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Legal Endearment: An Unmarked Barrier to Transforming Policing, Public Safety, and Security

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Legal Endearment: An Unmarked Barrier to Transforming Policing, Public Safety, and Security

Emmanuel Mauleón*

The problems of racialized policing have come into renewed focus over the past decade. The advent of viral bystander videos has not only forced a popular confrontation with moments of both routine and extraordinary policing violence but also sparked protests, uprisings, and grassroots movements to challenge current practices in policing and determine what must be done to transform it. And yet, even after the mobilization of one of the largest racial justice movements in American history, transformative change remains elusive. This Article offers an answer to this puzzle by foregrounding White people's collective relationship with policing and describing how this relationship colors current debates on how to best address policing's racial disparities.

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The Article asks: “How might we reconcile White people’s articulated commitments to racial equality with their continued acquiescence in and support for a system of policing that continues to produce such stark racial disparities?” I answer with the theory of legal endearment, which suggests that groups who benefit disproportionately from systems of legal power tend to develop critical attachments to the institutions that maintain such unequal arrangements. For White people, policing is one such institution. Their attachment to policing provides at least a partial explanation for why meaningful police reform has been difficult to achieve.

White people’s legal endearment results from four significant and interrelated aspects of their relationship to policing: the experiential, the symbolic, the structural, and the social. First, unlike many people of color, White people generally believe that police exist to “serve and protect” them because that is their general experience of policing. Second, whereas Black people and other people of color have had to worry about how policing positions them symbolically as criminally suspect and dangerous, White people generally have not. Instead, White people have largely benefited from their positive symbolic positioning as law-abiding and innocent. Third, policing responds to and reproduces a broader set of structural arrangements—including racially segregated spaces and social spheres—that have benefitted White people through the maintenance of White towns, suburbs, and neighborhoods, acting to racially circumscribe access to material resources. Finally, the multiple ways in which White people are socialized to ignore the material realities of race and to view race through the prism of colorblindness facilitates an affective relationship between White people and the police. By taking stock of these dimensions of White people’s relationship to policing and considering how these elements contribute to legal endearment with the police, we can begin to understand how legal endearment has operated as an unmarked barrier to achieving transformative police reforms.

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PROLOGUE

George Perry Floyd moved from Houston, Texas, to Minneapolis, Minnesota, in 2014, and lived there for approximately six years.¹ On Monday, May 25, 2020, it was Minneapolis that killed him:² three officers of the Minneapolis Police Department pressed Floyd’s body into the pavement, while a fourth kept pleading bystanders away.

The next morning, the Minneapolis Police Department issued a press release titled “Man Dies After Medical Incident During Police Interaction.”³ The statement alleged that Floyd had resisted arrest and, once handcuffed, “appeared to be suffering medical distress.” It also stated that officers requested an ambulance to take Floyd to Hennepin County Medical Center, “where he died a short time later.”⁴ Darnella Frazier, who recorded Floyd’s final moments as she stood among other bystanders, uploaded her now infamous cellphone video to

1. See Todd Richmond, *Victim in Police Encounter Had Started New Life in Minnesota*, AP NEWS (May 27, 2020), <https://apnews.com/article/minneapolis-virus-outbreak-us-news-ap-top-news-houston-766d7ec7c90d94ad38e3e1c31186fb95> [<https://perma.cc/6WX2-L5NF>].

2. Minneapolis paid Floyd’s family a record-setting \$27 million to settle a wrongful death suit. See Nicholas Bogel-Burroughs & John Eligon, *George Floyd’s Family Settles Suit Against Minneapolis for \$27 Million*, N.Y. TIMES (Mar. 12, 2021), <https://www.nytimes.com/2021/03/12/us/george-floyd-minneapolis-settlement.html> [<https://perma.cc/4AJZ-WZXX>].

3. See Press Release, Minneapolis Police Dep’t, Man Dies After Medical Incident During Police Interaction (May 25, 2020), <https://www.minnpost.com/wp-content/uploads/2020/05/Screenshot-2020-05-28-at-9.51.56-AM.png> [<https://perma.cc/3A6V-JBYT>]; see also Greta Kaul, *Seven Days in Minneapolis: A Timeline of What We Know About the Death of George Floyd and Its Aftermath*, MINN. POST (May 29, 2020), <https://www.minnpost.com/metro/2020/05/what-we-know-about-the-events-surrounding-george-floyds-death-and-its-aftermath-a-timeline/> [<https://perma.cc/WU27-ND52>].

4. See Press Release, Minneapolis Police Dep’t, *supra* note 3.

Facebook the following day. That video spread quickly, as did the outrage in response.⁵

On Tuesday, May 26, 2020, protestors, calling for justice for Floyd and for the arrest of all the officers involved in his murder, began to gather in Minneapolis—first at the site of Floyd’s death and then throughout the Twin Cities.⁶ Throughout the rest of the week, confrontations between protestors and the Minneapolis police grew increasingly violent: police shot rubber bullets, teargas, and flash grenades into large crowds, who returned fireworks, bottles, and other projectiles.⁷ Dozens of businesses, particularly along two main thoroughfares—Lake Street in Minneapolis and University Avenue in St. Paul—were broken into, looted, and set on fire.⁸ Minnesota’s governor, Tim Walz, deployed the National Guard and instituted a curfew.⁹ By Thursday night, on May 28, at the direction of Mayor Jacob Frey, the Minneapolis police abandoned the Third Precinct Police Station,¹⁰ which protestors then set ablaze.¹¹ Thus began a summer of uprisings against anti-Black policing,¹² which spread around the world.¹³

5. See Versha Sharma, *Darnella Frazier, Teen Who Filmed George Floyd’s Murder, Speaks Out About Her Trauma*, TEEN VOGUE (May 26, 2021), <https://www.teenvogue.com/story/teen-recorded-george-floyd-murder-statement> [<https://perma.cc/K254-YQ38>]; Audra D.S. Burch & John Eligon, *Bystander Videos of George Floyd and Others Are Policing the Police*, N.Y. TIMES (Nov. 24, 2021), <https://www.nytimes.com/2020/05/26/us/george-floyd-minneapolis-police.html> [<https://perma.cc/cZZ6S-F2RB>]; cf. Michele B. Goodwin, *Law & Anti-Blackness*, 26 MICH. J. RACE & L. 261, 334 (2021) (suggesting the viral sharing of Frazier’s video functioned as an unwelcome digital lynching postcard).

6. See Derrick B. Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Nov. 5, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [<https://perma.cc/TC7R-VY3H>].

7. *Id.*

8. Frederick Melo & Sarah Horner, *55 Fires, Looting Overnight Leave Extensive Damage in St. Paul; Midway Neighborhood Hardest Hit*, PIONEER PRESS (May 29, 2020), <https://www.twincities.com/2020/05/29/fires-looting-st-paul-university-ave-george-floyd-protests/> [<https://perma.cc/4HP9-RMRC>].

9. See Taylor, *supra* note 6.

10. See *Exclusive: Mayor Jacob Frey Discusses What Led to the Abandonment of 3rd Precinct*, WCCO NEWS (May 29, 2020), <https://www.cbsnews.com/minnesota/news/exclusive-mayor-jacob-frey-discusses-what-led-to-the-abandonment-of-3rd-precinct/> [<https://perma.cc/KE6P-8RV5>].

11. See *George Floyd Uprising—Reporter Reflection [5 Episode Series]*, UNICORN RIOT, <https://unicornriot.ninja/georgefloyd/> [<https://perma.cc/4BLR-J6Q3>].

12. I use the umbrella term “uprisings” to denote a collection of “protests,” “rebellions,” and “riots,” while acknowledging the tension inherent in these terms. See Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 406 n.1 (2018) (“[T]he term riot suggests chaos, and the terms rebellion and uprising suggest political resistance to political problems.”) [hereinafter *Radical Imagination*]. But see Jackie Wang, *Against Innocence: Race, Gender, and the Politics of Safety*, 1:10 LIES 1, 7 (2012) (“Translating riots into morally palpable terms is another manifestation of the appeal to innocence—rioters, looters, criminals, thieves, and disruptors are not proper victims and hence, not legitimate political actors.”). Or, perhaps more succinctly, “The riot that’s goin’ on is a party for self-defense.” FRED MOTEN, *STOLEN LIFE* 186 (2018).

13. I begin this Article by describing George Floyd’s death with some trepidation, wary of reproducing his experience as a spectacle. See Jalen Banks, *Black Death as Spectacle: An American Tradition*, BERKELEY POL. REV. (Nov. 23, 2019), <https://bpr.berkeley.edu/2019/11/23/black-death-as-spectacle-an-american-tradition/> [<https://perma.cc/L2TS-QHEG>] (tracing the history of Black death from lynching to police killings as forms of public spectacle); FRANK B. WILDERSON III,

* * *

The Twin Cities Metro Transit 21A bus begins its route in St. Paul.¹⁴ Leaving the downtown St. Paul transit depot, it winds past skyscrapers and then passes the towering St. Paul Cathedral. The bus continues for several miles down Selby Avenue, a street demarcating the line between the Rondo, Selby Dale, Frogtown, and Midway neighborhoods to the north and the Crocus Hill and Summit Avenue neighborhoods to the south. In traversing this route, the bus's tires trace the historic redline that continues to reverberate between the "undesirable" neighborhoods in the north and the "desirable" communities in the south.¹⁵

The bus continues its trip through St. Paul, then crosses the Mississippi River into Minneapolis, where it follows Lake Street for several miles to its end. Along the way, it passes the now charred and barricaded site of the Third Precinct Police Station at Minnehaha Avenue, one site at the center of the 2020 global racial justice uprisings.¹⁶

I grew up riding this bus along this route.¹⁷ The first time I rode the 21A was as a young boy. My grandfather had asked me to run an errand and sent me

AFROPESSIMISM 225 (2020) ("We *are* being genocided, but genocided *and* regenerated because the *spectacle* of Black death is essential to the mental health of the world.") (italics in original); cf. "Wildcat the Totality"—Fred Moten and Stefano Harney Revisit the Undercommons in a Time of Pandemic and Rebellion (Part 1), MILLENNIALS ARE KILLING CAPITALISM, at 20:02 (July 4, 2020), <https://millennialsarekillingcapitalism.libsyn.com/wildcat-the-totality-fred-moten-and-stefano-harney-revisit-the-undercommons-in-a-time-of-pandemic-and-rebellion-part-1> [<https://perma.cc/L2K5-RB4D>] ("When it comes to Black folks, between policy and the police, they're gon' kill us all. No, that's not right—they're gon' kill every one of us. I don't know a Black person who has ever not died of anti[B]lackness. . . . And the fact that I can't do nothing about that is obviously a source of—pain is not—I don't know what the word would be to describe how one feels about that."). Floyd's name has become shorthand for the 2020 uprisings and the innumerable "racial reckonings" following his death. Compare Janice G. Asare, *One Year After George Floyd: Do Black Lives Matter Within Corporations?*, FORBES (May 25, 2021), <https://www.forbes.com/sites/janicegassam/2021/05/25/one-year-after-george-floyd-do-black-lives-matter-within-corporations/> [<https://perma.cc/P4ZH-8N4N>], with Touré F. Reed, *The Political Economy of Racial Inequality*, DISSENT MAG. (Summer 2021), <https://www.dissentmagazine.org/article/the-political-economy-of-racial-inequality> [<https://perma.cc/7LLX-U3AB>] ("[F]ollowing the brutal murder of George Floyd by police officer Derek Chauvin in May 2020 . . . policymakers and corporations promote[d] [B]lack entrepreneurship, homeownership, and, of course, diversifying the ranks of corporate and government leaders, [as] real structural change . . . is forgotten.").

