

# ABOLISH CARCERAL LOGIC

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The year 2020 was a pivotal one in America’s on-again, off-again reckoning with policing and race. The images, and the sounds, of officer Derek Chauvin kneeling on the neck of George Floyd while three other officers stood by passively and an anguished crowd pled for Floyd’s life,<sup>1</sup> set a spark to the understory of fear and outrage about police violence, particularly as it is visited upon Black people in the United States. By early June, the largest and most racially diverse

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1. George Floyd’s murder is known to us because it was recorded by 17-year-old Darnella Frazier in one continuous shot on her cell phone. *Darnella Frazier*, PULITZER PRIZES, <https://perma.cc/Y9QN-CGD7> (last visited Aug. 30, 2021); Nicholas Bogel-Burroughs & Marie Fazio, *Darnella Frazier Captured George Floyd’s Death on Her Cellphone. The Teen-ager’s Video Shaped the Chauvin Trial*, N.Y. TIMES (Apr. 21, 2021, 6:38 PM), <https://perma.cc/K5PD-V37H>.

protests in American history were playing out across the country.<sup>2</sup> Protests reached a crescendo on June 6, but continued throughout the summer, and in some places beyond.<sup>3</sup>

Theories abound about why the killing of George Floyd, one in a long line of police killings of unarmed Black people, prompted this ground-shifting response.<sup>4</sup> But for whatever reason, in the Summer of 2020, the message that advocates had been sending relentlessly since Trayvon Martin was killed<sup>5</sup> and worked hard to bring into the nation's living rooms during Ferguson,<sup>6</sup> seemed to have finally hit home: Black lives in the United States are simply not given the same value as white ones. And importantly, an unprecedented number of people appeared to recognize that one manifestation of this truth is that the use of violence by police too often has very little to do with legitimate public safety need, and far too much to do with race.<sup>7</sup> For the first time ever, most Americans, including a bare majority of white Americans, said that policing needs "major

2. See, e.g., Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://perma.cc/3VDB-GRRF> ("Four recent polls — including one released this week by Civics Analytics, a data science firm that works with businesses and Democratic campaigns — suggest that about 15 million to 26 million people in the United States have participated in demonstrations over the death of George Floyd and others in recent weeks. These figures would make the recent protests the largest movement in the country's history."); Dana R. Fisher, *The Diversity of the Recent Black Lives Matter Protests is a Good Sign for Racial Equity*, BROOKINGS INST. (July 8, 2020), <https://perma.cc/N3R4-HE57> ("[T]hese protests are more diverse than the March for Racial Justice in fall 2017, as well as the previous moments of protest in the Black Lives Matter movement and the Civil Rights Movement."); Lara Putnam et al., *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://perma.cc/9XW8-WPL2>.

3. See Buchanan et al., *supra* note 2 ("The recent Black Lives Matter protests peaked on June 6, when half a million people turned out in nearly 550 places across the United States. That was a single day in more than a month of protests that still continue to today."); Giulia McDonnell Nieto del Rio et al., *A Timeline of What Has Happened in the Year Since George Floyd's Death*, N.Y. TIMES (May 25, 2021), <https://perma.cc/V3ZX-GD2T>; *Global Protest Tracker*, CARNEGIE END'T FOR INT'L PEACE (July 7, 2021), <https://perma.cc/Q46K-9BRT> (noting that protests against police violence that began in May 2020 are still "active").

4. For a summary of some early iterations of these theories, see Elliott C. McLaughlin, *How George Floyd's Death Ignited a Racial Reckoning that Shows No Signs of Slowing Down*, CNN (Aug. 9, 2020, 11:31 AM), <https://perma.cc/V986-QN35>. The question of *why* George Floyd's death provoked the response it did is an important one, but beyond the scope of this essay. To me, it seems that it was some combination of the cold callousness of Floyd's murder; the Covid pandemic — which exposed to a broader audience the breadth and depth of structural racial inequity in the United States, and cast the entire country into a state of collective trauma; and the work activists and others had been engaged in non-stop since Ferguson to call attention to the too-often illegitimate exercise of police power. See, e.g., Ryan J. Reilly, *Ferguson Prepared America for This Moment*, HUFFPOST (Aug. 3, 2020), <https://perma.cc/T2GF-WGKJ>.

5. Monica Anderson, 3. *The Hashtag #BlackLivesMatter Emerges: Social Activism on Twitter*, PEW RSCH. CTR. (Aug. 15, 2016), <https://perma.cc/2A9T-M4PA>.

6. Reilly, *supra* note 4.

7. See *Protestors' Anger Justified Even If Actions May Not Be*, MONMOUTH UNIV. POLLING INST. (June 2, 2020), <https://perma.cc/T689-ZNGL> ("A majority of Americans (57%) say that police officers facing a difficult or dangerous situation are more likely to use excessive force if the culprit is black . . . [I]n July 2016, just 34% said blacks were more likely to be

changes.”<sup>8</sup> Only six percent of Americans maintained that policing does not need to change at all.<sup>9</sup>

This support for change in policing was not only unprecedented in its breadth but different in quality. For many, “reforming” the police was no longer enough; the loudest cry in the summer of 2020 was to “defund” the police. Many cities across the country seemed to respond to this demand almost immediately, to varying degrees: within days of Floyd’s death, the Minneapolis City Council pledged to dismantle their current police department, with Council President Lisa Bender telling a crowd they would “end policing as we know it.”<sup>10</sup> In July, the Los Angeles City Council approved \$150 million in cuts to the LAPD, seeking to decrease the force (albeit from 10,000 officers to 9,700), and shifting \$100 million to other social service programs in the city.<sup>11</sup> The City of Berkeley pledged to cut the police department’s budget by one-half, to be achieved through a dramatic reduction in the scope of police responsibilities.<sup>12</sup> In August, the Austin, Texas, City Council voted to cut its police department budget by one-third.<sup>13</sup> The Mayor of Ithaca, New York, called for the creation of a new public safety department to entirely replace the Ithaca Police Department.<sup>14</sup>

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subject to excessive force while 52% said they were just as likely as whites.”); Nate Cohn & Kevin Quealy, *How Public Opinion Has Moved on Black Lives Matter*, N.Y. TIMES (June 10, 2020), <https://perma.cc/84JL-69ZH> (“By a 28-point margin, Civiqs finds that a majority of American voters support the [Black Lives Matter] movement, up from a 17-point margin before the most recent wave of protests began.”); Ian Thomsen, *The Research is Clear: White People Are Not More Likely than Black People to Be Killed by Police.*, NEWS@NORTHEASTERN (July 16, 2020), <https://perma.cc/L7RL-4FM3> (citing a Northeastern-Harvard data-driven study finding black people were three times as likely to be killed when the victim appeared to pose a minimal-or-less threat to police).

8. Steve Crabtree, *Most Americans Say Policing Needs ‘Major Changes’*, GALLUP (July 22, 2020), <https://perma.cc/8CYZ-K9Q3>.

9. *Id.*

10. Eric Ferkenhoff, *Minneapolis Leaders Promised Big Changes in Policing After George Floyd’s Death. Keeping Them Is Taking Longer than Some Hoped.*, USA TODAY (Mar. 19, 2021, 8:07 PM), <https://perma.cc/89VH-UU5K> (noting that the City Council promised to rebuild a new public safety system, but that only smaller-scale measures have been enacted, including outlawing the use of no-knock warrants and chokeholds in most situations); *Where Minneapolis’ Pledge to Defund the Police Stands Now*, NPR (Apr. 3, 2021, 5:23 PM), <https://perma.cc/NJ9H-82LV> (quoting Council President Lisa Bender as stating “Our commitment is to end our city’s toxic relationship with the Minneapolis Police Department, to end policing as we know it. . . .”).

11. Elizabeth Chou, *LA Leaders Approve \$150 Million in Cuts to the LAPD, Shrinking Police Force to Under 10,000*, L.A. DAILY NEWS (July 1, 2020, 12:40 PM), <https://perma.cc/PG2L-2XMJ>.

12. Jon Kawamoto, *Berkeley Cops to Stop Issuing Traffic Tickets Under Sweeping Police Changes*, EAST BAY TIMES (July 16, 2020, 8:46 AM), <https://perma.cc/64KA-CEF4>.

13. Meena Venkataramanan, *Austin City Council Cuts Police Department Budget by One-Third, Mainly Through Reorganizing Some Duties Out from Law Enforcement Oversight*, TEX. TRIBUNE (Aug. 13, 2020, 6:00 PM), <https://perma.cc/6V9Z-8EFA>.

14. Wesley Lowery, *The Most Ambitious Effort Yet to Reform Policing May Be Happening in Ithaca, New York*, GQ (Feb. 22, 2021), <https://perma.cc/3PEH-9Z4T>; Letter from Andrew M. Cuomo, Governor, N.Y., to Chief Execs., Police Chiefs, and Sheriffs (Aug. 17, 2020) (on file at <https://perma.cc/45WV-RTC5>).

The defund demand was met also with energetic recriminations. Many liberals and even stalwart police reformers loudly lamented the “language” of defund, arguing that it would alienate would-be supporters and thus doom the chances of more achievable but still meaningful police reform.<sup>15</sup> Many, especially establishment Democrats, voiced concern that “defund” might cause the Democrats to lose the 2020 presidential election.<sup>16</sup>

Notwithstanding ubiquitous use of the term, and its influence on politics and public policy over the past year, there has been little agreement on precisely what “defund” means, what steps (if any) should be taken to get there, or how it relates to traditional police reforms efforts or police “abolition”—an idea with deep roots that also became part of the national conversation after Floyd’s death.<sup>17</sup>

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15. See, e.g., David Barsamian, *Noam Chomsky: Fight the Class Struggle or Get it in the Neck*, JACOBIN (Dec. 30, 2020), <https://perma.cc/XT6A-RTT3> (stating that the slogan of defund the police, when taken out of context, is a losing message that “[n]obody wants to hear,” even though police budgets should be significantly reduced and those funds redistributed to other programs); Kenya Evelyn, *Barack Obama Criticizes ‘Defund the Police’ Slogan but Faces Backlash*, THE GUARDIAN (Dec. 2, 2020, 12:32 PM), <https://perma.cc/ZG2T-CU2Y> (analyzing the reaction to Obama’s criticisms of the slogan, including pushback from progressives, and reporting that other Democrats have similarly found “the phrase polarizing”); Johanna Wald & Nat Kendall-Taylor, *Keep the Ideas Behind ‘Defund the Police,’ but Forget the Slogan*, THE HILL (Jan. 28, 2021, 8:00 AM), <https://perma.cc/GKW9-488G> (decrying the slogan as unpalatable and ineffective from a public communications perspective, while advocating for systemic change).

16. In the end, the evidence that the “defund” movement hurt the Democratic Party is mixed. See Linley Sanders, *How Voters View Donald Trump’s Political Advertisement, ‘Break In’*, YOUGOVAMERICA (Aug. 4, 2020, 12:40 PM), <https://perma.cc/U4M4-5ADE> (finding that viewing a targeted attack ad against Biden that used the defund slogan slightly diminished independent voters’ instant opinions of Biden by 6%, but that, compared to Trump, Biden still retained a higher positive favorability rating with independent voters); *Public Poll Findings and Methodology: Americans Supportive of Peaceful Protests and Bipartisan Support for Police Reform*, IPSOS 8-9 (June 12, 2020), <https://perma.cc/898F-G3KN> (finding that 57% of those surveyed opposed the “‘defund the police’ movement,” 58% opposed proposals to “completely dismantle police departments and give more financial support to address” various public policy and health concerns, but 22% opposed and 76% supported plans to reallocate “some money” from police departments to police reform efforts and public health concerns); Nathaniel Rakich, *How Americans Feel About ‘Defunding The Police’*, FIFTYEIGHT (June 19, 2020, 5:58 AM), <https://perma.cc/43VF-N2RT>; Richard Luscombe, *James Clyburn: ‘Defund the Police’ Slogan May Have Hurt Democrats at Polls*, THE GUARDIAN (Nov. 8, 2020, 3:01 PM), <https://perma.cc/8QKA-XTQ8> (analyzing comments by House majority whip James Clyburn, who compared the use of the “defund” slogan to instances when “Burn, Baby, Burn” was chanted during 1960’s civil rights protests); Scottie Andrew et al., *Biden Opposes Defunding the Police. Here’s What That Means*, CNN (Apr. 14, 2021, 3:47 PM), <https://perma.cc/N7BA-PXEL>.

17. See Ruairí Arrieta-Kenna, *The Deep Roots—and New Offshoots—of ‘Abolish the Police’*, POLITICO (June 12, 2020, 7:30 PM), <https://perma.cc/A5W3-SBFK> (“By the ‘80s and ‘90s, prison abolition had become a movement, most closely associated with two black women, Angela Davis and Ruth Wilson Gilmore, as well as Canadian Quaker Ruth Morris. Prison abolitionists such as Davis expanded their critiques to a broader ‘prison-industrial complex,’ including policing. And in the public sphere, some activists started to use ‘abolish the police’ as a rallying cry after a series of prominent police shootings in 2014 and 2015, but it didn’t really take off until this year.”); see generally V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40

This essay offers one conceptual approach for consideration.

As a preliminary matter, it is worth setting out the various meanings of “defund.” My view is that, while different people mean different things when they talk about defunding the police, generally speaking, the concept takes one of three forms. First, an abolitionist iteration of defunding the police means zeroing out police budgets as quickly as possible—eventually removing all police—as part of the larger abolitionist project to live in a world without police or prisons.<sup>18</sup> Defunding the police may not be immediate when viewed through this abolitionist lens, but it is meant literally.<sup>19</sup>

A second interpretation of defund is less radical, but would still require a fundamental rethinking of the police function which would, among other things, require reductions in police responsibilities and budgets.<sup>20</sup> This was perhaps how the term was understood by most people in the immediate aftermath of George Floyd’s murder and the protests that followed. Indeed, the call for defund reached its zenith on social media right after the Minneapolis City Council voted to “dismantle” its police department and “end policing as we know it.”<sup>21</sup> I argue that

CARDOZO L. REV. 1453 (2019); ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? (2003).

18. Abolitionists describe defunding the police as a step on the road to abolition—an initial demand meant to narrow the scope of policing and reduce its intensity, while building up communities in other ways, with the aim of showing how alternative modes can better meet community needs, and, ultimately, that we can live in a world without police. *See, e.g.*, Amna Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 1781, 1825 (2020) [hereinafter Akbar, *Abolitionist Horizon*] (“Abolitionists are working for a world without police—and so they are making demands and running experiments that decrease the power, footprint, and legitimacy of police, while building alternative modes of responding to collective needs and interpersonal harm.”); Mariame Kaba, *Summer Heat*, NEW INQUIRY (June 8, 2015), <https://perma.cc/B344-MFPW> (framing defunding the police as a step “[o]n the way to abolition . . . to shrink the police force and to restructure our relationships with each other”); Amy Goodman, *Defund the Police: Linda Sarsour & Mychal Denzel Smith on What Meaningful Change Would Look Like* (June 8, 2020), <https://perma.cc/AW7N-7649> (quoting Mychal Denzel Smith saying “[t]he defund the police demand is an abolitionist demand”). Paul Butler’s writing also provides a thorough but accessible explanation of what abolition requires and why. PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017). Keeanga-Yamahtta Taylor’s interview of Mariame Kaba offers one of the most sophisticated, uplifting and current conversation on prison and police abolition. Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, NEW YORKER (May 7, 2021), <https://perma.cc/5P5H-CXBV>.

19. 1. *Defund Police*, 8TOABOLITION, <https://perma.cc/Q4UD-YYRK> (last visited Aug. 30, 2021) [hereinafter 8TOABOLITION, *Defund*]; Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://nyti.ms/3w0obkK> [hereinafter Kaba, *Literally Abolish*].

