

# Investing in Alternatives: Three Logics of Criminal System Replacement

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*What logics underlie the call to “defund the police,” and how do those logics matter in policy debate? In the wake of widespread protests after the deaths of George Floyd, Breonna Taylor, and other victims of police violence during the summer of 2020, the Black Lives Matter movement’s call to “defund the police” captured the national imagination. Several municipal governments promised to cut funding and contracts for their respective police departments, with mixed results. Because we expect police defunding and reinvestment to remain a central movement demand, this Article explores the demand’s discursive and normative terrain. It does so by describing and critically engaging three logics of criminal system alternatives that we have observed in activists’ demands and organizing efforts. Specifically, we theorize investments in social welfare, safety production, and racial reparation as deeply connected but distinct logics that might guide decisions about where and how money should be spent as part of defund initiatives, and we discuss some implications of each for transformational change within and beyond policing.*

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### INTRODUCTION

In the wake of widespread protest after the deaths of George Floyd, Breonna Taylor, and other victims of police violence during the summer of 2020, the Black Lives Matter movement’s call to “defund the police” captured the national imagination. Municipal governments in Seattle, New York, Minneapolis and elsewhere promised to cut funding and contracts for their respective police departments, with mixed results.<sup>1</sup> This first major push for defunding encountered resistance that has seriously hampered those efforts, with sources of critique ranging from police unions to Democratic Party operatives.<sup>2</sup> Aspects of local government

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1. Jenny Gross & John Eligon, *Minneapolis City Council Votes to Remove \$8 Million From Police Budget*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/12/10/us/minneapolis-police-funding.html> [<https://perma.cc/C5BG-8TDJ>]; Jemima McEvoy, *At Least 13 Cities Are Defunding Their Police Departments*, FORBES (Aug. 12, 2020, 10:24 AM), <https://www.forbes.com/sites/jemimamcevoy/2020/08/13/at-least-13-cities-are-defunding-their-police-departments/?sh=38dc4c8729e3> [<https://perma.cc/BSF2-YUSJ>]; Astead W. Herndon, *Alexandria Ocasio-Cortez on Biden’s Win, House Losses, and What’s Next for the Left*, N.Y. TIMES (June 22, 2021), <https://www.nytimes.com/2020/11/07/us/politics/aoc-biden-progressives.html> [<https://perma.cc/CT77-7ARQ>] (noting that, in an interview, Representative Alexandria Ocasio Cortez described the inclination to ignore calls to defund the police unsustainable).

2. See, e.g., Robert Iafolla, *Defunding Is One Place Police Unions See Vaunted Powers Limited*, BLOOMBERG L. (June 12, 2020, 11:15 AM), <https://news.bloomberglaw.com/daily-labor-report/defunding-is-one-place-police-unions-see-vaunted-powers-limited> [<https://perma.cc/45R7-KB7S>]; ArLuther Lee, *Police Unions Brace for Fight as Calls Grow to ‘Defund’ Law Enforcement*, ATLANTA J.-CONST. (June 14, 2020), <https://www.ajc.com/news/police-unions-brace-for-fight-calls-grow-defund-law-enforcement/zG5C8ckWUOmTGPMUIBogLP/> [<https://perma.cc/9ZVF-AKXJ>]; Luis Ferré-Sadurní & Jesse McKinley, *How ‘Defund the Police’ Roiled Competitive Races in New York*, N.Y. TIMES (Dec. 13, 2020), <https://www.nytimes.com/2020/11/06/nyregion/election-nyc-defund-police.html> [<https://perma.cc/XDP8-E27F>]; Richard Luscombe, *James Clyburn: ‘Defund the Police’ Slogan May Have Hurt Democrats at Polls*, GUARDIAN (Nov. 8, 2020, 3:01 PM), <https://www.theguardian.com/us-news/2020/nov/08/james-clyburn-defund-police-slogan-democrats-polls> [<https://perma.cc/FLY4-GYFG>]; Kyle Peyton, Paige E. Vaughn & Gregory

law, including the content of municipal charters, have also hampered efforts to reduce police funding and reinvest it elsewhere.<sup>3</sup> Many cities have cut their police budgets to some noticeable degree, while others have increased their police budgets for 2021.<sup>4</sup> Calls to cut police funding and invest in alternatives to policing and incarceration will surely continue in budgetary and legislative debates for fiscal year 2022 and beyond.

In debates over police funding, casual observers and many policymakers have overlooked fundamental attributes of the call to defund police. The argument is not merely a demand for subtraction but also addition: the idea is that funds taken from police departments should be invested in alternative community-supportive organizations and institutions that build public safety through nonpunitive, non-carceral means.<sup>5</sup> Yet, what it means to invest in alternatives to police and incarceration is often unclear to those who retain governmental control. In particular—perhaps for strategic reasons—there is little consistency about which alternatives should take priority and little specificity about how to create a robust infrastructure that can shrink the footprint of the police without leaving gaps in needed services.<sup>6</sup> In this context, important debates about the proper role of government in crafting and administering alternatives to the criminal legal system; the relative role of local, state, and the federal government given simultaneous calls to find solutions in proximate community while also rooting out broad, systemic racism; the definition and deeper meaning of alternatives; and the criteria for

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A. Huber, *Americans Don't Support the Idea of Defunding the Police*, WASH. POST: MONKEY CAGE (Aug. 31, 2020, 6:00 AM), <https://www.washingtonpost.com/politics/2020/08/31/slogan-defund-police-can-turn-americans-away-movement-against-police-brutality/> [<https://perma.cc/JF7T-8PBX>]. But see Herndon, *supra* note 1.

3. Anthony O'Rourke, Rick Su & Guyora Binder, *Disbanding Police Agencies*, 121 COLUM. L. REV. (forthcoming 2021); see also Zoë Jackson, *How Charter Commission Kept Minneapolis Police Reform Off November Ballot*, STAR TRIBUNE (Sept. 1, 2020, 2:36 PM), <https://www.startribune.com/how-charter-commission-kept-minneapolis-police-reform-off-november-ballot/572285651/> [<https://perma.cc/QW8F-H2PC>].

4. Sarah Holder, Fola Akinnibi & Christopher Cannon, *'We Have Not Defunded Anything': Big Cities Boost Police Budgets*, BLOOMBERG CITYLAB (Sept. 22, 2020), <https://www.bloomberg.com/graphics/2020-city-budget-police-defunding/> [<https://perma.cc/Y8AM-JY3P>]; Sam Levin, *These US Cities Defunded Police: 'We're Transferring Money to the Community'*, GUARDIAN (Mar. 11, 2021, 11:03 AM), <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community> [<https://perma.cc/TM2R-GA3Q>]; see also David Larson, *Durham Approves Police Budget Increase Despite 'Defund' Movement Pressure*, N. STATE J. (June 17, 2020), <https://nsjonline.com/article/2020/06/durham-approves-police-budget-increase-despite-defund-movement-pressure/> [<https://perma.cc/V2QK-HCAE>].

5. See, e.g., Dionne Searcey, *What Would Efforts to Defund or Disband Police Departments Really Mean?*, N.Y. TIMES (Dec. 10, 2020), <https://www.nytimes.com/2020/06/08/us/what-does-defund-police-mean.html> [<https://perma.cc/SDQ7-AQPG>].

6. See, e.g., *Durham Mayor Pro Tempore on Defunding the Police in Her City*, NPR: ALL THINGS CONSIDERED (June 6, 2020, 5:25 PM), <https://www.npr.org/2020/06/06/871520133/durham-mayor-pro-tempore-on-defunding-the-police-in-her-city> [<https://perma.cc/LQX3-R9JR>] (arguing for investment in alternative systems).

prioritizing government programs and community organizations in funding redistribution are submerged.

Because we expect police defunding and reinvestment to remain a central movement demand, this Article explores the demand's discursive and normative terrain. It does so by describing three logics of criminal system alternatives that we have observed in activists' demands and organizing efforts. Specifically, we identify investments in *the welfare state*, *safety production*, and *racial reparation* as overlapping but distinct logics that might guide decisions about where and how money should be spent as part of defund initiatives at the local, state, and federal levels. In articulating these logics, we aim to contribute to the iterative relationship between movement activists, directly affected community members, policymakers, scholars, and the public. This analysis is thus sympathetic to calls for scholarship that is in conversation with social movements and marginalized people, and we ally ourselves with a rich tradition of critical race scholarship that aims to understand law and policy through the narrative lenses and experiences of the people most affected by its implementation.<sup>7</sup> At the same time, this Article also invites challenging and perhaps less inspirational questions of implementation and lawmaking, recognizing that moving from demand, to policy, and then to practice necessitates multiple acts of translation.

To be sure, the logics we describe overlap and intersect. For example, arguments for reallocating funds to Black-led nonprofit organizations apply logics of community-based safety production and racial reparation. Similarly, many advocates argue for investment in a combination of community-based alternatives and governmental alternatives.<sup>8</sup> One logic is not obviously superior to another. We also do not aim, in this Article, to offer a comprehensive accounting of logics underlying the call to invest in alternatives to traditional policing. There are certainly others. However, in our estimation, the logics we identify and analyze here are at least three of the most significant in contemporary discourse and policymaking.

Debates about budget allocation are rarely transparent about the values that motivate them or the implications of one or another budgetary choice. By setting forth clearly diverse ways of thinking about the meanings of investing in alternatives

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7. See, e.g., DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); Amna Akbar, Sameer Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. (forthcoming 2021); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2411 (1989); Charles Lawrence III, *Listening for Stories in All the Right Places: Narrative and Racial Formation Theory*, 46 LAW & SOC'Y REV. 247, 247 (2012); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 323 (1987).

8. See, e.g., Ashish Prashar, Opinion, *Yes, We Need to 'Defund the Police'*, BUS. INSIDER (June 9, 2020, 6:57 AM), <https://www.businessinsider.com/we-need-to-defund-police-reduce-budget-spend-social-services-2020-6> [<https://perma.cc/7PYN-T4GV>] (arguing for a "community first" approach that includes both investment in community leaders who are "much better placed to care for their members and their block rather than outside police forces" and non-police, government-run emergency response).

to criminal system approaches, debates can be more productive and justice-promoting: indeed, some local officials have used the lack of clarity in calls to defund as a way to explain the failure of some summer 2020 efforts.<sup>9</sup> We also hope that clarifying these terms helps ground and explicate some of the normative and political underpinnings of criminal system alternatives more broadly.

In Part I, we engage with the police defunding logic of investment in the welfare state, shifting funds from the state's punitive arm to its ostensible provision-granting arms. In Part II, we describe the logic of alternative, community-based safety production, with emphasis on both root causes and ways of preventing and responding to harm that do not rely upon traditional policing. In Part III, we explore the oft overlooked logic of racial reparation that is at the heart of calls to defund, situating the call to defund within a broader racial justice agenda that is keenly focused on past harms of policing and nonprofit funding. In the Conclusion, we briefly discuss some of the implications of misunderstanding these logics for budgeting and policymaking debates, and we also make note of dynamics of law and politics that surround these debates.

### I. INVESTMENTS IN THE WELFARE STATE

Some advocates of penal divestment advocate shifting funds from policing and the penal system to governmental agencies tasked with community support, service provision, housing, and welfare. This logic draws from a noncontroversial sociological insight that, as the American welfare state has mutated and devolved, the penal system has risen to supplant its intended work.

#### *A. The Demise of Penal-Welfarism & the Rise of the Carceral State*

The penal-welfarism of the post-war era, which was characterized by widespread support for state interventions into the economy and government efforts to address underlying conditions of poverty and crime, has come to an end.<sup>10</sup> Just as penal-welfarism flourished alongside Keynesianism, contemporary poverty governance in the United States is embedded within neoliberal ideas about the proper role of the state and market. Under neoliberalism, poverty and crime have been framed in terms of individual responsibility, and social supports recast as engendering dependency, not equality or civic inclusion.<sup>11</sup>

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9. E.g., Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, N.Y. TIMES (Jan. 2, 2021), <https://www.nytimes.com/2020/09/26/us/politics/minneapolis-defund-police.html> [https://perma.cc/PSG3-9WQX].

10. See generally DAVID GARLAND, PUNISHMENT AND WELFARE: A HISTORY OF PENAL STRATEGIES (Quid Pro Books 2018); DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY (2001).

11. See David Garland, *Penal Controls and Social Controls: Toward a Theory of American Penal Exceptionalism*, 22 PUNISHMENT & SOC'Y 321, 323 (2019) (positing that America's political economy and weak social welfare programs lead to poverty and high crime rates).

The co-occurrence of the massive expansion of the U.S. penal system with the politicization and transformation of welfare has led many to conceptualize this shift as one in which the state's heavy-handed right arm has come to replace its more supportive left arm.<sup>12</sup> As historians Elizabeth Hinton and Julilly Kohler-Hausmann have described, the expansion of the welfare state is in many ways at the root of the expansion of the carceral complex, with similar logics, narratives, and practices operating in both.<sup>13</sup> Arguments about welfare retrenchment tend to focus on changes to cash assistance that culminated in the 1996 Personal Responsibility and Work Opportunity Act (PRWORA). This 1996 legislation devolved public authority from federal to state and local jurisdictions and further inserted the private sector and market principles into government relief.<sup>14</sup> Changes to Temporary Assistance for Needy Families (TANF) in particular typified a punitive style of welfare provision that borrowed techniques from carceral settings and embedded criminal suspicion into the process of receiving aid.<sup>15</sup> TANF recipients are subjected to surveillance, sanctions, and ritualized stigmatization that are intended to produce obedient, self-reliant subjects.<sup>16</sup> PRWORA also fueled a sharp decline in the number of people receiving Aid to Families with Dependent Children and TANF, as total recipients fell by seventy-two percent between 1994 and 2008.<sup>17</sup>

Given the dramatic nature of these changes, it is tempting to see PRWORA as emblematic of broader welfare retrenchment. Yet, as sociologists Laura Tach and Kathryn Edin argue, “[a] focus on TANF suggests the dwindling of the American safety net, but a broader view reveals that the United States now spends significantly more on behalf of the poor and near-poor than it did prior to welfare reform.”<sup>18</sup> Specifically, when food assistance, disability supports, tax credits, and expenditures on social services are included, per capita welfare expenditures have actually

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12. See, e.g., LOÏC WACQUANT, PUNISHING THE POOR: THE NEOLIBERAL GOVERNMENT OF SOCIAL INSECURITY, at xiii (2009); Vesla M. Weaver, *Frontlash: Race and the Development of Punitive Crime Policy*, 21 STUD. AM. POL. DEV. 230, 230–31 (2007).

13. ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 334 (2016) (describing the emergence of “a historically distinct carceral network composed of punitive and social welfare institutions, with statistical discourses of black criminality and pathological understandings of poverty serving as its intellectual foundation”); JULILLY KOHLER-HAUSMANN, GETTING TOUGH: WELFARE AND IMPRISONMENT IN 1970S AMERICA 290–93 (2017) (explaining the emergence of common narratives within both welfare and criminal system policy debates that problems of inequality were “problems of incorrigible drug pushers, welfare queens, and criminals”).

14. See generally JOE SOSS, RICHARD C. FORDING & SANFORD F. SCHRAM, DISCIPLINING THE POOR: NEOLIBERAL PATERNALISM AND THE PERSISTENT POWER OF RACE (2011).

15. Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 661–62 (2009).

16. SOSS, FORDING & SCHRAM, *supra* note 14, at 40.

17. *Id.* at 38.

18. Laura Tach & Kathryn Edin, *The Social Safety Net After Welfare Reform: Recent Developments and Consequences for Household Dynamics*, 43 ANN. REV. SOCIO. 541, 553 (2017).

grown.<sup>19</sup> At the same time, the distribution of welfare expenditures across groups has changed. Aid has been diverted away from able-bodied, working-age adults and from the poorest, non-working households with children, and toward the shallow and working poor.<sup>20</sup> Cash assistance has been curtailed while expenditures on social service provision have increased.

Overall, then, relief has become decidedly lean for the poorest Americans, which helps explain the rise of extreme poverty and deprivation in recent years.<sup>21</sup> Welfare is less supportive of the most vulnerable, increasingly decentralized, and characterized by the interpenetration of the public and private sectors. Social services comprise a large and growing share of state anti-poverty efforts and are increasingly delivered by non-state organizations and for-profit firms.<sup>22</sup> Some of these social service programs, such as emergency shelter or childcare, function as a form of in-kind transfer. Many other programs provide training or services aimed at helping recipients retain or obtain work.<sup>23</sup> These latter programs continue the trend of neoliberal paternalism in welfare provision: rather than providing cash assistance to the poor, the state contracts with a substantial human and social services industry to provide programs designed to address various individual treatment needs as well as barriers to work.<sup>24</sup> As a result, human and social services now play important roles of the lives of poor people.<sup>25</sup> These “therapeutic” programs often work in tandem with the police and the courts and generally feature a notable emphasis on compliance and a high degree of reliance on sanctions to punish and deter noncompliance.<sup>26</sup> This iteration of a safety net aims to promote economic self-sufficiency by fixing broken people and without addressing structural and social roots of poverty.

These changes in the welfare sphere have occurred alongside the deinstitutionalization of mental health and substance abuse treatment beginning in the mid-twentieth century. Spurred by landmark patients’ rights decisions and

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19. JOHN ICELAND, *POVERTY IN AMERICA: A HANDBOOK* 145 (3d ed. 2013); Robert A. Moffitt, *The Deserving Poor, the Family, and the U.S. Welfare System*, 52 *DEMOGRAPHY* 729, 735 (2015).

20. Moffitt, *supra* note 19, at 741–43.

21. H. Luke Shaefer & Kathryn Edin, *Rising Extreme Poverty in the United States and the Response of Federal Means-Tested Transfer Programs*, 87 *SOC. SERV. REV.* 250, 251 (2013).

22. See SCOTT W. ALLARD, *OUT OF REACH: PLACE, POVERTY, AND THE NEW AMERICAN WELFARE STATE* 7 (2009); MICHAEL B. KATZ, *THE PRICE OF CITIZENSHIP: REDEFINING THE AMERICAN WELFARE STATE* 152 (2001); JENNIFER R. WOLCH, *THE SHADOW STATE: GOVERNMENT AND VOLUNTARY SECTOR IN TRANSITION* 1 (1990).

23. ALLARD, *supra* note 22, at 9.

24. SOSS, FORDING & SCHRAM, *supra* note 14, at 200.

25. STEVEN RATHGEB SMITH & MICHAEL LIPSKY, *NONPROFITS FOR HIRE: THE WELFARE STATE IN THE AGE OF CONTRACTING* 3 (1993).

26. See FORREST STUART, *DOWN, OUT, AND UNDER ARREST: POLICING AND EVERYDAY LIFE IN SKID ROW* 80–81 (2016) (discussing the use of “therapeutic policing” on Skid Row and the implementation of punitive measures “in an attempt to rehabilitate and transform those who had ‘fallen’ to the neighborhood”).

incentivized by the introduction of Medicaid in 1965 and Supplemental Security in 1972, state leaders systematically closed down mental hospitals.<sup>27</sup> Between 1955 and 2000, the per capita number of publicly funded mental health beds fell by more than ninety percent, discharging nearly half a million patients, literally onto the streets, by the end of the century.<sup>28</sup> Deinstitutionalization began with the expectation that mental health care would be provided, not in accordance with the “cold mercy of custodial isolation” but through “the open warmth of community concern,” as President Kennedy promised in his speech advocating for the 1963 Community Mental Health Center Construction Act.<sup>29</sup> Unfortunately, this promise never materialized, leaving former and would-be patients left to survive without a systematic treatment system and heavily dependent on publicly funded health care that has fallen under the axe of successive waves of welfare retrenchment. It is no surprise that research consistently traces the late twentieth-century explosion of street homelessness to deinstitutionalization.<sup>30</sup>

These changes in the social welfare sphere are paralleled by equally dramatic change in the penal sphere. In this context, policing has become more aggressive, and prisons and jails have become warehouses and workplaces for the poor and the mentally ill.<sup>31</sup> Police, bolstered by relatively novel theories of preventive policing and order-maintenance policing, today focus more on surveilling and signaling control over Black and brown urban neighborhoods through low-level crime response than on solving the serious crimes that threaten Black and brown people’s sense of safety and well-being.<sup>32</sup>

Two main policy shifts help explain the rise of especially aggressive forms of policing. The first was the federal war on drugs, which emanated from national-level politicians but included a number of incentives aimed at encouraging state and local police departments to place greater emphasis on drug law enforcement and to employ proactive methods such as “buy-busts” and no-knock

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27. MICHAEL J. DEAR & JENNIFER R. WOLCH, *LANDSCAPES OF DESPAIR: FROM DEINSTITUTIONALIZATION TO HOMELESSNESS* 98 (1987).

28. H. Richard Lamb & Linda E. Weinberger, *The Shift of Psychiatric Inpatient Care from Hospitals to Jails and Prisons*, 33 J. AM. ACAD. PSYCHIATRY & L. 529, 529–30 (2005).

29. *Reflecting on JFK’s Legacy of Community-Based Care*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/jfks-legacy-community-based-care> [https://perma.cc/5T7D-6CVD] (Mar. 18, 2021); *see also* Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Pub. L. No. 88–164, 77 Stat. 282.

30. *See generally* Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Pub. L. No. 88–164, 77 Stat. 282.

31. *See, e.g.*, Timothy Williams, *Jails Have Become Warehouses for the Poor, Ill and Addicted, a Report Says*, N.Y. TIMES (Feb. 11, 2015), <https://www.nytimes.com/2015/02/11/us/jails-have-become-warehouses-for-the-poor-ill-and-addicted-a-report-says.html> [https://perma.cc/4N9U-7RDK].

32. *See, e.g.*, Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2117 (2017).

search warrants to identify and arrest drug law violators.<sup>33</sup> Similarly, advocates of “broken windows policing” successfully urged police departments to encourage officers to react strongly to low-level (potentially) criminal behaviors, such as panhandling or lying on sidewalks.<sup>34</sup>

These changes in policing, as well as more aggressive prosecutorial charging practices and the imposition of longer sentences, fueled the expansion of the penal system.<sup>35</sup> Critics on both the left and the right use the term “mass incarceration” to call attention to the unprecedented scale of detention in the United States. The U.S. incarceration rate began a dramatic ascent in the late 1970s and early 1980s and continued to rise through 2007, when 750 of every 100,000 U.S. residents—nearly one in 100 adults—lived behind bars.<sup>36</sup> The scale of confinement now sharply differentiates the United States from comparable democratic countries, where incarceration rates range from forty-one per 100,000 residents in Japan to 140 in England and Wales.<sup>37</sup> Mass incarceration has had far-reaching demographic, political, and sociological effects that work to enhance—and mask—racial and socioeconomic inequalities.<sup>38</sup> In this context, police and penal institutions have become the primary available response to a wide range of social problems, including not only violence but also mental illness, substance abuse, and other behavioral health issues.

### *B. Impacts of #Defund on Local Government Reallocation*

Arguments by #Defund advocates to reallocate funding from police to social services, welfare, housing, and education draw on a widely recognized sense that the

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33. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 124 (rev. ed. 2012).

34. See, e.g., GEORGE L. KELLING, U.S. DEPT OF JUST., NCJ 178259, “BROKEN WINDOWS” AND POLICE DISCRETION 33 (1999).

35. Katherine Beckett, *Mass Incarceration and Its Discontents*, 47 CONTEMP. SOCIO. 11, 12 (2018) (reviewing MONA LYNCH, *HARD BARGAINS: THE COERCIVE POWER OF DRUG LAWS IN FEDERAL COURT* (2016)).

36. JENIFER WARREN, PEW CTR. ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, at 3, 35 tbl.A-7 (2008).

37. ROY WALMSLEY, INST. FOR CRIM. POL’Y RSCH, WORLD PRISON POPULATION LIST, (12th ed. 2018), [https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl\\_12.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf) [<https://perma.cc/UA3U-SJWY>] (reporting figures from 2016).

38. See BECKY PETTIT, *INVISIBLE MEN: MASS INCARCERATION AND THE MYTH OF BLACK PROGRESS* 11 (2012) (tying high rates of incarceration in the U.S. to inequality in terms of race and class); BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* 6 (2006) (charting the rise of the prison boon and contending that it had direct effects on the economic situation of young Black men in the 1990s); Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753, 1754 (2010) (showing effects on Black communities and that criminal punishment is often concentrated in poor, urban neighborhoods); Hedwig Lee, Tyler McCormick, Margaret T. Hicken & Christopher Wildeman, *Racial Inequalities in Connectedness to Imprisoned Individuals in the United States*, 12 DU BOIS REV. 269, 270 (2015) (examining the consequences of mass incarceration not just on adult men who were imprisoned, but also on the “spillover effects” on families and communities).

criminal system has reached far beyond its appropriate borders, and that shrinking the criminal system will only be possible if some of its funding is redirected to build more robust and less punitive systems of provision and support.

In many cities, the need to create and expand more constructive and less dangerous responses to people contending with homelessness and behavioral health challenges is a particular focus. In such places, activists have successfully argued for redirection of emergency response from police departments to health-related agencies and social service agencies, often holding up Eugene, Oregon's Crisis Assistance Helping Out On The Streets (CAHOOTS) model as an example.<sup>39</sup> The Austin Justice Coalition has made a reallocation of funds from the police department to emergency medical services (EMS) a centerpiece of its reform campaign, with the aim of creating a new option for 911 callers to specify whether they would like a mental health worker to respond to their emergency, accompanied by EMS workers.<sup>40</sup> A few cities, including New York, are piloting such models that are largely untested using formal, independent policy evaluation tools.<sup>41</sup>

Some of these initiatives involve the provision of care and housing, while others offer a more short-term response along with referrals to other programs and providers.<sup>42</sup> While all of these approaches rely on public funds, emerging models vary according to whether they are designed and operated by government agencies as opposed to community-based organizations. San Francisco's new Street Crisis Response Team, for example, brings together employees of the San Francisco Fire Department and Department of Public Health to respond to 911 calls concerning people experiencing behavioral health crises.<sup>43</sup> Others, such as Seattle's JustCARE initiative, allocate funds acquired by the county through the federal CARES Act to community organizations.<sup>44</sup> Those community organizations then provide

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39. In Eugene's CAHOOTS program, 911 calls that appear to stem from a behavioral health issue and do not appear to include the risk of violence are re-routed to the White Bird Clinic, whose outreach responders then responds to those calls. 'CAHOOTS': *How Social Workers and Police Share Responsibilities in Eugene, Oregon*, NPR: ALL THINGS CONSIDERED (June 10, 2020, 3:57 PM), <https://www.npr.org/2020/06/10/874339977/cahoots-how-social-workers-and-police-share-responsibilitiesin-eugene-oregon> [<https://perma.cc/T5E4-Z7X4>].

40. Adela Uchida, *Group Wants Austin Council to Shift Response to Mental Health Calls from Police to EMS*, CBS AUSTIN (Aug. 28, 2019), <https://cbsaustin.com/news/local/group-wants-austin-council-to-shift-response-to-mental-health-calls-from-police-to-ems> [<https://perma.cc/AB3B-Q2CL>].

41. See, e.g., Fola Akinnibi, *NYC Pilot Tries Mental Health Responders in Place of Police*, BLOOMBERG CITYLAB (Nov. 13, 2020, 4:13 AM), <https://www.bloomberg.com/news/articles/2020-11-13/nyc-pilot-sends-health-workers-in-place-of-police> [<https://perma.cc/62AY-MGCJ>].

42. See *id.*; Uchida, *supra* note 40.

43. Press Release, San Francisco Office of the Mayor, San Francisco's New Street Crisis Response Team Launches Today (Nov. 30, 2020), <https://sfmayor.org/article/san-franciscos-new-street-crisis-response-team-launches-today> [<https://perma.cc/27V6-NUCF>].

