Policing Is Not a Good

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During the 2020 protests against police violence, activists demanded that we defund the police, a demand that deserves serious scholarly engagement. Scholars and activists often refer to the policing of Black communities as suffering from a paradox of both overpolicing and underprotection. At the same time, many critics of defunding the police have focused on the issue of underprotection to argue that the defund movement is unrealistic and unconcerned with community safety. In this Essay, I argue that the underprotection framework conflates protection with police and co-opts the arguments of people who want to make all communities—including Black ones—healthier and safer. It is premised on the notion that policing can be a public good that brings security to everyone. However, the underprotection argument for more police examines police administration in a vacuum. These claims about underprotection and policing as a good are rooted in micro- and meso-level issues, such as individual police encounters and crime rates. These claims tend to avoid macro-level considerations that situate policing within its relevant social, political, historical, and cultural context, ignoring its role in racial subordination and its inherently violent nature. Embracing a macro perspective on policing reveals that increasing the number of police officers does not necessarily translate into healthier and safer communities. This Essay argues that adopting a macro-level analysis of policing takes the underprotection problem seriously by also considering the qualities of policing that reinforce racial subordination and compromise community safety.

INTRODUCTION

Scholars and activists often refer to the policing of Black and other marginalized communities as suffering from a paradox of both overpolicing and underprotection.[1] On the one hand, police profile underserved

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[1] *See* Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418, 1433, 1471 (2012) (noting "intersectional dimensions of social control . . . shape the overpolicing and underprotecting of Black women" and "the relationship between underprotection and overpolicing is not solely a matter of state power but also the

communities and subject them to constant surveillance while disregarding their rights.[2] The murder of George Floyd after he was suspected of merely

consequence of political elisions that have undermined the development of a more robust critique of social control and a more expansive vision of social justice. . . . [T]he efforts to attend to the paradoxes of overpolicing and underprotection are fruitfully grounded in and informed by the experiences of women of color."); *see also* Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2118 (2017) ("The twin perils of harsh policing and neglectful policing indicate structural exclusion from public safety, an exclusion that corresponds with intersecting race, class, and geographic marginalization. Some scholarship on overpolicing and underprotection portrays the phenomenon as a gendered and generational issue, meaning that young people, especially young men, feel overpoliced while older, 'decent' people in poor African American communities feel underprotected. The reality is far more complex. Many young men, too, would ideally want the police to protect them and their communities."); Johanna E. Bond, *International Intersectionality: A Theoretical and Pragmatic Exploration of Women's International Human Rights Violations*, 52 EMORY L.J. 71, 111–12 (2003) ("Activists within the human rights community have often failed to successfully combat the stereotypes that serve to justify practices of 'overpolicing' and 'underpolicing.' Antiviolence campaigns must address both the race and gender axes of oppression in order to stem the tide of violence within ethnically or racially subordinated communities. By assuming that a program that works in a white suburb is transferable to a community of color, antiviolence activists ignore the importance of race in the context of gender-based violence."); I. Bennett Capers, *The Under-Policed*, 51 WAKE FOREST L. REV. 589, 593 (2016) (suggesting consideration of "criminal justice not only as an issue of overcriminalization and overenforcement vis-à-vis racial minorities, but also as an issue of undercriminalization and underenforcement vis-à-vis nonminorities" to bring a different framing to the overpolicing/underprotection discourse); Fanna Gamal, *The Racial Politics of Protection: A Critical Race Examination of Police Militarization*, 104 CALIF. L. REV. 979, 1001 (2016) ("Blacks are overpoliced and underprotected, in part, because it is economically lucrative for a minority of people. As connections between the military and the police expand, both the 'prison industrial complex' and the 'military industrial complex' become increasingly profitable areas of business."); Pragna Patel, *Notes on Gender and Racial Discrimination: An Urgent Need to Integrate an Intersectional Perspective to the Examination and Development of Policies, Strategies and Remedies for Gender and Racial Equality*, U.N., https://www.un.org/womenwatch/daw/csw/Patel45.htm [https://perma.cc/5J6R-AZPZ] (last visited June 4, 2022).

Professor Sarah L. Swan describes this process of simultaneous underpolicing and overpolicing as a form of discriminatory dualism, a feature of structural discrimination that is "a frequent but previously overlooked tendency to develop into two seemingly opposing, yet in fact mutually supportive practices." Sarah L. Swan, *Discriminatory Dualism*, 54 GA. L. REV. 869, 872, 877 (2020) ("At the same time as black and minority communities are overpoliced for petty crimes, they are grossly underpoliced in regard to major crime. In other words, communities of color experience both 'very high rates of arrest for minor offenses white folks routinely get away with, and shockingly low arrest rates for serious violent crime.' To illustrate the latter point, in one predominantly black neighborhood in Los Angeles, every square mile housed forty-one unsolved homicides.").

[2] *See* Devon W. Carbado & L. Song Richardson, *The Black Police: Policing Our Own*, 131 HARV. L. REV. 1979, 1979 (2018) (reviewing JAMES FORMAN JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA (2017)) (defining overpolicing of Black people as "by some metric they end up having more interactions with the police and more violent encounters than is normatively warranted"); Trina Jones & Kimberly Jade Norwood, *Aggressive Encounters & White Fragility: Deconstructing the Trope of the Angry Black Woman*, 102 IOWA L. REV. 2017, 2040 (2017) ("Consider Sandra Bland, who was found dead in a jail cell after talking back to a White police officer. Consider the Black

using a counterfeit $20 bill illustrates the harms of aggressive policing.[3] It leads to police violence and police surveillance.[4] It contributes to police intervention for minor offenses that would be better resolved outside the criminal legal system.[5] This aspect of policing—its aggressiveness and constant surveillance—represents the "over" when assessing the amount of policing that marginalized communities experience.[6] Ironically, or so the story goes, these communities are also underprotected and underpoliced.[7]

Police officers are neglectful and do not operate as effective caretakers when policing these communities.[8] Professor Randall Kennedy has argued that "withholding protection against criminality . . . is one of the most destructive forms of oppression that has been visited upon African-Americans."[9] Implicit in these arguments is that these communities do not receive the ideal amount of policing to protect them, and that they receive

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woman who was straddled and beaten like an animal on a public street in broad daylight, and the Black women who were raped by an on-duty police officer. Consider the Black woman who accidentally locked herself out of her apartment, called a locksmith to have the locks changed, and was later confronted by not one, not two, not three, but *nineteen* police officers who burst into her apartment, with their guns drawn, accusing her of burglary.") (emphasis in original); K. Sabeel Rahman, *(Re)Constructing Democracy in Crisis*, 65 UCLA L. REV. 1552, 1565 (2018) ("The problems of mass incarceration and overpolicing produce a modern system of racial subordination akin to the Jim Crow era of racial terror and inequality. Overpoliced and overincarcerated communities of color do not, in any meaningful sense, live in the kind of democratic polity marked by broad, equal, protected, mutually binding consultation.").

[3] *See* Scott L. Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 WIS. L. REV. 441, 488 (2018) ("The portrait of Ferguson before the killing was one in which city leaders conspired to extract revenue from the most marginalized and least powerful communities—specifically the city's low-income black population. Officials did so by engaging in a deliberate plan to overpolice city residents, arresting them for low-level misdemeanor crimes—like having grass too high—and then charging disproportionate fines that could not be paid, pushing those punished into debt collection and often jail, where fines and fees continued to mount. In 2013, the city of Ferguson netted two million dollars from such fees (out of a total city budget of approximately ten million).").

[4] *See* Jessica A. Clarke, *Explicit Bias*, 113 NW. U. L. REV. 505, 536 (2018).

[5] *See* Ekow N. Yankah, *Pretext and Justification: Republicanism, Policing, and Race*, 40 CARDOZO L. REV. 1543, 1568–69 (2019) (describing long-term implications of "seemingly inconsequential misdemeanor arrests").

[6] *See* Barbara Perry, *Nobody Trusts Them! Under- and Over-policing Native American Communities*, 14 CRITICAL CRIMINOLOGY 411, 412 (2006) (describing how Native American participants reported a range of police "activities ranging from willful blindness to Native American victimization at one extreme, to overt forms of police harassment and violence at the other"); Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 685 (2015) (noting that "[o]verpolicing fuels [minority communities'] entry into the criminal justice system for other offenses, making them ineligible to participate in drug courts on account of their criminal histories").

