not bother to submit data to the FBI’s National Use-of-Force Data Collection program established in 2019).

165. See generally Liza Vertinsky, *Pharmaceutical (Re)Capture*, 20 YALE J. HEALTH POL’Y L. & ETHICS 146, 151, 153, 210 (2021) (showing that the pharmaceutical industry is “one of the most highly regulated industries,” but nonetheless private manufacturers, distributors, and insurers largely control “the construction, operation, and regulation of pharmaceutical markets from start to finish.” Capture is not limited to opioids but endemic to pharmaceutical markets.). KEEANGA-YAMAHTTA TAYLOR, *RACE FOR PROFIT: HOW BANKS AND REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* 91, 147 (2021) (demonstrating that insurance companies, mortgage bankers, and real estate associations craft housing policy to feed profits, and even official prohibitions on redlining licensed public-private schemes that “welcomed [African Americans] into the housing market on terms most favorable to the industry”).

166. See, e.g., SEIGAL, *supra* note 39; Brian Bean, *Abolish the Police*, RAMPANT (March 31, 2020), <https://rampantmag.com/2020/03/abolish-the-police> [<https://perma.cc/S3Z3-K8VL>]; Robin D. G. Kelley, *Insecure: Policing Under Racial Capitalism*, SPECTRE (Nov. 8, 2020).

state-sanctioned and extralegal violence. All examples are from 2020–22, except the first.

1. Jail Surveillance, or the So-Called Sandra Bland Act

The Sandra Bland Act of 2017 is an example of imperious police influence masquerading as respect for the Black women they harass and kill.¹⁶⁷ In July 2015 Sandra Bland was driving from Chicago to Houston to start a new job at Prairie View A & M University, her alma mater, when a Texas state trooper pulled over the twenty-eight-year-old Black woman for allegedly failing to signal. After threatening to “light [her] up” with his Taser, the trooper pinned Bland to the ground and arrested her for a Class C misdemeanor that carries no jail time.¹⁶⁸ Unable to pay \$515 to the bail bond company, Sandra Bland was booked in Waller County Jail, where she was reported dead three days later.¹⁶⁹ Officials say that Bland committed suicide; Bland’s family and friends maintain that there was foul play.¹⁷⁰

The path of the Sandra Bland Act illustrates how police rewrite regulations to preserve their power. As introduced in March 2017, the original Sandra Bland Act (Texas HB 2702)—the version supported by Bland’s family—was a sweeping proposal to circumscribe police powers to stop, search, arrest, and jail. Specifically, the original Sandra Bland Act prohibited pretextual stops and consent searches; raised the burden of proof for cops to conduct roadside investigations; prohibited arrests for fine-only misdemeanors; and limited jailing someone for an inability to pay bail.¹⁷¹ But the Texas Senate revised these key provisions under police pressure. By the time Governor Abbott signed the Sandra Bland Act, it merely required police to collect data on traffic stops, searches, and arrests for Class C violations; that is, instead of limiting these powers, the law allowed police to use them and then present the tally.¹⁷²

167. Sandra Bland Act, 2017 Tex. Sess. Law Serv. 3801 (West) (stating that “[t]his Act shall be known as the Sandra Bland Act, in memory of Sandra Bland”) (effective Sept. 1, 2017).

168. CRENSHAW ET AL., *supra* note 3.

169. Marie Gottschalk, *No Star State: What’s Right and Wrong About Criminal Justice Reform in Texas*, 19 SEATTLE J. SOC. JUST. 927, 959 (2021).

170. CRENSHAW ET AL., *supra* note 3.

171. The original Sandra Bland Act opened with an indictment of police and jails: “There are significant racial disparities in how the Texas Department of Public Safety treats Blacks when compared to [w]hites.” H.B. 2702, § 1.03, 85th Leg., Reg. Sess. (Tex. 2017). The bill therefore expanded pretrial release for non-violent charges; outlawed pretextual stops and consent searches; raised the burden of proof for stopping and searching vehicles; and prohibited arrest for fine-only misdemeanors (excluding certain public intoxication). *Id.* § 3.01, 5.01, 5.08, 5.10.

172. Gottschalk, *supra* note 169, at 1009.

As enacted, much of the Sandra Bland Act pertains to mental health monitoring. The Act requires jails to divert people with mental health and addiction issues; it requires independent investigation of all jail deaths and possible suicides; and it provides modest funding for jails to install cameras and electronic sensors for head counts and suicide checks.¹⁷³ Google “Sandra Bland Act” and find at least two surveillance companies that sell scannable wristbands with the promise of making jails, in industry parlance, Sandra Bland Compliant.¹⁷⁴

The Act’s emphasis on mental health implies that Sandra Bland suffered from psychological instability rather than police misogyny. Police certainly used this angle to gut the bill. The executive director of Texas’s largest police union criticized the original bill as “a straight-out attack on all law enforcement over a tragic suicide in a county jail,” adding, “[a]ppropriately, now we’re talking about mental health diversion.”¹⁷⁵ As Governor Abbott signed the surveillance act in Sandra Bland’s name, Bland’s older sister, Sharon Cooper said, “I don’t think it’s worthy of her name.”¹⁷⁶ She continued, “It should be a bill that actually takes away the issue that caused her death. Not this.”¹⁷⁷

173. *Id.*; Paul J. Weber, *Watered-Down ‘Sandra Bland Act’ Riles Sister*, PHILA. TRIB. (May 16, 2017), https://www.phillytrib.com/news/watered-down-sandra-bland-act-riles-sister/article_93e37040-e603-5c3f-b85b-f573bfbd7d6.html [<https://perma.cc/YR8E-5ZEQ>]; Chuck Lindell, *Senate Passes Stripped-Down Sandra Bland Act*, AUSTIN AM. STATESMAN (Sept. 22, 2018, 1:09 AM), <https://www.statesman.com/story/news/2017/05/11/senate-passes-stripped-down-sandra-bland-act/10419713007> [<https://perma.cc/CE24-BFGV>].

174. Brian Dolinar, *Prison Profiteer is Using Sandra Bland’s Death to Sell Surveillance Technology*, TRUTHOUT (Jan. 27, 2022), <https://truthout.org/articles/prison-profiteer-is-using-sandra-blands-death-to-sell-surveillance-technology> [<https://perma.cc/B6EY-BJEP>] (investigating Texas counties that contracted with the jail surveillance company Guardian RFID to “demonstrate continuous compliance’ with the Sandra Bland Act”).