44. Sydney Brownstone, *New Approach to Sheltering Homeless People During COVID-19 in Seattle Shows Signs of Success, but Funding in Peril*, SEATTLE TIMES (Nov. 26, 2020, 7:53 AM), <https://www.seattletimes.com/seattle-news/homeless/a-new-approach-to-get-homeless-people-out-of-camps-has-shown-success-but-its-funding-expires-soon/> [<https://perma.cc/3ZY9-C5BJ>]; see also Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-36, 134 Stat. 281 (2020).

long-term, intensive case management and housing to people who are living unsheltered and contending with behavioral health challenges and who would likely otherwise end up in the criminal legal system or the victim of encampment sweeps.<sup>45</sup>

Activists have also made arguments for police funding to shift to schools, housing authorities, and welfare agencies. For example, the organization Make the Road New York has argued for city funding from NYPD to be reinvested into the Department of Youth and Community Development, along with other initiatives that seem likely to have a major governmental component—education and adult literacy, housing, housing the homeless, and social services that keep our communities safe and healthy.<sup>46</sup>

### C. Welfare-State Logic in Political Context

The main benefit of the welfare-state logic of reinvestment is that it promises to help rebuild the supportive governmental arm that has been weakened and rendered more punitive in recent decades. In 1980, governments spent roughly the same amount on social control through the criminal system (including police, courts, and corrections) as on cash welfare.<sup>47</sup> Today, governments spend more than twice as much on social control spending than on TANF, food stamps, and supplemental social security combined.<sup>48</sup> This trend has meant that the United States is increasingly distinguished from other wealthy countries by its comparatively high levels of poverty and inequality, porous social safety net, and massive penal system.<sup>49</sup>

While the social welfare logic of reinvestment makes sense given larger changes in the social policy landscape, and seems to enjoy relatively widespread support, it also has several potential drawbacks. One is that the state's provision arm has never operated justly, certainly not toward racially marginalized communities.<sup>50</sup> There is a large body of research cataloguing the perils of the welfare

45. Brownstone, *supra* note 44.

46. Angélica Acevedo, *Defunding the Police Means Prioritizing Public Services, Investing in Communities*, MAKE ROAD N.Y. (June 30, 2020), <https://maketheroadny.org/defunding-the-police-means-prioritizing-public-services-investing-in-communities/> [<https://perma.cc/U4CQ-RTQD>].

47. Christopher Ingraham, *U.S. Spends Twice as Much on Law and Order as it Does on Cash Welfare, Data Show*, WASH. POST (June 4, 2020) (citing EMMANUEL SAEZ & GABRIEL ZUCMAN, *THE TRIUMPH OF INJUSTICE: HOW THE RICH DODGE TAXES AND HOW TO MAKE THEM PAY* (2019)), <https://www.washingtonpost.com/business/2020/06/04/us-spends-twice-much-law-order-it-does-social-welfare-data-show/> [<https://perma.cc/CU6Q-YCQA>].

48. *Id.*

49. Elise Gould & Hilary Wething, *U.S. Poverty Rates Higher, Safety Net Weaker than in Peer Countries*, ECON. POL'Y INST. (July 24, 2012), <https://www.epi.org/publication/ib339-us-poverty-higher-safety-net-weaker/> [<https://perma.cc/QLC2-2E28>].

50. *See, e.g.*, KOHLER-HAUSMANN, *supra* note 13, at 165 (“Ultimately, [certain] policies converged with other state initiatives, such as punitive criminal and drug policies explored in other parts of this book, to help solidify the public perception of a racialized, unassimilable ‘underclass’ in U.S. society.”); JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR*

state for poor people and communities of color—surveillance,<sup>51</sup> blame and assessments of desert,<sup>52</sup> humiliation and stigmatization,<sup>53</sup> administrative burden,<sup>54</sup> reinforcement of racial hierarchy,<sup>55</sup> and the welfare state’s own carceral and neoliberal logics and justifications.<sup>56</sup> The shift away from cash assistance and toward the provision of social services has arguably exacerbated the paternalistic quality of many forms of welfare. Debates over reallocation must be attentive to specific features of the systems of provision they endorse. To receive additional funds, government programs and community organizations should emphasize the maximization of recipients’ agency and choice, avoid stigmatization and sanction in structure and implementation, and reinforce the dignity of human beings who encounter them.<sup>57</sup> They should be actively anti-racist, operating in ways that directly reject or upend racialized stereotypes and ideologies.<sup>58</sup> It is hard to locate many current-day, local provisional bureaucracies that meet those standards, even if the individuals inside them do. To the extent that enhanced social service/welfare resources are allocated to community-based organizations, care should be taken to contract with organizations that hold these values and commitments.

A second potential drawback of social welfare logic is that it is susceptible to reinterpretation merely as a demand for social service allocation alone, which can occur in many places without coinciding with police defunding—that is, allocation but not *reallocation*. The persuasive diagnosis that welfare retrenchment and transformation is associated with criminal system overreach is not widely

ON POVERTY 195 (1994) (discussing that attitudes were split about the social programs of the 1960s on the basis of how those programs affected racial minorities).

51. *See generally* KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017); JOHN GILLIOM, *OVERSEERS OF THE POOR: SURVEILLANCE, RESISTANCE, AND THE LIMITS OF PRIVACY* (2001).

52. *E.g.*, Noah D. Zatz, *Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction*, 59 UCLA L. REV. 550, 556 (2012).

53. *E.g.*, JAMILA MICHENER, *FRAGMENTED DEMOCRACY: MEDICAID, FEDERALISM, AND UNEQUAL POLITICS* 64 (2018); Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297, 311 (2013).

54. *E.g.*, PAMELA HERD & DONALD P. MOYNIHAN, *ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS* 15 (2018) (defining the term “administrative burden” and explaining how it relates to social welfare).

55. *E.g.*, DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002); Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J.L. & FEMINISM 317, 337 (2014).

56. *E.g.*, SOSS, FORDING & SCHRAM, *supra* note 14, at 20; Noah D. Zatz, *Get to Work or Go to Jail: State Violence and the Racialized Production of Precarious Work*, 45 LAW & SOC. INQUIRY 304, 304 (2020).

57. Jennifer Sykes, Katrin Križ, Kathryn Edin & Sarah Halpern-Meekin, *Dignity and Dreams: What the Earned Income Tax Credit (EITC) Means to Low-Income Families*, 80 AM. SOCIO. REV. 243 (2015); Katherine Beckett, Forrest Stuart, Monica C. Bell, Gregory Antill, Kailyn Gaines, Ann Sarnak & Malina Simard-Halm, *Dignity and Diversion* (unpublished manuscript) (on file with author). *See generally* ANGE-MARIE HANCOCK, *THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN* (2004).

58. *See generally* IBRAM X. KENDI, *HOW TO BE AN ANTRACIST* (2019).

understood to make a case for criminal system defunding. Instead, policymakers prefer to use this logic to support slightly increased investment in social service-oriented alternatives to police that runs *alongside* a consistent or even increased police budget.<sup>59</sup> In doing so, they eschew the fundamental analysis of Black Lives Matter on #Defund, which “question[s] the fundamental premise of policing . . . that it produces safety.”<sup>60</sup> Maintaining or increasing police funding while also increasing social services budgets may be a valid political compromise, but it does not start from or even recognize the baseline analysis of movement actors.

Demands for social welfare investments have frequently manifested merely as new allocations to the welfare state, without divestment from policing. In Durham, North Carolina, the city council faced significant pressure in summer 2020 to cut police department funding, chiefly from local group Durham Beyond Policing.<sup>61</sup> Roughly one year earlier, the group had been pushing the city to create a Community Safety and Wellness Task Force, which would study racial disparities in the city and support responses to violence outside of the criminal system.<sup>62</sup> There are no consistently held seats on the Task Force for the police department.<sup>63</sup> Priority memberships are given to community members who are directly impacted by the criminal legal system.<sup>64</sup> Efforts to create the Task Force had come to standstill in the city council before summer 2020, hampered by waning political interest and COVID-19.<sup>65</sup> Yet, the national protests in summer 2020 changed the political possibilities in Durham. Emboldened by #Defund and more overt calls for police and prison abolition, Durham Beyond Policing made more radical demands in summer 2020. In response to these more radical calls, the city finally adopted the group’s proposal to invest one million dollars into the Community Safety and Wellness Task Force.<sup>66</sup> Yet, instead of cutting police funding alongside this alternative investment, the city also increased the police budget by five percent.<sup>67</sup>

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59. See *supra* notes 57–58 and accompanying text; *infra* notes 60–63 and accompanying text.

60. Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 108 (2020).

61. Cameron Oglesby, *Durham Task Force Will Assess Community Safety, Police Funding*, 9TH ST. J. (July 6, 2020), <https://9thstreetjournal.org/2020/07/06/durham-community-task-force-to-assess-community-safety-policing/> [https://perma.cc/YU3L-L6ZH].

62. *Id.*

63. *Id.*

64. BY-LAWS OF DURHAM COMMUNITY SAFETY & WELLNESS TASK FORCE, [https://cityordinances.durhamnc.gov/OnBaseAgendaOnline/Documents/ViewDocument/Final-Published%20Attachment%20-%2013824%20-%20OTHER%20-%20DURHAM%20COMMUNITY%20SAFETY%20\\_%20WELLNES.pdf?meetingId=369&documentType=Agenda&itemId=15078&publishId=64805&isSection=false](https://cityordinances.durhamnc.gov/OnBaseAgendaOnline/Documents/ViewDocument/Final-Published%20Attachment%20-%2013824%20-%20OTHER%20-%20DURHAM%20COMMUNITY%20SAFETY%20_%20WELLNES.pdf?meetingId=369&documentType=Agenda&itemId=15078&publishId=64805&isSection=false) [https://perma.cc/656T-SDC3].

65. Oglesby, *supra* note 61.

66. *Id.*

67. See Quran, *It’s Time to Defund and Abolish Policing in Durham*, DURHAM BEYOND POLICING (July 2, 2020), <https://durhambeyondpolicing.org/time-to-abolish-policing-durham/> [https://perma.cc/9X9U-4CTD].

The city thus met a bold demand with another undeniably bold but less radical demand.

Similarly, in October 2020, the City of San Francisco announced a new initiative that will send crisis teams to respond to calls related to psychiatric issues, substance abuse, and other behavioral issues, as mentioned previously.<sup>68</sup> Like Durham, San Francisco did not cut funding to the police department in order to pursue this approach. Instead, money for the Street Crisis Response Team comes from the city's General Fund.<sup>69</sup> These examples may not be aberrational. As Michelle Wilde Anderson has observed, even the most cash-strapped cities reserve and sometimes increase police department budgets while the budget for every other type of municipal service erodes or is even eliminated.<sup>70</sup> Especially in cities like San Francisco that are not on the brink of financial disaster, it is unsurprising that the city would attempt to meet the investment aspect of Black Lives Matter movement demands without seriously engaging the trickier and less popular divestment demand. Police unions are likely to continue to make doing so even more challenging.<sup>71</sup>

Decisions about specific strategies and timelines toward investing in alternatives involve local assessments of the political and policy environments. Even policymakers who are skeptical of police departments might believe that speedy divestment from police might ultimately jeopardize the broader goals of defunding. The choice to invest in alternatives without divesting from policing might be, for some policymakers, part of a longer-term strategy for successful criminal system divestment. For others, though, investment in other bureaucracies without divestment from police might be a way to deflect and thus retain status quo policing. Time will tell whether social welfare enhancement might be a viable pathway toward eventual reallocation.

## II. SAFETY PRODUCTION

In addition to pointing out the failures of the welfare state, advocates for reducing police funding also contend that police have done a poor job of promoting public safety and responding to harm and violence. They argue that policing makes some communities *less* safe and leaves communities with little recourse or healing

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68. See, e.g., Eric Westervelt, *Removing Cops from Behavioral Crisis Calls: We Need to Change the Model*, NPR (Oct. 19, 2020, 5:00 AM), <https://www.npr.org/2020/10/19/924146486/removing-cops-from-behavioral-crisis-calls-we-need-to-change-the-model> [<https://perma.cc/QHJ4-65P4>].

69. Press Release, Off. of the Mayor of the City of San Francisco, Mayor London Breed Announces Plan to Create Behavioral Health Street Crisis Response Team (Aug. 11, 2020), <https://sfmayor.org/article/mayor-london-breed-announces-plan-create-behavioral-health-street-crisis-response-team> [<https://perma.cc/XDH2-VHR5>].

70. Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1121, 1161 (2014).

71. See, e.g., Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 714 (2017).

when violence occurs.<sup>72</sup> Accordingly, they demand that cities stop pouring stable or escalating amounts of money into policing and instead invest in community organizations and other non-governmental institutions that have proven track records of contributing to community safety and responding to harm.<sup>73</sup>

#### *A. Broadening the Concept of Public Safety*

The motivating theory behind safety production logic is that public safety is most effectively promoted by investments that confront the root causes of violence and other public safety issues, have legitimacy in the community, and work to supplant rather than support carceral techniques of social control.<sup>74</sup> The social scientific literature provides some support for this argument. For example, important research by sociologists Patrick Sharkey, Gerard Torrats-Espinosa, and Delaram Takyar concludes that cities with higher concentrations of nonprofits focused on crime prevention, community development, substance abuse prevention, job training, and youth activities showed reductions in murder, violent crime, and property crime rates over a twenty-year period.<sup>75</sup>

Among advocates, the connection between the state and safety production is often left unresolved. Thus, some advocacy that operates from a safety production logic encourages investment into governmental agencies that, if well-operating, can address root causes of crime and violence, such as the education system and housing agencies. Sometimes, arguments focused on safety production question the role of government agencies altogether.<sup>76</sup> Advocates may push for both investment into governmental bodies that address some of the root causes of crime and

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72. E.g., Robert Rooks, Opinion, *Lack of Humanity Makes Justice System More Dangerous for Blacks Long Before Cops Interact*, USA TODAY (June 9, 2020, 7:44 AM), <https://www.usatoday.com/story/opinion/policing/2020/06/09/lack-humanity-makes-system-more-dangerous-blacks-long-before-cops-interact/5319143002/> [<https://perma.cc/XY2G-PV57>].