14. See *Interactive Map, 21, TWIN CITIES METRO TRANSIT*, <https://www.metrotransit.org/imap/21> [<https://perma.cc/E3J5-P5HG>].

15. See *infra* Part II.C (describing how ongoing racial segregation affects White people's relationship to policing).

16. See Kyle Stokes, *Minneapolis City Council Resolves Not to Return Police to Burned Third Precinct Building*, MINN. POST (July 20, 2023), <https://www.minnpost.com/metro/2023/07/minneapolis-city-council-resolves-not-to-return-police-to-burned-third-precinct-building/> [<https://perma.cc/3VDJ-5QXW>].

17. I begin this Article with a personal story as an explicit adoption of critical race theory methodology. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2414 (1989). I understand, however, that now—as in the past—there are those who continue to disagree with and discourage the use of this methodology, questioning its relationship to neutrality and objectivity. Compare JONATHAN BUTCHER & MIKE GONZALEZ, HERITAGE FOUND., CRITICAL RACE THEORY, THE NEW INTOLERANCE, AND ITS GRIP ON AMERICA 9 (2020) ("CRT is the

off with a bus pass, a worn transit map, and instructions to return home by the afternoon. I continued to ride the bus for years, meeting friends or catching a transfer to my job at the Walker Art Center or to Juxta,¹⁸ where I first learned and later taught visual arts. I came to know both Minneapolis and St. Paul from my view out of the 21A's windows, becoming intimately familiar with the blocks along the route and their homes, shops, and landmarks.

I moved to Minnesota from Mexico with my mother and siblings in the early 1990s. My family displayed a broad phenotypical spectrum of appearances: my White mother with light white skin,¹⁹ blonde hair, and blue eyes; my younger brother, the lightest-skinned of my siblings, with light brown hair and hazel-green eyes; my older brother,²⁰ with olive skin, brown hair, and brown eyes; myself, with nearly black hair, dark brown eyes, and the darkest-skinned of my siblings; and my Mexican father, with black hair, dark eyes, and copper-brown skin. In the summer I would look more like my father and less like my siblings; by winter, my skin would lighten several shades.

We arrived from Puebla and stayed in Minnesota quite unexpectedly, spending several months with my grandparents in their large, single-family home. This house was where my mother and her siblings had grown up and become familiar with every neighbor on the block, which they later described as an idyllic, safe community. It was also, up until our arrival, an exclusively White block.²¹ Half a year later, I moved with my mother and siblings to an apartment in Rondo, a predominantly and historically Black neighborhood abutting the 21A bus route.²²

least intellectually ethereal and the most explicitly political [school of critical legal theory]."), with Richard A. Posner, *The Skin Trade*, NEW REPUBLIC, Oct. 13, 1997, at 40, (reviewing DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW*) (calling CRT scholars the "lunatic core" of "radical legal egalitarianism").

18. Juxtaposition Arts (Juxta) is a Black-founded, led, and staffed design studio, gallery, and art space in the historically Black neighborhood of North Minneapolis. See *Northside Since '95*, JUXTAPOSITION ARTS (Jan. 3, 2020), <https://juxtapositionarts.org/blog/25-stories/northside-since-95/> [<https://perma.cc/HMC7-HJUV>].

19. I capitalize "White" when used as a socially constructed category but not as a color, for many of the reasons LaToya Baldwin Clark lays out in *Stealing Education*. See LaToya Baldwin Clark, *Stealing Education*, 68 UCLA L. REV. 566, 568–69 n.1 (2021) ("Choosing not to capitalize White while capitalizing other racial and ethnic identifiers would implicitly affirm Whiteness as the standard and norm.").

20. My older brother is a trans man, who presented as a girl and then as a woman until his thirties. See *infra* Part II.A (describing how intersectional race and gender differences affect one's relative exposure to police violence).

21. See *infra* Part II.C (describing racial segregation's effects on White people's relationship to policing).

22. The Rondo neighborhood was once home to 85 percent of St. Paul's Black community and was the childhood home to both civil rights leader Roy Wilkins and photographer and writer Gordon Parks. See Anura Si-Asar, *Gordon Parks Recalling 1920s Rondo*, ST. PAUL ALMANAC (May 5, 2011), <https://saintpaulalmanac.org/2011/05/31/gordon-parks-recalling-1920s-rondo/> [<https://perma.cc/99A7-DEA7>]. Like many historically Black neighborhoods across the United States, much of Rondo was razed during the construction of the interstate highways. See Jane McClure, *Rondo Neighborhood*, ST. PAUL HIST. SOC'Y, <https://saintpaulhistorical.com/items/show/160> [<https://perma.cc/T69R-3HS2>].

From that vantage point—a brown boy, living with siblings and a single mother who did not share a similarly racialized experience—I attempted to understand my place in Minnesota’s racial landscape.²³ And with this perspective, decades later, I began to process the uprisings that erupted after Floyd was murdered.

Like countless others, I found myself transfixed from afar by what was unfolding in Minneapolis. I heard from friends and family in Minnesota, each in various stages of awe, disbelief, grief, outrage, and panic. All those hours I spent gazing out of the 21A windows amplified what I was watching play out online and the hurt, fear, anger, uncertainty, and heartache shared in the conversations that I had with those on the ground. It did not surprise me that much of the protesting, burning, and looting in the cities was taking place along the 21A bus path, exploding open invisible lines between segregated neighborhoods that for so long acted as racial barriers, with the Third Precinct at the center.

At the same time, I suspected that my perspective likely diverged from those in my family whose formative relationships to the cities had blossomed outside of the redline and whose racial embodiment as White people was different than my own. Even as we all witnessed Floyd’s murder, the swift, subsequent violence from the police and National Guard toward protestors, and the uprising that ensued from one vantage point or another, I imagined the concerns my family likely felt about what was unfolding might be foreign to me, as mine might be to them. Although we had all called the Twin Cities home at one point or another, the spaces and people we recalled and the stories we told about that “home” were incongruent.²⁴

With this in mind, I wrote a message to my extended family detailing my own numerous encounters with the Minneapolis Police. I began by detailing how I had been handcuffed at eleven years old and ended with a run-in with the police during the winter break of my first year in law school, with several incidents in-between.²⁵ Noting that this would be the first time many of my family members

23. Minnesota’s unique racial landscape was also shaped by immigration from South Asia, Southeast Asia, Somalia, and Mexico. See *Population Trends: Foreign Born Population by Birthplace: Minnesota, 1870–2020*, MINN. COMPASS, <https://www.mncompass.org/chart/k264/population-trends#1-5581-g> [<https://perma.cc/HUD6-L3F8>] (charting a sharp increase in the 1990s–2000s of Hmong, Indian, Mexican, Somali, and Vietnamese immigrants).

24. See *infra* Parts II.C–D (describing how racially segregated spaces, social groups, and White racial socialization messages shape White people’s relationship to policing).

25. I described the following incidents, which I truncate here: I was handcuffed and detained twice before adolescence—at eleven while skateboarding in an empty parking lot, and at thirteen after being accused of shoplifting. I was also stopped four times while driving and biking between the ages of sixteen to eighteen, including for allegedly fitting the description of a bike robbery suspect, and once at gunpoint for failing to signal a turn. I was suddenly and violently arrested at twenty by two undercover cops who jumped out from an unmarked car and hit, handcuffed, and searched me and a friend before driving us around for hours before eventually taking us to Hennepin County Jail. The too-tight cuffs, which I repeatedly asked to be adjusted to no avail, caused lasting nerve damage in my hands. At twenty-three, while waiting in the parking lot of my friend’s apartment for a ride home, a police car pulled up to me and the officer yelled for me to get on the ground. I was then handcuffed while he knelt on my

would be learning about how policing touched my own life,²⁶ I ended the message asking not for sympathy, but reflection. Why had some family members previously sent messages urging me not to attend protests that might put me in harm's way but never raised the harms I might face from everyday policing?

Nearly a year later, I received an unexpected reply from an aunt: "I am writing because I have submitted a newsletter article . . . in which I write about my experience reading your email of May 29, 2020, in which you share with the family a few examples of your experiences with the Minneapolis Police [D]epartment."²⁷ The article draft read, in part:

Born and raised in St. Paul, Minnesota (USA). The youngest of 3 girls, in a [W]hite, middle-class family and lovely neighborhood. . . . My oldest sister went to college in Mexico and married a wonderful Mexican man and they have 3 boys; all brown-skinned. The children were born in Mexico but raised in Minnesota after my sister moved home. I have always seen them as family, never the color of their skin, and assumed their life experience/expectations of society were the same as mine.²⁸

She then shared my first experience of being stopped, handcuffed, and questioned by the Minneapolis Police as an eleven-year-old child. Afterward, she prompted her reader:

When you read this what are your initial thoughts? Truly, initial thoughts, no filter.

. . .

As I read, my thoughts kept returning to "surely he, my nephew, did something that warranted being handcuffed." I even found myself wondering how he was dressed, did he look suspicious, was he belligerent to the police officer. Then, I stopped, mid-thought and said, "what am I doing?" Why was I trying to find fault with my nephew and not the officer? None of this made sense to me. Law enforcement is supposed to be logical, and this was completely illogical.²⁹

These words caught me off guard, with one part standing out: The confidence with which she assumed her (presumably White) audience would

back, searched my pockets, and accused me of trying to break into the parked cars. Finally, at twenty-seven, an off-duty officer approached me and a friend at a karaoke bar. He asked where I was from, then eventually asserted I was "Afghanistani," and stated that he had his gun in his car and that it would be "no big deal" for him to shoot me in the parking lot.