175. Paul J. Weber, *Sister: Weakened ‘Sandra Bland Act’ in Texas ‘Gut-Wrenching’*, AP (May 13, 2017), <https://apnews.com/article/police-us-news-bills-tx-state-wire-black-lives-matter-6a2e63e81f2f4af983d2c0027cdfca24> [<https://perma.cc/TF42-ABQA>] (quoting Charley Wilkison of the Combined Law Enforcement Association of Texas); *see also* Gottschalk, *supra* note 169, at 928 (arguing that police, prosecutors, and the bail industry successfully cut or revised the potentially transformative non-reformist reforms of the original Sandra Bland Act).

176. Weber, *supra* note 175; *see also* Jonathan Silver, “Sandra Bland Act” Doesn’t Address Cause of Her Arrest, Family Says, TEX. TRIB. (May 13, 2017, 11:00 PM), <https://www.texastribune.org/2017/05/13/sandra-bland-family-response/#:~:text=Donate-,%22Sandra%20Bland%20Act%22%20does%20address%20cause%20of%20her,issues%20and%20county%20jail%20operations.> [<https://perma.cc/GP89-JEKV>] (quoting Sharon Cooper saying of the final Sandra Bland Act, “[i]t’s a complete oversight of the root causes of why she was jailed in the first place”).

177. Weber, *supra* note 175.

2. Regulations on No-Knock Warrants, Sometimes Called Breonna's Law

Breonna Taylor, an EMT and aspiring nurse, had fallen asleep after watching a movie at home on March 13, 2020, when Louisville Metro Police burst in with a no-knock warrant. Taylor's fiancée fired in defense against the plainclothes officers who had entered unannounced, and cops opened fire. They killed the twenty-six-year-old Black woman.¹⁷⁸

A prominent post-uprising police reform is the regulation of no-knock warrants, sometimes called Breonna's Law. At the start of 2020, only a handful of cities and two states, Oregon and Florida, had banned no-knock warrants, but from March 2020 through March 2021, at least thirty-three states have seen more than eighty-four proposals to study, restrict, or ban no-knock warrants.¹⁷⁹ Louisville Metro Council's Breonna's Law nominally banned no-knock warrants by requiring police to perform certain protocols while executing a search: police must knock and wait fifteen seconds before entering; they must wear body cameras and activate them at least five minutes before the search; and they must retain recordings for five years.¹⁸⁰ What counts as a ban is essentially a set of instructions for delayed breaking and entering with guns drawn, cameras rolling.¹⁸¹ Other no-knock regulations are weaker still. Kentucky's initial Breonna's Law (HB 21) prohibited no-knock raids, but the final enactment allows unannounced raids between the hours of 6:00 a.m. and 10:00 p.m.¹⁸² Since

178. Kimberlé Crenshaw, *We Must Center Black Women*, in *ABOLITION FOR THE PEOPLE* 81–87 (Kaepernick ed., 2021).

179. Tessa Duvall & Darcy Costello, *In Cities and States Across the US, Breonna's Law is Targeting Deadly No-Knock Warrants*, LOUISVILLE COURIER J. (Mar. 17, 2021, 4:22 PM), <https://www.courier-journal.com/story/news/local/breonna-taylor/2021/03/12/spread-of-breonnas-law-across-us-has-become-policy-legacy/4642996001> [<https://perma.cc/DR5W-FS2S>].

180. *Metro Council Passes Breonna's Law, "No-Knock" Warrants Are Banned for LMPD*, LOUISVILLE-JEFFERSON CNTY. METRO GOV'T (June 11, 2020), <https://louisvilleky.gov/news/metro-council-passes-breonnas-law-no-knock-warrants-are-banned-lmpd> [<https://perma.cc/WRJ4-X9U4>].

181. As of late 2022, four states have banned no-knock warrants (Florida, Oregon, Virginia, and Connecticut). At the federal level, the unpassed Justice for Breonna Taylor Act would have banned no-knock warrants for federal police, as well as state and local police who receive federal funds. Senator Rand Paul (R-Kentucky) introduced the Justice for Breonna Taylor Act in June 2020, after his notorious vote against a version of the Emmett Till Antilynching bill (H.R. 35, 116th Cong. (2019)), and after his private meeting with Breonna Taylor's family brought a personal revelation that he felt compelled to announce publicly. See Jordain Carney, *Rand Paul Introduces Bill to End No-Knock Warrants*, THE HILL (June 11, 2020, 8:34 PM), <https://thehill.com/homenews/senate/502392-rand-paul-introduces-bill-to-end-no-knock-warrants> [<https://perma.cc/VX4H-UH2W>].

182. See Piper H. Blackburn, *Kentucky Limits No-Knock Warrants After Breonna Taylor Death*, AP (Apr. 9, 2021), <https://apnews.com/article/breonna-taylor-legislature-shootings->

the uprisings, at least eleven states have enacted requirements that police must wear and activate body cameras while executing warrants.¹⁸³

No-knock bans are born into a zero-gravity legal space that renders them weightless.¹⁸⁴ Police have no incentive to follow knock-and-announce rules because, as the Supreme Court held in *Hudson v. Michigan*, evidence from an illegal search is legally permissible.¹⁸⁵ Police do have incentives, however, to protect their reputations and their hides. Understanding police self-interest is the key to explaining the spread of no-knock bans (as well as chokehold bans discussed below). Many police associations see no-knock raids as unnecessarily

kentucky-crime-d8e382606205d0ae6808fec4224baa69 [https://perma.cc/8TSE-U7N6]; Ernest Owens, *After Amir Locke Killing, Is Police Reform Even the Solution*, ROLLING STONE (Feb. 12, 2022) <https://www.rollingstone.com/culture/culture-commentary/amir-locke-killing-police-reform-solution-1297782> [https://perma.cc/ATT8-VCUT] (showing that Rep. Attica Scott introduced Breonna's Law (H.B. 21) to require cops to wait ten seconds after knocking and activate body cameras, but Scott called the final enactment, which no longer bore Breonna Taylor's name, "another example of performative politics").

183. Alex Brown, *Summer of Protest Prompted Flurry of Policing Bills*, STATELINE (July 27, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/07/27/summer-of-protest-prompted-spring-flurry-of-policing-bills> [https://perma.cc/GN4L-BMTF].