[7] *See* I. Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241, 1252 (2017).

[8] *See id.*

[9] RANDALL KENNEDY, RACE, CRIME, AND THE LAW 29 (1997).

poor quality policing. Police do not provide adequate protection in response to domestic violence;[10] police do not investigate violent crime;[11] and police respond slowly to calls for assistance.[12]

Scholars have pointed out the contradiction between a punitive, aggressive, ever-present police force and the appallingly low quality of protection it offers. Professor L. Song Richardson has noted, "Black neighborhoods are simultaneously underpoliced and overpoliced. They are underpoliced when it comes to the police responding to calls reporting criminal activity. Yet, these neighborhoods are overpoliced when it comes to proactive policing."[13] Therein lies the paradox of policing.[14] Sociologist Victor M. Rios calls this phenomenon the "paradox" in which "[p]olicing seemed to be a ubiquitous part of the lives of many of these marginalized young people; however, the law was rarely there to protect them when they encountered victimization."[15] Professor Tracey Meares has described it as the "twin factors."[16] Police are absent when these communities need them present. But they are too present when these communities want to be left alone.[17]

These scholars are justifiably concerned about the nature and scope of policing within marginalized communities. However, coupling overpolicing with underprotection suggests that there is a positive correlation between policing and protection for all communities. These arguments reflect a micro and meso perspective on policing. The micro analysis of policing focuses on individual experiences and incidents of police interactions and encounters. This perspective is apparent in the procedural justice literature.[18] It focuses on improving individual encounters or preventing the bad conduct of individual biased police

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[10] *See* Chandra L. Ford, *Graham, Police Violence, and Health Through a Public Health Lens*, 100 B.U. L. REV. 1093, 1103–04 (2020); Deborah Tuerkheimer, *Underenforcement as Unequal Protection*, 57 B.C. L. REV. 1287, 1290–91 (2016).

[11] Tuerkheimer, *supra* note 10, at 1290; Alexandra Natapoff, *Underenforcement*, 75 FORDHAM L. REV. 1715, 1716 (2006).

[12] *See* Natapoff, *supra* note 11, at 1723.

[13] *See* L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035, 2087 (2011) (footnote omitted); *see also* Natapoff, *supra* note 11, at 1718.

[14] *See* Abigail R. Hall & Christopher J. Coyne, *The Militarization of U.S. Domestic Policing*, 17 INDEP. REV. 485, 485–86 (2013).

[15] *See* VICTOR M. RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS 54 (2011).

[16] *See* Tracey L. Meares, Terry *and the Relevance of Politics*, 72 ST. JOHN'S L. REV. 1343, 1344 (1998).

[17] *Id.*

[18] *See, e.g.*, Tom R. Tyler, *Can the Police Enhance Their Popular Legitimacy Through Their Conduct: Using Empirical Research to Inform Law*, 2017 U. ILL. L. REV. 1971, 1972 (2017). *But see* Eric J. Miller, *Encountering Resistance: Contesting Policing and Procedural Justice*, 2016 U. CHI. LEGAL F. 295, 298 (2016) (noting that "some of the techniques endorsed by procedural justice are the very techniques used by the police to procure waivers of rights").

officers. It focuses on improving the interactions between individuals in police encounters and invites individualistic responses to incidents of police violence, such as additional officer trainings.

The next level of analysis is a meso perspective that is also concerned with the relevant laws and relationship between police and the community. For example, Professor Meares has described the tension between the focus on police effectiveness—defined as crime control—and police lawfulness—defined as compliance with constitutional and legal standards.[19] Professors Meares and Gwen Prowse have also engaged with the question of policing as a public good and have argued for an expanded role for the state in the provision of security.[20] Many of the critiques of policing that describe how marginalized communities are overpoliced and underprotected engage in a meso analysis of policing by describing the community experience of policing. The meso perspective is one step higher than the micro in that it considers the collective concerns of multiple community members, including crime rates and collective community complaints. However, the meso-level analysis does not center the historical, political, and social context of policing within the community.

From the micro and meso levels, policing appears to be a public good. Professor Jeremy Waldron describes a public good as "something which is said to be valuable for human society without its value being adequately characterizable in terms of its worth to any or all of the members of the society considered one by one."[21] It is good in that it is beneficial, and it is

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[19] *See* Tracey L. Meares, *Synthesizing Narratives of Policing and Making a Case for Policing as a Public Good*, 63 ST. LOUIS U. L.J. 553, 554–55 (2019).

[20] *See* 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). Professor Meares examines the continued role of the state as a provider of security and safety. Her inquiry responds to claims by conservative groups that calls to defund the police evince a need to shrink the state and government spending in the provision of security. Accordingly, her focus has been on the expansion of "police powers" to promote the "public health, safety, and general welfare of a state's inhabitants." *Id.* at 22. By contrast, this Essay takes no position on whether the crisis in policing warrants an expansion of the state (beyond policing), nor does it examine the extent to which defund the police movement is an anti-statist movement, a topic of active discussion within the movement itself. Rather, it provides a methodology for deliberating on the appropriateness of police and similar law enforcement organizations in particular, rather than the state as an administrator of "police powers" in general. Moreover, Professor Meares recognized:

> Without a deliberative process to determine the shape of public goods as critical to citizenship as safety, society will be stuck with the ad hoc production of a state service organized around force and centered in a history of legalized racial segregation in which problems are never solved but merely addressed by isolating, separating groups, and surveilling.

Id. at 21–22. This Essay provides such a deliberative process.

[21] *See* Ian Loader & Neil Walker, *Policing as a Public Good: Reconstituting the Connections Between Policing and the State*, 5 THEORETICAL CRIMINOLOGY 9, 25 (2001).

public in that it is widely available to everyone. Scholars have regularly tied police to the public good of security. Professors Ian Loader and Neil Walker argue that police use their coercive power to contribute to "[o]ur sense of safety and security."[22] But who is included in "*our*"?[23] How can policing be a public good when the communities most impacted by policing view the police as a threat to their safety and security?

Only 32% of Black people describe their interactions with the police as being mostly good;[24] 76% of Black people believe that police do not treat Black people as fairly as they treat white people;[25] and 74% have warned their children about the dangers of interacting with the police.[26] In one study, 70% of Black Americans supported reducing police budgets and investing the funds in community development.[27] Recognizing this, critical criminologists have contested crime control models of policing and demonstrated the ways in which crime is socially constructed. They have critiqued conceptions of security and crime that ignore the insecurity that policing brings and fail to account for the economic stability and services that make people feel secure.[28]

Some scholars have misinterpreted over/under arguments to mean that marginalized communities require additional policing, equating more police with more protection.[29] They rely on arguments about the lack of

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[22] *See id.* at 26.

[23] Some might critique this Essay's centering of Black people rather than the multitude of other communities marginalized by policing, such as people with disabilities. *See generally, e.g.*, Jamelia N. Morgan, *Rethinking Disorderly Conduct*, 109 CAL. L. REV. 1637 (2021) (discussing how disorderly conduct laws reinforce racist, sexist, and ableist hierarchies). The centering of Black people is not intended to discount the experiences of other communities. Rather, this Essay intends to illustrate how even the most obvious forms of discrimination receive insubstantial consideration in traditional modes of police analysis.

[24] LOREN SIEGEL, THE OPPORTUNITY AGENDA, A NEW SENSIBILITY: AN ANALYSIS OF PUBLIC OPINION RESEARCH ON ATTITUDES TOWARDS CRIME AND CRIMINAL JUSTICE POLICY 31 (2016), https://www.opportunityagenda.org/sites/default/files/2018-04/A-New-Sensibility-Report.pdf [https://perma.cc/H673-ZRU6].

[25] *Id.* at 33.

[26] *Id.* at 32.

[27] Steve Crabtree, *Most Americans Say Policing Needs 'Major Changes,'* GALLUP (July 22, 2020), https://news.gallup.com/poll/315962/americans-say-policing-needs-major-changes.aspx [https://perma.cc/5PU7-J2T6].

[28] *See, e.g.*, Mark Neocleous, *Security, Liberty and the Myth of Balance: Towards a Critique of Security Politics*, 6 CONTEMP. POL. THEORY 131, 147 (2007) (arguing that for members of society to "keep demanding 'more security' (while meekly hoping that this increased security doesn't damage our liberty) is to blind [themselves] to the possibility of building real alternatives to the authoritarian tendencies in contemporary politics").