73. See, e.g., *id.*

74. See, e.g., Patrick Sharkey, Gerard Torrats-Espinosa & Delaram Takyar, *Community and the Crime Decline: The Causal Effect of Local Nonprofits on Violent Crime*, 82 AM. SOCIO. REV. 1214, 1218 (2017); LEAH SAKALA, SAMANTHA HARVELL & CHELSEA THOMSON, URBAN INST., PUBLIC INVESTMENT IN COMMUNITY-DRIVEN SAFETY INITIATIVES 2 (2018), [https://www.urban.org/sites/default/files/publication/99262/public\\_investment\\_in\\_community-driven\\_safety\\_initiatives\\_1.pdf](https://www.urban.org/sites/default/files/publication/99262/public_investment_in_community-driven_safety_initiatives_1.pdf) [<https://perma.cc/A2LX-UEWA>].

75. Sharkey et al., *supra* note 74, at 1221.

76. Cf. Akbar, *supra* note 60, at 91 (“Some of us are reimagining the state. Others are dreaming of moving beyond it.”) (describing the unsettled position of leftist grassroots activists and advocates on the ideal role of the state). Cf. Tracey L. Meares & Gwen Prouse, *Policing as a Public Good: Reflecting on the Term ‘To Protect and Serve’ as Dialogues of Abolition*, 72 FLA. L. REV. (forthcoming 2021) (manuscript at 17) (reporting that, for a set of Black qualitative research participants, “a better characterization of their conversations is an aspiration for a different relationship with the state rather than a smaller footprint for it”).

community-based programs that respond to harm, deter harmful behavior, or bolster efforts to address the root causes of harm.<sup>77</sup>

Arguments centering on the logic of safety production typically seek to decouple the taken-for-granted relationship between public safety and criminal justice, as enforced by police. This entails a broadening of the very conception of public safety beyond the current, narrow focus on criminal victimization to also include harmful actions that generally fall outside standard criminal statutes and reporting procedures, as well the various injuries perpetrated by state bureaucracies, private companies, and those who may have little to no direct presence in affected communities (e.g., absentee landlords, industrial polluters, predatory financial institutions).<sup>78</sup> By redefining public safety in this manner, advocates not only call into question the efficacy of policing in meaningfully increasing safety; they insist that for many neighborhoods and their residents, policing may actually *decrease* safety.<sup>79</sup>

Advocates' longstanding criticisms of the police role in safety production have been bolstered by new efforts to more systematically document and demonstrate the (often lethal) threat posed by police officers, particularly to residents of marginalized communities of color.<sup>80</sup> This has always proven difficult, as most law enforcement agencies do not collect, publish, or make publicly accessible standardized data on police killings, much less nonlethal use of force.<sup>81</sup> When a national database was established in 2019 by the FBI, it only contained roughly forty percent of all U.S. law enforcement officers.<sup>82</sup> Spurred by protests in 2014 following

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77. See, e.g., Lisa Deaderick, *Defunding Police to Build Stronger Social Services in Communities*, SAN DIEGO UNION-TRIB. (June 21, 2020, 6:00 AM), <https://www.sandiegouniontribune.com/columnists/story/2020-06-21/defunding-police-to-build-stronger-social-services-in-communities> [<https://perma.cc/8E2T-VZVW>] (“We need to get to the root cause of crime by reducing concentrated disadvantage and investing in resources that create safety for Black people and people of color, including high-quality public schools, clean and affordable housing, mental health care, the creation of living wage jobs with health care and other benefits, after school programs, youth services, and trauma healing centers.” (quoting Jennifer Cobbina, associate professor in the School of Criminal Justice at Michigan State University)).

78. Josiah Bates & Karl Vick, *America's Policing System Is Broken. It's Time to Radically Rethink Public Safety*, TIME (Aug. 6, 2020, 6:27 AM), <https://time.com/5876318/police-reform-america> [<https://perma.cc/7HNC-J2XJ>].

79. See, e.g., Monica Melton, *Why the ACLU, Black Lives Matter and Others Want to 'Defund The Police' While This Weapons Supplier Disagrees*, FORBES (June 8, 2020, 9:29 PM), <https://www.forbes.com/sites/monicamelton/2020/06/08/why-the-aclu-black-lives-matter-and-others-want-to-defund-the-police-while-this-weapons-supplier-disagrees> [<https://perma.cc/AX8N-XL6K>] (quoting Lizzie Buchen, ACLU criminal justice director).

80. See, e.g., Cynthia Lum, Christopher S. Koper, Xiaoyun Wu, William Johnson & Megan Stoltz, *Examining the Empirical Realities of Proactive Policing Through Systematic Observations and Computer-Aided Dispatch Data*, 23 POLICE Q. 283, 283–84 (2020).

81. *Wanted: Better Data on Police Shootings to Reduce Mistrust Between the Police and the Communities They Serve*, NATURE (Sept. 4, 2019), <https://www.nature.com/articles/d41586-019-02614-4> [<https://perma.cc/M8VJ-YRL3>].

82. Lynne Peoples, *Brutality and Racial Bias: What the Data Say*, 583 NATURE 22, 22 (2020).

the lethal police shooting of Michael Brown in Ferguson, Missouri, and death by officer chokehold of Eric Garner in New York City, media outlets and academic researchers launched new data-collection projects and publicly accessible databases to better quantify the frequency and rate of police violence in the United States.<sup>83</sup>

Using these data, new research reveals that police officers account for roughly 1,000 deaths per year and are responsible for more than one in twelve of all homicides of adult men.<sup>84</sup> These numbers are more pronounced in minority communities. Roughly one out of every 1,000 Black men can expect to be killed by police officers in their lifetime, making police violence one of the leading causes of death for Black men.<sup>85</sup> In fact, between 2012 and 2018, police officers “killed more Black men in their 20s than diabetes, flu/pneumonia, [and] chronic respiratory disease.”<sup>86</sup> Further, for many advocates and researchers, fatal encounters are but the most visible manifestations of ubiquitous police abuses. “This emphasis on lethal violence,” writes Shannon Malone Gonzales, “implicitly minimizes the importance of other forms of violence, such as sexual violence.”<sup>87</sup> Indeed, in addition to nonlethal forms of police harms, gender-based and sexual violence perpetrated by police officers have been virtually absent from both state and nonstate data collection efforts.<sup>88</sup> However, according to a growing number of qualitative case studies, Black and Latina women and transwomen routinely report experiencing sexual assaults, harassment, and unwanted advances by officers, sometimes under threat of arrest and incarceration.<sup>89</sup>

These experiences lead residents, particularly in the wake of criminal victimization, to mistrust, avoid, or hesitate in turning to the police for protection or assistance, compounding the extent to which policing may further decrease overall public safety.<sup>90</sup> Given that the rate of police violence has been found to be

83. E.g., *The Counted*, GUARDIAN, <https://www.theguardian.com/us-news/series/counted-us-police-killings> [<https://perma.cc/Z98U-F7BH>] (last visited July 18, 2021); FATAL ENCOUNTERS, <https://fatalencounters.org> [<https://perma.cc/FVK5-UQ9D>] (last visited July 18, 2021); *951 People Have Been Shot and Killed by Police in the Past Year*, WASH. POST: FATAL FORCE, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/M5Q9-K2PF>] (July 10, 2021); MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org> [<https://perma.cc/3XCF-WKG8>] (June 30, 2021).

84. Gabriel L. Schwartz & Jaquelyn L. Jahn, *Mapping Fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities, 2013-2017*, PLOS ONE, June 24, 2020, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0229686> [<https://perma.cc/Q172-D5T8>].

85. *Id.*

86. *Id.*

87. Shannon Malone Gonzalez, *Making It Home: An Intersectional Analysis of the Police Talk*, 33 GENDER & SOC’Y 363, 378 (2019).

88. Dara E. Purvis & Melissa Blanco, *Police Sexual Violence: Police Brutality, #MeToo, and Masculinities*, 108 CALIF. L. REV. 1487, 1494 (2020).

89. See Gonzalez, *supra* note 87, at 364; Purvis & Blanco, *supra* note 88, at 1494–98.

90. Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 GENDER & SOC’Y 531, 546 (2006); Brooklynn K. Hitchens, Patrick J. Carr & Susan Clampet-Lundquist, *The Context for Legal Cynicism: Urban Young Women’s Experiences with*

greater in neighborhoods with higher rates of violent crime, it stands to reason that residents in some of America's least safe communities have come to approach public life as a trade-off between criminal victimization on one hand and police violence on the other.<sup>91</sup>

Safety production necessarily implies a broad scope of funded institutions and an array of priorities, including issues like social connection, environmental justice, and more.<sup>92</sup> The structural causes of violence—both police violence and violence by those other than the police—are multiple and interconnected.<sup>93</sup> Interactional dynamics that sometimes lead to violence are complex.<sup>94</sup> Accordingly, multiple types of support and response are necessary to deter conflict and heal individuals and communities after violence; interventions across domains, including education, health, and housing, must be included in a comprehensive public safety agenda. Organizations engaged in work that *broadly* prevents violence, including youth mentoring programs, youth jobs programs, and greening groups, are within the scope of organizations that the state could fund as part of a comprehensive strategy to support public safety without relying solely upon policing and the criminal legal system.<sup>95</sup> Because safety production logic can apply to such a broad array of organizations, local preferences, political dynamics, and the priorities of private funders (such as philanthropic foundations) can shape alternative public safety funding priorities more than a negotiated theory of harm prevention or response.

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*Policing in Low-Income, High-Crime Neighborhoods*, 8 RACE & JUST. 27, 39, 42–43 (2018); Shannon Malone Gonzalez, *Black Girls and the Talk? Policing, Parenting, and the Politics of Protection*, SOC. PROBS., June 12, 2020, at 2.

91. Hoon Lee, Michael S. Vaughn & Hyeyoung Lim, *The Impact of Neighborhood Crime Levels on Police Use of Force: An Examination at Micro and Meso Levels*, 42 J. CRIM. JUST. 491, 493–98 (2014) (finding a significant, positive correlation between rates of violent crime and higher levels of police force in a given community).

92. See, e.g., Monica C. Bell, *Safety, Friendship, and Dreams*, 54 HARV. C.R.-C.L. L. REV. 703, 722–31 (2019); Barry Friedman, *What Is Public Safety?* (N.Y.U. Sch. of L., Working Paper No. 21-05) (unpublished manuscript) (on file with author).

93. See, e.g., Robert J. Sampson, William Julius Wilson & Hanna Katz, *Reassessing “Toward a Theory of Race, Crime, and Urban Inequality”: Enduring and New Challenges in 21st Century America*, 15 DU BOIS REV. 13, 14–16 (2018).

94. See, e.g., FORREST STUART, *BALLAD OF THE BULLET: GANGS, DRILL MUSIC, AND THE POWER OF ONLINE INFAMY* 6–12 (2020).

95. See, e.g., Charles C. Branas, Rose A. Cheney, John M. MacDonald, Vicky W. Tam, Tara D. Jackson & Thomas R. Ten Have, *A Difference-in-Differences Analysis of Health, Safety, and Greening Vacant Urban Space*, 174 AM. J. EPIDEMIOLOGY 1296, 1296–97, 1301–02 (2011); Sara B. Heller, *Summer Jobs Reduce Violence Among Disadvantaged Youth*, 346 SCIENCE 1219, 1219, 1222 (2014); Sara B. Heller, Anuj K. Shah, Jonathan Guryan, Jens Ludwig, Sendhil Mullainathan & Harold A. Pollack, *Thinking, Fast and Slow? Some Field Experiments to Reduce Crime and Dropout in Chicago*, 132 Q.J. ECON. 1, 3, 50–51 (2017); Eugenia C. Garvin, Carolyn C. Cannuscio & Charles C. Branas, *Greening Vacant Lots to Reduce Violent Crime: A Randomised Controlled Trial*, 19 INJ. PREVENTION 198, 198 (2013); see also Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1224–32 (2015).

*B. Advocacy for Investments in Safety Production*

Some organizations seem to deal with the uncertain limits of safety production by limiting proposed new investments to organizations that would directly supplant a criminal system function. For example, the coalition supporting the Los Angeles People’s Budget successfully pushed for “Measure J,” a ballot proposal that will amend Los Angeles’ municipal charter to direct that at least ten percent of LA County’s unrestricted revenues in its General Fund, up to \$900 million, be set aside for “community investment and alternatives to incarceration.”<sup>96</sup> Fifty-seven percent of Los Angeles County voters voted in favor of the measure on November 3, 2020.<sup>97</sup> While earlier advocacy documents did not specify what these alternatives are, the “Measure J” language specifies that “alternatives to incarceration” include the following: “[c]ommunity-based restorative justice programs,” “[p]re-trial non-custody services and treatment,” “[c]ommunity-based health services, health promotion, counseling, wellness and prevention programs, and mental health and substance use disorder services,” and “[n]on-custodial diversion and reentry programs, including housing and services.”<sup>98</sup> Notably, the Los Angeles measure does not require cuts to police funding.<sup>99</sup> However, unlike in Durham and San Francisco, the City of Los Angeles has already taken steps in its 2021 budget to reduce police funding. The level of budget cutting might not reach the ambitions of abolitionist activists, but the \$150 million cut sharply cuts police staffing levels and overtime pay.<sup>100</sup> It is difficult to tell, however, whether this cut is a mere austerity measure that will incentivize officers to provide lower-quality service or a meaningful structural attempt to shrink the footprint of policing in Los Angeles.

Debates over research and evidence can become highly salient in a safety production framework, and the relatively small amount of evaluative research on many police and prison alternatives leaves #Defund proponents vulnerable to claims that their proposals will increase crime. For example, during the summer of 2020, several social scientists wrote op-eds opposing #Defund, pointing out that preexisting social science research suggests that investments in policing correlate with reduced crime and that more policing reduces fear of crime, even in Black

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96. L.A. Cnty. Bd. of Supervisors Res. 20-3881 (2020), <http://file.lacounty.gov/SDSInter/bos/supdocs/147586.pdf> [<https://perma.cc/9EHA-S9HL>]; Jaclyn Cosgrove, *L.A. County Voters Approve Measure J, Providing New Funding for Social Services*, L.A. TIMES (Nov. 4, 2020, 5:35 PM), <https://www.latimes.com/california/story/2020-11-03/2020-la-election-tracking-measure-j> [<https://perma.cc/VP63-F83F>].