20. Dionne Searcey & John Eligon, *Minneapolis Will Dismantle Its Police Force, Council Members Pledge*, N.Y. TIMES (June 7, 2020), <https://perma.cc/6UAD-V27M> (“[T]o defund or abolish the police are often not meant literally. Rather, they are demands to rethink a law enforcement system from the ground up and to grapple with deeply ingrained issues.”); Christy E. Lopez, *Defund the Police? Here’s What That Really Means*, WASH. POST (June 7, 2020, 3:37 PM), <https://perma.cc/ZUN2-9MD8>.

21. Alicia Adamczyk, *What It Actually Means to ‘Defund the Police’*, CNBC (June 15, 2020, 3:45 PM), <https://perma.cc/77TC-X7T8> (finding that “[o]n Twitter, calls to defund the police increased from near zero between May 25, the day Floyd was killed, to almost 740,000 on June 8,” one day after the Minneapolis City Council announced its plans to defund the

this iteration of defund is not abolitionist but can be viewed as working towards a transformation of policing.<sup>22</sup>

A third, and arguably increasingly widespread, framing of defund views it as a demand to keep policing largely intact but to shift some sub-set of policing responsibilities to other entities, arguing this is necessary to correct our current overreliance on policing to meet public safety needs, including needs that police are ill-equipped to effectively address. This interpretation of “defund” would not eliminate policing altogether, or even “as we know it,” but would narrow the scope and nature of policing and, perhaps, reduce the size of some police departments.<sup>23</sup> This articulation of defund is, in my view, fundamentally reformist.

All conceptualizations of defund, wherever they lie on this spectrum, include a commitment to add additional resources to non-policing social service and violence reduction efforts—both community and government-based, to better meet communities’ needs.<sup>24</sup> Regardless of which iteration is being voiced, there is no

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police); Brittany Levine Beckman, *#BlackLivesMatter Saw Tremendous Growth on Social Media. Now What?*, MASHABLE (July 2, 2020), <https://perma.cc/Q5X2-E6FA> (noting that mentions of “Defund the Police” on social media peaked at a level far higher in the days after George Floyd’s murder than after other police shootings in prior years).

22. I often use the term “police transformation” to underscore that, regardless of whether one considers oneself an abolitionist, we should all recognize that police “reform” is not enough. Policing needs to change in ways that fundamentally alter its scope, impact, structure, and nature. In other words, policing is not something damaged or broken that can be fixed through reform. The policing function, including its role in promoting public safety and in its use of state-sanctioned violence, needs to be entirely reconceived, i.e. transformed. *See, e.g.*, BUTLER, *supra* note 17 (speaking throughout of the need to “transform” policing and why “the chokehold” cannot be “reformed”); *id.* at 7 (“In order to halt this wretched cycle we must not think of reform—we must think of transformation. The United States of America must be disrupted, and made anew.”); Tracey Meares, *Policing: A Public Good Gone Bad*, BOS. REV. (Aug. 1, 2017), <https://perma.cc/L7E6-F33C> (“I agree with Kaba: policing as we know it must be abolished before it can be transformed.”); Christy E. Lopez, *supra* note 20 (writing that during my 25 years dedicated to police reform it has become clear that reform is not enough).

23. Rashawn Ray, *What Does ‘Defund the Police’ Mean and Does It Have Merit?*, BROOKINGS INST. (June 19, 2020), <https://perma.cc/P7PH-D3TN> (“‘Defund the police’ means reallocating or redirecting funding away from the police department to other government agencies funded by the local municipality. That’s it. It’s that simple. Defund does not mean abolish policing.”); Arrieta-Kenna, *supra* note 17 (“Congresswoman Alexandria Ocasio-Cortez called the use of language like ‘defund’ an ‘excellent choice’ for those who have been trying for years to ‘prompt a national conversation’ about police. ‘Refund’ or ‘reallocate’ didn’t do that,” she tweeted.”).

24. Amy Goodman, *Angela Davis on Abolition, Calls to Defund Police, Toppled Racist Statues & Voting in 2020 Election*, DEMOCRACY NOW (June 12, 2020), <https://perma.cc/JV7G-PJSN> (quoting Angela Davis saying that “[d]efunding the police is not simply about withdrawing funding for law enforcement and doing nothing else . . . It’s about shifting public funds to new services and new institutions — mental health counselors, who can respond to people who are in crisis without arms. It’s about shifting funding to education, to housing, to recreation.”); Andrea J. Ritchie, Mariame Kaba & Woods Ervin, *#DefundPolice #FundThePeople #DefendBlackLives: Concrete Steps Toward Divestment from Policing & Investment in Community Safety*, INTERRUPTING CRIMINALIZATION 3, <https://perma.cc/JQ32-XWNW> (last visited Aug. 30, 2021) (“#DefundPolice is a demand to cut funding and resources from police departments and other law enforcement and invest in things that actually make our communities safer: quality, affordable, and accessible housing, universal quality health care, including community-based

question that “defund” is as much about building as about dismantling.

The fluidity and debate over what defunding the police means is unsurprising. The landscape has changed dramatically and rapidly. Many people—whether new to the issues of policing and institutionalized racism in America, or well-steeped in the study of both—spent the better part of 2020 learning to navigate this new terrain.<sup>25</sup>

I argue in this essay that the key to navigating a path forward in the wake of George Floyd’s death—including understanding how the idea of “defund” fits into those efforts—can be found within abolitionist tenets. More specifically, to fully realize the potential of the “defund the police” idea, we should conceptualize it in the context of the need to abolish carceral logic. If we accept the abolitionist idea that one of the underpinnings of our current public safety system is a

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mental health services, income support to stay safe during the pandemic, safe living wage employment, education, and youth programming.”); Alex S. Vitale, *The Only Solution Is to Defund the Police*, NATION (May 31, 2020), <https://perma.cc/RLK2-344F> (arguing that defunding the police and redirecting funds elsewhere is the only solution to policing now that other reforms and federal oversight have failed).

25. One example of this flux was the back-and-forth over Congresswoman Alexandria Ocasio-Cortez’ articulation of defund. In an apparent attempt to put the concept in terms that would seem more familiar and thus less unnerving to a broader swath of Americans, Representative Ocasio-Cortez declared that defunding the police “looks like a suburb.” Emma Colton, *Ocasio-Cortez Says a World Without Police Looks Like ‘a Suburb,’* WASH. EXAM’R (July 12, 2020, 3:24 PM), <https://perma.cc/79LW-GY78>. She explained: “Affluent white communities already live in a world where they choose to fund youth, health, housing, etc. more than they fund police. These communities have lower crime rates not because they have more police, but because they have more resources to support healthy society in a way that reduces crime.” Emily Dixon, *Alexandria Ocasio-Cortez: Was Asked About Defunding the Police and Her Answer Went Viral*, MARIE CLAIRE (June 12, 2020), <https://perma.cc/8GZ7-XJJU>. In making this comparison, Ocasio-Cortez was echoing foundational abolitionist Mariame Kaba, who said in 2016 that “People in Naperville [a wealthy suburb of Chicago] are living abolition right now . . . The cops are not in their schools, they’re not on every street corner.” Maya Dukmasova, *Abolish the Police? Organizers Say It’s Less Crazy than It Sounds.*, CHICAGO READER (Aug. 25, 2016), <https://perma.cc/7N39-NSEQ>. Thomas B. Harvey and Janae Stacier argued similarly in a 2019 essay that “[t]o get a sense of what police abolition would look like, you only have to imagine places where St. Louis-type policing does not exist and never has. It shouldn’t be hard. Many wealthy people live in such areas. In St. Louis, we just call it Ladue.” Thomas B. Harvey & Janae Stacier, *Policing in St. Louis: ‘I Feel Like a Runaway Slave Sometimes’*, in CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES 39, 39 (Tamara Rice Lave & Eric J. Miller eds., 2019). Among the characteristics of such policing is that police and police surveillance is not omnipresent but, “[i]f these people want the police, they call them to their house. And the police come quickly.” *Id.* at 39-40. Nonetheless, in the summer of 2020, many abolitionists and policing activists disputed Ocasio’s characterization, with academic Tamara Nopper, for example, arguing that defund requires far more than “fetishizing” suburban policing and accountability mechanisms as the model for less affluent, Black communities. Tamara K. Nopper, *Abolition is Not a Suburb*, THE NEW INQUIRY (July 16, 2020), <https://perma.cc/6LWN-C57Y> (noting that writers and thinkers from Mariame Kaba and Josie Duffy Rice to Ta-Nehisi Coates and Alexandria Ocasio-Cortez have used the suburb analogy but arguing that “the affluent, white suburb is no model for abolition. To imagine it as such is to construct the suburb as an idyllic space in which white people make good political choices rather than to identify it as part of the design of racial capitalism and carcerality abolitionists seek to confront.”).

carceral logic, and understand what that logic is and how it influences policing and public safety, we see that the focal point of advocacy efforts should be abolishing carceral logic itself. In this context, “defunding the police” becomes an outcome, not the goal, of those efforts. Further, seen in this light, “defunding the police” is a concept that is more radical and transformative than police reform advocates tend to view it, but also does not need to be applied literally in order to remake policing and public safety as it must be remade. I argue that viewing defund as part of a more fundamental project to abolish carceral logic is compatible with abolitionist principles, but does not require one to adopt the entirety of abolitionist thinking to accept.

### I. WHAT IS CARCERAL LOGIC?

Before discussing why one should view defund through the lens of abolishing carceral logic, it may be helpful to set out what carceral logic is. Carceral logic can be understood as a punishment mindset that views retribution and control, including by physical constraint (e.g. imprisonment), surveillance (e.g. electronic monitoring via ankle bracelet), or violence, as central components of a public safety system.<sup>26</sup> Abolitionists argue persuasively that a carceral logic undergirds the United States’ approach to public safety, including policing.<sup>27</sup> I agree and argue that, accordingly, advocates should center efforts to transform policing around ridding the public safety system of its carceral logic, rather than around the idea of “defunding,” or “divesting” from police *per se*.

To be clear, abolitionists argue that much more than carceral logic must be undone to achieve the world they seek. Abolitionists see the carceral logic of policing as being in service to more fundamental harmful features of American society.<sup>28</sup> Perhaps most fundamentally with regards to policing, abolitionists

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26. This is the framing of carceral logic I am using for the purposes of this essay. It is based on the articulations of “carceral logic” and the “carceral state” predominant in abolitionist writing. See, e.g., MARIAME KABA, WE DO THIS ‘TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE 125 (Tamara K. Nopper ed., 2021) (describing carceral logic as a “punishment mind-set.”); Dorothy Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 7 (2018).

27. See, e.g., Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1576 (2019) (“Contemporary reformist approaches to addressing the apparent overreach and scandalous excesses of the carceral state—characterized by calls to end “police brutality” and “mass incarceration”—fail to recognize that the very logics of the overlapping criminal justice and policing regimes *systemically* perpetuate racial, sexual, gender, colonial, and class violence through carceral power.”).

28. See Roberts, *supra* note 26, at 6-8 (finding useful “three central tenets common to formulations of abolitionist philosophy,” even though it is “hard to pin down what prison abolition means.” These tenets are: “First, today’s carceral punishment system can be traced back to slavery and the racial capitalist regime it relied on and sustained. Second, the expanding criminal punishment system functions to oppress black people and other politically marginalized groups in order to maintain a racial capitalist regime. Third, we can imagine and build a more humane and democratic society that no longer relies on caging people to meet human needs and solve social problems.”)



view policing and militarism as enforcing a system of racial capitalism that results in the devastating maintenance of poverty and inequality for Black people, Brown people, and other politically marginalized groups.<sup>29</sup> I acknowledge that focusing on abolishing carceral logic elevates just one aspect of abolitionist theory, but I believe this can be done without discounting the broader abolitionist effort. I further believe that focusing on carceral logic can make the work of police transformation more principled and effective, even for those who do not subscribe to the entirety of abolitionist theory.

A full exploration of carceral logic, much less abolitionist theory, is beyond the scope of this essay.<sup>30</sup> My aim here is simply to set out my understanding of the basic framework for carceral logic as groundwork for examining how this racialized and classist logic has distorted our thinking about how to keep people and communities safe. Understanding this groundwork is critical because, I argue, it explains why we have collectively normalized assumptions about what public safety requires that are at odds with what is *actually* needed to keep people and communities safe. Relatedly, because carceral logic animates the practice and systems of policing and public safety in the United States, we must understand it if we are to permanently transform policing in the United States.

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29. See, e.g., Akbar, *Abolitionist Horizon*, *supra* note 18, at 1822 (“A central critique of police is that their core mission is not to provide safety, but rather to hold in place racialized and capitalist social relations.”); Destiny Harris, *Policing and Militarism Go Hand in Hand. We Must Abolish Both*, TRUTHOUT (June 9, 2021), <https://perma.cc/55XM-SKN3> (describing policing and militarism as a “two-headed monster that protects and upholds the foundation upon which racial capitalism was built—exploitation of the lives of poor Black and Brown people.”). In this view, ridding public safety of its carceral logic arguably does not go nearly far enough. It is not clear to me that policing would, or could, continue to enforce racial capitalism if it were rid of its carceral logic, since a system so rid of such logic would be focused instead on genuine community safety and nurturing, which, it seems to me, are inconsistent with racial capitalism. Regardless, this rather broader topic is far beyond the scope of this essay.

30. Among the many rich and varied works exploring abolitionist thinking are: W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* (1935); DAVIS, *supra* note 17; Roberts, *supra* note 26; KABA, *supra* note 26; Rodríguez, *supra* note 27; Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613 (2019) [hereinafter McLeod, *Envisioning Abolition Democracy*]; Julia Chinyere Oparah, *Transatlantic Visions: Resisting the Globalization of Mass Incarceration*, 27 SOC. JUST. 133 (2000); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015) [hereinafter McLeod, *Prison Abolition and Grounded Justice*]; Allegra M. McLeod, *Beyond the Carceral State*, 95 TEX. L. REV. 651 (2017); Rachel Herzing, *Big Dreams and Bold Steps Toward a Police-Free Future*, TRUTHOUT (Sept. 16, 2015), <https://perma.cc/4W4H-A7UR>; Akbar, *Abolitionist Horizon*, *supra* note 18; RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 11 (2007) (discussing mass incarceration in California as a response to deindustrialization); Kelly Lytle Hernández, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771-1965* (2017) (discussing the unique features of settler colonialism and its impact in California on indigenous people and, later, on Chinese, Latine, and Black residents).

## II. ORIGINS AND CURRENT ITERATION OF CARCERAL LOGIC IN AMERICA

At this point in our history, the canopy of carceral logic covers all American people, systems, and institutions to some degree,<sup>31</sup> but its roots are most inextricably intertwined with the enslavement of Black people in the United States.<sup>32</sup> During slavery, control of the bodies of enslaved Black people was centered around economic concerns, although perceived safety was also an important consideration. The American people's spectacular failure to follow through on Reconstruction ensured that using the law to control the freedom—bodily, economic and otherwise—of Black people outlived slavery to a significant degree.<sup>33</sup> After the Civil War, southern states passed Black Codes that stringently regulated and explicitly criminalized the conduct of only Black people and thus ensured a steady stream of Black convict labor to prop up the ailing southern agricultural economy, and perpetuated white supremacy. Jim Crow laws further codified state control over Black autonomy.<sup>34</sup>

Nearly a century after the Civil War, Martin Luther King, Jr. spoke compellingly of the need for radical reconstruction of American society,<sup>35</sup> and indeed

31. See e.g., KITTY CALAVITA & VALERIE JENNESS, *APPEALING TO JUSTICE: PRISONER GRIEVANCES, RIGHTS, AND CARCERAL LOGIC* 16 (2014) (“While the expansion of imprisonment has its most direct and devastating effects on racial minorities, the ‘culture of control’ of which it is one manifestation is felt in virtually every social institution, from the family to schools, churches, the military, the media, and beyond. . . . carceral logic penetrates our institutions and feeds the very fears and social forces that undergird it.”); JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* (2007).