[29] *See, e.g.*, MICHAEL JAVEN FORTNER, NISKANEN CENTER, RECONSTRUCTING JUSTICE: RACE, GENERATIONAL DIVIDES, AND THE FIGHT OVER "DEFUND THE POLICE" 5 (2020) https://www.niskanencenter.org/wp-content/uploads/2020/10/Reconstructing-Justice-Formatted-1-1.pdf [https://perma.cc/M8N9-QUDN] ("We need to end police brutality without ending policing.").

community protection (the "under" in underpolicing) to justify the need for additional police in marginalized communities. This approach equates the underprotection of marginalized communities with the lack of policing and eschews a meaningful discussion of the inherently discriminatory nature of policing.[30] It is a perspective that operates on micro or meso levels and focuses on the interpersonal nature of policing or community experiences of crime outside of their social and political contexts. For example, claims about gang violence in communities of color and Black-on-Black crime often reflect this assessment that there is a lack of protective policing. These arguments presume policing is about service and protection and reflect a positive and decontextualized understanding of policing as a public good. Egon Bittner described policing as "a mechanism for the distribution of non-negotiably coercive force employed in accordance with the dictates of an intuitive grasp of situational exigencies."[31] Missing from this description are the ideologies, biases, and cultural norms that shape the basis of our intuitions in this country. Although the calls for more police appear to be justified from a micro and meso perspective of policing, they divorce policing from its historical and political roles in racial subordination and oppression.

Since the mass mobilization against police violence in 2020, activists have been demanding that policymakers "defund the police," arguing that policing is doing what it is intended to do—violently oppress Black people.[32] While the precise meaning of defunding the police has been debated, it generally reflects a desire to reduce the resources given to law enforcement and reallocate those funds to communities. For many activists, defunding the police is a progressive step toward the eventual abolition of policing altogether.[33] Abolitionists often envision well-funded communities that are able to eliminate the criminogenic conditions (for example, poverty,

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[30] *See, e.g.*, Paul G. Cassell & Richard Fowles, *Still Handcuffing the Cops? A Review of Fifty Years of Empirical Evidence of* Miranda*'s Harmful Effects on Law Enforcement*, 97 B.U. L. REV. 685, 826–27 (2017) (arguing that *Miranda v. Arizona* handcuffed law enforcement activities) ("Our conclusion is simply that when the Supreme Court imposed unprecedented restrictions on an important police investigative technique, the police became less effective. This was exactly what the dissenters predicted in *Miranda*, a claim that the majority did not bother to refute. In short, we are not asserting anything unusual; instead, we are merely suggesting the obvious.") (footnotes omitted).

[31] EGON BITTNER, THE FUNCTIONS OF THE POLICE IN MODERN SOCIETY: A REVIEW OF BACKGROUND FACTORS, CURRENT PRACTICES, AND POSSIBLE ROLE MODELS 46 (1970).

[32] #8TOABOLITION, https://www.8toabolition.com/ [https://perma.cc/J7BS-FQP4] (last visited June 4, 2022) ("At its root, policing and prisons are systems designed to uphold oppression. One thousand people are killed by police every year, and Black people are murdered at three times the rate of white people.").

[33] *See* Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html.

poor schools, and lack of affordable housing) that lead to crime.[34] They also seek to establish community-based restorative and transformative justice programs that prevent and address harm. [35] Yet the opposition to the defund the police and abolition movements has been loud. Many opponents of calls to defund the police claim that the high crime rates and security threats within Black communities—communities that the opponents typically are not a part of—justify the continued policing of Black communities.[36] They seem to presume both that there is a positive causation between police presence and public safety, and that there is some *ideal amount* of policing that can be attained if we simply tweak policing to "get it right"—that there is an ideal intersection between respect for civil rights and crime control.

In response to these critiques about the underprotection of Black communities, this Essay argues that scholars, policymakers, and activists should adopt a macro-level evaluation of policing that centers the history of policing and its continued role in racial subordination. Macro-level considerations situate policing within its relevant social, political, historical, and cultural context. The macro perspective is also forward-looking and aspirational in imagining what a safe and healthy community looks like by allowing for new visions of security.[37] This level of analysis considers the ways that policing reinforces the dominant social hierarchy. It is a methodology for police evaluation that (1) decouples policing from protection and (2) centers the ways in which policing reinforces racial subordination. Nevertheless, the concerns from different levels of analysis can impact each other in a macro-level analysis. For example, meso-level concerns (such as community crime rates) may impact policing from a micro level (such as individual stop and frisk encounters). The macro-level analysis both contextualizes policing and engages with the question of underprotection in a sophisticated manner that does not overinflate the role of police in providing protection.

This Essay embraces social dominance theory in evaluating policing from a macro perspective. "Social dominance theory tells us that societies

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[34] CRITICAL RESISTANCE, A WORLD "WITHOUT" WALLS: THE CR ABOLITION ORGANIZING TOOLKIT Mission Statement (last visited June 4, 2022), http://criticalresistance.org/wp-content/uploads/2012/06/CR-Abolitionist-Toolkit-online.pdf [https://perma.cc/SQS3-CKEF].

[35] *See* INDIA THUSI, OPPORTUNITY AGENDA, BEYOND POLICING 9 (2020), https://www.opportunityagenda.org/sites/default/files/2020-09/2020.09.03%20DefundThePolice%20FINAL.pdf [https://perma.cc/SQ96-P8DG] (detailing programs that address community harms without resorting to additional policing).

[36] *See, e.g.*, Matthew Yglesias, *Growing Calls to "Defund the Police," Explaine*d, VOX (June 3, 2020, 10:30 AM), https://www.vox.com/2020/6/3/21276824/defund-police-divest-explainer [https://perma.cc/E2C8-ZU33] (claiming that concerns about underprotection warrant against any decreases in police budgets).

[37] *See* I. Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 1, 3 (2019).

are organized around the notion of dominant and subordinate groups with the dominant groups possessing a disproportionate amount of wealth, power, status, and so forth."[38] This approach to evaluating the police purposively considers the role police play in maintaining existing social hierarchy. The approach not only accurately diagnoses the problem, but also points to effective solutions. This methodology contemplates the possibility of other modes of providing community protection by acknowledging that policing is not the only method by which communities may seek security. This Essay argues that policing should be evaluated on a macro level that considers the historical, structural, and systemic operation of the police. However, my critique is not of the scholars who use the over/under framework, because I agree, and many of their perspectives are illuminating and helpful regarding policing issues. Rather, this Essay brings additional nuance to the discourse on policing and examines the conflation of underprotection with a need for more police.

Part I of this Essay describes what I define as the macro-level evaluation of policing and discusses the importance of centering the role of racial subordination in policing. It contextualizes policing in the United States by examining its inherently violent nature. Part II provides a list of questions that examine policing from a macro perspective. Part III considers the role of policing in maintaining white supremacy. It argues that the social and historical contexts of policing are relevant to evaluating what police do, and there is nothing paradoxical about the overpolicing and underprotection of Black communities. Part IV discusses the implications of the macro assessment of policing for efforts at legislative reform. It argues that a macro assessment reveals that policing is not a public good, and researchers should more fully consider alternatives to policing. Adopting a macro-level analysis of policing takes the underprotection problem seriously, but also considers the qualities of policing that destabilize community security, centering those communities most impacted by policing.

I. THE MACRO APPROACH: CONTEXTUALIZING POLICING IN THE UNITED STATES

A macro assessment of policing examines the *nature* of police conduct within a particular sociopolitical context rather than just the *frequency* of interactions with law enforcement.[39] It is comparable to the qualitative approach to research in that it "encompasses all forms of social inquiry that rely primarily on nonnumerical data in the form of words, including all types of textual analyses such as content, conversation, discourse, and narrative analyses. The aim and function of qualitative inquiry is to

[38] Susan E. Howell, Huey L. Perry & Matthew Vile, *Black Cities/White Cities: Evaluating the Police*, 26 POL. BEHAV. 45, 49 (2004).
[39] *See* Rod K. Brunson & Jody Miller, *Young Black Men and Urban Policing in the United States*, 46 BRIT. J. CRIMINOLOGY 613, 614–15 (2006).

understand the meaning of human action."[40] It considers the historical and social context and is interpretative.[41]

By contrast, the meso- and micro-level inquiries focus on the quantities of policing at the community level and the interpersonal nature of police encounters, respectively, with varying levels of examination of the historical and political context of policing.[42] The macro analysis accounts for micro and meso concerns while also situating policing within its historical, social, political, and economic context.[43] The amount of policing is relevant information, but it is not the primary focus.[44] This Part provides a methodology for adopting a macro-level account of the police. This Part will first introduce the relationship between policing and violence before explaining how a macro evaluation of policing situates law enforcement within its appropriate sociopolitical context. Finally, it will demonstrate how policing functions to uphold white supremacy.