97. Cosgrove, *supra* note 96.

98. L.A. Cnty. Bd. of Supervisors Res. 20-3881 (2020), <http://file.lacounty.gov/SDSInter/bos/supdocs/147586.pdf> [<https://perma.cc/9EHA-S9HL>].

99. *See id.*

100. David Zahniser, Adam Elmahrek & Priya Krishnakumar, *Defund the LAPD? At This Pace, It Would Take 20 Years to Hit Black Lives Matter’s Goal*, L.A. TIMES (Aug. 11, 2020, 6:00 AM), <https://www.latimes.com/california/story/2020-08-11/defund-lapd-la-budget-spending-priorities> [<https://perma.cc/87WK-TPDM>].

communities.<sup>101</sup> Social scientists and social science-interested journalists point out, correctly, that residents of Black communities often express a desire for similar or higher levels of police presence than they currently have, even as they express a disdain or distrust for police.<sup>102</sup> To be sure, it may not be obvious how to interpret preferences for policing. These preferences could be genuine or what Serene Khader and others have called “adaptive preferences.”<sup>103</sup> These preferences could reflect what Nietzsche called “amor fati,” or “love of fate”—love of “everything that is necessary.”<sup>104</sup> It might be that American ideals around policing remain so strong that, despite racialized experiences, police remain part of the “American Dream” of social citizenship, or the “public good,” even for those who sometimes suffer because of it.<sup>105</sup> However, taken at face value, these findings, at first glance, weigh against proposals to cut police funding.

At a minimum, one must acknowledge that there is relatively little evidence about the world that #Defund advocates are proposing—a world in which police funding is cut but alternatives that promote public safety are well funded. The

101. E.g., Rod K. Brunson, *Protests Focus on Over-Policing. But Under-Policing Is Also Deadly*, WASH. POST (June 12, 2020), [https://www.washingtonpost.com/outlook/underpolicing-cities-violent-crime/2020/06/12/b5d1fd26-ac0c-11ea-9063-e69bd6520940\\_story.html](https://www.washingtonpost.com/outlook/underpolicing-cities-violent-crime/2020/06/12/b5d1fd26-ac0c-11ea-9063-e69bd6520940_story.html) [https://perma.cc/H87W-NQV2].

102. Aaron Ross Coleman, *How Black People Really Feel About the Police, Explained*, VOX (June 17, 2020, 8:30 AM), <https://www.vox.com/2020/6/17/21292046/black-people-abolish-defund-dismantle-police-george-floyd-breonna-taylor-black-lives-matter-protest> [https://perma.cc/WE35-74X6]; Lydia Saad, *Black Americans Want Police to Retain Local Presence*, GALLUP NEWS (Aug. 5, 2020), <https://news.gallup.com/poll/316571/black-americans-police-retain-local-presence.aspx> [https://perma.cc/UC9R-6WAP] (“Most Black Americans want the police to spend at least as much time in their area as they currently do, indicating that they value the need for the service that police provide. However, that exposure comes with more trepidation for Black than White or Hispanic Americans about what they might experience in a police encounter.”); Matthew Yglesias, *The Case for Hiring More Police Officers*, VOX (Feb. 13, 2019, 9:00 AM), <https://www.vox.com/policy-and-politics/2019/2/13/18193661/hire-police-officers-crime-criminal-justice-reform-booker-harris> [https://perma.cc/E3DJ-YP6C].

103. See SERENE J. KHADER, ADAPTIVE PREFERENCES AND WOMEN’S EMPOWERMENT 74-75 (2011) (defining “inappropriately adaptive preferences” as “preferences formed under conditions inhospitable to a person’s flourishing that are causally related to conditions inconsistent with basic flourishing”). It is beyond the scope of this Article to assess whether Black preferences for more police are adaptive, appropriately or inappropriately; however, the argument would be that the Black preference for policing emerges from an anti-Black context that is inconsistent with Black flourishing and is part of what sustains and reinforces anti-Blackness.

104. See Béatrice Han-Pile, *Nietzsche and Amor Fati*, 19 EUR. J. PHIL. 224, 237 (2011) (explaining that amor fati is a type of love that helps a person avoid the existential conditions of “self-pity, resignation and self-deception” that might otherwise flow from suffering). Applied here, Black support for police might be interpreted as a sort of love for a seemingly necessary institution that guards against the nihilism that might otherwise result from suffering under racism and policing, perhaps demonstrating “the clarity of vision sometimes fostered in us by the need not to give up when faced with protracted suffering.” *Id.* at 239.

105. Monica C. Bell, *Located Institutions: Neighborhood Frames, Residential Preferences, and the Case of Policing*, 125 AM. J. SOCIO. 917, 950 (2020); see also Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOSTON REV. (Aug. 1, 2017) <http://bostonreview.net/law-justice/tracey-l-meares-policing-public-good-gone-bad> [https://perma.cc/RY6Z-HJVU].

evidence that social scientists have collected over multiple decades has tended to investigate whether and how police practices can prevent crime<sup>106</sup>—after decades of research that suggested that policing cannot prevent crime.<sup>107</sup> While some of the studies do indicate that police presence can deter crime, virtually no independent evaluative research has deeply interrogated whether alternative approaches, such as transformative justice and community-based accountability measures, might prevent future crime or confer other social benefits.<sup>108</sup> Much of the best literature on transformative justice is descriptive or polemical, not evaluative.<sup>109</sup> Community-based organizations that provide harm-reduction and harm-responsive services often operate on shoestring budgets and have not tended to attract the attention of elite philanthropic organizations or prominent researchers who could fund research on their work. In addition, the traditional tools of evaluation may well be poorly suited to capture interventions that attempt to mitigate structural racism.<sup>110</sup> Advocates might also reasonably resist the idea that their work needs legitimation through quantitative or experimental tools, pointing instead to rich qualitative, narrative evidence on how their programs are effective.<sup>111</sup>

There are, of course, some alternatives to policing that do have a relatively firm independent quantitative research and evaluation base. Of particular note are community-based programs that apply epidemiological, community outreach approaches traditionally reserved for controlling infectious epidemics (e.g., tuberculosis, cholera, and HIV/AIDS) to violence prevention and intervention. Programs using this approach include Illinois' Cure Violence,<sup>112</sup>

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106. See, e.g., Anthony A. Braga, Andrew V. Papachristos & David M. Hureau, *The Effects of Hot Spots Policing on Crime: An Updated Systematic Review and Meta-Analysis*, 31 JUST. Q. 633, 633–34 (2014); Anthony A. Braga, Brandon C. Welsh & Cory Schnell, *Can Policing Disorder Reduce Crime? A Systematic Review and Meta-analysis*, 52 J. RSCH. CRIME & DELINQ. 567, 567, 580 (2015).

107. See DAVID H. BAYLEY, POLICE FOR THE FUTURE 3–11 (1994); see also Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10 ANN. REV. L. & SOC. SCI. 335, 342–45 (2014).

108. See, e.g., Ejeris Dixon & Leah Lakshmi Piepzna-Samarasinha, *Introduction* to BEYOND SURVIVAL: STRATEGIES AND STORIES FROM THE TRANSFORMATIVE JUSTICE MOVEMENT 2 (Ejeris Dixon & Leah Lakshmi Piepzna-Samarasinha eds., 2020).

109. See, e.g., Ejeris Dixon, *Building Community Safety: Practical Steps Toward Liberatory Transformation*, in BEYOND SURVIVAL: STRATEGIES AND STORIES FROM THE TRANSFORMATIVE JUSTICE MOVEMENT, *supra* note 108, at 15, 16.

110. See Carla Goar, *Experiments in Black and White: Power and Privilege in Experimental Methodology*, in WHITE LOGIC, WHITE METHODS: RACISM AND METHODOLOGY 153, 153–62 (Tukufu Zuberi & Eduardo Bonilla-Silva eds., 2008).

111. Cf. KIRSTEN KEENE, KIM KEATING & PIRKKO AHONEN, THE POWER OF STORIES: ENRICHING PROGRAM RESEARCH AND REPORTING 2–4, 10–15 (2016) (describing the relative value of qualitative and quantitative evidence for program evaluation).

112. See, e.g., Gary Slutkin, Charles Ransford & R. Brent Decker, *Cure Violence: Treating Violence as a Contagious Disease*, in ENVISIONING CRIMINOLOGY 43 (Michael D. Maltz & Stephen K. Rice eds., 2015).

Chicago's Institute for Nonviolence,<sup>113</sup> Boston's Ceasefire,<sup>114</sup> Baltimore's Safe Streets,<sup>115</sup> and California's Advance Peace.<sup>116</sup> Organizations embracing this model employ trusted neighborhood residents—often former gang-associated individuals—as street outreach workers, or “violence interrupters.”<sup>117</sup> When neighborhood gun violence occurs, these outreach workers gather intelligence regarding the identity of the victim, offender, and the details of the incident.<sup>118</sup> They then make contact with those in the relevant social networks to “interrupt” the transmission of subsequent, often retaliatory violence.<sup>119</sup> As part of the street outreach model, programs often provide vital social services to those connected to both victims and perpetrators, including psychological counseling and victim support, employment opportunities and job training, and extensive case management to address alienation, distrust, and disaffiliation among marginalized youth, in particular.<sup>120</sup>

This street outreach approach has proven among the most effective non-police-based models for reducing urban violence. Given the difficulty of measuring the effects of such programs, assessments of their impacts have been mixed but generally positive. An evaluation of sixteen years of data on Cure Violence showed that shootings decreased by up to twenty-four percent in program communities, and there was a drop in retaliatory homicides in four of eight communities.<sup>121</sup> In New York, respondents' inclination to use violence in both petty and serious disputes decreased significantly and most sharply in Cure Violence program neighborhoods, and participants in Cure Violence program neighborhoods more readily embraced nonviolent responses to interpersonal

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113. See INST. FOR NONVIOLENCE CHI., <https://www.nonviolencechicago.org/> [<https://perma.cc/L72V-B485>] (last visited July 19, 2021).

114. See, e.g., Anthony A. Braga & Glenn L. Pierce, *Disrupting Illegal Firearms Markets in Boston: The Effects of Operation Ceasefire on the Supply of New Handguns to Criminals*, 4 CRIMINOLOGY & PUB. POL'Y 717, 717–19 (2005).

115. Adam J. Milam, Shani A. Buggs, C. Debra M. Furr-Holden, Philip J. Leaf, Catherine P. Bradshaw & Daniel Webster, *Changes in Attitudes Toward Guns and Shootings Following Implementation of the Baltimore Safe Streets Intervention*, 93 J. URB. HEALTH 609, 613–14 (2016); Daniel W. Webster, Jennifer Mendel Whitehill, Jon S. Vernick & Frank C. Curriero, *Effects of Baltimore's Safe Streets Program on Gun Violence: A Replication of Chicago's CeaseFire Program*, 90 J. URB. HEALTH 27, 29, 39 (2012).

116. See, e.g., JASON CORBURN & AMANDA FUKUTOME, ADVANCE PEACE STOCKTON, 2018-2019 PROGRESS REPORT, 3–4 (2019), [https://www.advancepeace.org/wp-content/uploads/2020/02/Advance-Peace-Stockton-2018\\_2019-Progress-Report-FINAL\\_2019.pdf](https://www.advancepeace.org/wp-content/uploads/2020/02/Advance-Peace-Stockton-2018_2019-Progress-Report-FINAL_2019.pdf) [<https://perma.cc/4R3P-F7UJ>].

117. Slutkin et al., *supra* note 112, at 50.

118. *Id.* at 49–50.

119. *Id.*

120. See, e.g., CORBURN ET AL., *supra* note 116, at 4–5.

121. WESLEY G. SKOGAN, SUSAN M. HARTNETT, NATALIE BUMP & JILL DUBOIS, EVALUATION OF CEASEFIRE-CHICAGO 17–18 (2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/227181.pdf> [<https://perma.cc/J6EM-H3PU>].

conflicts.<sup>122</sup> Evaluations of Cure Violence programs in Philadelphia, Pennsylvania; Richmond, California; and Port of Spain, Trinidad and Tobago, similarly found evidence of significant reductions in violence, demonstrating a reduction in legal and medical costs typically expended on gun injuries.<sup>123</sup>

Similarly, pre-arrest diversion frameworks—which aim to reduce the harm of substance use, sex work, and other issues stemming from unmet behavioral health needs, help people to find housing, and clear participant’s criminal records—have research support. Evaluations of the Seattle-based Law Enforcement Assisted Diversion/Let Everyone Advance with Dignity initiative (LEAD), for example, have shown positive outcomes in reducing recidivism,<sup>124</sup> cutting the overall costs of incarceration,<sup>125</sup> reducing the time clients spend in jail,<sup>126</sup> and increasing clients’ access to housing and income supports,<sup>127</sup> though results have been inconsistent across locations and contexts, and not all sites have been rigorously evaluated.<sup>128</sup> In the context of the pandemic, the previously mentioned JustCARE initiative suggests that frameworks like LEAD, especially as they evolve to decenter or forego police involvement, can be paired with clinically and culturally appropriate housing

122. See, e.g., THOMAS ABT, BLEEDING OUT: THE DEVASTATING CONSEQUENCES OF URBAN VIOLENCE AND A BOLD NEW PLAN FOR PEACE IN THE STREETS 94–99 (2019); Jeffrey A. Butts, Caterina Gouvis Roman, Lindsay Bostwick & Jeremy R. Porter, *Cure Violence: A Public Health Model to Reduce Gun Violence*, 36 ANN. REV. PUB. HEALTH 39 (2015); Sheyla A. Delgado, Laila Alsbahi, Kevin Wolff, Nicole Alexander, Patricia Cobar & Jeffrey A. Butts, *The Effects of Cure Violence in the South Bronx and East New York, Brooklyn*, in DENORMALIZING VIOLENCE: A SERIES OF REPORTS FROM THE JOHN JAY COLLEGE EVALUATION OF CURE VIOLENCE PROGRAMS IN NEW YORK CITY 1, 1, 6–11 (2017).