32. See *supra* note 28. As noted above, abolitionists emphasize also the economic drivers of carceral logic, especially as they intersect with race, and as a feature of the settler colonialism that impacts indigenous and Latine people in particular. See *supra* note 30.

33. See, e.g., J. Morgan Kousser, *Reconstruction*, OXFORD AFR. AM. STUD. (Dec. 2006), <https://perma.cc/MZ44-XHGH> (“Despite such transformations, however, historians who stress continuity between the antebellum and postbellum periods point to the persistent, often increased poverty of southern African Americans; the continuation of the plantation system; the survival of many former plantation owners or their sons among the postwar economic and social elite; the eventual disfranchisement and segregation of blacks; and the frequent outbreaks of racist violence, particularly the surge of lynching in the 1890s.”); LEEANNA KEITH, *THE COLFAX MASSACRE: THE UNTOLD STORY OF BLACK POWER, WHITE TERROR, & THE DEATH OF RECONSTRUCTION* (2009) (arguing that the Supreme Court’s decision in *United States v. Cruikshank* not to hold a white supremacist mob accountable for the slaying of more than 150 members of a black militia virtually nullified the Ku Klux Klan Enforcement Acts of 1870 and 1871, cleared the way for the Jim Crow Era and ended Reconstruction).

34. Elizabeth Hinton & DeAnza Cook, *The Mass Criminalization of Black Americans: A Historical Overview*, 4 ANN. REV. CRIMINOLOGY 261, 263 (2021) (“The entrenchment of Jim Crow laws before, during, and after Prohibition unleashed new mechanisms for spatial regulation and social control at the federal and local levels that subsequently compromised black social and physical mobility, economic opportunity, and life prospects.”).

35. King told journalist David Halberstam in 1967, “[f]or years I labored with the idea of reforming the existing institutions of society, a little change here, a little change there. Now I feel quite differently. I think you’ve got to have a reconstruction of the entire society, a revolution of values.” David Halberstam, *The Second Coming of Martin Luther King*, HARPER’S (Aug. 1967), <https://perma.cc/UR92-54RK>.

the Civil Rights Movement of the 1960s brought about the dismantling of Jim Crow. But even as that era ended, the carceral logic reintroduced itself in a new form with the war on drugs and mass incarceration.<sup>36</sup>

Much has been written about the current era of mass incarceration. I will not revisit that rich body of work except to note that, as the features of mass incarceration show us, carceral logic in its current iteration continues to be fixated on punishment and control of marginalized people's bodies and autonomy, including the threat of such control, as a central and essential feature of effective public safety.<sup>37</sup> Accordingly, the carceral logic responds to those who cause harm with punishment, retribution, and confinement, rather than viewing accountability as

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36. See Melvin I. Urofsky, *Jim Crow Law*, ENCYCLOPEDIA BRITANNICA, <https://perma.cc/3VQB-CHT6> (last updated Feb. 12, 2021) (“Jim Crow law, in U.S. history, any of the laws that enforced racial segregation in the South between the end of Reconstruction in 1877 and the beginning of the civil rights movement in the 1950s.”); Vesla Weaver, *Frontlash: Race and the Development of Punitive Crime Policy*, 21 *STUD. AM. POL. DEV.* 230 (2007) (arguing that punitive policy intervention was not just about crime fighting but rather an intentional attempt to push back some of the gains of the civil rights movement); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (New Press 2020) (2010) 5 (“[M]ass incarceration in the United States had, in fact, emerged as a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow.”); Anthony Cook, *The Ghosts of 1964: Race, Reagan, and the Neo-Conservative Backlash to the Civil Rights Movement*, 6 *ALA. C.R. & C.L. L. REV.* 81, 82 (2015) (“With the election of Ronald Reagan in 1980, the forces that would shape a sustained backlash against the gains of the civil rights movement were already in play: party realignment and the re-emergence of the religious right in American politics; the rise of a ‘law and order’ movement that would morph into a ‘war on drugs’ movement fueling the mass incarceration of Black and Hispanic men, women, and children; the accelerated development of a ‘military industrial complex’ that would morph from a war against communism to one against terrorism.”); Dan Baum, *Legalize it All: How to Win the War on Drugs*, *HARPER’S* (Apr. 2016), <https://perma.cc/39YJ-YL3N> (An advisor to Richard Nixon stated that the administration “knew we couldn’t make it illegal to be against the war or black, but by getting the public to associate hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes . . . and vilify them night after night on the evening news. Did we know we were lying about drugs? Of course we did.”); ALEX S. VITALE, *THE END OF POLICING* 134-35 (2017) (approximately half of individuals held in federal prison and a third at the state level are incarcerated for drug crimes; many police units finance themselves in part through forfeiture laws for assets seized during drug investigations, which provides an institutional incentive for aggressive police tactics); James Cullen, *The History of Mass Incarceration*, *BRENNAN CTR. FOR JUST.* (July 20, 2018), <https://perma.cc/HT4P-Y7ZN>.

37. See *supra* note 36; see also DAVIS, *supra* note 17, at 10 (addressing why prison abolitionists are dismissed as utopians, Davis wrote “[t]his is a measure of how difficult it is to envision a social order that does not rely on the threat of sequestering people in dreadful places designed to separate them from their communities and families”); GILMORE, *supra* note 30, at 11 (“The practice of putting people in cages for part or all of their lives is a central feature in the development of secular states, participatory democracy, individual rights, and contemporary notions of freedom.”); Alison Reed, *Caption This: Police in Pussyhats, White Ladies, and Carceral Psychology Under Trump*, *ABOLITION J.* (Sept. 24, 2017), <https://perma.cc/2N9H-U7C8> (“What I define as “carceral psychology” describes not merely a reliance on, but an active *psychic investment* in, cops and cages.”).

a component of rehabilitation, restitution, prevention, and healing for all involved.<sup>38</sup>

Carceral logic as a modern organizing principle extends far beyond buildings and physical imprisonment. As Dylan Rodríguez explains, “incarceration as a logic and method of dominance is not reducible to the particular institutional form of jails, prisons, detention centers, and other such brick-and-mortar incarcerating facilities.”<sup>39</sup>

Especially important when thinking about how the “defund” approach should fit into efforts to remake policing is the fact that carceral logic is not confined to the criminal legal system. In the United States, carceral logic permeates public institutions and private relationships. “Governing through crime,” as scholar Jonathan Simon has framed it, has become the norm in the United States, resulting not only in an irrational fear of and focus on crime in traditional spheres, but also on the introduction of criminal penalties into family relationships<sup>40</sup> and schools.<sup>41</sup> Angela Y. Davis has emphasized how deeply this logic has embedded itself into our psyches, writing how we replicate “the structures of retributive justice” in our interpersonal relationships to the point that “[t]he retributive impulses of the state are inscribed in our very individual emotional responses.”<sup>42</sup>

### III. HOW CARCERAL LOGIC IMPACTS POLICING AND PUBLIC SAFETY

Carceral logic shapes current efforts to promote public safety, including policing, in at least three ways. First, carceral logic actually undermines the effectiveness of public safety. Second, carceral logic perpetuates race disparities in the criminal legal system, with or without the addition of any new introduction of bias. Third, as carceral logic permeates American life far outside the traditional criminal sphere, it brings unnecessary policing and criminal punishment along with it.

A central feature of the carceral logic’s influence is how it undermines actual public safety. The surveil, control, arrest, incarcerate approach is consistent with

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38. See, e.g., McLeod, *Prison Abolition and Grounded Justice*, *supra* note 30, at 1232-38; KABA, *supra* note 26, at 241-87.

39. Rodríguez, *supra* note 27, at 1587.

40. SIMON, *supra* note 31, at 177-78 (discussing how governance of the family has “flipped” in the past two generations, from tolerance for “truly violent” conduct by parents, especially adult men, to a system in which professionals serving families “find themselves acting as extensions of the actual police and the criminal justice system for which police operate as the gatekeepers”).

41. *Id.* at 207-209 (discussing how public schools have become associated with crime and facilitated the introduction of police, probation officers, prosecutors, and private security professionals into schools to the extent that these “new forms of expertise now openly compete with pedagogic knowledge and authority for shaping routines and rituals of schools”).

42. Angela Y. Davis, Address at the University of Chicago: Feminism and Abolition: Theories and Practices for the 21st Century (May 3, 2013) (transcript available at <https://bit.ly/35UZAmQ>).

the carceral logic of controlling bodies and punishing people, but it is not required by an effective public safety system. Much of it, in fact, conflicts with effective public safety in at least two fundamental respects.

First, carceral logic facilitates and perpetuates a definition of public safety that is overly narrow. In his article, *What is Public Safety?*, Barry Friedman sets out how artificially narrow our concept of public safety is. He notes that we typically assume that public safety means “freedom from injury to one’s person, and to one’s property in particular from violent crime or events,” and thus we tend to describe public safety with reference to “the police, as well as fire departments and emergency medical services.” As Friedman goes on to point out, however, “Surely . . . being safe means much more than freedom from sudden, violent, physical harm.” For while it is true that people feel neither safe nor secure if they are threatened by violent harm, nor do they feel safe and secure if “they are forced to sleep on the streets, to forage in trash cans for food, or are facing starvation. If they are lacking an education and cannot earn a living or find a job. They do not feel safe if they are confronting grievous illness or face health costs they cannot afford.”<sup>43</sup> Friedman advocates for understanding public safety “more capaciously” that we do at present to include these concerns, and to increase the government’s obligation to meet these public safety needs.<sup>44</sup>

Secondly, within the already artificially narrow concept of public safety, in which “protecting public safety” concerns itself largely with preventing precipitous violence, property crimes, and drug offenses, the carceral logic causes us to take a narrow view of *how* to achieve even those artificially narrow public safety aims. In other words, in addition to investing in education, recreation, employment, and health care to enhance *public safety broadly speaking*, we should also be investing in those same things much more than we do *in order to decrease rates of crime as traditionally defined*.

Writer and abolitionist Derecka Purnell describes how this dual failure played out in the St. Louis-area community where she grew up:

We called 911 for almost everything except snitching.

Nosebleeds, gunshot wounds, asthma attacks, allergic reactions. Police accompanied the paramedics.

Our neighborhood made us sick. A Praxair industrial gas-storage facility was at one end of my block. A junkyard with exposed military airplane and helicopter parts was at the other. The fish-seasoning plant in our backyard did not smell as bad as the yeast from the Budweiser factory

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43. Barry Friedman, *What is Public Safety?*, 102 B.U. L. REV. (forthcoming Apr. 2022) (manuscript at 3, 12) (available at <https://perma.cc/MZR9-RCNZ>).

44. *Id.* at 4. Jonathan Simon similarly writes that “as a historical matter, nothing could be more wrong” than the idea that “the first task of government is to provide security for body and property.” Nonetheless, Simon concedes, however historically anomalous, this is now the dominant narrative: crime, as traditionally defined, is “a, if not the, defining problem for government.” SIMON, *supra* note 31, at 13.

nearby. Car honks and fumes from Interstate 64 crept through my childhood bedroom window, where, if I stood on my toes, I could see the St. Louis arch.

Environmental toxins degraded our health, and often conspired with other violence that pervaded our neighborhood. Employment opportunities were rare, and my friends and I turned to making money under the table. I was scared of selling drugs, so I gambled. Brown-skinned boys I liked aged out of recreational activities, and, without alternatives, into blue bandanas. Their territorial disputes led to violence and 911 calls. Grown-ups fought too, stressed from working hard yet never having enough bill money or gas money or food money or day-care money. Call 911.<sup>45</sup>

Purnell's description brings home how our public safety system tends to disregard the public safety needs of neighborhoods and families when those needs require investment, support, and corporate accountability, rather than coercion and control of already-marginalized individuals. This approach leaves communities to deal with the fallout of those failures by relying on the one form of "help" generally available—the coercive power of the state, aka, the police, regardless of how inapt this tool is to the task.

Another stark example of how carceral logic similarly causes police protecting the *right* things to do so in the *wrong* way was highlighted in the Department of Justice's report on the Investigation of the Ferguson Police Department:

In one instance . . . a woman called [the Ferguson Police Department] to report a domestic disturbance. By the time the police arrived, the woman's boyfriend had left. The police looked through the house and saw indications that the boyfriend lived there. When the woman told police that only she and her brother were listed on the home's occupancy permit, the officer placed the woman under arrest for the permit violation and she was jailed. In another instance, after a woman called police to report a domestic disturbance and was given a summons for an occupancy permit violation, she said, according to the officer's report, that she "hated the Ferguson Police Department and will never call again, even if she is being killed."<sup>46</sup>

During the DOJ investigations of police departments that I helped conduct, I heard people express sentiments like the one above many times, not only in Ferguson, but in communities large and small across the country. They were not usually so succinctly captured or vividly conveyed (in a police report no less!), but this consistent expression of frustration that police were responding to real, emergent harm, but in entirely the *wrong* way, brought home the mismatch between the community need and what the police were providing.

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45. Derecka Purnell, *How I Became a Police Abolitionist*, ATLANTIC (July 6, 2020), <https://perma.cc/4GXV-DUHW>.

46. U.S. DEP'T JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 81 (2015) [hereinafter FERGUSON REPORT].

Purnell's description and the police reports from Ferguson give texture to what experience and data tell us more broadly: that the current approach to public safety is premised on a carceral logic that is inconsistent with approaches that would provide communities what they actually need to be safe and to thrive. Further, carceral logic pushes public safety responders to cause unnecessary harm and fail to solve the problem, even when pursuing traditional public-safety goals. As a result, the communities most in need of public safety support are instead under-protected, even as they bear a disproportionate portion of police violence and misconduct.<sup>47</sup>

Having lived the consequences of our current carceral-minded public safety approach, modern abolitionist organizers and others have developed and are deploying innovative and more effective approaches to protecting community safety, under both its broad and narrow definitions. They are also exploring transformative justice methods that better serve the needs of those subjected to harm while doing more to prevent the recurrence of harm.<sup>48</sup>

The carceral logic, however, pushes us to distrust and dismiss these approaches and to instead rely on an insufficiently effective and deeply destructive carceral panoply of police patrol and other forms of surveillance, stops, arrests, and incarceration as our primary means of crime control. Carceral logic's stranglehold on our public safety thinking is so strong that we continue to pour billions of dollars into our current carceral approach without demanding evidence that it is effective—much less whether there might be more humane, nurturing, and supportive ways of keeping us safe.<sup>49</sup>

A second feature of carceral logic is that it not only reflects, but also reinforces, a racially unjust criminal legal system. Carceral logic currently is viewed as especially apt for Black and Latine people. This is hardly surprising given the racialized roots of the logic. As historian Khalil Gibran Muhammad and others have argued, there has long been a dominant narrative that justifies treating poor

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47. See, e.g., Rose Quandt & Alexi Jones, *Research Roundup: Violent Crimes Against Black and Latinx People Receive Less Coverage and Less Justice*, PRISON POL'Y INITIATIVE (Mar. 18, 2021), <https://perma.cc/938L-CGPG> (“The research shows that not only are Black Americans – especially those in poverty – disproportionately victims of crime, but that crimes against Black people are less likely to be cleared by police and less likely to receive news coverage than crimes against white people.”).