184. This is gestural police reform that "forces no change in actual, on-the-ground, police actions." CORREIA & WALL, *supra* note 163, at 36–37 (explaining that "the [no-knock] ban does nothing" because courts have "transformed the Fourth Amendment into the Fourth Suggestion"). *Hudson v. Michigan*, 547 U.S. 586 (2006), builds on prior Supreme Court holdings that blur meaningful distinction between standard (knock and announce) warrants, quick-knock warrants, and no-knock warrants. *Wilson v. Arkansas*, 514 U.S. 927 (1995), held that police need not announce if they fear destruction of evidence or personal danger, and *United States v. Banks*, 540 U.S. 31 (2003), held that police need only knock and wait fifteen to twenty seconds before knocking down the door. See Alice Ristroph, *The Constitution of Police Violence*, 64 UCLA L. REV. 1182 (2017).

185. *Hudson v. Michigan*, 547 U.S. 586; CORREIA & WALL, *supra* note 163, at 37 (arguing that "*Hudson v. Michigan* erased the distinction between knock-and-announce warrants and no-knock warrants"); INT'L COMM'N OF INQUIRY, SYSTEMIC RACIST POLICE VIOLENCE AGAINST PEOPLE OF AFRICAN DESCENT IN THE UNITED STATES 110 (2021) (arguing that, after *Hudson v. Michigan*, "officers have no incentive to knock and announce").

life-threatening to police.¹⁸⁶ In many cities, new restrictions on no-knock warrants come from police chiefs, not city councils and mayors.¹⁸⁷

Breonna Taylor was killed in a so-called botched raid, and the repetition of this fact fits with liberal apologia that police killings are simply mistakes.¹⁸⁸ When the problem is isolated to no-knock warrants, the solution, in turn, is to improve police raids. Rather than witnessing police killings as excess or error, we should examine the preconditions that make killing possible.¹⁸⁹ The killing of Breonna Taylor was preconditioned on, first, the police authority to enter homes. As a Black woman killed inside her own home, Breonna Taylor is in the company of Eleanor Bumpurs, Shereese Francis, Meagan Hockaday, Aiyana Stanley-Jones, Kathryn Johnston, and Tarika Wilson, among many others.¹⁹⁰ Police bust in with city-ordered eviction notices, on drug raids, and answering calls about domestic disputes; they come when an algorithm shows a red flag for alleged child abuse; they come as first responders to mental health crises, and

186. Police associations prioritize officer wellbeing, and officials from Police Executive Research Forum (PERF) and National Tactical Officers Association (NTOA) generally deem no-knock raids unsafe for police. See, e.g., Christina Carrega & Peter Nickeas, *Justice Department Limits Use of Chokeholds and 'No-Knock' Warrants*, CNN (Sept. 14, 2021), <https://www.cnn.com/2021/09/14/politics/justice-chokeholds-no-knock-warrant/index.html> [https://perma.cc/KTZ2-GRJJ] (quoting the director of PERF, Chuck Wexler, saying that the DOJ's ban on no-knock entries (and chokeholds) is an example of the feds "following" rather than leading police departments, who already know that such prohibitions are good for the policing profession); Peter Nickeas, *There's a Growing Consensus in Law Enforcement Over No-Knock Warrants: The Risks Outweigh the Rewards*, CNN (Feb. 12, 2022, 11:03 AM), <https://www.cnn.com/2022/02/12/us/no-knock-warrants-policy-bans-states/index.html> [https://perma.cc/H6DL-3D9T] (quoting the executive director of the NTOA, Thor Eells, saying that raids compel cops to move through a "fatal funnel," where "the bad guy" gets tactical advantage by opening fire at the doorway); Kevin Sack, *Door-Busting Drug Raids Leave a Trail of Blood*, N.Y. TIMES (Mar. 18, 2017), <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html?mtrref=undefined&gwh=0CCB20B3FD1FED70DA04E25812A82DC6&gwt> [https://perma.cc/L7F9-ZFRR] (quoting the chair of the NTOA saying that officer safety is too valuable to risk on no-knock and forcible entry drug raids); Duvall & Costello, *supra* note 179 (citing leadership from Campaign Zero saying that no-knock bans appeal to conservatives who worry about officer safety).

187. Duvall & Costello, *supra* note 179 (noting, for example, police departments in Indianapolis, Memphis, and Long Beach that self-imposed restrictions on no-knock warrants over summer 2020); *Critical Issues in Policing*, POLICE EXEC. RSCH. F. (Sep. 9, 2020), https://www.policeforum.org/index.php?option=com_content&view=article&id=714:criticalissuesep9&catid=20:site-content [https://perma.cc/2JRV-HBAE] (interviewing police chiefs in Orlando, San Antonio, and Buffalo who restricted or suspended no-knock warrants after the killing of Breonna Taylor).

188. Akbar, *supra* note 163, at 1811 (demonstrating that "scholars excuse police violence as a departure from liberal norms or a discrete failure of governance rather than acknowledge it as a reflection of a structural, historically rooted problem").

189. Gilmore & Gilmore, *supra* note 2, at 176.

190. CRENSHAW ET AL., *supra* note 3.

sometimes they solve potential suicides by beating someone to the punch.¹⁹¹ The killing of Taylor was preconditioned, second, on the core police function of servicing the interests of real estate. Taylor was killed by cops in the Place Based Investigation (PBI) unit, established in 2019 to police Louisville streets slotted for clearance, demolition, and redevelopment.¹⁹² In this sense, Breonna Taylor's murder is linked to the plans of real estate developers, not the accidents of raids. These plans will not change if police wait a few seconds before breaking into another Black woman's home.

3. Chokehold Bans, Sometimes Called the Eric Garner Act or the George Floyd Act

After the world watched Minneapolis police kill George Floyd, protesters rolled into the streets while lawmakers rolled out police reforms. A favorite among reformers was the so-called chokehold ban. Prior to May 2020 only two states, Tennessee and Illinois, used their statutory authority to regulate police chokeholds.¹⁹³ As of this publication, however, twenty-four states have regulated police chokeholds, eight states have banned them altogether, and sixteen states have categorized chokeholds as allowable only in situations that allegedly call for lethal force.¹⁹⁴ State-level chokehold regulations are remarkable for the speed with which they were enacted in the wake of the Summer 2020 uprisings.