Violence is a central feature of policing, not an aberration. Continuing in the tradition of a number of police scholars, Walter Benjamin examined the inherently violent nature of policing.[45] He argued that police violence "marks the point at which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain."[46] Reflecting on Walter Benjamin's account of the police, Jacques Derrida wrote:

> [P]olice are no longer content to enforce the law and thus to preserve it; the police invent the law, publish ordinances, and intervene whenever the legal situation is unclear to guarantee security—which is to say, these days, nearly all the time. The police are the force of law [*loi*], they have force of law, the power of the law. The police are ignoble because in their authority, "the

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[40] *See* Ronald L. Jackson II, Darlene K. Drummond, & Sakile Camara, *What is Qualitative Research?*, 8 QUALITATIVE RSCH. REPS. COMMC'N 21, 23 (2007).

[41] This methodology is interpretative in that it examines the "meaning and significance" of data and makes "connections between different components and aspects of the data in order to increase our understanding." Carla Willig, *Interpretation and Analysis*, *in* THE SAGE HANDBOOK OF QUALITATIVE DATA ANALYSIS 136, 136 (Flick ed., 2013).

[42] *Cf.* Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. CHI. L. REV. 213 (2017) (proposing a methodology for legal scholarship that considers the historical and sociopolitical context of legal doctrines and adopts methods from empirical methodologies).

[43] *See id.*

[44] *See id.*

[45] *See* WALTER BENJAMIN, CRITIQUE OF VIOLENCE (1955), *reprinted in* REFLECTIONS 277 (Peter Demetz ed., Edmund Jephcott trans., 1978).

[46] *Id.* at 287.

> separation of law-founding violence and law-preserving violence is suspended."[47]

This framing of police violence recognizes the inherent violence in policing and the vast discretion police have when enforcing the law. In the American context, this discretion manifests in assertions about perceived threats, the necessity of using force or violence on suspects, and the need for exceptional laws when present in communities that police deem as "high crime." Policing is concerned with protecting the preexisting social order and fabricates new interpretations of the law in order to maintain the social hierarchy. Recognizing the inherently violent nature of policing reveals why instances of police violence, which are often painted as aberrational or the result of bad actors, are core to the very function of the police.

Walter Benjamin described the violence of policing and its "ignominy."[48] As Professor Julia Hornberger explains, the ignominious role is

> a role that is squeezed between a constitutive lawmaking violence and the violence of maintaining the law. The police can avail themselves of the kind of violence that has the power to constitute an order outside of the law; however, when they do this, they do it by staying under the cover of lawfulness. Benjamin argues that it is in democracies that the ignominious role of the police is accentuated, as the seemingly legitimate use of violence by the police stands in harsh contrast to the state's dependency on the police to act outside of it in order to produce and sustain the order the state wants.[49]

So, police are able to use violence to maintain the social order within democratic societies, even as the exercise of violence is outside of the requirements of the law. Violently maintaining the status quo is thus a central feature of policing.[50]

Social dominance theory provides further clarification on the ways in which police exercise their discretion to use violence. Social dominance

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[47] JACQUES DERRIDA, ACTS OF RELIGION 277 (Gil Anidjar ed., 2002).
[48] BENJAMIN, *supra* note 45, at 286.
[49] Julia Hornberger, *Human Rights and Policing: Exigency or Incongruence?*, 6 ANN. REV. L. & SOC. SCI. 259, 274 (2010).
[50] *See* Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUM. L. REV. 1333, 1376 (2020) (highlighting this point by quoting a letter from the United Auto Workers Local 2865 to the AFL-CIO urging the AFL-CIO to expel police unions from the labor movement because they were never part of the original labor movement and are in opposition to the progress of workers) ("It is the job of the police to protect capital, and consequently, maintain class society. . . . The police force exists solely to uphold the status quo. Their material survival depends on it, and they hold a vested interest in the preservation and expansion of the most deplorable practices of the state.").

theory indicates "that the police maintain racial oppression in the interest of the majority (white) society."[51] Under this view, the primary aim of policing is to maintain the status quo through the preservation of the property and safety of elite or dominant members of the community.[52] Policing preserves the social hierarchies within society by prioritizing the wellness and property of elites and maintaining the marginalization of outcasts.[53] As social theorist Loïc Wacquant demonstrated, the criminal justice system is concerned with the "management of dispossessed and dishonored groups" and is part of a "historical sequence of 'peculiar institutions' that have shouldered the task of defining and confining African Americans, alongside slavery, the Jim Crow regime, and the ghetto" for racial subordination and control.[54] Professor Akwasi Owusu-Bempah notes:

> The penal system is . . . a crucial part of a uniquely American system of racial and social stratification. Like slavery and Jim Crow, both the ghetto and the criminal justice system are important "race-making" institutions, by marking those they confine as spoiled or debased and outside of mainstream or decent American society.[55]

Policing is an important part of the "race-making" aspects of the American penal system because the police are the first point of contact with the criminal legal system.[56] These macro-level observations about policing consider the social and historical context of policing as an institution, providing insights about its role in racial subordination. From this perspective, there is no paradox in American policing. The concern around underpolicing is that police fail to protect Black communities, which they underprotect and neglect. However, neglectful policing and violent policing

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[51] *See* Howell et al., *supra* note 38, at 46.

[52] *See* David E. Barlow & Melissa Hickman Barlow, *A Political Economy of Community Policing*, 22 POLICING: INT'L J. POLICE STRATEGIES & MGMT. 646, 647 (1999).

[53] *See* I. Bennett Capers, *Policing, Race, and Place*, 44 HARV. C.R.-C.L. L. REV. 43, 69 (2009) (examining the role of policing and criminal law in maintaining racial segregation). *See generally* Jack R. Greene, *New Directions in Policing: Balancing Prediction and Meaning in Police Research*, 31 JUST. Q. 193 (2014) (describing various research approaches to understanding policing).

[54] *See* Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, 3 PUNISHMENT & SOC'Y 95, 95 (2001).

[55] Akwasi Owusu-Bempah, *Race and Policing in Historical Context: Dehumanization and the Policing of Black People in the 21st Century*, 21 THEORETICAL CRIMINOLOGY 23, 27 (2017).

[56] *See, e.g.*, I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1, 22–23 (2011) ("Racial profiling, almost by definition, is a type of race-making. Its harm is not limited to its use of skin color as a proxy for criminality, which again has a disparate impact on law-abiding minorities. Its harm is also that it ratchets up racial salience. Put differently, when government actors engage in racial profiling, they perpetuate the notion that race matters—that it matters to be black or brown or yellow, and that it matters to be white. In short, racial profiling reinforces notions of racial difference.") (footnotes omitted).

are entirely consistent with each other because they both reinforce the American social hierarchy, which dehumanizes Black people and constitutes them as threats. Policing protects white interests.

For instance, on January 6, 2021, pro-Trump rioters and white nationalists raided the U.S. Capitol and led an insurrection in an attempt to overturn the results of the 2020 presidential election.[57] Multiple people died during the insurrection, including a police officer.[58] The police response to the rioters appeared "tepid" when compared to their response to Black Lives Matters protestors just several months earlier.[59] Commentators contrasted the police response and decried the inequities in policing that they observed.[60] White insurrectionists threatening to violently overthrow our national government and kidnap politicians were treated respectfully by the police.[61] Meanwhile, law enforcement officers spent the summer of 2020 driving their vehicles through crowds of protesters and pepper spraying people who asked only that the police not kill Black people without cause.[62] Police were violent in their response to Black Lives Matters protestors. Why was there such a disparity? Some observers have argued that there should have been a much greater police presence at the Capitol on January 6—that law enforcement should have showed up to an insurrection in *at least* the same numbers as they did throughout the civil rights movement of 2020.[63] However, social dominance theory anticipates that the police response to issues that are beneficial to Black people would be harsher than their response to the outcries of resentful white people. Policing is an outsized good for white people in its maintenance of racial hierarchy. White supremacy is the underlying ideology in this country,[64] and policing is not a public good for everyone. This is America.