48. McLeod, *Envisioning Abolition Democracy*, *supra* note 30, at 1630-32; Akbar, *Abolitionist Horizon*, *supra* note 18, at 1834-37; Annie Gorden, *Breaking the Cycle of Violence: Utilizing Community-Based Accountability Strategies to Address Sexual Violence*, RESTORATIVE JUST. CTR. U.C. BERKELEY (May 20, 2015), <https://perma.cc/B8UL-ALYE>; Natalie Y. Moore, *Payback*, MARSHALL PROJECT (Oct. 30, 2018), <https://perma.cc/3RNW-QJ24> (quoting Mariame Kaba regarding the call for payment for the torture victims of former Chicago Police Commander Jon Burge: “I consider the reparations ordinance to be an abolitionist document. It’s an expansive way of demanding a form of justice, and it had specific requests and demands that were non-carceral demands that tend to the needs of survivors.”).

49. Barry Friedman & Elizabeth Janszky, *Policing’s Information Problem*, 99 TEX. L. REV. 1, 3 (2020) (discussing how the United States spends over \$100 billion each year on policing without knowing the benefits of this expenditure and while ignoring the social and distributional costs of current approaches).

white people differently than poor Black people on the premise that poor white people are poor despite their best efforts and need social services to turn away from crime, while Black people are poor because they are less moral or intelligent, and need to be controlled and coerced into lawful behavior.<sup>50</sup> This narrative has resulted in—and perpetuated—a criminal legal system premised on the belief that Black and Latine people respond to different stimuli than white people: where white people can become productive members of society if they are nurtured and supported, Black and Latine people will behave only if they are controlled and coerced.<sup>51</sup>

Carceral logic in its modern manifestation is different in that it usually does not explicitly cite to a perceived need to control Black bodies and lives, specifically, as a driving motivation.<sup>52</sup> But masking these racialized underpinnings does not keep the carceral logic from creating systems and rules that—always—disproportionally harm BIPOC communities.

Disparities between Black and Latine and similarly-situated (non-Latine) white people exist at every stage of the criminal legal process and tend to be exacerbated at each step.<sup>53</sup> To be clear, this means that different treatment of Black and Latine people by police and the criminal legal system cannot not be fully explained by any factor or combination of factors other than race or ethnicity at any stage of the process.

In other words, race and ethnicity *always* play a role in aggregate criminal “justice” system outcomes. Police are more likely to stop and search Black people in both pedestrian and vehicle stops, with many of those same studies showing that, at the same time, police are less likely to find contraband in searches of

50. See, e.g., KHALIL GIBRAN MUHAMMAD, CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA 100 (2010) (discussing, e.g., how the “new discourse” of the Progressive era would “continue to explain why black people’s criminality was still fundamentally different from that of whites and immigrants”); Khalil Gibran Muhammad, *Playing the Violence Card*, N.Y. TIMES (Apr. 5, 2012), <https://perma.cc/3NN7-Q5UU> (analyzing how commentators’ invocation of “black-on-black violence” implies that “the violence that afflicts black America reflects a failure of lower-class black culture, a breakdown of personal responsibility, a pathological trait of a criminally inclined subgroup — not a problem with social and institutional roots”).

51. See, e.g., Zach Parolin, *Welfare Money is Paying for a Lot of Things Besides Welfare*, ATLANTIC (June 13, 2019), <https://perma.cc/DLV6-WDEG> (discussing the correlation between TANF resources and a state’s racial makeup, as well as how those resources are used, including, for example, that “[a] black family in poverty is more likely than a white family to be offered advice via a ‘Healthy Marriage Initiative’ in place of direct cash support”); FERGUSON REPORT, *supra* note 46, at 44-45, 74-75; Ta-Nehisi Coates, *Gangsters of Ferguson*, ATLANTIC (Mar. 5, 2015), <https://perma.cc/FSC5-7JNR>; Taylor, *supra* note 18 (noting “our society’s obsession with ‘personal responsibility’”).

52. See Rick Perlstein, *Exclusive: Lee Atwater’s Infamous 1981 Interview on the Southern Strategy*, NATION (Nov. 13, 2012), <https://perma.cc/G9LH-JGAU> (including link to interview recording exposing the Republican political operative Lee Atwater’s intentional effort to hide the racist motivation of conservative policies).

53. ELIZABETH HINTON ET AL., VERA INST. JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 1 (2018), <https://perma.cc/9Y8C-APTJ>.



Black people.<sup>54</sup> Black people comprise approximately 13 percent of the nation's populace; nevertheless, arrests of Black people increased by 23 percent between 1980 and 2014, eventually comprising approximately 28 percent of all arrests.<sup>55</sup> The most extreme race disparities in arrests occur for low-level offenses.<sup>56</sup> White defendants are more likely to have their most serious charge dismissed in a plea bargain and less likely to be required to accept jail time as part of a plea deal.<sup>57</sup> Black men receive a sentence almost 20 percent longer than a white man committing the same crime.<sup>58</sup> People who kill Black people are rarely sentenced to death, especially if the killer is white. A person who kills is much more likely to get the death penalty if the victim is white. The most reliable predictor of whether someone who kills will be given the death penalty is when a Black man kills a white woman.<sup>59</sup> Studies show that color matters too—the darker the skin of a Black person, the greater the disparity in arrests, charges, conviction rates and sentencing.<sup>60</sup> One study showed mock jurors the same evidence from a fictional robbery case, but used alternate security camera footage depicting either a light- or dark-skinned suspect. Jurors were more likely to find the dark-skinned suspect guilty.<sup>61</sup>

Because these disparities are built into the logic of the system, no ongoing, affirmative race bias is needed to perpetuate them. To be sure, continuing implicit and explicit race bias at the individual, agency, and societal levels is part of the reason for these disparities.<sup>62</sup> But even these affirmative biases, particularly the implicit variety, are largely reflective of the pre-existing structural bias

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54. *Id.* at 7; Jeffrey Fagan & Amanda Geller, *Following the Script: Narratives of Suspicion in Terry Stops in Street Policing*, 82 U. CHI. L. REV. 51, 55 (2015) (observing race-based suspicion leading to stops and searches of Black and Latine people in New York); Stephen Rushin & Griffin Edwards, *An Empirical Assessment of Pretextual Stops and Racial Profiling*, 73 STAN. L. REV. 637 (2021) (arguing that pretextual traffic stops contribute to an increase in racial profiling).

55. S. REBECCA NEUSTETER ET AL., VERA INST. JUST., GATEKEEPERS: THE ROLE OF POLICE IN ENDING MASS INCARCERATION 16 (2019), <https://perma.cc/N8YK-C8N9>.

56. *Id.*

57. Carlos Berdejó, *Criminalizing Race: Racial Disparities in Plea Bargaining*, 59 B.C. L. REV. 1187 (2018); Gene Demby, *Study Reveals Worse Outcomes for Black and Latino Defendants*, NPR (July 17, 2014, 10:44 AM), <https://perma.cc/2MF2-T9WK>.

58. U.S. SENT'G COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 BOOKER REPORT 2 (2017), <https://perma.cc/99WJ-KSES>.

59. Radley Balko, *There's Overwhelming Evidence that the Criminal Justice System is Racist. Here's the Proof.*, WASH. POST (June 10, 2020), <https://perma.cc/63RL-76V9> (collecting studies of death penalty race disparities).

60. Ellis P. Monk, *The Color of Punishment: African Americans, Skin Tone, and the Criminal Justice System*, 42 ETHNIC & RACIAL STUD. 1593 (2019); Jennifer L. Hochschild & Vesla Weaver, *The Skin Color Paradox and the American Racial Order*, 86 SOC. FORCES 643 (2007).

61. Justin D. Levinson & Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 W. VA. L. REV. 307, 337 (2010).

62. *See, e.g.*, KATHERINE BECKETT, MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS 83-88 (1997) (discussing the high correlation between

created in no small part by carceral logic.<sup>63</sup> As just one example, individual officer bias is a relatively miniscule part of the explanation for race disparities in police stops and searches. Of far greater impact is the fact that, because of the racialized features of carceral logic, those officers are disproportionately deployed to areas of a city with overwhelmingly Black residents, and, again due to the dictates of carceral logic, we have decided that the best way to keep those neighborhoods safe is for those officers to stop and search as many people as they legally can to find illegal weapons and contraband.<sup>64</sup> Officers who thus may have no explicit, or even implicit, bias are likely to further race disparities in stops every day simply in the course of doing what we tell them to do.

These institutionalized disparities are long-entrenched and pervasive—and they are entirely unsurprising given the system’s animating logic.<sup>65</sup> As critics of trying to “reform” the system emphasize, the system is not broken.<sup>66</sup>

A third feature of carceral logic is that it has proven remarkably amenable to being co-opted by public officials or special interests to promote objectives only related to crime tangentially, if at all.<sup>67</sup> There is thus now a now well-trod path for ever more carceral policies and practices to infiltrate broad areas of our lives. As Mariame Kaba writes, starting in the 1970s, carceral logic “crept into nearly every government function, including those seemingly removed from prisons.”<sup>68</sup> She describes some of these functions: “those seeking food stamps are subject to mandatory and/or random drug testing. Immigration and Customs Enforcement has become the largest enforcement agency in the United States. Post-secondary education applications ask about criminal records, and many states bar those with

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racial attitudes and beliefs regarding crime and punishment, including link between racial prejudice and greater support for more punitive measures).

63. See generally JENNIFER EBERHARDT, *BIASED: UNCOVERING THE HIDDEN PREJUDICE THAT SHAPES WHAT WE SEE, THINK, AND DO* (2019); see also Marie Pryor et al., *Risky Situations: Sources of Racial Disparity in Police Behavior*, 16 ANN. REV. L. & SOC. SCI. 343 (2020).

64. Ezra Klein, *Race, Policing, and the Universal Yearning for Safety*, VOX (Sept. 15, 2020), <https://perma.cc/E9EY-52W5>.

65. See generally BUTLER, *supra* note 17; JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017); NAT’L RSCH. COUNCIL, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 91 (Jeremy Travis et al. eds., 2014) (finding that disproportionate rates of incarceration of Black and Latine individuals “are partly caused and substantially exacerbated by the mandatory minimum sentence, three strikes, truth-in-sentencing, life without possibility of parole, and similar laws enacted in the 1980s and 1990s. All of these laws mandate especially severe—in recent decades unprecedentedly severe—punishments for offenses for which black and Hispanic people often are disproportionately arrested and convicted”).

66. See, e.g., Paul Butler, *The System is Working the Way it is Supposed to: The Limits of Criminal Justice Reform*, 2019 FREEDOM CTR. J. 75, 81 (2020); Akbar, *Abolitionist Horizon*, *supra* note 18, at 1838-39.

67. See, e.g., SIMON, *supra* note 31, at 4 (discussing tendency of elected officials and interest groups to deploy the category of crime in order to legitimate other motivations because combatting crime can achieve majority support even when the issue may otherwise be polarizing).

68. KABA, *supra* note 26, at 125.

felony convictions from voting.”<sup>69</sup>

Promoting the use of police in schools on the grounds that police make good mentors and role models to students<sup>70</sup> is a further normalization of carceral logic. It is otherwise a wholly insensible use of public funds to pay police officers, often carrying handcuffs and guns—and always with the power to arrest—to promote students’ healthy emotional and social growth, especially given that this comes at the expense of having trained counselors, mental health professionals, and social workers carry out this critically important work.

We accept uncritically the use of policing to promote these myriad objectives only because, as Jonathan Simon has written, in the modern era crime has become the lens “through which other problems are recognized, defined, and acted upon.”<sup>71</sup> Essentially, once carceral logic was embedded into our psyches and our systems, it was easy to normalize the introduction of coercion and control to educational, employment, and other settings. It has been easier still to double down on police violence and intrusion given the ever-broadening sphere of conduct deemed “criminal.” Further increasing tolerance for an expansion of police powers and their severity is that, as discussed below, carceral logic has fully infiltrated our country’s most foundational—and only national—framework for police conduct: Supreme Court opinions setting out the constitutional parameters for police conduct.<sup>72</sup>

The above discussion has set out how carceral logic undermines efforts to achieve true public safety, and how this focus on punishment and control has permeated a broad range of our relationships with one another. I have also outlined how this logic both reflects and reinforces the structural racism and economic inequality that are defining features of our country’s history. The next section sets out how to apply this understanding to police transformation efforts.

#### IV. WORKING TOWARD PUBLIC SAFETY AND POLICING WITH A FOCUS ON ABOLISHING CARCERAL LOGIC

The impact of carceral logic on policing is profound. Carceral logic explains why we accept the racially disparate outcomes policing generates, and why policing as a whole operates as it does. It explains why, for example, we tolerate so many police stops, searches, arrests, and uses of force in the first place, despite the lack of research showing this approach works to keep communities safer, and despite much evidence of its harms. Carceral logic explains why policing has become militarized,<sup>73</sup> why we tolerate the use of the criminal system to raise

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69. *Id.*

70. POLICE FOUND., A TOOLKIT FOR CALIFORNIA LAW ENFORCEMENT: POLICING TODAY’S YOUTH: DEFINING THE ROLE OF SCHOOL-BASED POLICE OFFICERS 3 (2016), <https://perma.cc/S5VY-ZGDK>.

71. SIMON, *supra* note 31, at 13.

72. *See, e.g.*, Allegra M. McLeod, *Police Violence, Constitutional Complicity, and Another Vantage*, 2016 SUP. CT. REV. 157 (2016).

73. Charlotte Lawrence & Cyrus J. O’Brien, *Federal Militarization of Law Enforcement*

revenue,<sup>74</sup> and why we have allowed this coercive arm of the state to take up such a large swath of our public safety response, even as we entirely overlook the bulk of communities' public safety needs.

When we accept that the carceral logic underlying our current approach to policing is illegitimate, undermines efforts to make public safety more effective, and both reflects and reinforces deeper, broader, American pathologies, it becomes clear that we must do more than focus on the outcomes of the carceral logic. Rather, we must center our efforts on eradicating the underlying logic.

This is no small task. As Amna Akbar has framed it:

We can continue to advance a reform agenda that treats the police as an aberrant institution—an exception, rather than a feature, of how we govern—and therefore continue to debate how to invest in police to more effectively deploy their violence. Or, we can face the enormity of undoing the carceral state as a product of our history and a feature of our political economy. We can embrace the collective labor of building a society not of punishment but of social provision and collective care.<sup>75</sup>

As noted at the outset, eradicating carceral logic may not do all the work that abolitionists envision in “undoing the carceral state,” in Akbar’s words. But it is a big lift on its own. It is, however, not only worth the effort, but is also necessary to fundamentally transform policing while ensuring that the current undesirable aspects and unnecessary harms of policing do not recur in new entities, systems, or processes.<sup>76</sup>

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*Must End*, ACLU (May 12, 2021), <https://perma.cc/UH99-869S> (reviewing how the Federal program known as 1033 has allowed the transfer of more than \$7 billion dollars of military equipment to local police forces since 1996); Jonathan Mummolo, *Militarization Fails to Enhance Police Safety or Reduce Crime but May Harm Police Reputation*, 115 PROC. NAT’L ACAD. SCI. 9181 (2018).