26. See *infra* Part II.C (describing barriers to understanding cross racial policing experiences).

27. On file with the author.

28. See *infra* Part II.D (describing how the White racial socialization strategy of colorblindness simultaneously recognizes the markers of race (for example, "*all brown-skinned*") yet suppresses the meanings behind such recognition (for example, "I have always seen them as family, *never the color of their skin*"), upholding a belief in a universal experience based on White subjectivity (for example, "*assumed their life experiences/expectations of society were the same as mine*").

29. On file with the author.

share a similar unfiltered reaction to her own, comfortably asserting that her reader's first impulse would be to assess my likely culpability.

Underlying this prompt to her audience—even within the context of confronting their own biases—was a radically different understanding of policing than my own. Because I had engaged with the topic largely through my own experiences and those of other people of color, my aunt's message surprised me, making me question what I was missing in my own analysis of police violence. I found myself wondering what shaped her experiences and perceptions of the police such that she could assume agreement from her audience that the police treatment I experienced as a young brown boy was “supposed to be logical.”³⁰

For her part, my aunt seemed to think that race was shaping her own analysis.³¹ Indeed, she attributed her own reaction to her “White privilege.” And White privilege might capture the advantages she experienced as the result of moving through the world as a White person in a racially unequal society. But I was more intrigued by why and how those advantages shaped her apparent attachment to the institution of policing, a sentiment that White privilege alone did not seem to fully capture. I propose that an additional phenomenon, which I theorize below as *legal endearment*, is at play.³² Precisely what I mean by legal endearment, and its relationship to policing, is the subject of this Article.³³

INTRODUCTION

Policing has long been a mechanism for racial subordination in the United States,³⁴ with the past decade bringing the problems of racialized policing into renewed focus. Viral bystander videos have forced the public to confront moments of both routine and extraordinary police violence. The ensuing protests,

30. See *infra* Part I.A (detailing how policing produces symbolic social meanings that attach legal significance to racial categories, transforming evidence of racially discriminatory policing into the legal logics of *innocence* and *criminality*).

31. I do not suggest that every White person or that no person of color would have responded this way. See *infra* Part I.B (describing how “White people” is deployed throughout the Article).

32. The term “legal endearment” riffs on Monica Bell’s critique of the procedural justice literature in her theorization of “legal estrangement.” See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2054 (2017).

33. I draw on examples from the Twin Cities throughout the Article, showing how the mechanisms that contribute to legal endearment set the stage for Floyd’s death and the responses that followed.

34. Notwithstanding the vast literatures supporting this point, I recognize that this view is not universally held, nor is its history broadly understood. Compare, e.g., Philip Atiba Goff, *Perspectives on Policing*, 4 ANN. REV. CRIMINOLOGY 27, 27–32 (2021) (“[I]t is not possible to look honestly at the history of law enforcement in the United States and imagine it was not intended—for most of its existence—as a means of Black oppression. Similarly, there has been no time in the nation’s history when this mission has been explicitly acknowledged, repudiated, and corrected.”), with Heather MacDonald, *The Myth of Systemic Police Racism*, WALL ST. J. (June 2, 2020), <https://www.wsj.com/articles/the-myth-of-systemic-police-racism-11591119883> [<https://perma.cc/Q6HR-KQHW>] (“Hold officers accountable who use excessive force. But there’s no evidence of widespread racial bias.”).

uprisings, and grassroots-movement demands provoked a broader conversation on what is wrong with policing and what must be done to transform it.³⁵ And still, four years since the mobilization of one of the country's largest racial justice movements in 2020, transformative change has remained elusive.

This Article explores one explanation for why change has stalled, focusing on the relationship between White people and policing.³⁶ Doing so puts into sharp relief two questions that have received scant attention in the police reform literature: How can we reconcile White people's expressed commitments to the principle of racial equality with their continued acquiescence in and support for a system of policing that inflicts racial harm?³⁷ And why do they reject policies that seek to transform that arrangement?³⁸

I answer these questions by articulating the theory of *legal endearment*. The theory of legal endearment states that dominant groups who derive disproportionate benefits from systems of legal power—especially those that empower their group over others—tend to develop a critical affective attachment to the institutions that maintain those unequal arrangements.³⁹ And because those unequal arrangements are being produced through legal acts and enforcements, the regimes of dominance and subordination they support become justified and sanitized through recourse to law. I argue that policing provides such disproportionate advantages to White people and therefore fosters their legal endearment to the institution.

Before I move on, a few important caveats are in order. Legal endearment is not intended as a “total theory” that explains every aspect

35. See, e.g., BLACK VISIONS COLLECTIVE, MINNEAPOLIS WITHOUT POLICING 3–8 (2020); MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: END THE WAR ON BLACK COMMUNITIES 3–8 (2020); MPD 150, ENOUGH IS ENOUGH: A 150 YEAR PERFORMANCE REVIEW OF THE MINNEAPOLIS POLICE DEPARTMENT 37 (expanded ed. 2020).

36. One might criticize this Article for “centering Whiteness,” a pejorative phrase used to express the prioritization of White people's experiences and feelings on questions of discrimination. See Courtney Bledsoe, Comment, *Centering Whiteness and Entrenching the Myth of Race-Neutral Alternatives to Affirmative Action*, 170 U. PA. L. REV. 207, 211 (2021). Yet critical examinations on Whiteness from non-White perspectives are at the heart of some of critical race theorists' most profound and lasting interventions. See, e.g., Devon W. Carbado, *Colorblind Intersectionality*, 38 SIGNS 811 (2013); IAN HANEY LÓPEZ, *WHITE BY LAW* (2006); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); Kimberlé W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Derrick A. Bell Jr., *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

37. See *infra* Part II.A.2.

38. Nikhil Pal Singh, *The Whiteness of Police*, 66 AM. Q. 1091, 1096 (2014) (“[I]nsofar as the production of [W]hiteness has been concomitant with formal universality . . . the key moral and intellectual challenge has always revolved around how to reconcile commitments to racially disparate fate with claims to justice and fairness.”).

39. A related concept is “minority group threat,” which describes that Whites view minorities as symbolic racial competition. “Based on this perspective, [W]hites hold more favorable views of the police because they perceive the institution as a critical resource to own, and more importantly, as vital protectors of their interests and superiority against minority threat.” Liqun Cao & Yuning Wu, *Confidence in the Police by Race: Taking Stock and Charting New Directions*, 20 POLICE PRAC. & RSCH. 1, 11 (2019) (citations omitted).

of White people's relationship to policing or every component that contributes to their affective attachment.⁴⁰ Nor do I intend to suggest that every White person is endeared to the police. Instead, as I elaborate below, the theory operates at an aggregate level.⁴¹ Recognizing that race and racism operate as projects of group-status differentiation and approaching these concepts at this level of abstraction can generate valuable insights into the problems of racialized policing.⁴² Analysis at this level of abstraction allows us to recognize the role that the institution of policing plays in maintaining and reproducing the social meanings of race and a system of racial hierarchy.

Indeed, this claim is largely uncontroversial with respect to how others routinely engage the experiences of people of color. A significant body of legal scholarship on race and policing focuses on the role police play in shaping Black, Indigenous, and other people of color's symbolic and material experiences of policing.⁴³ Scholars seem to gravitate intuitively to exploring how and why Black people experience discriminatory policing and how those experiences shape their views on policing.

Yet far fewer embrace similar insights about White people to ask how policing might shape their symbolic and material experiences. Asking why White people support the police feels counterintuitive, in part because their views converge with a baseline presumption in the legitimacy of our institutions.⁴⁴ As I show below, however, presuming policing's legitimacy is unwarranted and should be dispelled, given its historic and contemporary role in advancing both racial subjugation and discrimination. In a moment when evidence of highly racialized policing is out in the open, it is important to challenge why White people's baseline presumptions of police legitimacy have not changed much.

40. See *infra* Part I.A (detailing the definitions and contours of the theory).

41. See *infra* Part II.A (defining the relationship between White racialization and policing).

42. Ben Brucato, *Fabricating the Color Line in a White Democracy: From Slave Catchers to Petty Sovereigns*, 61 THEORIA 30, 37 (2014) ("In the color-blind era, advantage is probabilistic, experienced in aggregation rather than an assurance to each [W]hite person.").

43. See *infra* Parts II.A–B. Throughout the text I refer to groupings of Black, Indigenous, and other people of color in a variety of ways, sometimes because a source or argument only pertains to one or more groups. Whereas some argue that any grouping aside from one broken down as "Black, Indigenous, and other people of color" (stylized as "BIPOC") is reductionist, others view the umbrella term "of color" to signify coalitional possibilities. See Constance Grady, *Why the Term "BIPOC" Is So Complicated, Explained by Linguists*, VOX (June 30, 2020), <https://www.vox.com/2020/6/30/21300294/bipoc-what-does-it-mean-critical-race-linguistics-jonathan-rosa-deandra-miles-hercules> [<https://perma.cc/6RNN-WTCX>].

44. See *infra* Part III.A; see also TRUST IN POLICING: THE ROLE OF WHITE SUPREMACY, MINN. JUST. RSCH. CTR. (2021) (noting that the measured gap in trust between Black and White Americans reached its largest divide in 2020, "with 56 percent of [W]hite adults expressing a great deal or quite a lot of confidence in police compared to just 19 percent of Black adults surveyed.") (citing Jeffrey M. Jones, *Black, White Adults' Confidence Diverges Most on Police*, GALLUP (Aug. 12, 2020), <https://news.gallup.com/poll/317114/black-white-adults-confidence-diverges-police.aspx> [<https://perma.cc/56LA-BPWA>]).

At a minimum, flipping the baseline question invites us to conceive of policing not only as an institution that subordinates people of color but also as one that *superordinates* White people as well. From that perspective, resolving policing's racial disparities is not simply a question of having police treat Black, Indigenous, and other people of color how they treat White people, but an inquiry into how the police's treatment of White people has relied upon the subordination of others. Put more provocatively, the theory of legal endearment suggests that Black people and other people of color cannot escape policing's harms unless we simultaneously interrupt the mechanisms that lead to White people's legal endearment with the institution of policing.

The theory of legal endearment shows how an affective attachment to policing emphasizes a view that police are necessary for maintaining order and security because of their role in producing a dominant racial order and securing racial dominance. Accordingly, legal endearment operates as an unmarked barrier to resolving the problems of racialized policing by setting the terms of the police reform debate itself. These terms are more favorable to the maintenance of the institution, rather than to achieving the functions that the institution is allegedly intended to address: achieving public safety and security for all. And, because White people occupy the dominant group position, they can leverage connections to social, political, and legal power to entrench their preferences and affective attachments as the hegemonic standard. In this way, White people's legal endearment shapes not only their own relationship to policing but also broader society's relationship to the institution as well.