123. Caterina G. Roman, Hannah J. Klein & Kevin T. Wolff, *Quasi-Experimental Designs for Community-Level Public Health Violence Reduction Interventions: A Case Study in the Challenges of Selecting the Counterfactual*, 14 J. EXPERIMENTAL CRIMINOLOGY 155, 164–66 (2018); Ellicott C. Matthey, Kriszta Farkas, Kara E. Rudolph, Scott Zimmerman, Melissa Barragan, Dana E. Goin & Jennifer Ahern, *Firearm and Nonfirearm Violence After Operation Peacemaker Fellowship in Richmond, California, 1996–2016*, 109 AM. J. PUB. HEALTH 1605, 1605–09 (2019); EDWARD R. MAGUIRE, MEGAN T. OAKLEY & NICHOLAS CORSARO, EVALUATING CURE VIOLENCE IN TRINIDAD AND TOBAGO 38–40 (2018), <https://publications.iadb.org/publications/english/document/Evaluating-Cure-Violence-in-Trinidad-and-Tobago.pdf> [<https://perma.cc/8EKQ-SLD6>].

124. Susan E. Collins, Heather S. Lonczak & Seema L. Clifasefi, *Seattle’s Law Enforcement Assisted Diversion (LEAD): Program Effects on Recidivism Outcomes*, 64 EVALUATION & PROGRAM PLAN. 49, 53 (2017).

125. Cora L. Bernard, Isabelle J. Rao, Konner K. Robison & Margaret L. Brandeau, *Health Outcomes and Cost-Effectiveness of Diversion Programs for Low-Level Drug Offenders: A Model-Based Analysis*, PLOS MED., October 13, 2020, at 1, <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1003239> [<https://perma.cc/W66Z-RVLV>].

126. Susan E. Collins, Heather S. Lonczak & Seema L. Clifasefi, *Seattle’s Law Enforcement Assisted Diversion (LEAD): Program Effects on Criminal Justice and Legal System Utilization and Costs*, 15 J. EXPERIMENTAL CRIMINOLOGY 201, 208 (2019).

127. Seema L. Clifasefi, Heather S. Lonczak & Susan E. Collins, *Seattle’s Law Enforcement Assisted Diversion (LEAD) Program: Within-Subjects Changes on Housing, Employment, and Income/Benefits Outcomes and Associations with Recidivism*, 63 CRIME & DELINQ. 429, 439–41 (2017).

128. See, e.g., MARK WILLINGHAM, SOPHIE GRALAPP & JOHN P. BARILE, LEAD HAW., LAW ENFORCEMENT ASSISTED DIVERSION HONOLULU 2-YEAR PROGRAM EVALUATION REPORT (2020).

support guided by a Housing First philosophy.<sup>129</sup> Preliminary evidence indicates that this holistic approach, which includes broadened access to health care and assistance in addressing legal barriers and disrupted access to benefits, may reduce crime and improve safety at the individual and neighborhood levels, though further research will be needed.<sup>130</sup> Although LEAD's status as an alternative to policing might be unclear to some given the evolution of the program over time,<sup>131</sup> the newly established JustCare coalition suggests that “[d]ecreasing police involvement in the management of behavioral health issues may be the single most effective method for reducing the overall number of daily police interactions with vulnerable populations.”<sup>132</sup>

On the back end, restorative justice programs administered through the traditional legal system have a relatively extensive research base relative to front-end public security efforts (though, to be sure, additional research on restorative justice would also be valuable).<sup>133</sup> Investment in research that evaluates and helps to refine a fuller *array* of security-producing programs should be part of a comprehensive public safety agenda, one that does not assume that policing and the criminal system are the only social institutions that can or should prevent or respond to violence.

A rhetoric and logic of safety production is likely helpful for the long-term sustenance for the politics of the #Defund movement. Without consistent messaging and data that support the positive safety returns of investing in alternatives to policing, policymakers who push reducing police funding to invest in alternatives to policing leave themselves vulnerable to backlash. For example, after the Seattle City Council voted 7-1 to cut funding to the Seattle Police Department by fourteen percent for the remainder of 2020 in August and allocate those funds to community groups to identify alternative public safety investments, City Council

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129. Brownstone, *supra* note 44.

130. KATHERINE BECKETT, MARCO BRYDOLF-HORWITZ, DEVIN COLLINS, ALLISON GOLDBERG, EMILY KNAPHUS-SORAN & ALIYAH TURNER, JUSTCARE: THE DEVELOPMENT AND IMPACT OF A MULTI-FACETED COLLECTIVE IMPACT MODEL 3-6 (2021).

131. See Katherine Beckett, Monica Bell & Forrest Stuart, Beyond Harm Reduction Policing 11–23 (June 8, 2021) (unpublished manuscript) (on file with author) (describing the evolution of LEAD from using police as gatekeepers to behavioral health and harm reduction programs—or “LEAD 1.0” to JustCare, born out of the pandemic, which does not place police officers in this gatekeeping role).

132. BECKETT ET AL., *supra* note 130, at 6.

133. E.g., SUVI HYNYNEN LAMBSON, CTR. FOR CT. INNOVATION, PEACEMAKING CIRCLES: EVALUATING A NATIVE AMERICAN RESTORATIVE JUSTICE PRACTICE IN A STATE CRIMINAL COURT SETTING IN BROOKLYN 42 (2015), <https://www.courtinnovation.org/sites/default/files/documents/Peacemaking%20Circles%20Final.pdf> [<https://perma.cc/P9KS-6GCV>]; ALEXANDRA LYNCH, CTR. FOR CT. INNOVATION, YOUTH ACCOUNTABILITY BOARDS: HOW PROSECUTORS ARE ENGAGING COMMUNITIES TO RESPOND TO LOW-LEVEL JUVENILE OFFENDING 14–15 (2004); Barton Poulson, *A Third Voice: A Review of Empirical Research on the Psychological Outcomes of Restorative Justice*, 2003 UTAH L. REV. 167, 169–76; William R. Nugent, Mona Williams & Mark S. Umbreit, *Participation in Victim-Offender Mediation and the Prevalence and Severity of Subsequent Delinquent Behavior: A Meta-Analysis*, 2003 UTAH L. REV. 137, 137–38; Alana Saulnier & Diane Sivasubramaniam, *Effects of Victim Presence and Coercion in Restorative Justice: An Experimental Paradigm*, 39 LAW & HUM. BEHAV. 378 (2015).

member Lisa Herbold's predominantly white West Seattle district led an effort to recall her.<sup>134</sup> The fourteen percent cut was actually the politically moderate position in Seattle at that time: activists had pushed a fifty percent budget cut, and the only council member who voted against the measure did so because, as a progressive with strong alignment with Black Lives Matter organizations, she believed the police budget cut was too small.<sup>135</sup>

Yet, several vocal constituents of Herbold used her vote for the more limited budget cut to threaten her office, accumulating nearly 5,000 signatures as of November 2020.<sup>136</sup> The initiator of this petition, Tim McConnell, has offered several arguments for it. On the petition itself, he criticizes Herbold for allegedly promising to expand the Seattle Police Department while campaigning in 2019, while voting to cut funding to the police department in 2020.<sup>137</sup> Yet, the argument that he uses most consistently is that Herbold is voting to cut police funding without offering a clear alternative safety plan.<sup>138</sup> As he told one reporter, “[r]eallocating police funds could be a good thing for the city. I just don’t know what their vision looks like and I’d like someone to share it with us before they start removing police.”<sup>139</sup> McConnell’s strategy was not to argue that reallocating police funds is per se wrong but that it is risky. More recently, opponents of defunding and other reform ideas have launched an even more audacious attack on activists’ efforts to enact a business tax and reduce reliance on the police and criminal legal system, suggesting in vivid ways that such policy shifts are responsible for the “death” of Seattle.<sup>140</sup>

Dallas, Texas, City Council member Jennifer Staubach Gates, who represents one the wealthiest and pro-police areas of the city, has expressed similar concerns

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134. Matt Markovich, *Defunding Seattle Police: City Council OKs Sharp Cuts but Avoid 50% Budget Reduction*, KOMO NEWS (Aug. 10, 2020), <https://komonews.com/news/local/defunding-seattle-police-city-council-poised-to-cut-departments-budget-today> [<https://perma.cc/C6KP-APMP>]; Patrick Quinn, *Seattle City Council's Vote to Defund Police Linked to Recall Effort*, KOMO NEWS (Aug. 17, 2020), <https://komonews.com/news/local/seattle-city-councils-vote-to-defund-police-linked-to-recall-effort> [<https://perma.cc/5JET-D33T>]; see also *Seattle's Race and Segregation Story in Maps, 1920–2019*, C.R. & LAB. HIST. CONSORTIUM UNIV. OF WASH., <http://depts.washington.edu/labhist/maps-seattle-segregation.shtml> [<https://perma.cc/N2YS-A3ZV>] (last visited July 19, 2021) (describing West Seattle’s racial demographics between 1920 and 2010).

135. Markovich, *supra* note 134.

136. Tim McConnell, *Recall Lisa Herbold*, CHANGE.ORG, <https://www.change.org/p/seattle-district-1-recall-seattle-city-council-member-lisa-herbold> [<https://perma.cc/UM9L-CU5D>] (last visited July 19, 2021).

137. *Id.*

138. *Id.*

139. Quinn, *supra* note 134.

140. Katie Wilson, Opinion, *2021 Will Be a Year of Sloppy Economic Thinking in Seattle*, CROSSCUT (Dec. 17, 2020), <https://crosscut.com/opinion/2020/12/2021-will-be-year-sloppy-economic-thinking-seattle> [<https://perma.cc/8AN2-C4PW>].

about police defunding and investment in alternatives.<sup>141</sup> Rather than attacking the proposal on normative grounds, she and other council members critique the lack of evidence that investing in alternatives to police, such as social services, reduces crime. “Until we get good data that we can reduce crime by investing . . . I don’t think we can reduce some of the budgets you’ve suggested on reducing.”<sup>142</sup>

Advocates who oppose police defunding also often marshal statistics that support the idea that more policing and more police funding are associated with lower crime. Criminologists have played a role in perpetuating these ideas, often relying upon correlation-based studies.<sup>143</sup> These studies shed light on the possibility that investments in policing can reduce crime rates, but they shed little light on whether investments in police alternatives and social supports could produce a similar reduction in crime rates, whether greater police investments are necessary to reduce crime rates, whether police or police alternatives might have some effect on unreported crimes that are not captured in crime rates, or whether investments in policing or police alternatives have effects on other objective and subjective measures of quality of life. Preexisting research tells scholars what has worked to cut crime rates in the past, but it tells us little about the practicality of proposed solutions that have not yet been tried and tested.<sup>144</sup>

Debates over safety production are also salient for understanding some disconnections between defunding advocates, often Black-led organizations, and Black officials and other members of the Black community.<sup>145</sup> For example, as of late 2020, increasing rates of violence in Minneapolis are further destabilizing the lives of residents of predominantly Black North Minneapolis.<sup>146</sup> Rates of violence have increased since the onset of COVID-19 and escalated after the death of George Floyd.<sup>147</sup> At the same time, police officers are rapidly leaving the police force, and there is no widely available set of alternatives that are springing up to do the important work of preventing violence, responding to community ills, or

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141. Hady Mawajdeh, *Have Calls to Defund Police Drowned Out Cries for Social Services in Dallas?*, KERA NEWS (Sept. 21, 2020, 5:00 PM), <https://www.keranews.org/news/2020-09-21/calls-to-defund-police-drown-out-cries-for-social-services-in-dallas> [https://perma.cc/MLG5-6Y4V].

142. *Id.*

143. *See, e.g.*, Justin Nix & Scott Wolfe, *Guest Post: Defunding or Disbanding the Police Is a Dangerous Idea If Done Hastily*, WASH. POST (June 18, 2020, 8:52 AM), <https://www.washingtonpost.com/crime-law/2020/06/18/guest-post-defunding-or-disbanding-police-is-dangerous-idea-if-done-hastily/> [https://perma.cc/AX55-N9TF].

144. *See* Monica C. Bell, *Black Security and the Conundrum of Policing*, JUST SECURITY (July 15, 2020), <https://www.justsecurity.org/71418/black-security-and-the-conundrum-of-policing/> [https://perma.cc/W8HU-VK3M].

145. *See, e.g.*, Jeffery C. Mays, *Who Opposes Defunding the N.Y.P.D.? These Black Lawmakers*, N.Y. TIMES (Aug. 10, 2020), <https://www.nytimes.com/2020/08/10/nyregion/defund-police-nyc-council.htm> [https://perma.cc/3346-SZTD].

146. *See* Holly Bailey, *Minneapolis Violence Surges as Police Officers Leave Department in Droves*, SEATTLE TIMES (Nov. 13, 2020, 1:14 PM), <https://www.seattletimes.com/nation-world/minneapolis-violence-surges-as-police-officers-leave-department-in-droves/> [https://perma.cc/LY52-5TCQ].

147. *Id.*

investigating harmful incidents once they have occurred.<sup>148</sup> The correlation between higher rates of interpersonal violence—which are devastating to Black lives—and lower police officer presence and morale is detrimental to the politics of the larger defunding movement.