74. As the Civil Rights Division of the Department of Justice and others have documented in Ferguson and elsewhere, these practices are a blatant example of deploying police to use legal authority not for legitimate public safety reasons, but rather to perpetuate a racialized social order and balance city budgets on the backs of residents who are members of politically and economically marginalized groups. See FERGUSON REPORT, *supra* note 46; LAWS.’ CMTE. C.R. S.F. BAY AREA, NOT JUST A FERGUSON PROBLEM: HOW TRAFFIC COURTS DRIVE INEQUALITY IN CALIFORNIA (2015), <https://perma.cc/6VLR-UCFW>; ARCHCITY DEFENDERS, MUNICIPAL COURTS WHITE PAPER (2019), <https://perma.cc/2L6H-NAMX>. See also Akbar, *Abolitionist Horizon*, *supra* note 18, at 1793 (noting that “Ferguson is an exemplar rather than an aberration in its targeting of poor people for fines and fees,” and discussing how monetary penalties “are a feature of every stage of the criminal process” and they are enforced with “further economic and carceral sanctions,” in such a way that the “immense powers of police to stop, frisk, cite, arrest, brutalize, and shoot are” integrated with the institutional need for revenue).

75. Akbar, *Abolitionist Horizon*, *supra* note 18, at 1838. As argued *supra*, whether a society built on social provision and collective care rather than punishment has *any* space for “police,” is a question it is not necessary to answer before accepting the need to abolish carceral logic.

76. I do not argue for centering the idea of abolishing carceral logic rather than defunding

Below I discuss four elements of an approach to policing transformation that center on abolishing carceral logic. First, I argue that “defunding the police” should be an outcome, not the goal. Relatedly, the continued existence of something called “policing” is less important than ridding policing of its carceral logic. Second, we must create alternative social supports and must do so in tandem with reducing the scope of policing. Third, we must be intentional and relentless about ensuring that carceral logic does not replicate or persist in new systems and entities that replace police responses. Finally, we must accept that, at least in the near term, and perhaps forever, we will have some form of policing, and therefore must engage directly with police officers and agencies to eradicate the carceral logic within policing itself. This approach would allow us to transform policing so that policing is but one part of a public safety system that is ethical, empathetic, equitable—and more effective at keeping the public safe.

#### A. Defunding the Police: Objective or Outcome?

The call to defund the police is perhaps most broadly understood as using budget reductions *as the levers* through which to force dramatic change in the scope, purpose, and impact of policing.<sup>77</sup> A focus on ridding the system of its underlying carceral logic underscores that we should *first* determine what we want public safety and policing to be once it is rid of that logic and *then* determine what the police budget should be.

Advocating for a system rid of its carceral logic rather than one broadly premised on “defund” makes it harder for policy makers to make symbolic or

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the police under any illusion that abolishing carceral logic is easier, or necessarily more politically palatable, than defunding the police. Rather, for the reasons outlined above and discussed more fully below, it seems to me that this pathway, illuminated by generations of abolitionists and consistent with my own experience doing this work, is the truer course for those serious about eliminating the unnecessary violence and intrusion, race and economic disparities, and other harms to marginalized people and groups that policing currently generates.

77. See Paige Fernandez, *Defunding the Police Will Actually Make Us Safer*, ACLU (June 11, 2020), <https://perma.cc/56SB-Q6V4> (“By shrinking their massive budgets, we can help end decades of racially driven social control and oppression as well as address social problems at their root instead of investing in an institution that further oppresses and terrorizes communities.”); 8TOABOLITION, *Defund*, *supra* note 19 (making “defund police,” which includes “demand the highest budget cuts per year, until they slash police budget to zero” the first step on the road to abolition); Philip V. McHarris and Thenjiwe McHarris, *No More Money for the Police*, N.Y. TIMES (May 30, 2020), <https://perma.cc/SUZ2-6WXF> (“Municipalities can begin by changing policies or statutes so police officers never respond to certain kinds of emergencies, including ones that involve substance abuse, domestic violence, homelessness or mental health. Instead, health care workers or emergency response teams would handle these incidents.”); Kaba, *Literally Abolish*, *supra* note 19 (“Regardless of your view on police power—whether you want to get rid of the police or simply to make them less violent—here’s an immediate demand we can all make: Cut the number of police in half and cut their budget in half. Fewer police officers equals fewer opportunities for them to brutalize and kill people.”).

temporary cuts to policing without sufficiently investing in communities and social services—a dynamic we currently see playing out across the country.<sup>78</sup> A defund-first strategy, on the other hand, facilitates public officials using reductions in policing to balance budgets rather than to facilitate more equitable and effective public safety. Officials can answer calls to “defund the police” and claim they are doing the people’s will without putting a penny into the services those same people are demanding. There is a long history in this country of public officials responding to calls for change by divesting in the disputed function without reinvesting these resources as necessary to maintain or improve community health and safety.<sup>79</sup> Indeed, this is a factor in how we came to have police responding to so many calls regarding persons in mental health crisis—we (appropriately) stopped over-relying on large state hospitals to house and provide care to persons with mental illnesses, but we did not reinvest those resources in a public mental health system.<sup>80</sup> Further, carceral logic predicts—and experience shows—that when police reduce activity and services based on blunt budget cuts, they tend to cut the “softer” elements, e.g. community collaboration efforts, while keeping the “harder” elements, like SWAT teams and K9s. As Professor James Forman often notes, communities demanding criminal system reform have historically been provided a quarter loaf of reforms rather than the full loaf needed—and it tends to be the punitive quarter.<sup>81</sup>

Relatedly, a pure budget cut is much easier to reverse than actual structural change.<sup>82</sup> Reversion will be much more difficult, and less attractive, if the logic

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78. See, e.g., *How ‘Defunding Police’ is Playing Out in Austin, Texas*, NAT’L. PUB. RADIO (Feb. 22, 2021, 5:01 PM), <https://perma.cc/9DGN-LSWY> (describing the majority of cuts to police budget as “just a reshuffling.”); Fola Akinnibi et al., *Cities Say They Want to Defund the Police. Their Budgets Say Otherwise.*, BLOOMBERG CITYLAB (Jan. 12, 2021), <https://perma.cc/XNC8-M65U> (noting, among other faltering stops, that Minneapolis’ budget cut police overtime and created alternatives to police responses but included plans to expand officer recruitment in 2022); Dakota Smith & David Zahniser, *L.A. Cut Millions from the LAPD After George Floyd. Here’s Where That Money is Going*, L.A. TIMES (May 26, 2021, 5:00 AM), <https://perma.cc/YE8G-FQK3>.

79. See, e.g., FORMAN JR., *supra* note 65, at 157-58; Molly Kaplan, *Why Are Police the Wrong Response to Mental Health Crises?*, ACLU (Oct. 8, 2020), <https://perma.cc/Z6L9-PKQG> (quoting Gregg Bloche as saying “when the institutionalization was sold to state legislatures, it was sold primarily as a budget cutting method. Had we done it right and provided this kind of comprehensive outpatient support and care, then it might have been, it could have been budget neutral. But it was sold as a way to save money”); Simone Weichselbaum & Nicole Lewis, *Support for Defunding the Police Department Is Growing. Here’s Why It’s Not A Silver Bullet.*, MARSHALL PROJECT (June 9, 2020, 6:00 AM), <https://perma.cc/C3RJ-JQVZ> (noting that in Memphis, previous police department reductions after the Great Recession led to increased civilian complaints of excessive police force).

80. See Kaplan, *supra* note 79; Sasha-Ann Simons, *IA Across America: Unpolicing Mental Illness*, NPR (June 30, 2020, 4:03 PM), <https://perma.cc/F9RK-B4JX> (“Law enforcement officials have become the de facto facilitators of mental health care in America, according to a survey of law enforcement officials from last year.”).

81. Jamiles Lartey, *‘Demolish That Lie’: James Forman Jr Takes on Black Lives Matter Backlash*, THE GUARDIAN (Apr. 29, 2017, 7:00 AM), <https://perma.cc/C3LQ-F87T>.

82. Zusha Elinson, Dan Frosch, and Joshua Jamerson, *Cities Reverse Defunding the Police Amid Rising Crime*, WALL ST. J. (May 26, 2021, 5:58 PM), <https://perma.cc/L9YQ-F9KM>.

has changed to the extent that policing is reconfigured and other, more effective community and government structures have been put in place and are more effectively protecting public safety.

A second reason for letting policy changes drive budget cuts rather than the reverse is that we have learned that cutting police budgets without carefully considering and attending to the policy ramifications *before* the cuts are made can diminish public safety even as it increases police misconduct. It is simply not the case that fewer police necessarily means less police violence.<sup>83</sup> There are many examples of fewer police wreaking greater havoc. In one relatively well-known example, Vallejo, California cut its police force nearly in half in response to the 2008 financial crisis. The number of fatal shootings by police skyrocketed, as did other forms of misconduct and crime rates more generally.<sup>84</sup> Activists point out that this reduction in policing was not accompanied by increases in community supports and services they envision. This is true. And it underscores the need to use community investment, pursuant to a new logic for public safety, rather than budget cuts, as the foundation for change.

If we focus on abolishing the carceral logic rather than on defunding the police as the primary driver for transformation, we center two touchstones to which we must be constantly attentive if we are to achieve sustainable, fundamental change to policing: first, that racial bias has played a central role in creating the policing that we have, and has done so to the detriment of public safety. Second (and relatedly), to fix policing, you must look outside policing.

Focusing on ridding policing of its carceral logic thus does not make the idea of defunding or divesting from policing erroneous or unimportant. It does, however, mean that we view divesting from policing neither as the goal of transformation efforts, nor as a strategy to drive change. Rather, defunding and divestment become one outcome of those efforts and, as such, one that may vary in degree and type in different places.

## B. Decenter Police as the Primary Problem-Solvers

As we determine what community safety and wellbeing, including policing rid of carceral logic, would look like, we should be mindful of the pitfalls of past efforts. At times, police reformers have attempted to address the current mismatch between the policing tool and the public safety need by addressing public safety “more capaciously” as Friedman puts it, but doing so by giving police a

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83. *Contra, e.g.*, Kaba, *Literally Abolish*, *supra* note 19 (“Fewer police officers equals fewer opportunities for them to brutalize and kill people.”).

84. Peter Jamison, *This California City Defunded Its Police Force. Killings by Officers Soared.*, WASH. POST (June 23, 2020, 6:00 PM), <https://perma.cc/C6G6-VP8A>; Shane Bauer, *How a Deadly Police Force Ruled a City*, NEW YORKER (Nov. 16, 2020), <https://perma.cc/N3F4-U75Y>; Stephen Stock et al., *Vallejo Police Have Highest Rate of Residents Shot Per Capita in Northern California; NBC Bay Area Probes Causes*, NBC BAY AREA (May 18, 2019, 4:17 PM), <https://perma.cc/A7PJ-2DEU>. *See also* Weichselbaum & Lewis, *supra* note 79.

broader set of tools to address a wider range of activity that makes communities feel unsafe or insecure, and to prevent serious crime before it occurs. Pursuant to this approach, police are asked to take the central role as “problem-solvers” for a broad host of social needs. Indeed, this type of policing is called “problem-oriented” or “problem solving” policing.<sup>85</sup>

Problem solving policing, and its close and more controversial cousin, “broken windows” policing,<sup>86</sup> expand the scope of police responsibility far beyond interrupting ongoing harm or investigating crimes that occurred previously. Rather, police are charged with enforcing very low-level laws—enforcing social norms is also tacitly condoned—in order to prevent “disorder,” improve a neighborhood’s “quality of life,” and head off more serious crimes. Thus, police are charged with ensuring that broken windows are fixed; that vacant lots are cleaned up; that unsheltered persons are not sleeping on stoops; and that unruly teens are not hanging out on corners or other public spaces in a way that makes other residents less likely to use those same community spaces.

But because carceral logic is so pervasive, as policing takes on these additional, seemingly community-caretaking functions, we generally do not see policing becoming less carceral, or improving the quality of life for many of those most in need of assistance. Rather, we see social problems become criminalized, and policing, with the attendant guns, handcuffs and unique power of state coercion, seeping more broadly into government services and regulation. As a result, as campaigns to end the “criminalization of poverty” highlight, we have increasingly developed coercive, carceral responses to homelessness, drug addiction, mental health crises, and neglected children, even though individuals facing these challenges could be supported far better, and the attendant harms reduced, with a non-criminal response.<sup>87</sup> Following this path, we have come to the point where governments routinely respond with criminal penalties for even the most minor of infractions, running the gamut from individuals’ failure to secure car insurance, cut their grass, or pay a parking ticket, to teenagers talking back or failing to do their homework.<sup>88</sup>

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85. *Problem Solving*, U.S. DEP’T JUST., <https://perma.cc/4J5P-TN2R> (last visited Aug. 30, 2021); *What is Problem-Oriented Policing?*, GEO. MASON UNIV., <https://perma.cc/5XVW-JX3K> (last visited Aug. 30, 2021) [hereinafter *Problem-Oriented Policing*].

86. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1982), <https://perma.cc/T5MH-U3TQ>; Sarah Childress, *The Problem with “Broken Windows” Policing*, PBS FRONTLINE (June 28, 2016), <https://perma.cc/JS2N-2GN8>; *Problem-Oriented Policing*, *supra* note 85.

87. See, e.g., PETER EDELMAN, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* (2019); DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2009); Jeff Yungman, *The Criminalization of Poverty*, GPSOLO MAG. (Jan. 2019), <https://perma.cc/ST2E-D5WR>; *Eliminate the Criminalization of Poverty*, OPPORTUNITY AGENDA (last visited Aug. 30, 2021), <https://perma.cc/M4TB-K2Q4>; *Criminalization of Poverty as a Driver of Poverty in the United States*, HUM. RTS. WATCH (Oct. 4, 2017), <https://perma.cc/6NXY-3XHA> (finding that the criminalization of poverty drives further poverty); Alan J. Borsuk, *Patrick Sharkey: Keep the Police, But Add a Corps of Problem Solvers*, MARQ. UNIV. L. SCH. FACULTY BLOG (July 23, 2020), <https://perma.cc/6CUZ-DGM2>.

88. See, e.g., FERGUSON REPORT, *supra* note 46; KRISTIN HENNING, *THE RAGE OF*



Recognizing the carceral logic that underlies the status quo pursuit of public safety helps us understand why it was a doomed effort to use police to secure broad community safety and wellbeing, regardless of any good intentions. It helps us understand why we came to the rather odd conclusion that a broken window and any community degradation it causes is best addressed by hiring more police officers rather than paying to repair the window and enabling communities to keep more windows intact. Further, recognizing that this logic persists helps us understand why “broken windows” policing, as applied, tends to be punitive towards, rather than protective of, Black and Latine people.<sup>89</sup>

We will simply perpetuate this futile effort if we commit to defining community needs more broadly than traditional “crime prevention” but continue to assign to police the primary responsibility for meeting this broader set of public safety needs. Many communities are already headed in this wrong direction. For example, some police departments hire and deploy their own social workers or mental health professionals.<sup>90</sup> Similarly, creating whole-city partnerships to address community challenges, including the challenge of gun violence, while centering police to lead those efforts<sup>91</sup> elevates and centers the coercive arm of the state as the primary response to what is essentially a public health problem. In so doing these “partnerships” perpetuate carceral logic.<sup>92</sup>

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INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH (2021); Jodi S. Cohen, *A Teenager Didn't Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention.*, PROPUBLICA (July 14, 2020), <https://perma.cc/V7ZQ-M38R>; Philip V. McHarris, *Community Policing is Not the Answer*, *The Appeal* (Dec. 2, 2019), <https://perma.cc/N2DZ-H9R6>.