191. *Id.*; Kimberlé Crenshaw, *We Must Center Black Women*, in ABOLITION FOR THE PEOPLE 81, 86 (2021) (linking “Breonna’s vulnerability in her own home to the fact that Black women were unsafe in the slave quarters, in the fields, and in the homes of white people that they worked for”).

192. Kelley, *Insecure: Policing Under Racial Capitalism*, *supra* note 166.

193. Farnoush Amiri, Colleen Slevin & Camille Fassett, *Floyd Killing Prompts Some States to Limit or Ban Chokeholds*, AP (May 23, 2021), <https://apnews.com/article/george-floyd-business-police-reform-death-of-george-floyd-government-and-politics-d706e72d068ee4898878415565b4e49a> [<https://perma.cc/97KS-5PTD>]. Tennessee did not exactly restrict chokeholds so much as codify their use, allowing for chokeholds if other restraints were ineffective. Law Enforcement Officers—Respiratory Restraining Maneuvers, 1994 Tenn. Pub. Acts 799. In 2021, Tennessee recategorized the chokehold as deadly force. 2021 Tenn. Pub. Acts ch. 489. Illinois was arguably the first state that restricted chokeholds by recategorizing them as deadly force. Trevor George Gardner & Esam Al-Shareffi, *Regulating Police Chokeholds*, 112 J. CRIM. L. & CRIMINOLOGY ONLINE 111, 122–24 (2022) (citing 720 ILL. COMP. STAT. ANN. 5/7–5.5 (effective Jan. 1, 2016)).

194. Eight states have banned chokeholds in all circumstances (California, Colorado, Massachusetts, Nevada, New York, Utah, Vermont, and Washington), and sixteen states categorized chokeholds as deadly force (Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Louisiana, Minnesota, Missouri, Nebraska, New Hampshire, Oregon, Texas, Tennessee, Virginia, and Wisconsin). See *Chokehold Bans*, POL’Y MOVEMENT (Nov. 2021), <https://policymovement.org/chokehold-bans> [<https://perma.cc/43TN-55N2>]; Gardner & Al-Shareffi, *supra* note 193, at 122–24.

Not limited to states with a Democratic trifecta (Democratic control of the governorship plus the state senate and house), chokehold regulations have been enacted in states with divided party control (e.g., Massachusetts, Vermont, Virginia) and in states with a Republican trifecta (e.g., Florida, Indiana, Iowa, Texas, Tennessee, and Utah).¹⁹⁵ After the murder of George Floyd, New York state became the first state to criminalize police chokeholds in the Eric Garner Anti-Chokehold Act of June 2020. Named for the 43-year-old Black man, a father of six and horticulturalist who said “I can’t breathe” as New York City police squeezed the life out of him in 2014, the Eric Garner Anti-Chokehold Act created the Class C felony of aggravated strangulation.¹⁹⁶ This rare act of criminalizing specific forms of police violence was part of Governor Cuomo’s “Say Their Name” Reform Agenda.¹⁹⁷ Following New York, four states (Colorado, Utah, Delaware, and Vermont) have attached criminal penalties to police chokeholds or police failure to stop an illegal chokehold.¹⁹⁸ Police in New York have challenged the criminalization of police chokeholds, making New York somewhat of an outlier.¹⁹⁹

In many instances of chokehold bans at the city level, it was police departments—not city councils—that adopted new administrative regulations.²⁰⁰

195. Amiri et al., *supra* note 193.

196. Unlike New York’s other strangulation crimes defined in Penal Law Article 121, the Eric Garner Anti-Chokehold Act applies specifically to police who cause serious injury or death through “criminal obstruction of breathing or blood circulation.” Eric Garner Anti-Chokehold Act, N.Y. PENAL LAW § 121.13-a (McKinney 2020).

197. Governor Andrew Cuomo’s “Say Their Name” Reform Agenda aimed to increase transparency (e.g., it repealed Section 50-a of the Civil Rights Law, used since 1976 to shield police disciplinary records from public access) and to increase criminalization and prosecution (e.g., it criminalized police chokeholds and false race-based 911 reports, and it designated the Attorney General as the independent prosecutor for police killings of “unarmed civilians”). Krumholtz, *supra* note 12.

198. Colorado prohibits the chokehold and categorizes it as a form of excessive force that triggers a cop’s duty to intervene; a cop’s failure to intervene against a police chokehold is a Class 1 misdemeanor. Enhance Law Enforcement Integrity, Colorado S.B. 20–217. Delaware defines a police chokehold as aggravated strangulation, a Class D felony, or, if the chokehold causes “serious physical injury or death,” a Class C felony. 11 DEL. CODE ANN. tit. 11, § 607A (West 2020). Utah criminalizes police using a knee to apply pressure to someone’s neck or throat as a third degree felony; a second degree felony in cases of loss of consciousness or serious injury; a first degree felony in cases of death. UTAH CODE ANN. § 53–13–115 (West 2020). Vermont punishes police use of chokeholds by, in cases of serious injury or death, imprisonment of up to twenty years and a fine of up to 50,000 dollars. VT. STAT. ANN. tit. 13 § 1032 (West 2020). See Gardner & Al-Shareffi, *supra* note 193, at 125.

199. The Police Benevolent Association of New York sued New York City, arguing that the Eric Garner Anti-Chokehold Act “inflicts a severe and unwarranted chilling effect on the ordinary performance of police duties of apprehensions and arrests.” Complaint at 21, Police Benevolent Ass’n v. City of New York, 205 A.D.3d 522 (2022) No. 2021–03041.

200. Kimberly Kindy, Kevin Schaul & Ted Mellnik, *Half of the Nation’s Largest Police Departments Have Banned or Limited Neck Restraints Since June*, WASH. POST (Sept. 6, 2020, 10:47 PM),

Chokehold bans are hailed as victories, or at least a step in the right direction. When the NYPD prohibited chokeholds in November 1993, it was hailed as a victory, then, too. From 2006 to 2013, more than 2000 New Yorkers came forward with chokehold complaints.²⁰¹ Just weeks after they killed Eric Garner in 2014, NYPD used the chokehold on Rosann Miller, a Black woman who was seven months pregnant, after they confronted her for barbecuing in front of her house.²⁰² The departmental ban was in full effect. Further still, there is no consensus that a police chokehold killed Eric Garner and George Floyd, so what is the protection of a ban written in their names?²⁰³

Chokehold restrictions require no net reduction in violence; they merely require adjustments to the techniques of violence. Police are already in the habit of regularly updating their arsenal, even without legal requirements, because doing so is part of reputational self-maintenance. The best weaponry, after all, is the weaponry that people accept as legitimate. Chokehold bans therefore give police an elegant solution: let one particular weapon or tactic absorb the blame, while police carry on. Same violence, different weapons.