Police defunding could also interfere with police response to civilian demands for controlling and surveilling homeless populations. Many 911 callers are not seeking intervention or prevention of serious crime.<sup>149</sup> Instead, they are seeking regulation of more minor behavior, often to regulate homelessness. In Portland, one-half of all 911 calls between 2013 and 2019 were “disorder calls,” often to report “unwanted persons” who are not actively engaged in committing crimes.<sup>150</sup> In other cities, over a similar time period, 911 calls to report on the routine behavior of people who are unhoused substantially increased even if the homeless population did not.<sup>151</sup> As sociologist Chris Herring has explained, third-party policing of socially malign populations—policing in response to private complaints that often have little to do with crime—is a fundamental characteristic of urban policing.<sup>152</sup> Indeed, the 911 system itself emerged in part because of white desire for racial control over Black communities after numerous episodes of urban unrest during the 1960s.<sup>153</sup> Although 911 has become a natural-seeming part of American life, it is only two generations old and has been nationally available for less than twenty-five years.<sup>154</sup> Because police defunding could leave fewer officers available to respond to less urgent 911 calls, people who call the police to report “unwanted persons” or other social undesirables are certainly likely to resist it. For this reason, ensuring that public safety investments address diverse public safety problems is crucial. At a minimum, these should include violence prevention, community-based responses to violence and harm, and harm reduction-oriented diversion frameworks for responding to people contending with homelessness and behavioral health challenges.

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148. *Id.*

149. *See, e.g.,* Barry Friedman, *Disaggregating the Police Function*, 170 U. PA. L. REV. (N.Y.U. Sch. of L., Working Paper No. 20-03) (forthcoming 2021) (manuscript at 27–28).

150. Katie Shepherd, *Portlanders Call 911 to Report “Unwanted” People More Than Any Other Reason. We Listened In.*, WILLAMETTE WEEK (Feb. 6, 2019), <https://www.wweek.com/news/2019/02/06/portlanders-call-911-to-report-unwanted-people-more-than-any-other-reason-we-listened-in/> [<https://perma.cc/8897-224H>].

151. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIO. REV. 769, 771 (2019).

152. *Id.*; *see also* Monica C. Bell, *Anti-Segregation Policing*, 96 N.Y.U. L. REV. 650, 722–27 (2020) (explaining that a function of police in metropolitan areas is to distribute racialized economic value across space, which includes responding to white police-callers’ complaints about non-criminal activities).

153. Katrina Feldkamp & S. Rebecca Neusteter, *The Little Known, Racist History of the 911 Emergency Call System*, IN THESE TIMES (Jan. 26, 2021), <https://inthesetimes.com/article/911-emergency-service-racist-history-civil-rights> [<https://perma.cc/2SK2-NXGU>].

154. *Id.*

## III. REPARATIONS FOR RACIAL INJUSTICE

Advocates for defunding the police often discuss the connections between defunding and the larger, longer-term movement for racial reparation.<sup>155</sup> This aspect of advocacy applies an explicit racial equity lens. The safety production and welfare state lenses invoke racism more indirectly by focusing on some of racism's correlates and outgrowths, such as the growth of the carceral system, the retrenchment of the welfare state, and the rise of neoliberalism. The reparations lens places racial equity as its central focus and the core measuring stick for the efficacy and desirability of a criminal system alternative. From a pro-reparations perspective, traditional policing is but one manifestation of structural racism. If the broader goal of intervention in the criminal system is to root out structural racism and to build meaningful self-determination for historically marginalized communities and individuals, cutting police funding is but one waystation in a longer, multiplex pathway toward racial justice.

*A. The Entwinement of Defunding and Reparations*

Public attention on Black Lives Matter tends to focus on its advocacy against police violence, but at least one major wing of the movement, as enshrined in the Vision for Black Lives, has deeper roots in broader demands for Black liberation.<sup>156</sup> From the standpoint of racial justice, with police transformation as one small part of the larger agenda, financially investing in alternatives to the criminal legal system necessarily implicates financial investment in actively undoing the harms the criminal legal system has exacted on Black communities. Thus, a substantial community of movement activists view the call to invest in alternatives to the police as part of a broader conversation about investment in Black communities—specifically, as part of calls for monetary reparations.<sup>157</sup>

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155. E.g., AMCGHEE, *From Reparations to Police Reform: Talking with the Racial Justice Coalition*, AVL TODAY (July 14, 2020), <https://avltoday.6amcity.com/reparations-racial-justice-coalition-ashville-nc/> [<https://perma.cc/YNW6-DVCH>]; Rebecca Ellis, *Hundreds Demand The Portland City Council Defund Police*, OPB (June 10, 2020, 8:01 PM), <https://www.opb.org/news/article/hundreds-demand-portland-city-council-defund-police/> [<https://perma.cc/5KYD-V8QX>] (“Unite Oregon has joined up with the Portland African American Leadership Forum with a list of demands . . . . The groups are asking these funds, instead, be used as reparations for Portlanders harmed by the War on Drugs.”); Jonathan Ben-Menachem, *Policing Can’t End Violence in the U.S., But Reparations Might*, CURRENT AFFS. (July 28, 2020), <https://www.currentaffairs.org/2020/07/policing-cant-end-violence-in-the-us-but-reparations-might> [<https://perma.cc/W6N8-E3NL>] (“It’s not a coincidence that calls to defund police departments are always accompanied by calls for reinvestment in Black communities. That reinvestment should be considered part of the process of reparations for the many iterations of American racial capitalism, including but not limited to chattel slavery.”).

156. See *Vision for Black Lives*, M4BL, <https://m4bl.org/policy-platforms/> [<https://perma.cc/2CB3-C3HF>] (last visited July 19, 2021) (describing the original Vision for Black Lives document as “a comprehensive and visionary policy agenda for the post-Ferguson Black liberation movement”).

157. See *id.* (including reparations as one of six pieces of its 2020 policy platform).

Although some classic calls for Black reparations focused primarily on Black enslavement, there is now a richer strain of thought that anchors calls for reparations not only in the enslavement of Black Americans but also more proximate racialized harms, such as the theft and pillaging of Black-owned land,<sup>158</sup> de jure segregation and oppression under Jim Crow,<sup>159</sup> redlining and other means of racialized economic exploitation,<sup>160</sup> environmental and health consequences of racialized violence including police killings,<sup>161</sup> and more—including the devaluation of Black life through police killings.<sup>162</sup> The demand to defund policing and financially invest in community well-being, including safety, runs alongside and is entwined within a broader demand to defund anti-Black policies and structures and financially invest in the individual and collective healing of Black Americans. Accordingly, from a pro-reparations perspective, it is essential that investing in alternatives to the criminal legal system means investing in the Black community specifically, not merely reallocating money into other bureaucratic arms or community organizations that work with but do not center Black leadership and Black experience.

Among other arguments, a reparations logic for investment in criminal system alternatives supports directing funding specifically toward organizations and institutions that are led by members of groups that have been marginalized through the criminal legal system, especially Black, Indigenous, and many Latinx groups. From this vantage point, investment in white-led community organizations, even if they are working for racial justice, is not targeted toward the broader goals of reparation.

Functionally, reparations logic bears some similarities to the community-based safety production logic. The key distinction has to do with the theory behind what investing in alternatives is meant to achieve. From a safety production standpoint, the primary goal of reinvestment is to supplant many of the roles that police perform with community-based and/or nongovernmental alternatives, providing non-carceral responses to violence, emergency, mental health crises, and behavioral

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158. See, e.g., Raymond A. Winbush, *And the Earth Moved: Stealing Black Land in the United States*, in *SHOULD AMERICA PAY? SLAVERY AND THE RAGING DEBATE ON REPARATIONS* 46, 48–54 (Raymond A. Winbush ed., 2003).

159. E.g., BORIS BITTKER, *THE CASE FOR BLACK REPARATIONS* 8–10 (1973); WILLIAM A. DARITY JR. & A. KIRSTEN MULLEN, *FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY* 207–18 (2020) (enumerating the abuses Black people experienced in the United States from the end of Reconstruction through the Jim Crow years).

160. DARITY & MULLEN, *supra* note 159 at 221–26 (detailing various means of how Black people are economically exploited in the present day); Ta-Nehisi Coates, *The Case for Reparations*, *ATLANTIC* (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> [<https://perma.cc/7KE8-YUBC>].

161. See, e.g., Jewel Crawford, Wade W. Nobles & Joy DeGruy Leary, *Reparations and Health Care for African Americans: Repairing the Damage from the Legacy of Slavery*, in *SHOULD AMERICA PAY? SLAVERY AND THE RAGING DEBATE ON REPARATIONS*, *supra* note 158, at 251, 260–71.

162. DARITY & MULLEN, *supra* note 159, at 220.

health challenges. From a racial reparation standpoint, supplanting the police is important, but delivery of funding to long-devalued and dispossessed Black communities is of paramount importance.<sup>163</sup>

In practice, reparations logic and the safety production logic are often intermingled. Consider activist and athlete Colin Kaepernick's essay that leads a series of essays focused on criminal system abolition:

By abolishing policing and prisons, not only can we eliminate white supremacist establishments, but we can create space for budgets to be reinvested directly into communities to address mental health needs, homelessness and houselessness, access to education, and job creation as well as community-based methods of accountability. This is a future that centers the needs of the people, a future that will make us safer, healthier, and truly free.<sup>164</sup>

While Kaepernick's call generally sounds like a safety production argument, it is also laced with reparations logic that is only apparent at the end of his statement. The goal, for Kaepernick, is not merely to make the community safer and healthier. It is also to make the community "truly free." While not explicit, here he is hearkening to the deeper roots of penal abolitionism: creating a world without prisons or police is to create a world where the vestiges of American slavery and racial oppression might truly be eradicated, where true freedom might be possible.<sup>165</sup> This theoretical linkage of enslavement, bureaucratic racial control, and imprisonment also undergirds the demand to defund the police, and it is why many advocates for defunding view a racial reparative approach as necessary.<sup>166</sup>

The BREATHE Act, a Left-led federal legislative proposal, offers a prominent policy example of reparations logic.<sup>167</sup> Representative Ayanna Pressley, a strong

163. See, e.g., Dreisen Heath, *Defunding the Police Is a Reparations Issue*, NATION (Oct. 2, 2020), <https://www.thenation.com/article/activism/defund-police-reparations/> [<https://perma.cc/UVK7-2KTY>]. Importantly, this article frames itself as focusing on reparations logic, but also makes core arguments from public safety logic without discussing how they are related or may at some points diverge.

164. Colin Kaepernick, *The Demand for Abolition*, LEVEL (Oct. 6, 2020), <https://level.medium.com/the-demand-for-abolition-979c759ff6f> [<https://web.archive.org/web/2021071001709/https://level.medium.com/the-demand-for-abolition-979c759ff6f>].

165. See, e.g., Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 30–33 (2019).

166. Cf. *id.* at 5 n.17.

167. THE BREATHE ACT FEDERAL BILL PROPOSAL 107–22 (2020), [https://breatheact.org/wp-content/uploads/2020/09/The-BREATHE-Act-V.16\\_.pdf](https://breatheact.org/wp-content/uploads/2020/09/The-BREATHE-Act-V.16_.pdf) [<https://perma.cc/L26K-A7WT>]. There are key differences between the BREATHE Act and the George Floyd Justice in Policing Act, which was embraced by a broad swath of congressional Democrats and was passed by the Democrat-led House but not the Republican-led Senate. The Floyd Act proposes a number of police reforms, such as requiring body cameras for federal law enforcement officials, authorizing the Department of Justice to issue subpoenas in pattern-or-practice suits against police departments, limiting qualified immunity, and shifting the legal standard that applies in federal police misconduct cases, but it does not embrace a divest-invest model for reform. See George Floyd Justice in Policing Act of 2020, H.R. 7120, 116th Cong. (2020). Rep. Pressley and Rep. Rashida Tlaib, primarily

supporter of the movement to defund and a vocal proponent of the BREATHE Act, has described the demand to reduce police funding as emanating from a desire to bring about “investment in our communities which have historically been divested from.”<sup>168</sup> In an interview with *Time*, she remarked that defunding is “simply about a refund. This is about true reparations.”<sup>169</sup>

The movement-backed legislation largely calls for social welfare investments. It proposes the repeal of more than thirty federal programs across multiple agencies, primarily the Department of Justice, the Department of Defense, and the Department of Homeland Security, and proposes the establishment of new offices and federal grant programs under the Department of Health and Human Services (HHS) and, to enhance the sovereignty of Native American tribes, the Department of the Interior.<sup>170</sup> Yet, the bill’s framing and logic are more focused on directly undoing the harm of racial oppression and racial segregation. Some concrete proposals emanate from reparations logic: most centrally, the bill calls for the passage of the longstanding reparations bill, House Resolution 40, which would create a Commission to Study Reparations Proposals for African Americans, and it would create a new, separate Commission to Study War on Drugs and Mass Criminalization Reparations that would address not only harms to Black communities through mass criminalization and the War on Drugs but also “the harms inflicted on Latinx, Indigenous, Asian, Muslim, Jewish, transgender, and disabled persons and peoples.”<sup>171</sup>

Reparations logic also undergirds other aspects of the bill in subtler ways. For example, the bill aims to establish an office within HHS that would direct funding toward youth programs that are “non-carceral, non-punitive programs that serve to promote youth safety, including prevention of harm.”<sup>172</sup> While any community-based organization (CBO) that meets this standard would be eligible for funding from this department, the bill specifies that “preference” will be given to CBOs that “[a]re led by individuals who have proven ties to the community,” “[h]ave a demonstrated track record in administering the specified programming or service,” “[h]ave a leadership that reflects the racial diversity of the community wherein the organization operates,” and “[a]re led by or employ directly impacted persons.”<sup>173</sup> Three of these four criteria suggest that part of the mission of this bill

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proponents of the BREATHE Act, also co-sponsored and voted in favor of the Floyd Act. See H.R. 7120 - *George Floyd Justice in Policing Act of 2020*, CONGRESS.GOV, <https://www.congress.gov/bill/116th-congress/house-bill/7120/cosponsors> [<https://perma.cc/85F5-RQPQ>] (last visited July 19, 2021).

168. Madeleine Carlisle, *This Is About True Reparations.* Rep. Ayanna Pressley on the Movement to Defund Police, *TIME* (June 25, 2020, 1:34 PM), <https://time.com/5857571/ayanna-pressley-defund-police-time100-talks/> [<https://perma.cc/W6N4-L5VA>].