The argument proceeds in three parts:

Part I expounds upon the theory of legal endearment by defining both its "legal" and "endeared" components within the context of policing.

Part II describes four significant and interrelated aspects of White people's relationship to policing through which legal endearment is produced: the experiential, the symbolic, the structural, and the social.

Part III deploys this expanded understanding of legal endearment to evaluate ongoing debates between more liberal police reformers and more radical police abolitionists. First, I examine some unnamed assumptions about White people's support for the police that pervade the legitimacy theory and procedural justice literature. I suggest that accounting for legal endearment helps reveal these assumptions and raises important questions about this literature's diagnosis of and prescriptions for resolving the problems of racialized policing. Next, I show how the theory of legal endearment can act as a useful shortcut to developing radical "nonreformist reform" proposals. Finally, I evaluate a common critique that abolitionist proposals are politically unpopular, especially among the communities most impacted by policing violence. Legal endearment helps reframe this critique by focusing not on whether communities most affected by police violence want abolition but instead on why those least affected by police violence refuse to support public safety alternatives.

Cumulatively, Parts I, II, and III demonstrate the descriptive, diagnostic, and theoretical value of legal endearment. Foregrounding the symbolic, experiential, structural, and social dimensions of White people's relationship with policing broadens our view of the problems of race and policing. Taking stock of White people's legal endearment to policing exposes a formerly unmarked barrier to achieving transformative police reform and provides us with a tool to help surmount that barrier.

I.

THE THEORY OF LEGAL ENDEARMENT IN POLICING

The theory of legal endearment suggests that dominant groups who derive disproportionate benefits from systems of legal power—especially systems that empower their group over others—tend to develop an affective attachment to institutions that maintain those unequal arrangements. And because dominant groups can leverage connections to social, political, and legal power, their affective attachments to these institutions become entrenched as the hegemonic standard. That is, dominant groups' legal endearment becomes encoded as the natural and neutral orientation, masking the social, political, and legal power dynamics of dominance and subordination that they reflect and reify.⁴⁵

This Article deploys the above framework to describe White people's relationship to policing. As such, I put forward both a "general" theory of legal endearment and develop an "as applied to race and policing" argument herein. I expect that other scholars might find the general theory of legal endearment to be transsubstantive and useful to describing and evaluating power dynamics across a variety of legal systems (e.g., legislatures, courts, prisons) and axes of group power (e.g., race, gender, citizenship status). But as this Article argues, policing's ongoing role in the production of racial dominance and subordination makes it a particularly salient example of the power of legal endearment and of the barrier it can pose to achieving transformative reforms.

As this is the first articulation of the theory, it is helpful to add a preliminary note on its nomenclature and its specific deployment in this Article: What is "legal" and what is "endeared" about White people's relationship to the police? Here, "legal" operates at two registers. First, it recognizes that police officers often operate as the most visible avatars of the state and the law. This is suggested by the expression that police are "the long arm of the law," or where "the law" is slang for the police.⁴⁶ In this register, "legal" simply recalls police as a

45. I would argue, for example, that White people's legal endearment with the institution of policing informed the push to develop "Blue Lives Matter" hate crimes legislation in response to the Black Lives Matter movement. In this context, the theory of legal endearment underscores the affective dimensions of "police hate" that must be guarded against (with civil rights tools developed to help the most marginalized members of society) against an unmarked backdrop of "police endearment." Cf. India Thusi, *Blue Lives & The Permanence of Racism*, 105 CORNELL L. REV. ONLINE 14, 16–17 (2020).

46. See *Law*, AM. HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=law> [<https://perma.cc/9ZP9-NEHA>] ((6)(b): "Informal—A police officer.").

frontline embodiment of the state.⁴⁷ Second, “legal” references the symbolic meanings produced by police actions.⁴⁸ To paraphrase James Forman Jr., as a “central representative of the state . . . what police do (and what they teach by what they do) has implications beyond policing.”⁴⁹ I argue that part of what police “do” as legal actors is produce legal meanings of “innocence” and “delinquency” that attach to racial categories.⁵⁰ Putting both registers together, “legal” reflects how police embody state power and how police actions shape our understanding of racial hierarchy in legal terms.

Endearment, on the other hand, may call to mind the warm feelings associated with one of its primary meanings, “to make beloved.”⁵¹ Although I argue that White people exhibit a warm affect toward policing, I do not suggest that they love it.⁵² Instead, I invoke endearing in its second sense, which is to “inspire[] affection or warm sympathy.”⁵³ To fully capture what I mean, we should understand “warm sympathy” not as a form of commiseration but instead as a type of mutual understanding, one that suggests both White people and policing rely upon one another deeply.⁵⁴

Combining the preceding signifiers, this Article deploys legal endearment to capture a broad cluster of sensibilities, including White people’s express support for, sympathetic response to, approval of, and critical attachment to policing. Part II makes this abstraction concrete by describing how White people’s relationship with policing produces White people’s legal endearment toward the institution.

47. Joe Soss & Vesla Weaver, *Police Are Our Government: Political Science and the Policing of Race-Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 574 (2017) (citations omitted) (noting that “[a]s street-level bureaucratic representatives, police operate as one of the most visible and proximate instantiations of state power in many citizens’ lives,” and noting that, in addition to the police, “courts, parole agencies, and prisons are among the most familiar state-led institutions”); Alice Ristroph, *The Thin Blue Line from Crime to Punishment*, 108 J. CRIM. L. & CRIMINOLOGY 305, 333 (2018) (“The police officer is the most prosaic representation of the criminal law.”).

48. See *infra* Part II.A.

49. James Forman Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 2 (2004). One of the “lessons” that Forman describes is how aggressive policing can push those “straddling the line between delinquency and law-abidingness to think of themselves as delinquent.” *Id.* at 34. This Article suggests the inverse is also true—a White person comes to think of themselves as “law-abiding,” both because of their minimal experiences with the police and because they comprehend that others (presumably criminals) are subject to aggressive policing.

50. See Brucato, *supra* note 42, at 41–44 (summarizing sociological evidence of this phenomenon).

51. “*Endearment*” describes the act of *endearing*, which is itself defined as “inspiring affection or warm sympathy.” See *Endearment*, AM. HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=endearment> [<https://perma.cc/F9QP-7WVF>]; *Endearing*, AM. HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=endearing> [<https://perma.cc/V8L3-A8C3>].

52. See *infra* Part II.D.

53. AM. HERITAGE DICTIONARY, *Endearing*, *supra* note 51.

54. See *Sympathy*, AMERICAN HERITAGE DICTIONARY, <https://www.ahdictionary.com/word/search.html?q=sympathy> [<https://perma.cc/D78U-TCYS>] (defining “sympathy” as both an “agreement with or support for an opinion or position” and a “relationship or affinity between things in which whatever affects one correspondingly affects the other”).

II.

PRODUCING LEGAL ENDEARMENT IN FOUR DIMENSIONS

Below, I describe four dimensions of White people's relationship to policing: the *symbolic*, the *experiential*, the *structural*, and the *social*.⁵⁵

These interrelated dimensions provide White people with significant benefits and simultaneously operate as barriers to confronting the racially discriminatory police practices that produce such benefits. As a result, White people become legally endeared to the institution of policing. Understanding the dynamics of White people's relationship to policing in each of these dimensions helps us to grasp how legal endearment operates as an unmarked barrier to achieving transformational policing reforms.

A. *The Symbolic Production of Legal Endearment*

The first dimension of White people's relationship to policing that I describe is *symbolic*. Understanding how White people derive symbolic benefits from policing is central to the following Sections. Addressing this dimension first grounds the subsequent Sections and elucidates how the key terms "White people" and "Whiteness" are conceived of and deployed throughout the Article.

First, it is helpful to review a central idea in critical race theory, the *social construction of race*.⁵⁶ Put forth prominently by Michael Omi and Howard Winant,⁵⁷ their theory of "racial formation" describes "the sociohistorical

55. This list is not intended to be exhaustive; I welcome others to contribute as they see fit.

56. The notion that race is "socially constructed" has gained widespread scholarly acceptance. See NELL I. PAINTER, *THE HISTORY OF WHITE PEOPLE* 391 (2010) (attributing widespread acceptance of racial social constructivism to genetic evidence dispelling longstanding biological accounts). Adoption of this account has not been uniform. Some invoke *race as a social construct* yet fall back upon biological or cultural explanations to explain that construction. See, e.g., COMM. ON NAT'L STAT., SPOTLIGHT ON HETEROGENEITY: THE FEDERAL STANDARDS FOR RACIAL & ETHNIC CLASSIFICATION 15 (Barry Edmonston, Joshua Goldstein & Juanita Tamayo Lott eds., 1996) ("Most social scientists consider race and ethnicity as social constructs . . . and thus point to the limitations of racial and ethnic classification; yet many still use the [federal government's racial] categories in their work."); see also DOROTHY ROBERTS, *FATAL INVENTION* (2011) (arguing that the widespread emergence of commercial genetic testing, race-specific drugs, and facial recognition reinscribe notions of race as biological and scientific); Adam Hochman, *Has Social Constructionism About Race Outlived Its Usefulness? Perspectives From a Race Skeptic*, 37 *BIO. & PHIL.* 1 (2022) (arguing social constructivism is taken up broadly and often in contradictory and incompatible ways).

57. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* (3d ed. 2015). Some scholars have critiqued Omi and Winant's theory of racial formation while others have criticized its application. See, e.g., DYLAN RODRIGUEZ, *WHITE RECONSTRUCTION: DOMESTIC WARFARE AND THE LOGICS OF GENOCIDE* 42 n.24 (2021) ("[Omi and Winant's] historical understanding of racial formation and the 'racial state' reproduces . . . conceptual and political errors . . . namely, that '[W]hite supremacy' composes a relatively compartmentalized *moment* in the historical life of racial formation in the United States."); Laura E. Gómez, *Looking for Race in All the Wrong Places*, 46 *LAW & SOC'Y REV.* 221, 229 (2012) (noting that despite widespread acceptance, researchers "have somewhat carelessly incorporated race into their research by treating it as a readily measurable, dichotomous ([B]lack/[W]hite) variable that affects law at various points, rather than in a more complex way") (citations and quotations omitted).

process by which identities are created, lived out, transformed, and destroyed.”⁵⁸ Notably, Ian Haney López expanded upon the concept, emphasizing that race is *fabricated* by humans, not caused by “abstract social forces.”⁵⁹

Like other racial categories, “White people” is a fabrication.⁶⁰ It developed in relation to various racial projects, including settler colonialism and slavery, that accomplished economic exploitation, dehumanization, and dispossession by marking the people designated “White” as superior and those designated non-White as inferior.⁶¹ For simplicity, I refer to the meanings that attach to race as “social meanings” and the constellation of social meanings that attach to “White people” as “Whiteness.”⁶² For example, the presumptions that White people are loyal, industrious, and law-abiding reflect some of the social meanings that attach to White people and instantiate Whiteness. Importantly, Whiteness is not a standalone phenomenon. It exists in relation to and has traction over and against the constellation of negative social meanings that have been mapped onto non-White racial groups and “Black people” in particular (e.g., *disloyal*, *lazy*, and *law-breaking*).⁶³

58. OMI & WINANT, *supra* note 57, at 109. Omi and Winant emphasize meanings attached to visible characteristics, notably skin and hair color, hair texture, and eye and nose shape, that become racial symbols. “Race is ocular in an irreducible way. Human bodies are visually read, understood, and narrated by means of symbolic meanings and associations.” *Id.* at 13. Others argue nonvisible characteristics also mark race. *See, e.g.*, Kerry Soo Von Esch, Suhanthie Motha & Ryuko Kubota, *Race and Language Teaching*, 53 LANGUAGE TEACHING 391, 397–410 (2020) (language); SAHAR AZIZ, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM* 40–45 (2022) (religion).

59. Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 28 (1994).

60. *See* STEVE MARTINOT, *THE MACHINERY OF WHITENESS: STUDIES IN THE STRUCTURE OF RACIALIZATION* 14 (2011) (“[W]hites are not born [W]hite. There is no inherency to being [W]hite. They are given their [W]hiteness by the [W]hite supremacist society into which they born. One is made [W]hite or not according to prior political criteria and prior political decisions.”). According to Cheryl Harris, “Whiteness at various times signifies and is deployed as identity, status, and property, sometimes singularly, sometimes in tandem.” In her foundational text, *Whiteness as Property*, Harris demonstrated how Whiteness had obtained a status as a legally recognized property interest and that it also operated as “an aspect of self-identify and of personhood.” Harris, *supra* note 36, at 1725.

61. *See* PAINTER, *supra* note 56, at 118–23; MARTINOT, *supra* note 60, at 10–11.

62. *See* Philip C. Wander, Judith N. Martin & Thomas K. Nakayama, *Whiteness and Beyond: Sociohistorical Foundations of Whiteness and Contemporary Challenges*, in *WHITENESS: THE COMMUNICATION OF SOCIAL IDENTITY* 13, 22–23 (Thomas K. Nakayama & Judith N. Martin eds., 1999) (“The shift from race to [W]hiteness is an important conceptual shift in that it allows us to identify the ways that [W]hite privilege functions without having to name anyone a racist.”). This is not to say that the social meanings of Whiteness attach solely to those racialized *as* White. Similar or overlapping social meanings that constellate Whiteness can and have been attributed to other racial groups. The question, then, is whether those groups are thought to be exhibiting Whiteness when those meanings are attached. *See* Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 887 (2002) (describing racial covering—adhering to White racial norms—in the employment context, not as a request to “convert to being [W]hite, or to pass as [W]hite” but rather a request to “perform [one’s] racial identity in ways that make it easy for [White coworkers] to ignore [one’s non-White] race”); Russell K. Robinson, *Uncovering Covering*, 101 NW. U. L. REV. 1809, 1819–21 (2007) (describing minority-imposed pressure to cover what are perceived as “White” traits).

63. For further historical examples of this oppositional duality, see Crenshaw, *supra* note 36, at 1373–74. *But see* Juan F. Perea, *The Black/White Binary Paradigm of Race: the “Normal Science” of*

Policing has been and continues to be one of the mechanisms through which Whiteness (again, the range of social meanings that attach to White people) is fabricated. Policing's racial disparities reflect both negative police practices that denigrate Black people and other people of color and preferential treatment that elevates White people. In this way, policing fabricates and reinforces not only the negative social meanings of Blackness but also the positive social meanings of Whiteness. Put differently, White people benefit from racially disparate policing practices through both the quality of their individual policing experiences and the symbolic messages that such experiences communicate about the group.

It is helpful to remember that I advance my claim about "White people" at the group level of abstraction. That should not obscure, however, that both "White people" and "Whiteness" have been and continue to be unstable categories that have applied differently to different groups across different contexts.⁶⁴ Indeed, it is precisely the instability of the category and its symbolic meanings that makes Whiteness a closely guarded commodity.⁶⁵ Similarly, different groups have attempted to align themselves with or attain White status through symbolic and material support for racial projects—including policing.⁶⁶ Thus, it is fair to say that both the meaning of "Whiteness" and determinations about who is "White" have shifted over time. What is constant, however, is that White people have existed at the top of the racial hierarchy, where the symbolic value of Whiteness—at least within the United States—has been positive.⁶⁷

American Racial Thought, 85 CALIF. L. REV. 1213, 1213 (1997) (arguing that the Black/White binary of race "distorts history and contributes to the marginalization of non-Black people of color").

64. See generally PAINTER, *supra* note 56 (suggesting that Whiteness in the United States experienced four periods of enlargement, becoming more capacious each time).

65. See generally Harris, *supra* note 36 (tracing shifting notions of "Whiteness" from a racial identity category to a closely guarded form of property); HANEY LÓPEZ, *supra* note 36 (tracing how courts used shifting, capricious, and often arbitrary markers of "Whiteness" to extend its legal protections to some and simultaneously deny others).

66. See, e.g., NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995); DAVID ROEDIGER, *WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (2007); see also SHERMAN A. JACKSON, *ISLAM AND THE BLACKAMERICAN: LOOKING TOWARD THE THIRD RESURRECTION* 15–16 (2005). Police support from groups whose Whiteness is aspirational does not necessarily reflect legal endearment. Instead, it may indicate an unfortunate political calculation that recognizes that proximity to Whiteness affords some protection from police violence. Cf. OLÚFÉMI O. TÁÍWÒ, *ELITE CAPTURE* 38–46 (2022) (drawing on "The Emperor's New Clothes" to underscore that subaltern acts aligned with hegemonic beliefs are not one in the same: "[W]e get a different answer if we ask not why the townspeople *believe* the emperor, but rather why they are acting *as if* they believe the emperor") (italics in original).

67. Although I focus on the U.S. context, I acknowledge Cedric Robinson's critical insight that intra-European projects of White racialization pre-date and presage this context. See CEDRIC J. ROBINSON, *BLACK MARXISM* 9–28 (1983). This focus is not an assertion that racial projects are contained by national borders. See, e.g., Tendayi Achiume, *Racial Borders*, 110 GEO. L. REV. 445, 464 n.87 (2022) (collecting sources to show that "racial borders of the United States . . . effect mobility and migration as racial privileges structured to a significant extent by [W]hite supremacy").

Relatedly, not all White people benefit from Whiteness in the same way or to the same degree.⁶⁸ As critical race and Black feminist theorists have made plain, racial categorization inherently fails to capture the complexities of both cross racial and intraracial experiences.⁶⁹ This failure includes White people's experiences.⁷⁰ "White people," like all racial categories, is a flattening descriptor that substitutes stereotypes and signification in place of individual nuance. It has functioned this way precisely because the "White" designation was intended to serve a hegemonic—*not descriptive*—function.⁷¹ It ignores the complex matrices structuring society (whether one thinks of them as intersectional,⁷² multidimensional,⁷³ or assemblages of relative power),⁷⁴ such as gender,

68. We should be cautious, however, about charges that essentializing Whiteness denies White people their individuality. The White experience is marked, in part, by a denial of White racial identity. See *infra* Part II.D. That White people think of themselves in race-neutral terms—that is, not as "White people" but simply as "people"—reflects some central social meanings of "Whiteness": individualism, freedom, and liberty. See Angela P. Harris, *Where is Race in Law and Political Economy?*, LAW & POL. ECON. PROJECT (Nov. 30, 2017), <https://lpeproject.org/blog/where-is-race-in-law-and-political-economy/> [<https://perma.cc/S3Y2-N9Q8>] (drawing on Sylvia Wynter's theorization that "'Man' as the universal subject of history was invented on the plantation, defined against indigenous, immigrant, and imported populations considered savage, heathen, and lacking the capacity for self-determination"); MARTINOT, *supra* note 60, at 22 ("The [W]hite individualist . . . is one who thinks he or she can escape what the system does because individual acts are by nature not systemic. But such 'innocence' is a luxury provided the hegemonic, which allows them to ignore the fact that the meaning of their acts is precisely systemic. That is what 'hegemony' means.").

69. Compare Kimberlé W. Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*, 1989 U. CHI. LEGAL F. 139, 149–50 ("Black women's experiences are much broader than the general categories that discrimination discourse provides. Yet the continued insistence that Black women's demands and needs be filtered through categorical analyses that completely obscure their experiences guarantees that their needs will be seldom addressed."), with Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 586 (1990) (arguing that antiessentialism does not require relinquishing categorization but "that we make our categories explicitly tentative, relational, and unstable").

70. As Khiara Bridges emphasizes, someone may belong to a group that is generally thought to confer a social advantage (for example, "White" or "man") and be targets of state violence because other aspects of their identity (for example, "disabled" or "Black") mark them as a perceived threat to the coherence of the dominant category—that is, they threaten to undermine the privileged meaning of that category. See generally Khiara Bridges, *White Privilege White Disadvantage*, 105 VA. L. REV. 449 (2019) (examining the concept of "White Privilege" within the context of the eugenics movement and the 1972 Supreme Court case *Buck v. Bell*).

71. One often-overlooked goal of stereotyping is to "serve a hegemonic function by perpetuating a mythology about both Blacks and [W]hites even today, reinforcing an illusion of a [W]hite community that cuts across ethnic, gender, and class lines." Crenshaw, *supra* note 36, at 1371 (italics in original).

72. See generally Crenshaw, *supra* note 69 (putting forth the framework of *intersectionality*, in describing how single-axis antidiscrimination law categories like "race" and "sex" failed to account for the unique injuries that occur at the intersections of those marginalized along both axes).

73. See generally Darren L. Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics*, 47 BUFF. L. REV. 1 (1999) (putting forth the framework of *multidimensionality*).

74. See generally JASBIR K. PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* (2007) (putting forth the framework of *assemblages*, which describes how sexuality, disability,

sexuality, and class. Recognizing the category's descriptive limits, however, does not negate the value of considering "White people" as a group when examining race's symbolic dimensions.