89. VITALE, *supra* note 36, at 5-7 (charting the historical development of “broken windows” policing, and how it was designed “to empower the police to not just fight crime, but to become agents of moral authority on the streets” against perceived cultural deficiencies of certain urban populations); BERNARD E. HARCOURT, *ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* (2001). The original proponents for “broken windows” policing knew this approach was likely to result in unnecessary racial disparities, but it became the predominant approach to police for decades anyway. The “oh well” attitude is striking. Kelling & Wilson, *supra* note 86 (“The concern about equity is more serious. We might agree that certain behavior makes one person more undesirable than another but how do we ensure that age or skin color or national origin or harmless mannerisms will not also become the basis for distinguishing the undesirable from the desirable? How do we ensure, in short, that the police do not become the agents of neighborhood bigotry? We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer except to hope that by their selection, training, and supervision, the police will be inculcated with a clear sense of the outer limit of their discretionary authority. That limit, roughly, is this—the police exist to help regulate behavior, not to maintain the racial or ethnic purity of a neighborhood.”).

90. See, e.g., Josh Wood, *The US Police Department that Decided to Hire Social Workers*, *THE GUARDIAN* (Sept. 19, 2020, 5:00 PM), <https://perma.cc/J9UL-4PZS>.

91. David McFadden, *Baltimore's Mayor Unveils New Violence Prevention Plan*, *ASSOCIATED PRESS* (July 23, 2021), <https://bit.ly/3zienEn> (quoting Police Commissioner Michael Harrison’s announcement of new plan that combines ““effective policing”” with “other approaches”).

92. To be clear, under this rubric police not only should, but must, train officers in mental health response, and should participate in co-response mental health responses to mental health crises that would otherwise require a police response due to the presence of a deadly weapon or similar ongoing threat of serious violence. See, e.g., D.C. POLICE REFORM COMM’N,

We also must recognize that *augmenting* policing with social service programs is not enough because this will not undo the carceral logic. The purpose of narrowing policing's scope is not simply to create resources and space for alternatives. As discussed in the final section of this essay, reducing policing's scope is necessary in part because policing is inherently coercive and a coercive response to social challenges must be narrowly tailored to the immediate threat if we are to eradicate carceral logic. We should therefore, to the extent possible, *replace* policing with social services—both government and community-driven—rather than simply add on such services to the current policing structure.

In sum, a path towards effective public safety requires that we reject carceral logic and “reconceptualize[e] prevention”<sup>93</sup> by replacing the current carceral approach that centers policing with non-police social programs—both government-run and community-run—that create healthier communities in which there is less need and therefore less harm. This path recognizes the primary import *to community health and safety* of trees and parks, recreational opportunities, access to nutritious food, and clean air and water alongside the import of safe housing and schools, improving care for all children, steady income, and access to medical and mental health care.<sup>94</sup> Most importantly, it recognizes that police are not the best government workers to do—much less lead—any of this. This approach would help prevent people and communities from falling into crises and thus reduce the need for a coercive or carceral response, allowing communities to avoid harm and thrive. When crises and emergent problems do occur, they would usually be resolved by community or government responders who are unarmed and do not have, or need, the power to arrest or use force. It is public safety logic centered on care rather than coercion.

### C. Ensure that Alternatives to Policing do not Replicate or Perpetuate a Carceral Approach

In tacit recognition that we need to decenter police as the primary protectors

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DECENTERING POLICE TO IMPROVE PUBLIC SAFETY: A REPORT OF THE DC POLICE REFORM COMMISSION 39 (2021) [hereinafter D.C. POLICE REFORM COMM'N] (recommending a behavioral/police co-response model to be deployed “in situations where an individual in crisis has a weapon or for some other reason poses a significant danger to others”).

93. McLeod, *Prison Abolition and Grounded Justice*, *supra* note 30, at 1224.

94. *Id.* at 1169, 1225-26, 1230-31; Akbar, *Abolitionist Horizon*, *supra* note 18, at 1834-37; Elizabeth Glazer & Patrick Sharkey, *Social Fabric: A New Model for Public Safety and Vital Neighborhoods*, SQUARE ONE PROJ., <https://perma.cc/V5NW-ES7U> (last visited Aug. 30, 2021) (“Instead of police accreting more and more civic functions, local governments should knit together the resources shown to improve safety—from employment to vibrant public spaces. Under disciplined leadership, these services, of which police are one, should work arm in arm with the other institutions also present in neighborhoods every day—neighborhood groups and families—that play an important role in defusing violence.”); D.C. POLICE REFORM COMM'N, *supra* note 92, at 61-64 (discussing lack of housing, including for survivors of domestic violence and youth aging out of foster care, as a driver of crime, violence, and harm in the District of Columbia); Emily Peiffer et al., *Housing First Breaks the Homelessness-Jail Cycle*, URB. INST. (July 15, 2021), <https://perma.cc/S4HU-RFNC>.

of public safety, the most prominent and readily accepted reform proposals of late have revolved around creating alternatives to police to address a broad spectrum of public safety needs, from responding to mental health crises, to promoting traffic safety, and extending even to preventing gun violence.<sup>95</sup> These proposals have received some pushback but are largely supported, at least in theory.<sup>96</sup> Even police are telling us that they are trying to be too many things to too many people.<sup>97</sup> There is growing consensus that no single set of actors could perform the myriad tasks we demand of the police, and that many actors would do a better job performing many of those functions than the police do.<sup>98</sup>

This is an enormously important shift that is essential to creating a well-functioning public safety system. But it will not have the long-term impact we seek unless we heed the abolitionist call to abolish carceral logic. As we build and invest in these alternatives to policing to address our public safety needs, we must keep in mind that carceral logic extends far beyond policing.

Most fundamentally, we should be clear that replacing “police” with another public sector worker will not necessarily reduce harm. The harmful impact of any intervention, government or otherwise, on individuals and families, especially Black and Latine families, will persist as long as it continues to be ani-

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95. Among innumerable examples, see Dakota Smith, *Unarmed Specialists, Not LAPD, Would Handle Mental Health, Substance Abuse Calls Under Proposal*, L.A. TIMES (June 16, 2020, 4:41 PM), <https://perma.cc/B3VL-9R9X>; JACKSON BECK ET AL., VERA INST. JUST., BEHAVIORAL HEALTH CRISIS ALTERNATIVES: SHIFTING FROM POLICE TO COMMUNITY RESPONSES (2020), <https://perma.cc/4PUY-EAKC> (discussing programs in Eugene, OR, Olympia, WA, and Phoenix, AZ); Katheryn Houghton, *In Montana, Crisis Support Teams Offer Alternatives to Policing Mental Health*, NPR (June 10, 2021, 5:00 AM), <https://perma.cc/N6MA-KM6H>; Jordan Blair Woods, *Traffic Without the Police*, 73 STAN. L. REV. 1471 (2021); Kellen Browning & Jill Cowan, *How Berkeley Could Remove the Police from Traffic Stops*, N.Y. TIMES (July 9, 2020), <https://perma.cc/YF8D-MNH3>; JOHN JAY COLL. RSCH. ADVISORY GRP. ON PREVENTING & REDUCING CMTY. VIOLENCE, REDUCING VIOLENCE WITHOUT POLICING: A REVIEW OF RESEARCH EVIDENCE (2020), <https://perma.cc/83J8-VHFS>.

96. Emma Coleman, *When Cities Replace Police with Social Workers*, MS. MAGAZINE (July 9, 2020), <https://perma.cc/DZM6-EPPV> (noting one professor of social work who felt that “social workers aren’t immediately ready to begin answering 911 calls,” as well as push back from police departments); Press Release, Justice Collaborative, REPORT: The Public Wants Non-Law Enforcement Emergency First Responders (June 22, 2020), <https://perma.cc/QG8Q-ABYW> (noting that 68% of individuals supported a program of non-law enforcement emergency responders); Evan Mintz, *New Polling Finds Extraordinary Bipartisan Support for Policing Reforms*, ARNOLD VENTURES (Aug. 25, 2020), <https://perma.cc/6A5E-666T> (finding 71% of those polled felt incidents involving people with mental health problems were best addressed by professionals other than police officers).

97. Brady Dennis et al., *Dallas Police Chief Says ‘We’re Asking Cops To Do Too Much in This Country’*, WASH. POST (July 12, 2016, 7:56 PM), <https://perma.cc/92NG-KYMQ> (quoting David Brown, then-Dallas Police Chief, as saying “‘Every societal failure, we put it off on the cops to solve. Not enough mental health funding, let the cops handle it. . . . Schools fail, let’s give it to the cops. . . . That’s too much to ask. Policing was never meant to solve all of these problems.’” (second omission in original)).

98. Barry Friedman, *Disaggregating the Policing Function*, 169 U.PA.L. REV. 925, 925-26 (2021); D.C. POLICE REFORM COMM’N, *supra* note 92.

mated by carceral logic. Activists have, for example, long documented and decried the racist and punitive nature of child welfare systems.<sup>99</sup> Indeed, scholar and activist Dorothy Roberts suggests referring to the child “welfare” system as the “family regulation system” or “family policing system,” and has urged abolishing the system and replacing it with more effective, compassionate ways of addressing harm and supporting families.<sup>100</sup>

Anecdotally, I have listened to many police officers express concern about the harsh and demeaning treatment that they observed mental health or social workers direct towards individuals in mental health crisis or in need of shelter as the officer handed off the individual for “care.” Indeed, I have directly observed, in my decades working at the nexus of law enforcement and mental health care—especially in jails and prisons—systems in which many law enforcement officers showed more compassion for imprisoned people struggling with mental illness than did the mental health professionals assigned to care for them. I learned early on in my work seeking to reform police and corrections agencies that it is systems—and the logic that drives those systems—that dictates how people are treated, more so than the name of the system or the proclivities of the individuals who work in those systems. Some social workers themselves have recognized the existence of “carceral social work” and are developing and implementing anti-carceral interventions to combat this dynamic.<sup>101</sup>

Drug courts are an example of how new systems may replicate old problems if we do not work intentionally to rid them of their carceral logic. Drug courts have been touted as (and likely are genuinely intended to be) rehabilitative rather than punitive, and a mechanism to reduce race disparities in jails and prisons. But those creating drug courts generally have not confronted the carceral logic of the criminal legal system, much less established a commitment to ensuring that any rehabilitative alternative rejects that logic. Drug courts operate pursuant to the same logic as the courts they replace. As a result, they disproportionately

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99. See, e.g., ROBERTS, *supra* note 87, at 17 (discussing racism in child welfare systems including, for example, that white children who are abused or neglected are twice as likely as Black children to receive services in their own homes, avoiding the emotional damage and physical risks of foster care placement. “Put another way, most white children who enter the system are permitted to stay with their families, whereas most Black children are taken from theirs.”). As Derecka Purnell tweeted, “My first foster home was so problematic. The second foster home was very violent. My mom’s home was safe. Her issue was that she was poor and suffered from capitalism. She needed resources, not removal.” Derecka Purnell (@dereckapurnell), TWITTER (July 2, 2020, 8:26 PM), <https://perma.cc/9LKJ-MRRH>.

100. ‘Abolition Is the Only Answer’: A Conversation with Dorothy Roberts, RISE (Oct. 20, 2020), <https://perma.cc/85UD-HLGY>; see also ROBERTS, *supra* note 87, at 274-75.

101. Leah A. Jacobs et al., *Defund the Police: Moving Towards an Anti-Carceral Social Work*, 32 J. PROGRESSIVE HUM. SERVS. 37, 37 (2021) (rejecting “coercive and punitive practices” that are used by social workers collaborating with police to manage BIPOC and poor communities in the areas of gender-based violence, child welfare, schools, and health/mental health; discussing examples of anti-carceral interventions “that dismantle police collaborations and point to life-affirming, community-centered, and mutual aid alternatives;” and providing recommendations to social work educators and practitioners on how to do anti-carceral social work).

lasso non-white people into the criminal legal system—and keep them there—under the guise of “diversion” from prison or jail, even though most of these individuals would not have been incarcerated even if there were no drug court system.<sup>102</sup> The old logic in a new form has had the effect of expanding punishment, control, and surveillance, and this carceral expansion has disproportionately impacted Black people, even as the drug court system has proved largely ineffective at addressing addiction.<sup>103</sup>

In short, shifting social services from police to other entities is the relatively easy part.<sup>104</sup> The far more difficult task will be ensuring that we rid policing alternatives of their animating carceral logic as well. Otherwise, as other government, or even private, actors take up the functions that policing currently serves, they will replicate many of policing’s same harms and create new ones.

#### D. Scrub the Laws at Every Level of their Carceral Logic

Particularly of late, there has been no shortage of writing and discussion regarding the need to change the law to change policing.<sup>105</sup> I will not reiterate that discussion here. But it is worth emphasizing that transforming policing and public safety cannot happen without transformative legal change—including to laws that may seem only tangentially related to policing and public safety. This is in part because law—whether in the form of judicial opinions or laws and ordinances passed by legislative bodies at the federal, state, and local levels—puts the imprimatur of legitimacy on government and private conduct. In so doing, the law, as long as it remains itself imbued with a carceral logic, acts to perpetuate and justify that logic, both as implemented via official authority and through

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102. See Micah R. Herskind, *New Jersey’s Drug Courts: Carceral Expansion in the Name of Rehabilitation* (May 15, 2018) (undergraduate thesis, Princeton University) (on file with author) (arguing that the “unspoken racial politics” of drug courts and the reality of a disproportionately-Black prison population caused drug courts to be unduly punitive rather than treatment-oriented and to disproportionately divert white people from prison and carceral oversight, despite reformers “rhetorically positing[ing] drug courts as a tool for reducing racial disparities.”).

103. See *id.* at 3 (citing the “growing academic literature” challenging the efficacy of drug courts at either reducing addiction or involvement with the criminal legal system); see also Zhandarka Kurti & Jarrod Shanahan, *Rebranding Mass Incarceration: The Lippman Commission and Carceral Devolution in New York City*, 45 SOC. JUST. 25, 26-27 (2018) (arguing that cities and states can achieve “substantive decarceration” (defined as the state-sponsored closing down of prisons), even as “the carceral net widens and expands, representing not an alternative to mass incarceration but a mutation and, in ideological terms, a rebranding.”).

104. Even former NYPD Commissioner Bill Bratton, in a strikingly histrionic N.Y. Post opinion piece urging “re-funding” the NYPD, conceded that “[t]he profession is more than willing to cede responsibility for the social services it is now providing.” Bill Bratton & Peter Knobler, *Bill Bratton: Defund the Police? Insane – We Need to Re-Fund Them*, N.Y. POST (June 16, 2021, 6:39 PM), <https://perma.cc/A899-JGZ6>.

105. See, e.g., FRIEDMAN ET AL., *CHANGING THE LAW TO CHANGE POLICING: FIRST STEPS* (2020); Roberts, *supra* note 26.

informal norms. More concretely, the law both constrains efforts at transformation, and condones—sometimes even requires—public safety approaches premised on carceral logic.

One substantial hindrance towards the necessary dramatic legal change is that the foundational regulation of policing occurs at the Supreme Court level, and Supreme Court precedent is glacially slow to change—even without the compounding difficulty of doctrines like qualified immunity.<sup>106</sup> This is problematic because Supreme Court precedent causes unnecessary harm and undermines public safety through its perpetuation of carceral logic. This logic has resulted in the Court granting police what Professor Paul Butler calls “superpowers” that can be used against everyone, but were designed with Black and Latine people in mind.<sup>107</sup>

Indeed, even Supreme Court Justices have connected the dots between the Court’s carceral logic and police practices. Justice Sonia Sotomayor called out the Court’s contributions to carceral logic, and obliquely referred to the origins of that logic, in her extraordinary dissent to the Court’s opinion in *Utah v. Strieff*. Justice Sotomayor wrote that when the Court condones officers’ use of the “array of instruments” the Court has provided them to “probe and examine you,” it risks “treating members of our communities as second-class citizens.” Justice Sotomayor went on to discuss the various ways the Court has authorized police to “control” people, including by stopping them, asking for their “consent” to be searched, and much more:

[I]f the officer chooses he may handcuff you to take you to jail for doing nothing more than speeding, jaywalking or driving your pickup truck with your 3-year-old-son and your 5-year-old daughter without your seatbelt fastened. At the jail he can fingerprint you, swab DNA from the inside of your mouth, and force you to shower with a delousing agent while you lift your tongue, hold out your arms, turn around, and lift your genitals. Even if you are innocent, you will now join the 65 million Americans with an arrest record and experience the “civil death” of discrimination by employers, landlords, and whoever else conducts a background check. And, of course, if you fail to pay bail or appear for court, a judge will issue a warrant to rend you ‘arrestable on sight’ in the future.<sup>108</sup>

Justice Sotomayor went on to note that “[t]he white defendant in this case shows that anyone’s dignity can be violated in this manner. But it is no secret

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106. Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797, 1814-1820 (2018) (discussing how qualified immunity “renders the Constitution hollow” in part by making it easy for courts to “avoid defining the contours of constitutional rights”).