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[57] *See* Kriston Capps, *The Double Standard for Policing Capitol Rioters and BLM Protesters*, BLOOMBERG (Jan. 7, 2021, 4:51 PM) https://www.bloomberg.com/news/articles/2021-01-07/trump-rioters-weren-t-policed-like-blm-protesters.

[58] Evan Hill, Arielle Ray & Dahlia Kozlowsky, *'They Got a Officer!': How a Mob Dragged and Beat Police at the Capitol*, N.Y. TIMES (Apr. 21, 2021) https://www.nytimes.com/2021/01/11/us/capitol-mob-violence-police.html.

[59] John Eligon, *Racial Double Standard of Capitol Police Draws Outcry*, N.Y. TIMES (Feb. 11, 2021) https://www.nytimes.com/2021/01/07/us/capitol-trump-mob-black-lives-matter.html.https://www.nytimes.com/2021/01/07/us/capitol-trump-mob-black-lives-matter.html.

[60] *See id.*

[61] *See id.*

[62] *See id.*; Li Cohen, *Video Shows NYPD Vehicles Driving into Protesters in Brooklyn*, CBS NEWS (May 31, 2020), https://www.cbsnews.com/news/video-shows-nypd-vehicles-driving-into-protesters-in-brooklyn-2020-05-31/ [https://perma.cc/DH3T-2332].

[63] *See* Capps, *supra* note 57.

[64] *See generally* Moon-Kie Jung, *Constituting the U.S. Empire-State and White Supremacy: The Early Years, in* STATE OF WHITE SUPREMACY: RACISM, GOVERNANCE, AND THE UNITED STATES 1, 20 (Moon-Kie Jung, João H. Costa Vargas, Eduardo Bonilla Silva eds., 2011) (examining white supremacy as the prevailing logic in the United States through the "deeply entrenched patterns of racial domination and inequality" that persist in the United States).

Sociologist Hubert Blalock, Jr. advanced the racial threat hypothesis, which posits that white proximity to communities of color and racial competition leads to increased social control of these communities through policing and incarceration.[65] Empirical research has shown that the

> [c]oercive power used to control minorities not only protects police officers on the frontlines of the racial divide but also the interests of dominants who fear the criminal threat thought to be posed by minorities. Police violence provides an expedient means to maintain social order, and more privileged citizens avoid interfering with police methods that serve their interests.[66]

So, policing is not a good required in some precise measure to provide meaningful protection to Black communities. Regardless of the *amount* of policing, the *quality* of policing holds steady. Reinforcing racial subordination remains a core feature of protecting American social hierarchy, and violence is a method for this form of policing. Police are engaged in an endeavor that qualitatively treats Black members of the community unfairly in light of the particular social and historical context.[67]

Adopting these theories of policing, police officers are not merely responding to calls for police assistance. Police officers are protecting dominant social hierarchies and doing so through violence. The violent protection of white supremacy is a core feature and purpose of policing.

II. POLICING IN PRACTICE: DISENTANGLING POLICE PRESENCE FROM COMMUNITY SAFETY AND SECURITY

Adopting a macro evaluation of police requires a contextual analysis of the shortcomings of policing.[68] It calls for a subtle shift in perspective.

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[65] *See generally* Hubert M. Blalock, TOWARD A THEORY OF MINORITY-GROUP RELATIONS (1967) (providing a framework for understanding interracial interactions and arguing that white people perceive Black people as threats for scarce resources where the size of the Black population is higher).

[66] Brad W. Smith & Malcolm D. Holmes, *Community Accountability, Minority Threat, and Police Brutality: An Examination of Civil Rights Criminal Complaints*, 41 CRIMINOLOGY 1035, 1040 (2003).

[67] *See* Barry Friedman & Maria Ponomarenko*, Democratic Policing,* 90 N.Y.U. L. REV. 1827, 1883 (2015); Bernard E. Harcourt, *The Politics of Incivility*, 54 ARIZ. L. REV. 345, 365–66 (2012) ("[P]erceptions of incivility are racially coded: How we perceive disorder is the product of the racial composition of the neighborhood.").

[68] *See, e.g.*, Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers,* 59 UCLA L. REV. 1474, 1491 (2012) ("The analysis of the roles black mothers play in both the prison and foster care systems reveals that these systems intersect with each other jointly to perpetuate unjust hierarchies of race, class, and gender. Prisons and foster care function together to discipline and control poor and low-income black women by keeping them under intense state supervision and blaming them for the hardships their families face as a result of societal inequities. As a result of the political choice to fund

Rather than focusing on why the police fail to allocate the adequate amount of protection and service to the community, it allows for a clear assessment of what the police are doing. Who are the police currently protecting? What social arrangements benefit from the current nature of policing? Which social hierarchies does policing maintain? How does the current approach to policing connect to structural inequities in this community? These questions focus on the current qualities of the police and are less concerned with preconceived notions of what policing should do. This approach to evaluating the police "calls on scholars to critically consider and understand the role of race in shaping the social, political, and economic structure of American society, recognizing that race (and ethnicity) are not ahistorical essences, but rather concepts 'rooted in a particular culture and a particular period of history.'"[69] It is a contextualized analysis of policing that does not presume that more policing leads to more protection. It allows for recognition of the differential experiences of policing. Below is a list of additional questions that are relevant to adopting a macro-level perspective of policing:

- What is the social hierarchy in the community?
- Who are the dominant groups in this community?
- Whose interests are currently being protected by the police?
- How prevalent are incidents of violence by the police against community members?
- Who has the highest levels of satisfaction with the police in this community?
- Whose property do the police currently protect?
- Who has the most interactions with the police?
- How has policing historically occurred in this community?
- Do any community members report police interactions that are degrading or dehumanizing?
- Has policing been successful at achieving safety for everyone in the community?
- Who does not feel protected by the police?
- Who does feel protected by the police?

This approach begins by acknowledging the role police play in reinforcing the existing social hierarchy. By discussing the nature of policing in light of the police's role in preserving social hierarchies, scholars and activists can have frank discussions about what policing will never accomplish.[70] The most relevant analysis occurs on a local level and the

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punitive instead of supportive programs, criminal justice and child welfare supervision of mothers is pervasive in poor black communities.").

[69] *See* Owusu-Bempah, *supra* note 55, at 24–26 (internal citations omitted).

[70] *See generally* Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes,* 104 GEO. L.J. 1479 (2016) (offering a theoretical model explaining the

specifics will vary depending on the community. The particulars of the relationship between communities and the police vary, and there are different local histories. This approach to discussing police behavior does not presume that policing is good or bad. Rather, it contemplates that policing serves rational ends and does not stumble upon unfortunate, unintentional, paradoxical outcomes. Policing is consistent both in its enforcement and protection, and macro evaluations facilitate honest assessments about what policing actually does.

III. APPLYING THE MACRO APPROACH: POLICING AS A VEHICLE TO MAINTAIN WHITE SUPREMACY

Adopting a macro perspective reveals how policing enables white supremacy to persist. Within the context of the United States, the prevailing ideology and social hierarchies are arranged around the preservation of white supremacy.[71] The specifics vary greatly based on the region and local community, but white supremacy is a remarkably consistent aspect of American life. From the founding until today, a variety of legal, social, and political forces have evolved to preserve the economic and political power of white people.[72] White supremacy,[73] ableism,[74] patriarchy,[75] and heteronormativity[76] define the social hierarchy in the United States. They have manifested in settler colonialism, slavery, Jim Crow, and mass incarceration—institutions that have effectively controlled and managed communities of color and kept them at the bottom of the social hierarchy in this nation.[77]

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persistence of "blue-on-black" violence and arguing that the causes of police violence are structural).

[71] *See* Lena Zuckerwise, "*There Can Be No Loser": White Supremacy and the Cruelty of Compromise*, 5 AM. POL. THOUGHT 467, 467 (2016) (arguing that political compromise, undertaken to achieve unity but achieved at the expense of Black Americans, is a form of white supremacy central to American democracy).

[72] *See generally* HENRY LOUIS GATES, JR., STONY THE ROAD: RECONSTRUCTION, WHITE SUPREMACY, AND THE RISE OF JIM CROW (2019) (providing a historical account of the period between Reconstruction and Jim Crow); IBRAM X. KENDI, STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA (2016) (chronicling the history of anti-Black racist ideas and their influence on American history).