Put precisely, not every White person needs to experience policing in the same way for racially disparate police experiences to produce socially salient meanings about Whiteness—or for those meanings, in turn, to inform White people's attitudes toward the police.⁷⁵ Those meanings need not be uniform; they are often intersectionally inflected. For example, one might consider how policing began as (and for a long time remained) the exclusive domain of White men,⁷⁶ both reinforcing their exercise of state power and aiding their symbolic construction as protectors of society and the politically powerful.⁷⁷ Or one might recall White women's historic and continuing support of state and private violence against Black men as one site that produces racial and gendered social meanings for both groups (one powerless and chaste, the other violent and sexually predatory).⁷⁸ Or one might observe, as both Dean Spade and Eric Stanley have argued, that increasing support for policing and criminal

race, and the nation become entangled in manners that defy what some might call conventional categorization, and emphasizing the interconnected nature of power structures).

75. A more interesting question, perhaps, is why only *some* of the experiences that *some* White people have come to typify "White" experiences of policing (those that reinforce Whiteness's purchase), while other experiences—especially violent and deadly ones—do not. See Emmanuel Mauleón, "Against-Interest" Policing: Fabricating White Complicity to Racial Capitalism (unpublished manuscript) (on file with author).

76. See JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* 84–111 (2017) (describing the history of White-exclusive police forces and efforts within Black communities to enlist Black police officers). Policing is still significantly and disproportionately predominated by White men. Compare SEAN E. GOODISON, BUREAU OF JUST. STAT., *LOCAL POLICE DEPARTMENTS PERSONNEL*, 2020, at 6 (2022) (reporting White men comprise 61.2 percent of U.S. police in 2020), with REFLECTIVE DEMOCRACY CAMPAIGN, *SYSTEM FAILURE: WHAT THE 2020 PRIMARY ELECTIONS REVEALED ABOUT OUR DEMOCRACY* (2021) (reporting that White men comprised 30 percent of the population in 2020).

77. See Stephanie N. Whitehead, *Cops and the Performance of White Masculine Decline*, 21 *RACE, GENDER & CLASS* 174, 175 (2014) (arguing that "the positive social roles that the police seek to inhabit . . . and the virtues they embody . . . tend to be stereotypical of [W]hite males, making police an enduring symbol conjoining white masculinity to the state"); see also Adam Malka, *Why Law Enforcement Has a Blind Spot for White Male Violence*, WASH. POST (Aug. 12, 2019), <https://www.washingtonpost.com/outlook/2019/08/12/why-law-enforcement-has-blind-spot-white-male-violence/> [<https://perma.cc/V6AH-2AX8>] ("Because violent [W]hite men have historically been the policing authorities, not the criminals, they helped to create a racialized legal system sympathetic to them and hostile to minorities—one that has proved deadly.").

78. See SAIDIYA HARTMAN, *SCENES OF SUBJECTION* 169–78 (2d ed. 2022); Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being "Out of Place" from Emmett Till to Trayvon Martin*, 102 *IOWA L. REV.* 1113, 1127–51 (2017) (describing the murder of Emmett Till as an act necessary to preserve the material and psychological value of Whiteness); see also Devon W. Carbado, *Strict Scrutiny & The Black Body*, 69 *UCLA L. REV.* 2, 5–9 (2022) (describing the race and gender dynamics of an encounter between Amy Cooper, a White woman who called the police to say that Christian Cooper (no relation), a Black man who asked her to leash her dog, had threatened her).

prosecution within predominately White, mainstream LGBTQ+ organizations fosters police violence against queer and trans people of color.⁷⁹

The broad point is this: while policing fabricates overall negative messages about Black, Indigenous, and other people of color (they are presumptively criminally suspect and need to be policed),⁸⁰ it also sends overall positive messages about White people (they are presumptively law-abiding and need to be protected). This difference in social meanings is one of the benefits White people derive from policing. And, again, although individual experiences vary (both good and bad), this Article is concerned with how aggregate experiences become coded as racially meaningful on a societal scale. Against the backdrop of racialized policing, a White person who has been stopped-and-frisked can easily conclude, “This isn’t supposed to happen to people like me (who are not a social problem); it’s only supposed to happen to people like them (who are a social problem).”

Furthermore, the social meanings that policing communicates about race can be especially salient because of policing’s relationship to “law” enforcement.⁸¹ Consequently, policing’s racial disparities take on not only symbolic racial significance but also symbolic legal significance. For example, society might proscribe private acts of racially motivated violence and offer victims of these acts sympathy. In contrast, a similar dynamic between police and people of color playing out at a societal scale transforms what might otherwise be perceived as racial harassment into law enforcement and sympathetic victims into criminals.⁸²

Simultaneously, the racial content (that is, the symbolic meanings and assumptions) undergirding police decisions about who *not* to stop and *not* to cite also become subsumed under their *legal* significance, making Whiteness legally discernable as innocent,⁸³ law-abiding, and in need of—indeed deserving of—protection. This symbolic work of policing is one of the primary drivers of White people’s legal endearment toward policing.

79. See DEAN SPADE, *NORMAL LIFE* 38–49 (2015); ERIC A. STANLEY, *ATMOSPHERES OF VIOLENCE* 6 (2021) (“The time of LGBT inclusion is also a time of trans/queer death.”).

80. “The moment police choose to profile a racial group or a single group member, the characteristic of criminality is freshly assigned to the group . . . calling for the anticipation of criminal conduct by other group members.” Trevor G. Gardner, *Racial Profiling as Collective Definition*, 2 *SOC. INCLUSION* 52, 57 (2014) (arguing racial profiling is a form of “social closure” for those marked as suspect).

81. See *supra* notes 46–50 and accompanying text.

82. Cf. Singh, *supra* note 38, at 1092 (“Policing . . . differentiates between where to arrest and the imperative to develop; it determines . . . who requires discipline so that others can be secure.”).

83. Baldwin Clark has written recently about how conceptions of White innocence pervade not only legal conceptions of innocence but also broader trajectories of *racial innocence*. “White innocence suggests that, at best, there is nothing we can do about the unfair racial status quo; at worst, the racial status quo is legitimate and racial disparities must have causes other than White supremacy. White innocence implies Black guilt of getting something they do not deserve and thus have no legitimate claim to equality.” LaToya Baldwin Clark, *The Critical Racialization of Parents’ Rights*, 132 *YALE L.J.* 3000, 3063 (2023).

B. *The Experiential Production of Legal Endearment*

The second dimension in which White people's relationship to policing produces legal endearment is *experiential*. Instead of describing every imaginable category of policing interaction, I focus on two features of policing that typify such experiences: *preferential discretion* and *preferential access*. Both features provide White people with various material advantages and shield them from disadvantages, contributing to positive symbolic messages about "White people" as a group-level category.

1. *Preferential Discretion*

One aspect of policing that is widely studied (but perhaps less broadly understood by the public) is how much our legal system relies upon discretionary enforcement.⁸⁴ Police departments and individual officers exercise leeway in deciding how and against whom to enforce the law. And, as Alice Ristroph noted in her examination of police discretion in models of criminalization, "It is all too well established that police . . . discretion yield[s] patterns of racially disparate treatment, in which minorities are more likely to receive the greatest investigative scrutiny, the most serious charges, and the heaviest penalties."⁸⁵

Of course, "racially disparate treatment" implies a relative measure: "disparate" compared to what? It can be tempting to describe the White side of such disparities as an inversion of the experiences of people of color (i.e., White people are unlikely to face police scrutiny, serious charges, and harsh penalties as compared with Black people). Although this may capture part of the dynamic, a deeper exploration helps uncover how preferential police discretion shapes White people's legal endearment.

To start, it is useful to examine racial disparities in traffic enforcement, which represents both the most common type of policing interaction and an area where the exercise of police discretion is readily apparent.⁸⁶ In this Section I do not recite the consistent, well-documented, and ever-increasing evidence of racial disparities in traffic enforcement, something that other scholars and studies have captured in depth.⁸⁷ Instead, I focus on how such disparities tend to be

84. See, e.g., BRUCE FREDERICK & DON STEMEN, VERA INST. OF JUST., *THE ANATOMY OF DISCRETION: AN ANALYSIS OF PROSECUTORIAL DECISION MAKING—TECHNICAL REPORT 1* (2012), <https://www.ojp.gov/pdffiles1/nij/grants/240334.pdf> [<https://perma.cc/WM54-SHDH>]; Michael J. Nelson & Taran Samarth, *Judging Prosecutors: Public Support for Prosecutorial Discretion*, 9 RSCH. & POL. 1, 1 (2022).

85. Ristroph, *supra* note 47, at 327 (citing Angela J. Davis, *Racial Fairness in the Criminal Justice System: The Role of the Prosecutor*, 39 COLUM. HUM. RTS. L. REV. 2020 (2007); L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035 (2011)).

86. See *Findings*, STANFORD OPEN POLICING PROJ., <https://openpolicing.stanford.edu/findings/> [<https://perma.cc/28XD-ZD4K>] ("Police pull over more than 50,000 drivers on a typical day.")

87. See, e.g., ELIZABETH HINTON, LESHAE HENDERSON & CINDY REED, VERA INST. OF JUST., *AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM* 7 (2018), <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial->

framed, often leveraging data to emphasize their subordinating effects on people of color—not their *superordinating* effects on White people.

The same data can tell many stories. Consider this description:

Black drivers were more likely to be searched than matched Whites, a finding robust across all search types, including highly discretionary consent searches. Despite occurring at much greater rates, police searches of Black drivers were less likely to reveal possession of contraband than were searches of matched Whites. These findings reveal that both discretionary and nondiscretionary searches of Black drivers were substantially less efficient than those involving matched White drivers.⁸⁸

By inverting the description, we unearth a racial counternarrative. Here, Whites are not simply the matched “baseline” group. Instead, their experiences are emphasized:

White drivers were *less likely* to be searched than matched Blacks, a finding robust across all search types, including highly discretionary consent searches. Despite occurring at *much diminished rates*, police searches of *White* drivers were *significantly more likely* to reveal possession of contraband than were searches of matched Blacks. These findings reveal that both discretionary and nondiscretionary *searches of White drivers were substantially more efficient* than those involving matched Black drivers.

Reframing the findings underscores how police discretion can be described not only as detrimental to Black drivers and not detrimental to White drivers but also as a White subsidy. One might think about how this discretion functions as a subsidy under two models. First, to the extent that police resources to effectuate traffic stops are finite (that is, when an officer is occupied with the stop of a Black driver they necessarily cannot engage in a stop of a White driver), the choice to engage in significantly more inefficient searches of Black drivers is also a choice to divert focus from White drivers.⁸⁹ This description suggests that

disparities.pdf [https://perma.cc/KFF7-EHTD] (summarizing a meta-analysis of studies comparing the experiences of Black and White Americans with regard to police encounters); Robin S. Engel, *Citizens' Perceptions of Distributive and Procedural Injustice During Traffic Stops with Police*, 42 J. RSCH. CRIME & DELINQUENCY 445, 473 (2005) (“The majority of the publicly available reports and studies reveal disparities in the percentages of minority citizens stopped, cited, searched, or arrested as compared to selected benchmarks [T]he police are significantly more likely to cite, arrest, search, and use force against African Americans during traffic stops, even after controlling for other legal and extra-legal factors.”) (collecting sources) (citations omitted).