For a textbook lesson in police reshuffling of weaponry, we can turn to the Los Angeles Police Department (LAPD). Between 1977 and 1982, Los Angeles police killed sixteen people with the chokehold; fourteen of the murder victims were Black.²⁰⁴ LAPD Chief Daryl Gates defended the categorically “non-lethal” chokehold by blaming Black people for their peculiar “veins or arteries” being slower to open than those of “normal people.”²⁰⁵ Facing lawsuits from Black Angelenos, in 1982 LAPD banned the “bar-arm” chokehold and restricted use of

<https://www.washingtonpost.com/graphics/2020/national/police-use-of-force-chokehold-carotid-ban> [<https://perma.cc/8PLB-AY7Y>] (showing that at least thirty-two of the nation’s sixty-five largest police departments restricted or banned neck restraints after the murder of George Floyd); Ian Prasad Philbrick & Sanam Yar, *What Has Changed Since George Floyd*, N.Y. TIMES (Aug. 11, 2020), <https://www.nytimes.com/2020/08/03/briefing/coronavirus-vaccine-tropical-storm-isaias-tiktok-your-monday-briefing.html> [<https://perma.cc/WN7K-VGSP>].

201. NYPD’s 1993 chokehold ban was partially a concession to all who protested the police killing of twenty-one-year-old Federico Pereira in 1991. Benjamin Mueller & J. David Goodman, *Despite Bans, the Use of Chokeholds Persists*, N.Y. TIMES (July 20, 2014), <https://www.nytimes.com/2014/07/21/nyregion/21banned.html> [<https://perma.cc/QQ9M-8JR5>].

202. CRENSHAW ET AL., *supra* note 3, at 28.

203. Derecka Purnell, *The George Floyd Act Wouldn’t Have Saved George Floyd’s Life. That Says It All*, GUARDIAN (Mar. 4, 2021), <https://www.theguardian.com/commentisfree/2021/mar/04/the-george-floyd-act-wouldnt-have-saved-george-floyds-life-thats-says-it-all> [<https://perma.cc/H3VV-BWKJ>].

204. Ian Fisher, *Kelly Bans Choke Holds by Officers*, N.Y. TIMES (Nov. 24, 1993), <https://www.nytimes.com/1993/11/24/nyregion/kelly-bans-choke-holds-by-officers.html> [<https://perma.cc/3DQC-9URJ>].

205. CORREIA & WALL, *supra* note 163, at 58.

the carotid chokehold.²⁰⁶ The chokehold had fallen out of favor, but it would be resurrected after the baton fell out of favor. After the world watched LAPD officers beat Rodney King with fifty-six baton swings in 1991, Chief Gates commissioned a study to formally reintroduce the chokehold. Chokeholds would be less bone-crushing and “more humane” than the baton, Gates suggested.²⁰⁷ “After the video played that night,” said an LAPD Deputy Chief about the beating of Rodney King, cops “hardly ever used the baton. It was banished.” Some evidence suggests that the weapon did indeed cycle out of favor with LAPD, with a reported 741 baton “force incidents” in 1990, compared to “just” fifty-four in 2015.²⁰⁸ The baton, Chief Gates said, had become a “symbol of police oppression.”²⁰⁹

Tasers became a police favorite.²¹⁰ In Los Angeles in 2015, with baton use at historic lows, LAPD used the Taser 519 times. In that same year across the U.S., police killed forty-eight people with Tasers.²¹¹ One was Natasha McKenna, a thirty-seven-year-old Black woman who, despite being handcuffed and leg-shackled, is alleged to have overpowered six specially trained Emergency Response

206. Ben Poston, *Police Agencies Are Banning a Controversial Neck Hold After George Floyd's Death*, L.A. TIMES (June 5, 2020, 2:37 PM), <https://www.latimes.com/california/story/2020-06-05/george-floyd-carotid-neck-hold-police> [https://perma.cc/NYD4-Q6E5].

207. CORREIA & WALL, *supra* note 163, at 58; AP, *Los Angeles Police Reconsider Using Choke Hold*, N.Y. TIMES (Sept. 3, 1991), <https://www.nytimes.com/1991/09/03/us/los-angeles-police-reconsider-using-choke-hold.html> [https://perma.cc/84PE-AMUZ].

208. Richard Winton, *How the Rodney King Beating 'Banished' the Baton From the LAPD*, L.A. TIMES (Mar. 2, 2016, 6:47 PM), <https://www.latimes.com/local/california/la-me-rodney-king-baton-20160303-story.html> [https://perma.cc/5PSN-YQFS].

209. AP, *Los Angeles Police Reconsider Using Choke Hold*, *supra* note 207.

210. While LAPD was an early adopter, most police departments expanded their arsenal to include Tasers in the decade from 2002 to 2012. Aaron Sussman, *Shocking the Conscience: What Police Tasers and Weapon Technology Reveal About Excessive Force Law*, 59 UCLA L. REV. 1342, 1349 (2012) (noting that, of the nation's 18,000 police agencies, in 2002 roughly 159 agencies had Tasers, but this jumped to 1735 agencies by 2005, 11,500 agencies in 2010, and 17,000 agencies by 2012). TASER International (now Axon) promoted their weapon with the promise that electrocution saves lives. Press Release, TASER Int'l, TASER (R) International Strongly Refutes New York Times Article (July 19, 2004) (delivering the “conservative” estimate that there have been “over 5000 such incidents where the TASER has saved a life or averted serious bodily injury”). One cop went so far as to insist that “TASERs Can Prevent Another Rodney King Incident.” David Griffith, *TASERs Can Prevent Another Rodney King Incident*, POLICE (Mar. 3, 2011), <https://www.policemag.com/blogs/weapons/blog/15317982/tasers-can-prevent-another-rodney-king-incident> [https://perma.cc/MK7N-5RX7] (stating that LAPD resorted to batons only after low voltage electrocution failed to subdue King; the implication here is that more and higher voltage Tasers offer a technological fix to state violence.)