[73] *See* Jung, *supra* note 64.

[74] *See generally* Jamelia N. Morgan, *Policing Under Disability Law*, 73 STAN. L. REV. 1401 (2021) (applying disability theory to understand the impact of police violence on disabled people).

[75] *See* Kathryn M. Stanchi, *Who Next, the Janitors? A Socio-Feminist Critique of the Status Hierarchy of Law Professors*, 73 UMKC L. REV. 467, 473–74 (2004) ("Patriarchy is a type of illegitimate social hierarchy based on gender. Patriarchy is defined by a set of interrelations among men that allow men to dominate women and monopolize benefits and rewards by, among other things, controlling women's labor.") (footnotes omitted).

[76] *See* Judith Butler, *Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory*, 40 THEATRE J. 519, 524–25 (1988).

[77] *See* Michelle Alexander, *The New Jim Crow*, 9 OHIO STATE J. CRIM. L. 7, 9–11 (2011).

Policing is the institution charged with maintaining order and preserving property and has played a role in the maintenance of each of these institutions. "[T]he police are the domestic institution responsible for preserving domestic spatial sovereignty. Thus, how the police conceptualize territory is critical to understanding police work."[78] Police guard the boundaries of white spaces to maintain white property. Black communities that are at the lower end of the social hierarchy encounter policing that is often described as aggressive and neglectful.[79] White elites have long been entitled to vigorous protection of property and life.[80] White poor people have received some protection, but not the same as white elites.[81] Black people are surveilled as threats to white interests.[82] Black people seek some protection from the police but often are also punished in response to calls for protection.[83] "Across U.S. history, the intersections of race, class, and criminal justice have produced a dehumanized view of African Americans that continues to influence their experiences with the police."[84] Merely looking at the quantified amounts of policing when it is presumed to be a public good presents paradoxes. White elites appear to have large amounts of policing as a public good, but low amounts of visible police presence in

[78] *See* Sandra Bass, *Policing Space, Policing Race: Social Control Imperatives and Police Discretionary Decisions*, 28 SOC. JUST. 156, 158 (2001).
[79] *See* Swan, *supra* note 1, at 876–77.
[80] *See* Brian Sawers, *Race and Property After the Civil War: Creating the Right to Exclude,* 87 MISS. L.J. 703, 706–07 (2018). *But see* Brad W. Smith & Malcolm D. Holmes, *Police Use of Excessive Force in Minority Communities: A Test of the Minority Threat, Place, and Community Accountability Hypotheses*, 61 SOC. PROBS. 83, 85 (2014) ("The threat hypothesis is commonly framed in terms of dominant group interests, with the police seen as performing the clandestine 'dirty work' necessary to protect them. Yet some large American cities have predominantly African American (e.g., Detroit, MI and Washington, DC) or Hispanic (e.g., El Paso, TX and Miami, FL) populations, and in such communities it is not clear that the majority of citizens would perceive minorities as threats. The power-threat hypothesis suggests that the dominant group increasingly mobilizes its resources of social control as a minority group becomes relatively large and is seen as an increasing threat. However, when the minority group represents a numerical majority, it becomes capable of effectively mobilizing resources on its own behalf, and white elites may become more inclined to political accommodation. Therefore, ascendant minority political power in predominantly minority communities may reduce the use [of] excessive force, which minority citizens see as supporting dominant interests.") (internal citations omitted).
[81] *See* Sawers, *supra* note 80, at 707; *see also* ISABEL WILKERSON, CASTE 178–80 (2020) (providing a genealogy of caste in the United States).
[82] *See* Andrew Guthrie Ferguson, *Illuminating Black Data Policing*, 15 OHIO STATE J. CRIM. L. 503, 518 (2018).
[83] *See generally* Kimberlé W. Crenshaw, *From Private Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control*, 59 UCLA L. REV. 1418 (2012) (exploring factors contributing to mass incarceration of women of color) .
[84] Owusu-Bempah, *supra* note 55, at 29.

their communities.[85] Black people appear to have large amounts of police presence, but little in terms of the goods of policing.[86]

Shifting from a micro- or meso-level conception of policing as being either under- or over- in quantity to a macro assessment of how policing reinforces social hierarchy uncovers how policing maintains white supremacy regardless of the quantities into which it is divvied up.[87] This macro assessment examines how policing occurs and who is protected through policing. Despite the amounts of policing or the tweaks to various forms of policing, policing will lead to the same outcome of preserving a social hierarchy where Black people are at the bottom. This focus allows for the discourse to progress past attempts to expand policing or place police officers in close proximity to Black people who, with Indigenous and Latinx people, are at the bottom of the American social hierarchy. Additional contact with the police will likely lead to additional social marginalization because police preserve the social hierarchy. Policing is a potential harm for these communities rather than a qualitatively good thing.[88] Nor is policing a fungible good that just needs to be rationed out to the community in a balanced quantity. Instead of uncovering ways to allocate the ideal amount of the good of policing, a macro framing of policing forces observers to acknowledge the ways in which policing consistently reflects a disregard for Black lives. This framing indicates that racist logics are inherent to policing and will ultimately prevail despite policies and directives to introduce more human rights or community to policing.[89]

To the extent that the police are concerned with service and protection, they prioritize the demands of the vocal and powerful members of the relevant community. Police are more likely to respond to community calls for assistance from high wealth communities.[90] Police are more likely to

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[85] *See* Smith & Holmes, *supra* note 66, at 1057 ("Dominant group members also may perceive minorities as criminal threats and tacitly approve of even extralegal strategies of crime control.").
[86] *See id.* at 1035–36.
[87] *See* Craig Konnoth, *An Expressive Theory of Privacy Intrusion*s, 102 IOWA L. REV. 1533, 1561–62 (2017).
[88] *See* Carbado, *supra* note 70, at 1483–85.
[89] *See* V. Noah Gimbel & Craig Muhammad, *Are Police Obsolete? Breaking Cycles of Violence Through Abolition Democracy*, 40 CARDOZO L. REV. 1453, 1461–62 (2019); Kathryne M. Young & Joan Petersilia, *Keeping Track: Surveillance, Control, and the Expansion of the Carceral State*, 129 HARV. L. REV. 1318, 1329 (2016) (book review).
[90] *See e.g.*, Press Release, American Civil Liberties Union of Illinois, Newly-Released Data Shows City Continues to Deny Equitable Police Services to South and West Side Neighborhoods (Mar. 31, 2014), https://www.aclu-il.org/en/press-releases/newly-released-data-shows-city-continues-deny-equitable-police-services-south-and [https://perma.cc/HKD9-W68J] (finding that police response times to call for assistance were longer in Black and Latinx communities as compared to white communities); Charlie LeDuff & Steve Neavling, *Part 4: Police Response Times are Slowest in Detroit's Poorest Neighborhoods*, MOTOR CITY MUCKRAKER http://motorcitymuckraker.com/2019/01/25/

solve crimes in high wealth communities.[91] The minority threat hypothesis indicates that white communities respond to close proximity to Black communities by demanding that Black communities be subjected to intense policing and control through the criminal legal system.[92] Multiple studies have provided support for this theory: "The minority threat hypothesis states that the greater the percent minority in a city, the greater the employment of coercive control strategies by the police. . . . [The] percent black and percent Hispanic related positively to the incidence of sustained excessive force complaints."[93] One study indicates that white people expect the police to maintain the racially biased social hierarchy in the United States.[94] The study examined white people's evaluations of police in majority-Black cities and found that white people were more likely to be dissatisfied with the police in Black cities than in white cities:

> In the two majority black cities studied, the relationship between race and police evaluations disappears, and it disappears because whites become more negative in a majority black context. Our findings are indicative of the reactions of whites when the "normal" social order is reversed. In a majority black context, whites, who are accustomed to holding the dominant position in society, show a tendency to penalize the police, a social institution that they typically embrace. White racial attitudes affect police evaluations in majority black contexts, but not in white contexts, while African American racial attitudes are inconsequential in both contexts. In addition, if a white citizen is victimized by crime in a black city, or believes that crime is increasing, it has greater ramifications for his or her evaluations of the police than if the victimization or the beliefs about crime had occurred in a white city. None of this can be attributed to higher crime rates, more citizen complaints about the police, or different neighborhood racial patterns in the black cities. What this does suggest is that whites' views of the police may be more racialized than African Americans' views of the police. Social dominance theory predicts that when groups change their positions in the social order, our models must also change.[95]

This study indicates that white people have an interest in preserving the dominant social hierarchy and have been dissatisfied with police when the social hierarchy is atypical in their communities.[96] Another study found that

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part-4-police-response-times-are-slowest-in-detroits-poorest-neighborhoods/ [https://perma.cc/XDQ3-TT56].