88. See Joshua Chanin, Megan Welsh & Dana Nurge, *Traffic Enforcement Through the Lens of Race: A Sequential Analysis of Post-Stop Outcomes in San Diego, California*, 29 CRIM. JUST. POL'Y REV. 561, 572 (2018). Although this study takes place in San Diego, similar disparities have been found in national studies. See, e.g., STANFORD OPEN POLICING PROJECT, *supra* note 86 (finding “significant racial disparities in policing” in analysis of one hundred million traffic stops from twenty-one state and twenty-nine municipal policing agencies).

89. Alice Ristroph has written that such discretionary avoidance might be viewed as a form of racial nullification. See Ristroph, *supra* note 47, at 327.

while racially disproportionate enforcement produces harmful and often grievous effects on non-White groups,⁹⁰ it also undermines its purported goals of efficient enforcement and safety.⁹¹

Second, even in a model that suggests policing resources are not constrained (that is, police could engage in proportionate stops of White drivers without decreasing current stop rates for Black drivers), we would confront a different, perhaps more troubling example of discretion. This dynamic is illustrated in a hypothetical posed by former FBI Director James Comey:

The two young Black men on one side of the street look like so many others the officer has locked up. Two White men on the other side of the street—even in the same clothes—do not. The officer does not make the same association about the two White guys, whether that officer is White or Black. And that drives different behavior. The officer turns toward one side of the street and not the other.⁹²

What Comey's example belies, however, is another racial script playing out in the background: *the two young White men look like so many others the officer has ignored, and he will ignore them, too*. This description invites us to imagine a different scenario. What if, in Comey's hypothetical, the officers had *only* observed two White men on one side of the street? Would the police have kept on driving? Posed this way, we might read the discretionary choice to racially profile, not as a decision about which of two racial groups to pursue (an either/or question), but rather as a decision about whether there will be a pursuit at all (an on/off question).⁹³

90. See Engel, *supra* note 87, at 472–74; see also Robin S. Engel & Jennifer M. Calnon, *Examining the Influence of Drivers' Characteristics During Traffic Stops with Police*, 21 JUST. Q. 49, 80 (2004) (finding that “minority drivers are significantly more likely than are [W]hite drivers to report being stopped for reasons other than speeding (for example, nonspeeding traffic offenses, vehicle defects, and license/registration checks), which result in the most coercive actions taken by police”).

91. “An unacknowledged investment in [B]lack inferiority—even [B]lack pain and death—is arguably at the root of Americans’ attractions to certain policies and political formations that are irrational, even self-destructive, from a conventional economic perspective.” Angela P. Harris, *Where is Race in Law and Political Economy?*, LAW & POL. ECON. PROJECT (Nov. 30, 2017), <https://lpeproject.org/blog/where-is-race-in-law-and-political-economy/> [https://perma.cc/S3Y2-N9Q8]. I do not suggest we should resolve this issue through mandatory enforcement—a conception of equality through punishment that may also yield racial disparities. For example, automated traffic citations may amplify structural effects both upstream (for example, speeding tending to occur near highway entrances and exits, which are mostly situated in poorer, less-White neighborhoods) and downstream effects (for example, compounding fines and fees resulting from citations that one cannot afford). See Beth A. Colgan, *Revenue, Race, and the Potential Unintended Consequences of Traffic Enforcement Reform*, 101 N.C. L. REV. 889, 942–45 (2023) (describing how automated enforcement, such as speeding cameras, “can exacerbate the extent to which traffic enforcement is made a tool of financial extraction from communities of color”).

92. FBI Dir. James B. Comey, *Hard Truths: Law Enforcement and Race*, Address at Georgetown University (Feb. 12, 2015), <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race> [https://perma.cc/VM67-UTWN].

93. Cf. MARTINOT, *supra* note 60, at 20 (“[I]t is the relation between the criminalization of others and [W]hite self-decriminalization that marks the history of race and [W]hiteness in the United States.”).

The point is that discretionary policing decisions are a mode through which one's race becomes embodied as either lawful and innocent or law-breaking and criminal. That is, through their discretion, "police have some independence in the symbolic construction of criminality."⁹⁴ Regardless of what laws are on "the books" (what any particular statute or criminal code determines is a violation), an officer's belief that some law is being broken and their subsequent decision to enforce that belief (even if mistaken)⁹⁵ shapes the law's substance. And when such decisions occur along racial faults, their shape takes on the contours of racial hierarchy.

Discretionary decisions not to pursue White people relieve them of the material burdens of stops, citations, and escalated forms of enforcement. And, as described in Part II.A, this also sends a strong signal that Whiteness itself negates criminal suspicion, typifies innocence, and renders enforcement inappropriate.⁹⁶ Discretionary nonenforcement validates the symbolic meanings of Whiteness (reinforcing a belief in one's own lawfulness and innocence) and simultaneously makes those meanings material.⁹⁷ That is, to the extent that criminality attaches

94. Brucato, *supra* note 42, at 34.

95. See Eang L. Ngov, *Police Ignorance and Mistake of Law Under the Fourth Amendment*, 14 STAN. J. C.R. & C.L. 165, 169–70 (2018).

96. See Tamara K. Nopper, *Abolition is Not a Suburb*, NEW INQUIRY (July 16, 2020), <https://thenewinquiry.com/abolition-is-not-a-suburb/> [<https://perma.cc/VCG3-JBVY>] ("[E]ven when [W]hite people are entangled in the criminal justice system . . . they are often able to solicit sympathy or leniency by being juxtaposed in relationship to the specter of Black and Brown criminality.").

97. Even when subject to criminal enforcement, research suggests there is a societal commitment to rehabilitate White offenders, especially White juveniles. See Anne McGlynn-Wright, Robert D. Crutchfield, Martie L. Skinner & Kevin P. Haggerty, *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, 69 SOC. PROBS. 299, 299 (2022) ("Black respondents who experience contact with the police by the eighth grade have *eleven times greater odds of being arrested* when they are 20 years old than their White counterparts.") (emphasis added). Extensive evidence suggests that for many comparable offenses, White offenders face less punitive consequences than non-White offenders—especially Black offenders—beyond initial police interactions. They are less likely to be charged, held without bail, plea-bargained into prison, or convicted. They receive shorter and less punitive sentences, are more likely to be granted early release, and are less likely to face secondary stigmatizing effects because of their criminal records. See EMILY OWENS, ERIN M. KERRISON & BERNARDO SANTOS DA SILVEIRA, EXAMINING RACIAL DISPARITIES IN CRIMINAL CASE OUTCOMES AMONG INDIGENT DEFENDANTS IN S.F. 44 (2017), <https://www.law.upenn.edu/live/files/6793-examining-racial-disparities-may-2017-full> [<https://perma.cc/25SS-M3EK>] (suggesting police booking decisions are a primary "driver of racial disparate criminal justice outcomes"); Paul Butler, *Race and Adjudication*, in 3 REFORMING CRIMINAL JUSTICE 211, 214–16 (Erik Luna ed., 2017) (discussing disparities in bail, plea-bargaining, conviction, and sentencing rates); Olinda Moyd, *Racial Disparities Inherent in America's Fragmented Parole System*, 36 CRIM. JUST. 6, 6–7 (2021) (finding significant structural and systemic biases against Black people throughout parole determination process). But see Kathryn D. Morgan & Brent Smith, *Impact of Race on Parole Decision-Making*, 25 JUST. Q. 411 (2008) (finding race played no role in first-time hearings). See also Devah Pager, Bruce Western & Bart Bonikowski, *Discrimination in a Low-Wage Labor Market*, 74 AM. SOCIO. REV. 777, 792–93 (2009) ("[B]lack and Latino applicants with clean backgrounds fared no better than a [W]hite applicant just released from prison."); Scott H. Decker, Natalie Ortiz, Cassia Spohn & Eric Hedberg, *Criminal Stigma, Race, and Ethnicity*, 43 J. CRIM. JUST. 108, 114 (2015) ("White ex-prisoners are not at an advantage over [B]lack or Hispanic job applicants without a prison record in all education/application method categories.").

to one's identity, not when one breaks the law, but rather when one is pursued for law enforcement, discretionary nonenforcement withholds the production of White criminality.

Casting police discretion in this light helps us understand how it benefits White people in symbolic and material ways. The following example describes how such benefits are simultaneously masked. Following George Floyd's murder, both the Minnesota Department of Human Rights and the Department of Justice opened investigations into the Minneapolis Police Department.⁹⁸ Both investigations separately concluded that Minneapolis police engaged in a pattern of discriminatory and race-based policing, especially in the highly discretionary area of traffic enforcement.⁹⁹ The investigation reports describe how officers used their discretion at every step—from the decision to make a stop, to the issuance of a citation, to arrest, to an application of force—to be more punitive to Black, Indigenous, and other people of color and less punitive to White people.¹⁰⁰

I raise these findings to ask two questions, neither of which is addressed in the above reports. First, how did White residents in Minneapolis experience these deep and pervasive disparities? And second, how might White residents perceive attempts to redress those disparities?¹⁰¹ The stark racial disparities that both reports describe might be difficult for any individual White motorist in Minneapolis to confront or comprehend, especially if they only draw upon their own experiences with the police. They would likely perceive their ability to avoid police detection, engagement, or other escalations—whether for speeding, running a stop light, failing to signal a turn, or driving with a broken taillight—as a fair exercise of colorblind, individualized discretion. In fact, they may not be aware such stops are commonplace.¹⁰²

98. See MINN. DEP'T OF HUM. RTS, INVESTIGATION INTO THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT 5 (2022), https://mn.gov/mdhr/assets/Investigation%20into%20the%20City%20of%20Minneapolis%20and%20the%20Minneapolis%20Police%20Department_tcm1061-526417.pdf [<https://perma.cc/HKR3-JQ3L>] [hereinafter MDHR MPD REPORT]; U.S. DEP'T OF JUST. & U.S. ATT'Y'S OFF., INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT (2023), https://www.justice.gov/d9/2023-06/minneapolis_findings_report.pdf [<https://perma.cc/XD6B-23SE>] [hereinafter DOJ MPD REPORT].