211. Winton, *supra* note 208.

Team officers so decisively that they had to Tase her four times.²¹² She stopped breathing and died several days later.²¹³ Before cops Tased her to death, McKenna pleaded with them, saying, “You promised you wouldn’t kill me.”²¹⁴ And in the eyes of the law, officers did *not* kill her. Tasers are presumed to be non-lethal, and this designation tends to hold, regardless of death toll, because “normal” bodies do not die when Tased.²¹⁵ Apparently, the problem is not that police use Tasers to terrorize and kill Black people. The problem is that too many Black people have “non-normal bodies.” They die when the appropriate response is to suffer.

Given this tendency to blame the machinery and the victims, we should be able to predict what will follow from chokehold bans. “By simply banning all chokeholds,” warns *Police1* magazine, well-meaning people “are forcing officers to move to a higher level of physical control (strikes) or an intermediate weapon (chemical spray, baton, or TASER), which *can be more harmful to the subject*.”²¹⁶ Police have warned us. Ban the chokehold, suffer the consequences of other weapons.

4. Criminalizing Bigotry: the Emmett Till Antilynching Act

Hate crime laws spread through the 1980s and 1990s, but the years 2021 and 2022 saw renewed attention to hate crime penalties. The slew of hate crime bills introduced in the 117th Congress culminated with two laws—the COVID-19 Hate Crimes Act (S. 937), enacted amid rising concerns about anti-Asian violence, and the Emmett Till Antilynching Act of 2022, named to memorialize the fourteen-year-old Black child who was murdered in 1955.²¹⁷

212. Kimberlé Crenshaw, Opinion, ‘*You Promised You Wouldn’t Kill Me*,’ N.Y. TIMES (Oct. 28, 2019), <https://www.nytimes.com/2019/10/28/opinion/police-black-women-racism.html> [<https://perma.cc/JW79-M9UL>].

213. *Id.*

214. *Id.*

215. Correia & Wall untangle this twisted logic. A 2011 Justice Department Study concluded that Tasers are relatively safe when used on “healthy, normal, nonstressed, nonintoxicated” people, thus if someone dies after being Tased it is due to their unhealthy or abnormal stressed intoxication. CORREIA & WALL, *supra* note 163, at 15.

216. Scott Sweetow & George Belsky, *A Letter to the American Public: Are Police Reform Proposals Real Solutions or Chimera?*, POLICE1 (July 27, 2020), <https://www.police1.com/police-reform/articles/a-letter-to-the-american-public-are-police-reform-proposals-real-solutions-or-chimera-1HukkX6Z90Fm6vK8> [<https://perma.cc/A6AL-ND3X>].

217. PETER G. BERRIS, CONG. RSCH. SERV., R47060, OVERVIEW OF FEDERAL HATE CRIME LAWS 37, 51 (2022).

Tears and triumphalism swirl around the new enactments. But it is disingenuous to say that the COVID-19 Hate Crimes Act protects Asians, or that the Emmett Till Antilynching Act prohibits lynching. People might be surprised to learn that, as defined in the Emmett Till Antilynching Act, lynching does not pertain to murder as a public carnival of gendered anti-Black racism. Nor does lynching pertain to greed, stealing Indigenous and Mexicano-Indigenous lands, or driving out Chinese workers.²¹⁸ Instead, 18 U.S.C. § 249(a)(5) defines lynching as death or serious injury resulting from a conspiracy to commit a hate crime, meaning a crime undertaken because of someone's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.²¹⁹ That is, antihate laws do not penalize crimes against oppressed groups; rather, they penalize the invocation of race, religion, or any of the listed categories, and hence many white people claim to be victims of antiwhite hate crimes.²²⁰ In this sense, hate crimes penalize categorization, not oppression.

218. See IDA B. WELLS, SOUTHERN HORRORS 4, 14, 22 (1892) (counting 728 Black lynch victims from 1886 through 1892, exposing “the old thread bare lie that negro men rape white women,” and stating that “the white man’s dollar is his god”). Lynch mobs murdered at least 150 Black women in the U.S. South between 1880 and 1965, but the banner unfurled in front of the New York NAACP announced in singularly gendered terms: “A Man Was Lynched Yesterday.” EVELYN SIMIEN, GENDER AND LYNCHING: THE POLITICS OF MEMORY 2 (2011). By conservative estimates mobs killed at least 597 people of Mexican descent from 1848 to 1928, with lynchings being “one of the mechanisms by which Anglos consolidated their colonial control of the American west.” William D. Carrigan & Clive Webb, *The Lynching of Persons of Mexican Origin or Descent in the United States, 1848 to 1928*, 37 J. SOC. HIST. 411, 413, 414, 418 (2003) (noting that, as a proportion of the population, “the chance of being murdered by a mob was comparable for both Mexicans and African Americans,” and there were at least 3386 Black lynch mob victims between 1882 and 1930). In 1871, a Los Angeles mob lynched 17 “Chinamen,” and in 1885 and 1886 vigilantes in at least 168 towns across the U.S. West drove out Chinese residents through harassment, arson, and murder. BETH LEW-WILLIAMS, THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA 1, 3, 6, 7 (2018).

219. 18 U.S.C. § 249(a)(5).

220. Like all criminal statutes, hate crime laws do not proactively protect anyone, much less members of oppressed groups. HANHARDT, *supra* note 159, at 163 (2013) (citing the 1995 *Wisconsin v. Mitchell* Supreme Court decision upholding a Black man’s antiwhite penalty enhancement and explaining that hate crime statutes take no account of hierarchy and social power). Consider, for example, antiwhite hate crimes. Of all police-reported “racial/ethnic/ancestry bias” crimes in 2017, about one-fifth (18 percent) were antiwhite hate crimes, a figure that exceeds all reported anti-AAPI, anti-Arab, anti-Latinx hate crimes combined. MICHAEL GERMAN & EMMANUEL MAULEÓN, BRENNAN CTR. FOR JUSTICE, FIGHTING FAR-RIGHT VIOLENCE AND HATE CRIMES 14 (2019). Recall that in 2020 many Republicans agreed with the statement that “discrimination against whites is as big a problem today as discrimination against [B]lacks and other minorities.” See Bartels, *supra* note 37, at 5.