[91] *See* LeDuff & Neavling, *supra* note 90 (noting longer response times in poor neighborhoods can lead to fewer arrests).

[92] *See* Kevin M. Drakulich, *Strangers, Neighbors, and Race: A Contact Model of Stereotypes and Racial Anxieties About Crime*, 2 RACE & JUST. 322, 322–23 (2012).

[93] *See* Smith & Holmes, *supra* note 80, at 97.

[94] Howell et al., *supra* note 38, at 62.

[95] *Id.*

[96] *Id.*

"race-based police discrimination will be most prevalent for black adolescents who live or pass through predominantly white neighborhoods, especially those that are experiencing an increase in the relative size of the black population."[97] This study supports the defended neighborhoods theory, which indicates that Black people "are likely at the greatest risk for discrimination and other adverse treatment at the hands of white citizens and criminal justice agents not in predominantly black or racially mixed areas, but rather in predominantly white neighborhoods in which the relative size of the black population is increasing."[98] Focusing on the quantitative amounts of policing as a public good in these communities would paint an incomplete picture of policing that ignores the central role of police in reinforcing hierarchy and reflecting the values of the community in question.

How does the policing of social hierarchy play out in Black communities? Policing takes the form of aggressive search and frisk policies that allow police to caress the exterior of young people's bodies to remind them of their status as perceived threats.[99] As Professor Khalil Gibran Muhammad has demonstrated, scholars constructed the social science and statistical data in a manner that reinforces the perceived criminality of Black people.[100] Professor Skolnick has described how Black people have been constructed as the "symbolic assailant" who is a perpetual threat to white people.[101] Policing facilitates the use racial profiling and pretextual traffic stops to investigate Black people as criminals based on the perceived threat of Black people.[102] "Blacks, irrespective of gender and sexual orientation, are generally more likely to be stopped, searched and arrested by the police, are more likely to be the victims of police use of force, and are more likely to report negative police experiences than are members of other racial groups."[103] The presumption that being Black is itself criminal results in Black women being arrested after calling the police

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[97] *See* Eric A. Stewart, Eric P. Baumer, Rod K. Brunson, & Ronald L. Simons, *Neighborhood Racial Context and Perceptions of Police-Based Racial Discrimination Among Black Youth*, 47 CRIMINOLOGY 847, 856 (2009).
[98] *Id.* at 854.
[99] *See* Gimbel & Muhammad, *supra* note 89, at 1463 (quoting Trump administration statement) ("A Trump Administration will empower our law enforcement officers to do their jobs and keep our streets free of crime and violence. The Trump Administration will be a law and order administration. President Trump will honor our men and women in uniform and will support their mission of protecting the public. The dangerous anti-police atmosphere in America is wrong. The Trump Administration will end it.").
[100] *See generally* KHALIL GIBRAN MUHAMMAD, THE CONDEMNATION OF BLACKNESS: RACE, CRIME AND THE MAKING OF MODERN URBAN AMERICA (2010) (tracing the history of notion of Black criminality in urban development and politics).
[101] *See generally* JEROME H. SKOLNICK, JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY (1966) (examining intersection of police practices and rule of law).
[102] Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 681, 751–52 (2015).
[103] Owusu-Bempah, *supra* note 55, at 24.

for assistance with intimate partner violence.[104] According to a multilevel Bayesian statistical analysis of police murders, there is "significant bias in the killing of unarmed black Americans relative to unarmed white Americans, in that the probability of being {black, unarmed, and shot by police} is about 3.49 times the probability of being {white, unarmed, and shot by police} on average."[105] The policing of Black people frequently includes policing by white community members who perceive Blackness as a threat.[106] It warrants police intervention for Black people being ordinary.[107] Black people who barbecue must be controlled.[108] Black people who birdwatch should be put in their place.[109] "Police were responsible for about eight percent of all homicides with adult male victims between 2012 and 2018. Black men's mortality risk is between 1.9 and 2.4 deaths per 100 000 per year, Latino risk is between 0.8 and 1.2, and White risk is between 0.6 and 0.7."[110] This racial disparity in police murders of Black people is staggering. These accounts of policing are diverse.[111] They involve many forms of police intervention.[112] But the message is the same: Blackness is at the bottom of the social hierarchy in the United States.[113] And this hierarchal position necessitates regular reminders and acts of

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[104] *See* Deborah Tuerkheimer, *Conceptualizing Violence Against Pregnant Women*, 81 IND. L. J. 667, 691–92 (2006) (describing disproportionate arrests of Black women for prenatal substance abuse, many after calls for assistance related to domestic violence); *see also* Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 443–44 (2019) (describing eviction of survivors of domestic violence who called police for help).

[105] *See* Cody T. Ross, *A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011–2014*, 10 PLOS ONE 1, 1 (2015).

[106] *See* Lolita Buckner Inniss, *Race, Space, and Surveillance: A Response to #LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. F. 213, 214 (2020) ("Black people from all walks of life seem at all times prone to being summarily judged and even executed by agents of the state or by self-deputized private citizens.").

[107] *See* Chanelle N. Jones, Comment, *#LivingWhileBlack: Racially Motivated 911 Calls as a Form of Private Racial Profiling*, 92 TEMP. L. REV. ONLINE 55, 55 (2020) ("#LivingWhileBlack refers to the recent increase in 911 calls white people make on Black people who are going about normal daily activities.").

[108] *See* Christina Zhao, *'BBQ Becky,' White Woman Who Called Cops on Black BBQ, 911 Audio Released: 'I'm Really Scared! Come Quick!*', NEWSWEEK (Sept. 4, 2018, 5:42 AM), https://www.newsweek.com/bbq-becky-white-woman-who-called-cops-black-bbq-911-audio-released-im-really-1103057.

[109] *See* Inniss, *supra* note 106, at 214 ("[I]n May 2020, a white woman called the police on a Black man in a semi-wild section of Central Park in New York after he asked her to follow park rules and keep her dog leashed. The woman refused and falsely claimed during the call that the man, an avid bird watcher, had threatened her life. Video of the incident revealed the woman's falsehood and sparked widespread anger.") (footnotes omitted).

[110] *See* Frank Edwards, Michael H. Esposito & Hedwig Lee, *Risk of Police-Involved Death by Race/Ethnicity and Place, United States, 2012–2018,* 108 AM. J. PUB. HEALTH 1241, 1241 (2018).

[111] *See* Inniss, *supra* note 106, at 214.

[112] *See* Joanna C. Schwartz, *Who Can Police the Police,* 2016 U. CHI. LEGAL F. 437, 439 (2016) (discussing various forms of regulating police behavior including civil and criminal interventions and evaluating the various efforts to reform the police).

[113] *See* Carbado & Richardson, *supra* note 2, at 1996–97.

discipline to assert Black people's relative lower positionality in the social hierarchy. Discipline is important to maintain control.[114]

Public opinion polls indicate that Black people are more likely to say that policing is racially discriminatory than are white people.[115] Black people are more likely to report hostile interactions with the police.[116] Black people are more likely to be stopped by the police, despite the lower likelihood of finding contraband on Black people when they are stopped as compared to white people.[117] A narrow assessment of policing in Black communities might find that there is a substantial number of police officers engaging in community patrols as opposed to the low number of officers engaged in community caretaking functions. However, macro-level policing in these communities goes beyond meso concerns about crime rates and underprotection and is instead impacted by how police are consistently protecting white interests, whether they are overpolicing or underpolicing. While the particulars of policing differ in different communities, the role of police in maintaining racial subordination is remarkably consistent throughout the United States.