107. BUTLER, *supra* note 17, at 56.

108. *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting) (internal quotation marks, brackets, ellipses, and citations omitted).

that people of color are disproportionate victims of this type of scrutiny.” She then wrote:

[T]his case tells everyone, white and black, guilty and innocent, that an officer can verify your legal status at any time. It says that your body is subject to invasion while courts excuse the violations of your rights. It implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.”<sup>109</sup>

Justice Sotomayor’s dissent reminds us that, however much the law has normalized the latitude we give to police, such powers are neither normal nor necessary. She reminds us how different the United States is from many other countries where coercion and bodily control is viewed as a relatively small part of a much broader public safety effort, rather than as the essential and primary component of a public safety system.<sup>110</sup> Our legal system, in line with the rest of the country, has refused to own up to or even acknowledge our history and how it brought us to where we are. As a result, we do not recognize that the law allows our policing and public safety to rely on punishment and coercion to this great extent not because that is what communities need to be safe, but because punishment and coercion was required to control the bodily autonomy and economic options of people our country enslaved.

Abolitionists like scholar Allegra McLeod are thus right to argue that breaking from “brutal histories [of racialized violence] and continuing practices will require, among other things, a transformation of our constitutional discourse and imagination.”<sup>111</sup> This transformation is elemental to ridding our public safety system of its carceral logic and should be a non-negotiable objective.

Of course, there is no formal mechanism for advocates and activists to force changes to Supreme Court jurisprudence directly. But constitutional criminal procedure is a floor, not a ceiling, of the protection we can offer to individuals

109. *Id.* at 2071 (Sotomayor, J., dissenting).

110. MARIE GOTTSCHALK, *CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS* 166–195 (2014); Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POL’Y INITIATIVE (June 2018), <https://perma.cc/ER3T-V6CB> (displaying data showing that the United States puts its citizens in jail at a rate higher than any other country in the world, and many times higher than other stable democracies; for example, compare the U.S. per capita incarceration rate of 689 per 100,000 citizens with Israel (265), Poland (199), England and Wales (141), and Germany (78); the majority of U.S. states individually rank higher than all other foreign countries in regard to their rates of incarceration as well, and Massachusetts, the state with the lowest level of incarceration, would still rank ninth if it were its own country); Miriam Berger & Rick Noack, *From Guns to Neck Restraint: How Police Tactics Differ Around the World*, WASH. POST (Apr. 21, 2021), <https://perma.cc/F52Z-RWP7> (In many countries “the police practices that are causing outrage in the United States are either entirely banned or are far more strictly regulated.” For example, police normally do not carry firearms in Norway, New Zealand, Iceland, or Britain. *Id.*)

111. McLeod, *supra* note 72, at 159.

from unnecessary harm and intrusion by state actors. There is plenty that advocates for transformation can and should be doing, especially at the state and local level, to change laws so that we reduce over-reliance on policing to meet our public safety needs and promote systems built on support and care rather than coercion and control. As activists and advocates go about this work, it is important to recognize the enormity of the task. As discussed above, the carceral logic has embedded itself in private relationships and non-governmental norms. Scholars like Jonathan Simon have explored in depth what most of have internalized without even knowing: in America, we govern through crime.<sup>112</sup> This approach to governance both reflects and reinforces carceral logic. As Simon argues, “crime has become so central to the exercise of authority in America, by everyone from the president of the United State to the classroom teacher, that it will take a concerted effort by Americans themselves to dislodge it.”<sup>113</sup>

Abolishing carceral logic can be the touchstone for ensuring that we dig deep enough in the work of remaking state and local laws, including when deciding which criminal violations should be reduced to civil infractions and which should be taken off the books entirely. Being mindful that a carceral logic pervades our criminal legal system should prompt hard questions about whether a particular law seems intended, or at least is used, to facilitate broad police investigation and intrusion rather than to promote public safety. For example, infractions like failing to cross the street at a right angle<sup>114</sup> or hanging items from a vehicle’s review mirror,<sup>115</sup> among thousands of similar prohibitions, ensure that police can effectively stop anyone, anytime they want. Such laws have resulted in the current policing regime in which police spend hundreds of thousands of hours making 20 million traffic stops and over 10 million arrests each year for little public safety payoff—and, every so often, entirely predictable human tragedy.<sup>116</sup> It is carceral logic, not public safety need, that drives criminal regulation of such a broad swath of human behavior. Indeed, a recent analysis of years of data from

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112. SIMON, *supra* note 31.

113. *Id.* at 4.

114. FERGUSON REPORT, *supra* note 46, at 25.

115. Andrés R. Martínez & Edgar Sandoval, *Daunte Wright Spent Final Moments Talking With His Mother*, N.Y. TIMES (Apr. 23, 2021), <https://perma.cc/8V8L-AEPU> (“The police said that Mr. Wright was stopped on Sunday because of an expired registration tag, and that the officers noticed something dangling from the rearview mirror after they pulled him over.”).

116. Emma Pierson et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736 (2020); LAWS.’ CMTE. C.R. S.F. BAY AREA, *supra* note 74; Erik Ortiz, *Inside 100 Million Police Traffic Stops: New Evidence of Racial Bias*, NBC NEWS (Mar. 13, 2019, 5:00 PM), <https://perma.cc/9Y2G-ZN85>; Denise Lavoie, *Daunte Wright: Doting Dad, Ballplayer, Slain by Police*, ASSOCIATED PRESS (Apr. 14, 2021), <https://perma.cc/5BQT-AH7D>; German Lopez, *Philando Castile Minnesota Police Shooting: Officer Cleared of Manslaughter Charge*, VOX (June 16, 2017, 4:15 PM), <https://perma.cc/244M-QSMS>; ShaCamree Gowdy, *It’s Been Five Years Since Sandra Bland Was Found Hanging in Her Texas Jail Cell*, HOUS. CHRON. (July 13, 2020, 5:20 PM), <https://perma.cc/AW69-L4M4>; Matthew Vann & Erik Ortiz, *Walter Scott Shooting: Michael Slager, Ex-Officer, Sentenced to 20 Years in Prison*, NBC NEWS (Dec. 9, 2017, 8:25 AM), <https://perma.cc/2S7N-UCS3>.



cities across the country found that in cities where arrests for low-level offenses decreased, officer shootings decreased as well—and crime neither increased nor was higher than in cities where arrests for low-level offenses remained higher.<sup>117</sup>

Even where criminal laws do appear aimed at a genuine societal need rather than a pretext for surveillance, control, or revenue generation, advocates should consistently question why a particular problem is being addressed via the *criminal* system. Is it because that level of coercion is really necessary? Is it even effective? Or is it simply because the carceral logic has normalized a criminal response where, say, a public health response would be more apt? As noted above, we have criminalized an astounding portion of social problems and normal human behavior in the name of public safety. We criminalize the homeless for sleeping on the street.<sup>118</sup> We build new jails and prisons to house the people we incarcerate for drug addiction, rather than investing in rehabilitation services that would alleviate the long waitlists for such services.<sup>119</sup> We arrest domestic abusers and then fault their partners for returning to them when they are released, even as we make it impossible for them to find safe housing.<sup>120</sup>

Being mindful that carceral logic rather than legitimate public safety need

117. Samuel Sinyangwe, *Cities That Reduced Arrests for Minor Offenses Also Saw Fewer Police Shootings*, FIVE THIRTY EIGHT (July 26, 2021), <https://perma.cc/B69T-L5F2>.

118. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 9-10 (Dec. 2019), <https://perma.cc/VY86-MCFJ> (reviewing the laws in 187 urban areas and finding a significant and increasing criminalization of homelessness); Bidish Sarma & Jessica Brand, *The Criminalization of Homelessness: Explained*, THE APPEAL (June 29, 2018), <https://perma.cc/K6WV-JJK9>; VITALE, *supra* note 36, at 90-107.

119. Press Release, Nat'l Insts. Health, 10 Percent of US Adults Have Drug Use Disorder at Some Point in Their Lives (Nov. 18, 2015), <https://perma.cc/FMA7-5S75> (reporting that approximately 25 percent of people who have had a drug use disorder receive treatment at some point in their lives, with the overwhelming majority of individuals never receiving care; for moderate or severe drug use disorders, only a fifth of individuals with use in the past year received any care); Kimberly Johnson et al., *Receiving Addiction Treatment in the US: Do Patient Demographics, Drug of Choice, or Substance Use Disorder Severity Matter?*, 75 INT'L J. DRUG POL'Y 1 (2020) (analyzing different types of severity and drug use disorders by substance type, and finding that the highest rate of treatment was received by people with severe opioid use disorder, at 55.6 percent, which still leaves slightly less than half of all severe opioid use disorders untreated).

120. Charlene K. Baker et al., *Domestic Violence, Housing Instability, and Homelessness: A Review of Housing Policies and Program Practices for Meeting the Needs of Survivors*, 15 AGGRESSION & VIOLENT BEHAV. 430-31 (2010) (reviewing the numerous intersecting factors that connect domestic violence and housing instability, including insufficient income to live independently, limited availability of affordable housing, ongoing harassment by abusers at survivors' place of work, and discriminatory evictions, among others); *Domestic Violence and Homelessness*, U.S. DEPT. HOUSING & URB. DEV., <https://perma.cc/X4DF-NH2N> (last visited Aug. 30, 2021) (recognizing that persons "experiencing domestic violence, particularly women and children with limited economic resources, are at increased vulnerability to homelessness"); *Domestic Violence and Homelessness: Statistics*, U.S. DEPT. HEALTH & HUM. SERVS. (2016), <https://perma.cc/JDU2-3FGD> (noting that on a given day there may be thousands of requests for housing that cannot be met by shelters, 84 percent of survivors reported needing help with affordable housing, and a substantial portion of homeless women report that domestic violence was the immediate cause of homelessness).

and demonstrated effectiveness explains much of what we have criminalized prompts us to question our own assumptions, demand that lawmakers question theirs, and underscores the breadth and depth of the work to be done to remake our criminal legal system.

E. What do we do about “the police”?

Centering abolishing carceral logic, rather than policing *per se*, as the focus of police transformation efforts has important implications for whether and how to engage with policing as we seek to transform it. I argue that, regardless of where one sits on the spectrum of advocating for change in policing from reform to abolition, we must continue to press for changes within policing itself even as we seek to reduce or eliminate our reliance on policing to keep us safe. I argue further that even if we rid the system of its carceral logic we can ultimately still have “police,” albeit policing that would look very different (and perhaps would be called by a different name) because it would be operating pursuant to an entirely different logic.

We must continue efforts to transform policing itself in part because we will have police for the foreseeable future. There is thus ethical and practical import to working to reduce policing’s harms and make it more effective in the near term. To be sure, as I and others have argued above and elsewhere,<sup>121</sup> any reasonable approach to effective police transformation would shrink the scope of policing and thus result in smaller policing agencies. It also would likely lead to the dismantling of some, possibly a large number, of this nation’s 18,000 law enforcement agencies (90 percent of which have fewer than 50 officers; half of which have fewer than ten).<sup>122</sup> But, given the number of agencies and entrenchment of policing in the American identity, at least for the foreseeable future, policing is here to contend with, and so contend with it we must.

Yet, the defund approach arguably absolves activists from any responsibility for engaging with policing while it continues to exist. Indeed, the abolitionist argument is that such engagement often takes the form of “reformist reforms”<sup>123</sup> or a “repair agenda”<sup>124</sup> that ignores history and distracts from the work that will actually bring about the change communities need. Rather, the argument goes, the work should focus entirely on convincing the public and legislators to shift

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121. See, e.g., Lopez, *supra* note 20; D.C. POLICE REFORM COMM’N, *supra* note 92.

122. *National Sources of Law Enforcement Employment Data*, U.S. DEP’T JUST. 6 (2016), <https://perma.cc/QZC6-29MR>.

123. *Reformist Reforms vs. Abolitionist Steps to End Imprisonment*, CRITICAL RESISTANCE 1 (2021), <https://perma.cc/9CH2-NMK8> [hereinafter *Reformist Reforms*].

124. See, e.g., Akbar, *Abolitionist Horizon*, *supra* note 18, at 1813 (arguing that a failure to see the influence of history has caused scholars to “fail to deal with the centrality of police violence and the larger social, economic, and political contexts in which police have exercised that violence over time,” and to apply a “repair agenda” that “implies the problem of policing is tertiary rather than fundamental, about governance rather than scale, and a departure rather than routine.”).

resources and responsibilities from police to other actors, public or private.<sup>125</sup>

The concerns of abolitionists and their allies—that working to reduce police harm has the potential to bog down activists in ultimately futile reform efforts—are legitimate. But so are concerns that failing to do so will result in avoidable harm, including loss of life and liberty, during the decades spent on the road to abolition. I offer the idea of abolishing carceral logic in part to act as a polestar to successfully navigate this fraught course. It is similar to the idea of seeking “abolitionist reforms” instead of “reformist reforms;”<sup>126</sup> indeed, as discussed at the outset of this essay, it largely stems from these abolitionist concepts. It differs, however, in that the focus is on ridding the system of its logic rather than of any particular structures or systems. As discussed below, this difference has practical implications.

For those seeking to maintain policing (or even just resigned to that likelihood) abolishing carceral logic provides the framework to ensure that efforts go beyond repair and reform and succeed in transforming how policing operates and the impact that it has. Focusing on abolishing carceral logic ensures that we recognize that achieving the policing and public safety we need requires more than culture change. It requires understanding that culture change will never be possible in policing unless the logic underlying that culture is first dismantled. Centering abolishing carceral logic also helps us recognize why “defund,” as many conceptualize it, does not go far enough. We must have fewer police to secure the kind of public safety and community well-being that people need and deserve. But this is not simply because with fewer police we will have more resources to give to other people and entities that can more effectively carry out public safety strategies. It is also because police as currently constituted are the most direct and explicit enforcers of carceral logic. Centering policing in our public safety efforts thus centers carceral logic. We will not be able to dismantle carceral logic until we take policing off that pedestal. As Tracey Meares wrote: “I agree with Kaba: policing *as we know it* must be abolished before it can be transformed.”<sup>127</sup>

But ridding our public safety system of carceral logic does not necessarily mean we must (or even should) get rid of police. As discussed earlier, my conviction that we must change dramatically the scope and logic of policing stems in part from my work trying to reform policing in communities across the country and realizing that these efforts will inevitably fall short unless we remake the underlying logic. But this same work has also convinced me that we *can* have

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125. The conflict in 2020 between Campaign Zero’s #8 Can’t Wait campaign and the 8toAbolition effort is one illustration of this difference. See, e.g., Olivia Murray, *Why 8 Won’t Work: The Failings of the 8 Can’t Wait Campaign and the Obstacle Police Reform Efforts Pose to Police Abolition*, HARV. C.R.-C.L. L. REV. (June 17, 2020), <https://perma.cc/C48F-S6XK>; DeRay Mckesson, *On the Path Toward Police Abolition*, MEDIUM (June 5, 2020), <https://perma.cc/5PZZ-AHBJ>; Adele Peters, *These 8 Steps for Police Abolition Go Further than #8Can’tWait*, FAST CO. (June 10, 2020), <https://perma.cc/CXP3-455P>.