Before Emmitt Till's law, Kay Whitlock and Michael Bronski asked a prescient question: does it matter that the lynching of Emmitt Till is now called a hate crime?²²¹ Yes, because the reframe reduces enduring oppression to a criminal event, an episode of isolated transgression; "the appeal of the hate frame is that it reaffirms a clear distinction between those who do violence and those who do not."²²² Instead of collective struggle against oppression and exploitation, hate crime victims can take their day in court, prepared to read their victim impact statement. To criminalize hate is to keep a safe distance from Ida B. Wells and her damning conclusion that lynching represents "the cool, calculating deliberation of intelligent people who openly avow that there is an 'unwritten law' that justifies them in putting human beings to death."²²³ Hate crime laws condemn the few to exonerate the many who find cool rationality in policing, prisons, executions, and drone strikes.

Hate crime laws epitomize my central claim, reprised here: police killings during COVID-19 compelled millions to see a "contemporary landscape thick with preventable, premature deaths" and to insist that another world is possible, but elites responded by criminalizing a few racist devils.²²⁴ This is evident, too, in the spread of antipolice hate crimes. In 2016 Louisiana became the first state to extend hate crimes protection to police, and by 2017 legislators in fourteen states introduced at least thirty-two "Blue Lives Matter" bills to classify crimes against police as hate crimes.²²⁵ Just as BLM activism raised consciousness about state

221. KAY WHITLOCK & MICHAEL BRONSKI, *CONSIDERING HATE: VIOLENCE, GOODNESS, AND JUSTICE IN AMERICAN CULTURE AND POLITICS* 16 (2015).

222. *Id.* at 15–16.

223. Ida B. Wells, *Lynch Law in America*, in IDA B. WELLS, *THE LIGHT OF TRUTH: WRITINGS OF AN ANTI-LYNCHING CRUSADER* 394 (Mia Bay & Henry Louis Gates Jr. eds., 2014).

224. That is, people recognized and rejected racism, broadly defined by Ruth Wilson Gilmore as "the state-sanctioned and/or extralegal production and exploitation of group-differentiated vulnerability to premature deaths." GILMORE, *GOLDEN GULAG*, *supra* note 115, at 247; *see also* Ruth Wilson Gilmore, *The Worrying State of the Anti-Prison Movement*, SOC. JUST. (Feb. 23, 2015), <http://www.socialjusticejournal.org/the-worrying-state-of-the-anti-prison-movement> [<https://perma.cc/QGW5-BVF2>] (arguing that abolitionists confront a "contemporary landscape thick with preventable, premature deaths," and hence "the struggle against group-differentiated vulnerability to premature death is waged in every milieu—environmental degradation, public-goods withdrawal, attacks on wages and unions, divide-and-conquer tactics among precarious workers, war, etc.").

225. LA Rev Stat § 14:107.2 (2022); Acts 2016, No. 184, § 1 (expanding Louisiana's hate crime statute to include selecting a victim based on "actual or perceived employment as a law enforcement officer, firefighter, or emergency medical services personnel"); *see also* Shanahan & Wall, *supra* note 40, at 72; Natasha Lennard, *Call Congress's "Blue Lives Matter" Bills What They Are: Another Attack on Black Lives*, INTERCEPT, (May 19, 2018, 6:00 AM), <https://theintercept.com/2018/05/19/blue-lives-matter-bill-police-brutality> [<https://perma.cc/W4KF-KYJC>].

violence, legislators protected police with a logic of “both sideism,” as if police and the subjects they patrol are engaged in symmetrical conflict, as if the policed should be mindful of their bad habits of prejudice against cops.

5. The George Floyd Justice in Policing Act (Failed)

Consider that, after the Senate tanked the George Floyd Justice in Policing Act, among those disappointed by stalled federal police reform were the International Association of the Chiefs of Police (IACP) and the Fraternal Order of Police (FOP). In their joint statement of September 2021, these powerful police organizations affirmed their role in crafting reform (“we thank all those Members of Congress who partnered with us in this effort”), and they clarified that the George Floyd Act would have strengthened policing.²²⁶

Congress might have instead considered the BREATHE Act, drafted by the Movement for Black Lives and introduced in the House as the People’s Response Act.²²⁷ The bill proposed divestment from carceral and military systems and investment in Medicare expansion, public housing, and pilot projects for universal basic income and childcare.²²⁸ The proposal did not wear titles announcing the names of the dead. But it would have redirected resources away from their killers and toward life-enhancing use.

After reviewing this memorial legislation, we reprise the question: why is it important to say their name, and why is it especially crucial to say *her* name? Saying the names of Black girls and women killed by police is not only a matter of recognition, a way of insisting that all Black Lives Matter; it is essential for

226. Monique Beals, *Police Organizations Say Failed Reform Proposal Would Have Strengthened Departments, Not Defunded Them*, THE HILL (Sept. 28, 2021, 2:29 PM), <https://thehill.com/policy/national-security/574312-police-organizations-say-failed-reform-proposal-would-have> [https://perma.cc/53YH-VSCD] (“[A]t no point did any legislative draft propose ‘defunding the police.’ In fact, the legislation specifically provided additional funding to assist law enforcement agencies in training, agency accreditation, and data collection initiatives.”).

227. In June 2021, Representative Cori Bush introduced the People’s Response Act, H.R. 4194, 117th Cong. (2021).

228. See also McLeod, *supra* note 20, at 554–55 (characterizing the BREATHE Act as “reparations in abolitionist terms—ending resource extraction from Black communities” and providing robust support for high-quality public education and health care).

understanding the full reach and function of policing.²²⁹ Each victim of state violence is unique. Say Her Name holds that uniqueness while illuminating that the functions of policing are massive, intersectional, and, at the end of the day, indispensable to a system that serves the few at the expense of the many.²³⁰ By contrast, the politics of victim rights exploits this uniqueness by particularizing down to the minutiae, as if Breonna Taylor died from police error and Sandra Bland died from inadequate jail surveillance.

IV. CONCLUSION: STOP HUSTLING BLACK DEATH, PLEASE

In “Stop Hustling Black Death,” Imani Perry describes her conversation with Samaria Rice, the mother of Tamir Rice.²³¹ In 2014 Cleveland police shot and killed Tamir Rice, a twelve-year-old who was playing in the park across the street from his home.²³² In the weeks that followed, Samaria Rice explained, certain lawyers and organizers coached the grieving mother to hide her rage, to let them “handle everything.”²³³ Rice eventually challenged Shaun King, Al Sharpton, Ben Crump, and others who, as Rice put it, make a living “hustling Black death.” Writing with another mother whose son was killed by the police, Rice issued this formal statement:

Families of those who are killed by the police—and whose loved ones’ deaths spark mass movements—continue to navigate political

229. As Crenshaw et al. explain, excluding Black girls and women risks falling into a faulty analysis that particularizes Black men and boys as in need of “fixing” through programs such as My Brother’s Keeper. By contrast, saying her name illuminates the structural relationship between Black communities and the carceral state, and it compels a fuller recognition of policing’s scope and purpose. CRENSHAW ET AL., *supra* note 3.