The over/under frame may allow some to conclude that policing is a good thing that needs to be properly allocated to communities. From this perspective, the simultaneous lack of protection and heightened surveillance of marginalized communities are thereby paradoxical, and we just need to adjust policing to the right amount to ensure these communities receive adequate protection. However, this assessment presumes that policing is a beneficial public good for all communities, and it avoids meaningful engagement with policing as a discriminatory endeavor designed to maintain racial subordination. It also contributes to the ratcheting up of policing in response to the perceived lack of it.[118]

IV. POLICING TODAY: REFORM OR DEFUND?

So, what does this focus on the contextualized, macro perspective of policing mean for policing as a subject of law reform? How can we reform an institution that is qualitatively intended to maintain white supremacy regardless of the quantities allocated to marginalized communities? The

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[114] *See generally* MICHEL FOUCAULT, DISCIPLINE & PUNISH, THE BIRTH OF THE PRISON (Alan Sheridan trans., 1977) (detailing the role of social discipline in establishing the dominant norms in a society).
[115] *See* SIEGEL, *supra* note 24, at 32–33.
[116] *See id.* at 31.
[117] *See* Darwin BondGraham, *Black People in California Are Stopped Far More Often by Police, Major Study Proves*, GUARDIAN (Jan. 3, 2020, 1:00 PM), https://www.theguardian.com/us-news/2020/jan/02/california-police-black-stops-force [https://perma.cc/C3ZW-BUYR].
[118] *See* Nathaniel Bronstein, Note, *Police Management and Quotas: Governance in the CompStat Era*, 48 COLUM. J.L. & SOC. PROBS. 543, 561–64 (2015).

macro assessment suggests that law reform, at least law reform that is targeted at police, is futile.[119] There is no need for reform because subordinating lower status communities is consistent with preserving the property and concerns of white elites. Despite the distaste for overt displays of racial discrimination, as Derrick Bell predicted, complacency with the status quo quickly returns.[120] Only months after a multiracial and multigenerational coalition of Americans protested the murder of George Floyd, news outlets sensationalized rioting and looting in response to police killings.[121] People were concerned with their property, and the energy for reform had appeared to dwindle—that is until the next horrific police killing occurred.[122]

Even if one is skeptical of social dominance theory and ignores the evidence of pervasive white supremacy in policing, it is lazy to simply dismiss calls for abolition as inattentive to the underprotection of Black communities. These dismissals are premised on the notion that policing equals protection. They are grounded in micro- and meso- level analyses of the police that assume that policing can be corrected with more polite police encounters and fewer individual killings. Moreover, resistance to defunding and abolishing the police is premised on the idea of policing as a public good, beneficial to most, in spite of historical harms. They presume police is a public good, beneficial to most, when the opinions of many Black people suggest otherwise. A macro perspective that is concerned with the history, social context, political arrangements, and contextualized nature of policing reveals the flimsiness of these responses. They elide meaningful engagement with the conditions that are precipitating the demand to defund the police in the first place. Communities that have direct experience with underprotection are making the demands for less policing.[123] Communities

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[119] Scholars and advocates have argued that reformist measures that expand the resources of police organizations are counterproductive and replicate the harms that they aim to redress. For example, scholar-advocates Mariame Kaba and Professor Ruth Wilson Gilmore have embraced Andres Gorz's advocacy of "non-reformist reforms," which are anti-capitalist and do not legitimize systems that they are seeking to abolish. *See* John Duda & Mariame Kaba, *Towards the Horizon of Abolition: A Conversation with Mariame Kaba*, THE NEXT SYSTEM PROJECT (Nov. 9, 2017), https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba [https://perma.cc/6WJA-M97B]; *see also* Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1842 (2020) ("Understanding police as central to the maintenance of a political economy of racialized violence and exploitation, abolition necessitates the fundamental transformation of society.").

[120] *See generally* DERRICK BELL, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1992) (examining persistence of racism in American life).

[121] *See* Olga Khazan, *Why People Loot*, ATLANTIC (June 2, 2020), https://www.theatlantic.com/health/archive/2020/06/why-people-loot/612577/.

[122] *See* Rick Rojas & Richard Fausset, *Police Killings Prompt Reassessment of Laws Allowing Deadly Force*, N.Y. TIMES (June 14, 2020), https://www.nytimes.com/2020/06/14/us/rayshard-brooks-Garrett-Rolfe-atlanta.html.

[123] *See End the War on Black Communities*, THE MOVEMENT FOR BLACK LIVES, https://m4bl.org/policy-platforms/end-the-war-on-black-communities/

that do not regularly interact with law enforcement are often dismissive of such demands, arguing that less policing will result in chaos. This is telling.

It is perverse that people who do not experience police violence feel they have the moral authority to tell those who *do* experience such violence that their demands are wrong, unrealistic, or might actually make life worse. On a deeper level, these dismissals may in fact demonstrate that white people fear a world without police because there will be no one left to enforce their desired social order. Perhaps, it is social dominance theory in action. At any rate, the communities that are most impacted by police violence have often demanded less police, as evinced by the organizing and demands to defund the police.[124] Scholars should embrace a macro analysis of policing that considers the context of policing instead of resorting to simplistic retorts that conflate more police with more protection, or wasting time quibbling with the linguistic meaning of defund.[125]

CONCLUSION

Policing scholars and activists should move away from a framing of policing that may be misinterpreted as equating more police with more protection.[126] This framing facilitates discussions about policing that remain on a micro or meso level, failing to center the systemic dysfunctions in policing within the social and political context of white supremacy in the United States. Instead, the discourse on policing should embrace a macro-level analysis, which may be obscured by focusing on the over- or under-of policing. A macro analysis centers the history, institutional discrimination, politics, and social dynamics that facilitate policing for the purpose of racial subordination. Focusing on the macro of policing suggests

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[https://perma.cc/ZPJ5-RDVE] (last visited June 4, 2022) (policy statement of a coalition of 50 groups that represent Black communities in the United States).

[124] There is diversity of opinion within communities that are impacted by racialized police violence about the appropriate approach to policing. *See, e.g.*, JAMES FORMAN, JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA (2017); Trevor Gardner, *By Any Means: A Philosophical Frame for Rulemaking Reform in Criminal Law*, 130 YALE L.J.F. 798 (2021). The demands regarding policing may differ by community. However, the members of the community who are actually policed and surveilled should be prioritized. For example, there has been a successful campaign to defund policing in Los Angeles that was driven by the demands of communities affected by policing. *See* Anabel Munoz, *Los Angeles City Council Votes to Cut LAPD Budget by $150 Million*, ABC7 (July 2, 2020), https://abc7.com/defund-the-police-lapd-los-angeles-mayor-eric-garcetti/6289037/ [https://perma.cc/K6FR-CSFL].

[125] *See, e.g.*, Abigail Higgins & Olúfémi O. Táíwò, *Enforcing Eviction*, NATION (Aug. 19, 2020), https://www.thenation.com/article/society/police-eviction-housing/ (discussing the macro implications of policing within the context of housing and eviction).

[126] *Cf.* Eric J. Miller, *Role-Based Policing: Restraining Police Conduct "Outside the Legitimate Investigative Sphere,"* 94 CALIF. L. REV. 617, 620 (2006) (arguing that "the police, as currently constituted, are the wrong people to engage in preventative policing. Instead, it is more appropriate for other groups—such as municipal officials with no power to engage in investigation—to conduct preventative policing").

that there is no paradox in the nature of policing marginalized communities. Police provide the quality of policing that is consistent with their charge to maintain law and order in a white supremacist society.[127] That is, policing is discriminatory and will be discriminatory because it exists within a discriminatory society.[128] The macro perspective illustrates the ways in which policing is not a public good. It is not good in quality for everyone and its beneficial aspects are not shared by all. Policing will be forceful and violent in its discrimination because police are commissioned to violently protect society's hierarchies.[129] Thus, police officers will protect the American social hierarchy even when it requires inflicting violence upon those at the bottom. Instead of devising tactics to reach an imagined perfect level of policing that prioritizes constitutional rights while effectively fighting crime, the focus should shift to examining how policing reinforces social, economic, and political inequality through criminal enforcement. Upon such examination, the liberatory potential of the political strategy of defunding and eventually abolishing the police becomes clearer. The real public goods are those that meet the material needs of communities, including resources for education, healthcare, housing, and food, which would benefit from the substantial resources devoted to trying to get policing just right.

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[127] *See* Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 655 (2020); Howell et al., *supra* note 38, at 45.
[128] Bell, *supra* note 127, at 656.
[129] *See generally* BENJAMIN, *supra* note 45 (examining inherent violence of policing).