169. *Id.*

170. THE BREATHE ACT FEDERAL BILL PROPOSAL, *supra* note 167, at 1–6.

171. *Id.* at 107.

172. *Id.* at 6.

173. *Id.* at 6–7.

is to upend traditional power relations in public safety policymaking, recognizing that the expertise of people who have directly experienced the dearth of resources for youth safety is central to effective and just governance, and that funds given to CBOs might have a closer and more direct tether to the community if the leadership has a sincere and longstanding relationship with that community.

Reparations logic is also central to many local debates about investing in alternatives to police and prisons. For example, the Seattle area's King County Equity Now organization structured its platform around collective land ownership, defunding the police, and investing funds specifically into Black-led organizations.<sup>174</sup> All of these pillars fit together in a reparative framework, explaining together why it is critical, from their perspective, that funds be redirected to Black-led organizations partly as reparations for a long process of Black displacement in Seattle.<sup>175</sup> Similarly, the Richmond Our Power Coalition, based in Richmond, California, links its demands for police defunding with investing specifically in Black communities and Black leadership.<sup>176</sup> Specifically, the Coalition calls for cutting police funding and directing police funds solely on policing violent crimes, and then directing those funds toward economic opportunity and justice, social and cultural resources, housing, education, health, and environmental justice. For example, the Coalition's list of demands includes "an African American Cultural and Wellness Center funded by [Richmond Police Department] divestment funds"—directly engaging in a reparations logic for police defunding with clear trade-offs.<sup>177</sup>

These initiatives are a clear response to the racial politics of nongovernmental organization (NGO) funding at the local, state, and national levels, which have meant that many organizations led by Black leaders (and likely Indigenous, Latinx, and other leaders of color) have struggled to retain funding. Foundations and governments have often been more supportive of white-led projects. For example, a report by grantmaking organizations Echoing Green and The Bridgespan Group

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174. Melissa Hellman, *At Center of Police Defunding Debate, King County Equity Now and Decriminalize Seattle Reimagine Public Safety*, SEATTLE TIMES (Sept. 10, 2020, 6:05 PM), <https://www.seattletimes.com/seattle-news/politics/at-center-of-police-defunding-debate-king-county-equity-now-and-decriminalize-seattle-reimagine-public-safety/> [https://perma.cc/4LRK-V8MZ] ("At the crux of the group's vision was a solution that community members had sought for many years without success: to defund the police and reallocate that funding to Black-led organizations. Organizers invited the crowd to reimagine public safety: to engage in a vision where gentrification, over-policing, violence and poverty were eradicated in the Black community.")

175. *Id.*

176. *Reparations Now: Honoring the Movement for Black Lives in Richmond*, ASIAN PAC. ENV'T NETWORK, <http://apen4ej.org/reparations-richmond/> [https://perma.cc/4HVD-GYVF] (last visited July 19, 2021) (listing movement demands). *See generally* RICHMOND OUR POWER COAL. <https://www.ourpowerrichmond.org/> [https://perma.cc/V4UU-8ZJZ] (last visited July 19, 2021) (explaining that APEN is a founding member of this coalition).

177. *List of Demands for Black People: Richmond Our Power Coalition*, RICH CITY RIDES, <https://www.richcityrides.org/list-of-demands> [https://perma.cc/45AS-HYMF] (last visited July 19, 2021).

finds that there is a twenty-four percent disparity in revenues between Black-led and white-led organizations that applied for Echoing Green grants, and that white-led organizations are seventy-six percent richer in unrestricted net assets.<sup>178</sup> These numbers may be “particularly startling” given that “such funding often represents a proxy for trust.”<sup>179</sup> Consequently, many white-led community organizations have better evidence of impact and more access to funds, political support, and positive press than organizations led by people of color (POC).<sup>180</sup> This might be true even if the POC-led organizations have greater or more relevant experience with violence reduction, emergency response, mental health, and behavioral health than white-led organizations do.

### B. *Avoiding Essentialism and Tokenism*

When many activists call for Black leadership in organizations that receive new funding, they do so not out of a mere desire for representation but as a way to produce broader reparation for the underfunded Black nonprofit sector. Because of longstanding racial inequities in nonprofit funding, a racial reparation logic of investment in alternatives may focus substantially on the leadership composition of an organization. A reparative logic emphasizes that relevant safety-building organizations be Black-*led*, not merely that they aim to help Black people. One worry about this emphasis is that fetishizing whether an organization is led by Black individuals could, without proper contextualization, undermine a broader reparative goal by falling into the trap of essentialism.<sup>181</sup>

Drawing from studies of organizational behavior, it is possible that white-led organizations would react to political and financial incentives that prefer Black-led organizations by hiring Black staff or finding Black board members as mere descriptive, external faces of their organization, not as true leaders who can marshal resources and direct agendas on behalf of dispossessed communities.<sup>182</sup> To be sure, descriptive representation tends to be substantively impactful; the classic bifurcation of descriptive and substantive representation is too simplistic,<sup>183</sup> perhaps especially

178. CHERYL DORSEY, JEFF BRADACH & PETER KIM, BRIDGESPAN GRP., RACIAL EQUITY AND PHILANTHROPY: DISPARITIES IN FUNDING FOR LEADERS OF COLOR LEAVE IMPACT ON THE TABLE 11 (2020), <https://www.bridgespan.org/bridgespan/Images/articles/racial-equity-and-philanthropy/racial-equity-and-philanthropy.pdf> [<https://perma.cc/XSU3-SDW3>].

179. *Id.*

180. *See id.*

181. *Cf.* Jane Mansbridge, *Quota Problems: Combating the Dangers of Essentialism*, 1 POL. & GENDER 622, 630–35 (2005) (explaining this type of concern in the context of quotas for women in political representation).

182. Organizational sociologists describe reactivity as a general phenomenon within organizations, recognizing that “people change their behavior in reaction to being evaluated, observed, or measured.” Wendy Nelson Espeland & Michael Sauder, *Rankings and Reactivity: How Public Measures Recreate Social Worlds*, 113 AM. J. SOCIO. 1, 1 (2007).

183. *See, e.g.*, Jane Mansbridge, *Should Blacks Represent Blacks and Women Represent Women? A Contingent “Yes,”* 61 J. POL. 628, 643–48 (1999); Markie McBrayer, *Translating Descriptive*

in the context of nonprofits where philanthropic resources are so discriminatorily distributed. However, there is some risk that interpreting reparation as investment in Black-led organizations without sharp attention to those organizations' specific understandings of Black futures could detrimentally affect decision-making about funding allocation. Diverse leadership that is directly tethered to the affected communities should be integral to the organization structure; diverse participation should not be superficial or tokenistic.<sup>184</sup>

#### CONCLUSION

After Derek Chauvin suffocated George Floyd on a Minneapolis sidewalk in May 2020, the city's response became a national focal point. The Minneapolis Police Department followed a familiar script after this violent episode, firing the officers and pledging various reforms.<sup>185</sup> However, nine members of the Minneapolis City Council took an unusual approach, initially pledging to activists that the city would "begin the process of ending the Minneapolis Police Department and creating a new, transformative model for cultivating safety in Minneapolis."<sup>186</sup> The Council's language was bold. With unforeseen visibility, a municipal government rhetorically embraced abolitionist ideas, espousing a view that *ending* the police department was the right goal for the city. At the same time, the rhetoric was vague. It is not clear what steps "begin the process of ending."<sup>187</sup> Given volatile and transitory political winds and local backlash, just three months after this pledge, several council members backpedaled from the boldest reading of the pledge.<sup>188</sup> They pointed to the wide variety of potential interpretations of the language; one council member said he agreed with the pledge "in spirit."<sup>189</sup>

In September 2020, Keith Young, then a Black city council member in Asheville, North Carolina, adopted the language of Black Lives Matter activists who call for "divest/invest"—but with seemingly little shared analysis of some of the logics that undergird that movement demand. He said that he agrees with the

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*Representation into Substantive Representation: The Role of Electoral Institutions in Urban School Districts in Texas*, 56 URB. AFFS. REV. 1687 (2019). See generally HANNA FENICHEL PITKIN, THE CONCEPT OF REPRESENTATION 60–143 (1967) (distinguishing, in seminal form, between descriptive, symbolic and "acting for" representation).

184. See, e.g., Christopher Fredette & Ruth Sessler Bernstein, *Ethno-racial Diversity on Nonprofit Boards: A Critical Mass Perspective*, 48 NONPROFIT & VOLUNTARY SECTOR Q. 931, 936 (2019).

185. Herndon, *supra* note 9.

186. Liz Navratil, *Most of Minneapolis City Council Pledges to "Begin the Process of Ending" Police Department*, STAR TRIB. (June 8, 2020, 5:50 PM) <https://www.startribune.com/mps-council-majority-backs-dismantling-police-department/571088302/> [<https://perma.cc/7T9M-SJLB>]; see also Dionne Searcey & John Eligon, *Minneapolis Will Dismantle Its Police Force, Council Members Pledge*, N.Y. TIMES (June 7, 2020), <https://www.nytimes.com/2020/06/07/us/minneapolis-police-abolish.html> [<https://perma.cc/HZ4N-RSMU>].

187. Navratil, *supra* note 186.

188. Herndon, *supra* note 9.

189. *Id.*

demand “on the surface”: “Yes, on the surface, yes, divest invest, of course, but like I said before, it’s more than just money to me . . . . Can you understand that people’s lives are at stake, and take a prudent approach and understand how this will adversely affect my son?”<sup>190</sup> Even as Young *rhetorically* accepted the idea of divest/invest, he criticized the underlying logics and potential effects of divest/invest, suggesting that these demands are only about money, that they threaten life, and that in particular they would threaten his Black son’s life. Given that the movement for cutting police funding and investing in alternatives is built on the idea that traditional policing actually threatens lives—particularly the lives of Black people<sup>191</sup>—it is clear that Young was using the movement’s language without its analysis. The rhetoric of the demand and its logics were divorced from each other.

This Article has sought to distill and explain some of the core logics observable in movement demands to invest in alternatives to police and prisons. This crystallization should help support productive debates over budgets and structural change. Without such discursive and analytic clarity, the vocabulary of alternative investment could become a set of content-free buzzwords that policymakers misunderstand and misuse. We have seen this before: terms like “community policing,”<sup>192</sup> “diversity,”<sup>193</sup> “colorblind”<sup>194</sup> and other malleable keywords,<sup>195</sup> in their capaciousness, can either share a common meaning that guides a constrained set of actions or might be used for purposes that run counter to the goals that motivated their development.

It may be that, for some populations and in some contexts, one of these logics should be prioritized over the other two. For example, for supporters of racial reparations, investing funds into underfunded, Black-led organizations might be merely one small piece of that larger commitment. Thus, the logic of racial reparation in criminal system debates might take precedence over efficient safety production or contributions to the welfare state. In contrast, for those who treat crime reduction as a self-justifying principle or who believe that protection from interpersonal violence is the state’s primary purpose, safety production logic might take precedence over racial reparations logic. Moreover, if it appears that investment

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190. Joel Burgess, *Defund Police: Asheville City Council Candidates Want to Cut Funds but Split on How*, CITIZEN TIMES (Sept. 10, 2020, 9:43 PM), <https://www.citizen-times.com/story/news/local/2020/09/10/asheville-council-candidates-want-defund-police-but-split-how/5766123002/> [https://perma.cc/7CRU-WNFU] (quoting Keith Young).

191. *E.g.*, Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 108 (2020).

192. *See, e.g.*, BERNARD HARCOURT, *THE ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING* 46–47 (2001).

193. *See* ELLEN BERREY, *THE ENIGMA OF DIVERSITY* 26 (2015).

194. AMAKA OKECHUKWU, *TO FULFILL THESE RIGHTS: POLITICAL STRUGGLE OVER AFFIRMATIVE ACTION AND OPEN ADMISSIONS* 18–19 (2019).

195. *See generally* Amin Ghaziani & Marc J. Ventresca, *Keywords and Cultural Change: Frame Analysis of Business Model Public Talk, 1975–2000*, 20 SOCIO. F. 523 (2005).

in the welfare state and racial reparation would not directly implicate safety, they might even disregard those logics despite their centrality to movement demands.

Finally, this Article raises but cannot fully answer larger questions about democratic governance. How should policymakers reach normative conclusions about which policy solutions to pursue? A basic orientation of this Article is that just governance requires careful attention to (though not uncritical deference to) knowledge from “below,” or expertise that emanates from lived experience.<sup>196</sup> This attention may be especially needed as both a moral and a practical matter in policy areas where marginalized communities face the most direct and visceral effects.<sup>197</sup> This Article also adopts the view that full engagement with the experiences and logics of mobilized collectives is vital to democratic lawmaking. Democratic governance demands attention to what Guinier and Torres have called “demosprudence,” or “the dynamic equilibrium of power between lawmaking and social movements.”<sup>198</sup> Of course, the consequences of policymaking and implementation processes emerge through a kaleidoscope of institutional actors. For this reason, clarity about the logics operating within movement demands helps to affirm democracy and account for power as that kaleidoscope turns.

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196. See MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING 1 (2007) (theorizing epistemic injustice as “a wrong done to someone specifically in their capacity as a knower”); see also Olúfemi O. Táíwò, *Being-in-the-Room Privilege: Elite Capture and Epistemic Deference*, 108 PHILOSOPHER, <https://www.thephilosopher1923.org/essay-taiwo> [https://perma.cc/68DX-PY9K] (critiquing “deference epistemology”).

197. E.g., Monica Bell, Andrea Taverna, Dhruv Aggarwal & Isra Syed, *Laboratories of Suffering: Toward Democratic Welfare Governance*, in HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY 40, 42 (Ezra Rosser ed., 2019); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 849–56 (2021); Benjamin Levin, *Criminal Justice Expertise*, 90 FORDHAM L. REV. (forthcoming 2022) (manuscript at 42–49).

198. Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2749 (2014). This is not to suggest that movements are representative stand-ins for marginalized publics. As we explain above, nationally representative polls of Black Americans and the views of Black Lives Matter activists may not be perfectly aligned.