230. What is demonstrated here, and in abolitionist work more broadly, is a capacity to hold individual stories, particular if dynamic groupings, and political economic analysis, all without atomizing reality into some false dichotomy of identity politics versus class politics. Abolitionist thinking and organizing continually push out the sites and terms of struggle. *See, e.g.,* DOROTHY ROBERTS, *TORN APART* (2022) (identifying so-called child protective services as a family policing system that should also be a target of abolition); DAVIS ET AL., *supra* note 19, at 22–25, 132, 180 (challenging “US-centric discourses” and scant attention to the fact that Native Americans are “the most likely of any racial or ethnic group to be killed by US law enforcement,” and urging social justice movements to “put poor/working class women of color in the center of their analysis” and “transform the capitalist economic system”); Gilmore & Gilmore, *supra* note 2, at 197 (interpreting the post-Ferguson BLM movement as “[s]parked by police murder in capitalism’s neoliberal turn” and a rejection of “austerity and the iron fist necessary to impose it.”).

231. Perry, *supra* note 161.

232. *Id.*

233. *Id.*

misrepresentations, battle zones of police repression, homelessness, and poverty, while Black “leadership” that has not been selected by the masses flourishes through celebrity status. These families must be provided the resources to sustain themselves, their families, and their work dedicated to building community infrastructures. Stop celebrity activism; stop corporate investments that support lobbyists for this norm; put an end to the political-economy’s parasitism on Black death and poverty.²³⁴

This dynamic is not new, as Imani Perry points out, but stems from a “fundamental tension” that undergirds all social movements.²³⁵ “Organizers need to solicit attention to bring people to their causes,” explains Perry, “but popular culture can’t help but fixate on the spectacle of charismatic leaders, rather than the larger landscape of political organizing.”²³⁶ Fixation on the individual is what Ella Baker corrected when she said, as Barbara Ransby reminds us, “Martin didn’t make the movement. The movement made Martin.”²³⁷

Movements make history, but history prefers to make heroes and martyrs, angels and a few devils who redeem the system that condemns them to jail. History written for and by elites, that is, is well served by turning a few people into supernovas, glorious bursts that suck up all the surrounding energy. Nationalistic and self-congratulatory histories of the Black freedom struggle commemorate Rosa Parks and Martin Luther King Jr. while forgetting that the work remains unfinished—and under renewed efforts to turn back the clock.²³⁸

The history of Summer 2020, another chapter in the long freedom struggle, is being written now. President Biden drafts this history every time he broadcasts to the world a private moment with George Floyd’s daughter. Gianna Floyd was six years old when she said to Biden before her father’s funeral, “Daddy changed

234. *Id.*

235. *Id.*

236. *Id.*

237. Barbara Ransby, *Ella Baker’s Legacy Runs Deep. Know Her Name*, N.Y. TIMES (Jan. 20, 2020), <https://www.nytimes.com/2020/01/20/opinion/martin-luther-king-ella-baker.html> [<https://perma.cc/4L29-MPV4>]; BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 189–92 (2003) (explaining that King’s celebrity status is “a product of a dominant culture that promoted individualism and egocentrism”).

238. Reflecting on the commercialization of Black History Month, the 1999 Congressional Gold Medal award to Rosa Parks, and the 2011 dedication of the Martin Luther King Jr. Memorial in the National Mall, historian Jeanne Theoharis writes: “By stripping King and Parks of the breadth of their politics—which interwove economic justice, desegregation, criminal justice, educational justice, and global justice—many of these national tributes render Parks and King meek and dreamy, not angry, intrepid, and relentless, and thus not relevant or, even worse, at odds with a new generation of young activists.” JEANNE THEOHARIS, *A MORE BEAUTIFUL AND TERRIBLE HISTORY: THE USES AND MISUSES OF CIVIL RIGHTS HISTORY* 17 (2018).

the world,” and she was seven when Biden used Chauvin’s guilty verdict to reprise the phrase by saying, first privately to Gianna Floyd and then to everyone, “Daddy *did* change the world.”²³⁹ Amidst the steady pace of police killings, Biden’s insistence that everything has changed feels like gaslighting of Shakespearian proportions—it is a tale told by the cop’s best friend, full of sound and fury, signifying something too raw to be called nothing. Because who has the cold nerve to correct the president’s history as he quotes a Black child talking about her recently murdered father? And this is the rub with the way elites address, at long last, Black victims of state violence: every commemoration, like a funeral, calls for bowed heads and silence. This is the politics of victim rights, DEI-style.

239. Biden has repeated Gianna Floyd’s sentence in at least five major speeches from June 2020 through June 2022. These include his acceptance speech at the Democratic National Convention in August 2020; the day of Derek Chauvin’s guilty verdict in April 2021; his first State of the Union address in late April 2021; the one-year anniversary of Floyd’s murder in May 2021; and the two-year anniversary of Floyd’s murder in May 2022. See Matt Stevens, *Joe Biden Accepts Presidential Nomination: Full Transcript*, N.Y. TIMES (Aug. 20, 2020), <https://www.nytimes.com/2020/08/20/us/politics/biden-presidential-nomination-dnc.html> [<https://perma.cc/3HJV-LTPL>]; *Biden and Harris on the Chauvin Trial Verdict*, N.Y. TIMES (Apr. 21, 2021), <https://www.nytimes.com/2021/04/20/us/politics/biden-harris-chauvin-verdict-transcript.html> [<https://perma.cc/WM8X-39RG>]; *Biden’s Speech to Congress: Full Transcript*, N.Y. TIMES (Sept. 7, 2021), <https://www.nytimes.com/2021/04/29/us/politics/joe-biden-speech-transcript.html> [<https://perma.cc/BH85-RX6W>]; Brett Samuels & Marty Johnson, *Biden, Bass Press for Police Reform After Meeting Floyd Family*, THE HILL (May 25, 2021, 4:58 PM), <https://thehill.com/homenews/administration/555390-biden-bass-press-for-police-reform-after-meeting-floyd-family> [<https://perma.cc/R5A6-X46U>].