126. *Reformist Reforms*, *supra* note 123.

127. Meares, *supra* note 22 (emphasis added).

police even if we abolish carceral logic—albeit fewer agencies with fewer officers, each of them operating under a narrower scope and, of course, pursuant to an entirely different logic.

While police are the most explicit manifestation of carceral logic, that logic permeates public institutions—and the public. Thus, getting rid of the police is not going to end that logic, or the harms that stem from it. And, as discussed above, history shows us that if the logic remains it will crop up elsewhere—often in ways that are better masked and thus harder to call out. I have investigated housing authorities, school districts, and mental health departments that were as or more carceral-minded than the law enforcement agencies they worked alongside—and that caused similar harm. I find very little solace in the idea of not having police and shifting those responsibilities to agencies like those. Those agencies do not have guns and handcuffs (although the minimally-trained security guards they hire often do), but we can—and must—do better. Since we are going to have to root out carceral logic, we might as well start where we are.

I also have found that some police officers are further along than many members of the public in recognizing how carceral logic can undermine public safety. One only has to go to a community-watch meeting in some towns and cities (including, if not especially, the liberal ones) to see carceral logic on display with a hubris that is matched only by its obliviousness to its own obliviousness. I have watched more than one police officer—patrol on up to Chief—explain to a community group that, no, police do not ticket or arrest someone every time they see that person violate a law or commit an infraction, and no, it would not make the neighborhood safer to shift to that policy. We the people have demanded that police carry out our carceral logic. The impact of rescinding that order should be explored before we decide whether police are capable of adapting to a non-carceral public safety approach.

There is a hint of the police potential to adapt to non-carceral approaches in places like Camden, New Jersey, a city with historically high poverty and crime rates and policing that was particularly brutal and almost entirely ineffective. In 2013, then-Chief Scott Thomson realized that Camden police were never going to achieve public safety through enforcement. “The solution to our problems in our most challenged communities,” Thomson has been quoted as saying, “does not lie in a pistol or a pair of handcuffs.”<sup>128</sup> This new approach required dramatic change. The entire department was disbanded. Every officer was required to re-apply for his or her job, and incentives were turned upside-down. No longer would police effectiveness be assessed through outcomes like citations and arrests. In fact, Chief Thomson directed internal affairs to investigate the five officers who wrote the most tickets each month.<sup>129</sup> More qualitative metrics of

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128. Sonia Tsuruoka, *Camden’s Turn: A Story of Police Reform in Progress; A Guide for Law Enforcement and Community Screenings*, U.S. DEP’T JUST., OFF. CMTY ORIENTED POLICING SERVS. 1 (2018), <https://perma.cc/H3DJ-RY9P>.

129. J. Scott Thomson, *As Camden’s Police Chief, I Scrapped the Force and Started Over. It Worked*. WASH. POST (June 18, 2020), <https://perma.cc/6XPB-MLYX>.

community safety and health were put in place: are more people sitting on front steps? Are more kids bicycling in their neighborhoods? Is the high school graduation rate increasing? Crime rates, including homicide rates, plummeted, and people came outside of their homes to enjoy public spaces. Even with those changes, Chief Thomson has said he would trade 10 officers for another boys and girls club.<sup>130</sup> I have met countless police officers at all levels who share Chief Thomson's views. Camden is galaxies away from being an example of abolition, but it provides evidence that policing may be capable of adapting to non-carceral approaches to public safety.

What would policing rid of its carceral logic look like, and how do we get there? For all the back and forth, impacted communities have been fairly consistent in stating what they want from "policing." One recent expression of what people who need protection have been asking for was recently framed by scholars Tracey Meares and Gwen Prowse as a request for police to *actually* "protect and serve."<sup>131</sup> This ask, clichéd as it is, does seem apt.<sup>132</sup> Mariame Kaba provided the instructions on how to achieve such policing when, after describing how most of the public thinks "it's the cops' job to arrest people, and they are incentivized to do that work," she advised "what would need to change to shift the dynamics are the job descriptions and the incentives."<sup>133</sup>

In practice then, policing rid of its carceral logic would still be a public good regulated by the state,<sup>134</sup> but would have a more narrow scope of responsibilities, different objectives and outputs, and desired outcomes that would be defined and prioritized differently. This must be achieved in part by the work done outside policing. Shifting responsibilities from police to other public and private entities, as described above, is a necessary precursor. Only when we *stop* relying on the police exercise of coercive power to resolve problems ranging from drug addiction to homelessness to traffic safety and *dramatically reduce* our reliance on policing even for problems like inter-personal violence can we fundamentally

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130. James Doubek, *Former Chief of Reformed Camden, N.J., Force: Police Need 'Consent of the People'*, NPR (June 8, 2020, 7:21 PM), <https://perma.cc/3U49-M56U>.

131. Tracey Meares & Gwen Prowse, *Policing as Public Good: Reflecting on the Term "To Protect and Serve" as Dialogues of Abolition*, 73 FLA. L. REV. 1 (2021). As Meares and Prowse point out, one interpretation of abolition could require "repudiation of state assistance for public safety projects." *Id.* at 4. This does not seem to be what most people living in impacted communities want. Meares, Prowse, and Vesla Weaver found through the Portals Project that "even when people are unrelentingly negative in their characterization of police and policing, they are more likely to argue for an aspirational vision of policing than state disengagement and self-policing." *Id.* at 5. This was consistently my experience—to an often-shocking extent—when talking with many people over the years and across the country who had been subjected to the very worst of police abuses. There is a persuasive argument to be made that this is in part because few options besides police have been offered, but it would be inappropriate to assume this is the case.

132. Recall the above discussion of abolition already existing in the suburbs, "like the suburbs," where police are there when you need them and only when you need them. *See supra* note 25.

133. Kaba, *supra* note 18.

134. *See* Meares, *supra* note 22.

alter the nature of policing and diminish carceral logic within and outside policing. Similarly, removing the legal latitude we have given police to mete out unnecessary violence and intrusions into individual autonomy and dignity will further realign incentives and help transform the nature of the occupation. There must be buy-in from a critical mass (but not necessarily all) of prosecutors, legislators, judges, and the public.

Within policing itself, radical change is required to rid it of carceral logic, given that it is currently the main embodiment of that logic. There must be a new mindset in which police, while understood to have (highly-circumscribed) authority to exercise coercion to protect the public they serve, are viewed—internally and externally—as one among many public safety actors and not the central one. The use of military weaponry by police would be eliminated and the use of any weapons minimized. Even today, in a country as gun-ridden as ours, many police do not need to carry weapons. Communities should re-double the efforts of recent years to recruit individuals with a proclivity to be guardians, not warriors—individuals with unusual moral courage, equanimity, and affinity for difference, and then train them to reinforce those values.<sup>135</sup> We must teach officers how to effectively intervene to protect other officers from causing unnecessary harm, and support them when they do.<sup>136</sup> One difference likely to be anathema to abolitionists and others, is that, in some places, we may need to pay police more and train them better.<sup>137</sup>

Similarly, under this rubric, the use of technology, considered a “reformist reform” by Critical Resistance, is neither inherently good nor bad. Whether and how it is used should be governed by whether it will promote or help rid the system of its carceral logic. For example, will it be used to surveil members of the public as a means of social control and coercion?<sup>138</sup> Or to promote accountable policing, reduce race disparities, or educate and inform our understanding of

135. Sue Rahr & Stephen K. Rice, *From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals*, HARV. KENNEDY SCH. (2015), <https://perma.cc/PCH9-G9MN>.

136. Douglas Star, *Can Police Be Taught to Stop Their Own Violence?*, BOS. GLOBE MAG. (May 6, 2021), <https://perma.cc/R575-PYMN>; *Active Bystandership for Law Enforcement (ABLE) Project*, GEORGETOWN L., <https://perma.cc/HZS6-QLA4> (last visited Aug. 30, 2021).

137. See, e.g., Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2131-33 (2017) (noting how low police wages push out skilled workers and create pressure to allow, and work, overtime, and noting that the Ferguson Consent Decree required the city to increase officer pay.). Of course, ridding the system of its carceral logic requires that we should ensure at least equal pay to other workers essential to promoting public safety—such as violence interrupters. See, e.g., D.C. POLICE REFORM COMM’N, *supra* note 92, at 84 (recommending that D.C. pay violence interrupters working to stem gun violence on “parity with other essential workers, particularly police,” and receive “benefits and other incentives (e.g., paid vacation, hazard pay, housing supplements, retirement account contributions)” that will allow the city “to recruit and maintain the most capable and dedicated staff.”).

138. See, e.g., Matthew Guariglia, *High Tech Police Surveillance of Protests and Activism: Year in Review in 2020*, ELEC. FRONTIER FOUND. (Dec. 25, 2020), <https://perma.cc/43FB-CDBC>.

effective public safety measures?<sup>139</sup> Red-light cameras, for example, could address the putative reason for vehicle stops—traffic safety—while reducing both the level of police intrusion, e.g. a car search, as well as race disparities, that are consistently associated with police vehicle stops. Many uses will be close calls and, ultimately, we may decide that, as with encouraging police to be far-reaching problem-solvers, the tug of the carceral logic is too strong to permit the use of much technology. But, at the moment, it seems that adopting technology after taking steps to ensure that it will be a tool to reduce, rather than reinforce, the carceral logic<sup>140</sup> is preferable either to wholesale acceptance of technology or a complete rejection of it.<sup>141</sup>

Police de-coupled from carceral logic would work to stabilize communities, prevent violence, and help ensure that those who do harm are held accountable, in part so that the victims of harm can be made whole, and so that harm-doers can be given the opportunity for healing as well. What exactly this looks like must be a truly community-led effort and will play out differently in different places. The efficacy and success of policing will be assessed not by numbers of tickets or arrests or even whether crime stats are up or down. These transformative efforts should be guided not by principles of reducing budgets *per se* but by the principle of abolishing the carceral logic within policing. Adherence to this principle will help ensure that policing is truly transformed and that its harms and previous logic do not re-root themselves elsewhere.

It perhaps goes without saying that all of this will be iterative and part of a

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139. Candice Norwood, *Body Cameras Are Seen as a Key to Police Reform. But Do They Increase Accountability?*, PBS NEWS HOUR (June 25, 2020, 4:41 PM), <https://perma.cc/XT6J-CVPG> (finding that “in a few high-profile cases, body camera footage has been used against officers in trials that led to convictions,” including the police killing of 15-year-old Jordan Edwards in Texas and the murder of Laquan McDonald in Chicago; however, prosecutions are rarely brought against the police and footage is much more frequently used against civilians); Brett Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, NAT’L INST. JUST. J., (Nov. 14, 2018), <https://perma.cc/NZ54-9WVD> (reviewing studies and finding that two randomized control trials suggest that body worn cameras reduce police use of force incidents, particularly when police officers do not have discretion as to whether to turn the cameras on, and calling for additional research). *But see* Maya Fegan, *Speeding into the Future: The Pitfalls of Automated Traffic Enforcement*, BERKELEY J. CRIM. L. (Apr. 15, 2021), <https://perma.cc/42F4-7D4C>.

140. *See, e.g.*, D.C. POLICE REFORM COMM’N, *supra* note 92, at 125-27 (calling for local legislation to ensure that decisions regarding surveillance technologies by any government agency are made with “thoughtful consideration and buy-in from the public and elected lawmakers, and that the operation of approved technologies is governed by rules that safeguard residents rights and provide transparency,” and the creation of a Surveillance Advisory Group).

141. *See* Akbar, *Abolitionist Horizon*, *supra* note 18, at 1809-1811 (discussing and rejecting police reform efforts that push for “more tools and technology” to improve policing and reduce its harm); *Reformist Reforms*, *supra* note 123 (“Body cameras are based on the idea that police who do not use ‘excessive force’ are less threatening. But police can turn off body cameras and, when used, footage often doesn’t have the impact that community members want, or is used for surveillance.”).

long-term project. This project will not be fully realized anytime soon, but a focus on abolishing carceral logic puts us on a realistic path that is well worth the effort.

#### CONCLUSION

Understanding carceral logic and its impact on policing clarifies that we must work towards something more, and in some respects different, than dismantling a current set of policy, practice, and budget choices. We must be focused on undoing the underlying carceral logic so that change in policing is transformative and that the transformation is permanent.

This is the lesson abolitionists have been trying to teach us since the origin of American abolition. Frederick Douglass warned us that abolition is an ongoing struggle because slavery is an “old snake” that “has been called a great many names and [] will call itself by yet another name.”<sup>142</sup> As Professor Paul Butler has written, “the genius of the chokehold is its mutability.”<sup>143</sup> In describing the chokehold metaphor, Professor Butler explains that: “[t]hroughout the existence of America, there have always been legal ways to keep Black people down. Slavery bled into the old Jim Crow; the old Jim Crow bled into the new Jim Crow. In order to halt this wretched cycle we must not think of reform—we must think of transformation. The United States of America must be disrupted, and made anew.”

It is especially important that we recognize this as prison populations decline<sup>144</sup> and as we are in the midst of unprecedented efforts to change policing. As Mariame Kaba plainly puts it: “we have all so thoroughly internalized these logics of oppression that if oppression were to end tomorrow, we would be likely to reproduce previous structures.”<sup>145</sup> Kaba’s words serve as a succinct warning. Unless we recognize and reject carceral logic, we run the risk of reducing prison populations and shrinking policing but allowing something just as harmful, or harmful in different ways, to replace the current system.

In short, we must transform the logic of policing and our public safety system so that it is no longer possible for the chokehold to mutate into something

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142. “[Slavery] has been called a great many names, and it will call itself by yet another name; and you and I and all of us had better wait and see what form this old monster will assume, in what new skin this old snake will come forth next . . .” Frederick Douglass, *In What New Skin Will this Old Snake Come Forth?: An Address Delivered in New York, New York, on 10 May 1865*, in THE FREDERICK DOUGLASS PAPERS 79, 82 (John W. Blassingame & John R. McKivigan eds., 1991), *quoted in* Rodríguez, *supra* note 27, at 1581.

143. BUTLER, *supra* note 17, at 7.

144. See Nazgol Ghandnoosh, *U.S. Prison Decline: Insufficient to Undo Mass Incarceration*, SENT’G PROJECT 1 (May 19 2020), <https://perma.cc/TWX6-UPEE> (noting that the prison population in the United States has declined by about ten percent since its peak in 2009); James Kilgore et al., *The Case Against E-carceration*, INQUEST (July 30, 2021), <https://perma.cc/3CED-D2D9>.

145. Mariame Kaba, *So You’re Thinking About Becoming an Abolitionist*, LEVEL (Oct. 29, 2020), <https://perma.cc/9WSU-WBQJ>.



new. This means recognizing that current harm caused by policing derivative of the more foundational pathology of carceral logic. To effectively eradicate this harm we must recognize the carceral logic as its primary source, identify the instruments that have been used to operationalize this logic—whether in law, policy, or elsewhere—and work to dismantle or remake *all* of these paradigms and structures so that they no longer operate pursuant to carceral logic. As the abolitionists have taught us, we must work not just to end prisons but ultimately, “to end carceral society—a society that is governed by the logic of incarceration.”<sup>146</sup>

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146. Roberts, *supra* note 26, at 19.