99. See MDHR MPD REPORT, *supra* note 98, at 5, 8; see also DOJ MPD REPORT, *supra* note 98, at 31–40 (finding that the Minneapolis Police stopped Black people at rates 6.5 times that of Whites, and Indigenous people at 7.9 times the rate of Whites).

100. See DOJ MPD REPORT, *supra* note 98, at 31.

101. Both reports are decidedly vague about how to address such disparities. See MDHR MPD REPORT, *supra* note 98, at 72 (“With collective action, urgency, coordination, and intentionality, the City of Minneapolis can address racial disparities in policing to improve public safety and increase community trust.”); DOJ MPD REPORT, *supra* note 98, at 86 (“Where unjustified racial disparities exist, take steps to reduce or eliminate them within the MPD.”).

102. Cf. Anne McGlynn-Wright, Robert D. Crutchfield, Martie L. Skinner & Kevin P. Haggerty, *The Usual, Racialized, Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, 69 SCI. PROBS. 299, 301 (2022) (quoting CHARLES R. EPP, STEVEN MAYNARD-MOODY & DONALD HAIDER-MARKET, PULLED-OVER: HOW POLICE STOPS DEFINE RACE AND CITIZENSHIP 135–36 (2014)) (“Racially biased investigatory stops tell a driver that they look like a criminal and

With the help of the spatial and social segregation described in Part II.C and the White socialization strategies described in Part II.D, White people come to interpret these lenient experiences of policing as the norm. Consequently, they understand contradictory evidence, including highly publicized incidents of police violence, in one of two ways: either as aberrations from the norm or as confirmation of a generalized criminality in communities of color. And certainly not as evidence that White people are subject to underenforcement.

In other words, preferential policing discretion allows White people to support policing strategies that produce deep racial disparities by framing them as the result of the ostensibly race-neutral pursuits of public safety, law enforcement, and maintenance of the social order. And this same preferential discretion and the experiences it produces suppress how “safety,” “law,” and “order” are already deeply raced constructs.¹⁰³ As a result, preferential policing discretion is one mechanism through which “[e]xclusionary and discriminatory treatments . . . have been justified and made to seem legitimate.”¹⁰⁴

2. Preferential Access

Some have argued that the problems of insecurity that plague communities of color result less from overpolicing than from underpolicing,¹⁰⁵ including the

people like them are subject to arbitrary control befitting their subordinate status; they are not an equal member of society.”).

103. See generally KHALIL G. MUHAMMAD, *THE CONDEMNATION OF BLACKNESS* (2010) (tracing the development of the myth of Black criminality within the United States); Naomi Murakawa, *The Origins of the Carceral Crisis: Racial Order as “Law and Order” in Postwar American Politics*, in *RACE & AMERICAN POLITICAL DEVELOPMENT* (Joseph E. Lowndes, Julie Novkov & Dorian T. Warren eds., 2008) (tracing how criminological “law and order” political rhetoric arose in tandem to and in opposition to the demands of Black civil rights). Darren Hutchinson makes a similar point in examining how anticrime policies help to achieve racial subordination and preserve White supremacy. Hutchinson observes that these policies work in ostensibly colorblind ways difficult to challenge through doctrines that require evidence of explicit bias. He has also argued that evidence that contemporary racism takes the form of implicit bias, racial resentment, and social dominance orientation undermines such doctrines. See Darren L. Hutchinson, “*With All the Majesty of Law*”: *Systemic Racism, Punitive Sentiment, and Equal Protection*, 110 CALIF. L. REV. 371, 377–79 (2022).

104. See Liqun Cao, *Historical Themes of Legitimacy*, in *UNDERSTANDING LEGITIMACY IN CRIMINAL JUSTICE* 3, 11 (Liqun Cao ed., 2022) (describing how legitimacy can be thought of as “a double-edged sword” that can be utilized to justify “extraordinary acts of exploitation and violence”).

105. See, e.g., JILL LEOVY, *GHETTOSIDE: A TRUE STORY OF MURDER IN AMERICA* 19 (2015); RANDALL KENNEDY, *RACE, CRIME, AND THE LAW* 19 (1997) (“The principal injury suffered by African-Americans in relation to criminal matters is not overenforcement but underenforcement of the laws.”). *But see* Paul Butler, *(Color) Blind Faith: The Tragedy of Race, Crime, and the Law*, 111 HARV. L. REV. 1270, 1273 (1998) (arguing Kennedy’s diagnosis of the problem and embrace of respectability politics “fails—both as a mode of analysis of racial injustice and as a means for achieving racial justice”); see also TRACEY MEARES & DAN KAHAN, *When Rights Are Wrong*, in *URGENT TIMES* 3 (Joshua Cohen & Joel Rogers eds., 1999) (arguing that the 1960s conception of “rights” did not fit a moment of rising violent crime in the 1990s). I do not engage with a related argument, which responds to concerns of overpolicing with the retort, “But what about Black-on-Black crime?” See David Neiwert, *White Supremacists’ Favorite Myths About Black Crime Rates Take Another Hit from BJS Study*, SO. POVERTY L. CTR. (Oct. 23, 2017), <https://www.splcenter.org/hatewatch/2017/10/23/white->

legal barriers to implementing effective, community-driven crime control policies. Instead of focusing on discriminatory stops, harassment, and police brutality, these arguments suggest that the greatest harms to people of color result from underenforcement, unresponsive police, and failure to investigate serious crimes.¹⁰⁶ They suggest that more police, and better policing, will make communities more safe, not less.

Putting aside the dichotomous framing that such insecurity must result from either over- or underpolicing (as opposed to a combination of the two, neither, or other unrelated factors), we can focus on one implication of this argument: that policing's public safety function has been made largely unavailable to Black, Indigenous, and other communities of color.¹⁰⁷ The flipside is that it is widely understood that police have provided White people with preferential access to policing's benefits.¹⁰⁸ This includes investigating White victims' complaints, providing White communities with responsive emergency and nonemergency services, and providing White communities with the most experienced officers.

Regardless of the actual degree of such preferential access, research suggests that Black and White people have very different beliefs about whether the police will consider their problems seriously and provide adequate services in response.¹⁰⁹ There is, however, a consensus shared among Black and White people that the police will respond favorably to White concerns.¹¹⁰ These beliefs go on to shape police interactions.

For example, Black people and other people of color often view requests for police assistance as a type of devil's bargain, weighing whether summoning the police for aid may instead result in their own arrest, injury, or worse.¹¹¹

supremacists-favorite-myths-about-black-crime-rates-take-another-hit-bjs-study
[<https://perma.cc/L2C5-JXD7>].

106. See MICHAEL GERMAN & EMMANUEL MAULEÓN, *FIGHTING FAR-RIGHT VIOLENCE & HATE CRIMES* 12–13 (2019) (reporting lower clearance rates for Black victims compared to White victims).

107. See Bell, *supra* note 32, at 2115–26 (arguing that the belief that police do not keep poor communities of color safe is central to their sense of structural exclusion).

108. *But see* Monica Bell, *The Dynamics of Policing and Segregation by Race and Class*, NYU FURMAN CTR. (July 2017), <https://furmancenter.org/research/iri/essay/the-dynamics-of-policing-and-segregation-by-race-and-class> [<https://perma.cc/ZD9C-S9ND>] (“Policing is not necessarily fairer or more effective in [W]hiter or wealthier neighborhoods, at least if you’re [B]lack, Latino, or poor. Indeed, the high visibility of minorities . . . can intensify surveillance for people of color who dare venture beyond ethnic enclaves.”).

109. See, e.g., Laura Santhanam, *Two-Thirds of Black Americans Don’t Trust the Police to Treat Them Equally. Most White Americans Do.*, PBS NEWS HOUR (June 5, 2020) <https://www.pbs.org/newshour/politics/two-thirds-of-black-americans-dont-trust-the-police-to-treat-them-equally-most-white-americans-do> [<https://perma.cc/4JZM-4DCL>]; Lawrence D. Bobo & Victor Thompson, *Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System*, 73 SOC. RSCH. 445, 463 (2006) (“Whereas a majority of [W]hites expect a quick response and to be taken seriously, only about a third of African Americans express such views.”).

110. See Bobo & Thompson, *supra* note 109, at 463.

111. See *id.* at 457–58 (recounting a focus group wherein a Black woman described calling the police after her home was burglarized, only to “[wind] up face down on my living room floor, and [the

Indeed, highly publicized incidents of racialized police violence have been shown to make Black people and other people of color persistently wary of summoning the police, with the effect of “powerfully suppress[ing] one of the most basic forms of civic engagement: calling 911 for matters of personal and public safety.”¹¹² In contrast, any similar wariness that White callers exhibit following such incidents is short lived. They are at best temporarily deterred from invoking the police, perhaps evincing a belief they do not face the same types of risks as Black callers.¹¹³

Studies show that police arrive much more quickly to majority-White, wealthy neighborhoods when responding to requests for assistance as compared to poorer and Blacker neighborhoods.¹¹⁴ Monica Bell has detailed how such disparities are amplified by department policies and laws that “send the most experienced and highest-paid police officers to the wealthiest areas.” She adds that “this insight reframes the problem that police reform attempts to address as not only a problem of racism or poverty, but a problem of inequality in access to the machinery of the law.”¹¹⁵

One of the effects of such beneficial access is that White people can deploy the police as if it functions as a type of private security force.¹¹⁶ As Devon

police] placed handcuffs on me,” and her story was of no surprise to the other Black individuals); Nikole Hannah-Jones, *Yes, Black America Feels the Police. Here’s Why.*, PROPUBLICA (Mar. 4, 2015) (describing the reluctance of a group of Black adults to call 911 after witnessing a shooting for fear they’d be “mistaken for suspects”); see also Bill Chappell, *Family of Aderrien Murry, 11-Year-Old Shot by Police, Files Federal Lawsuit*, NPR (May 30, 2023), <https://www.npr.org/2023/05/30/1178883925/aderrien-murry-11-boy-shot-police-lawsuit-mississippi> [<https://perma.cc/89PU-9XK7>] (detailing how police shot an 11-year-old Black boy who was exiting his house following police orders, after he called for assistance).

112. See Matthew Desmond, Andrew V. Papachristos & David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOCIOLOGICAL REV. 857, 866 (2016).

113. See Desmond, Papachristos & Kirk, *supra* note 112, at 866; see also Carbado, *supra* note 78, at 7–11.

114. See, e.g., Geoff Kelly, *Where’s a Cop When You Need One?*, INVESTIGATIVE POST (Dec. 7, 2021), <https://www.investigativepost.org/2021/12/07/wheres-a-cop-when-you-need-one/> [<https://perma.cc/Q6PB-QLYW>] (showing that “police take much longer to respond to urgent 911 calls in Black neighborhoods than in [W]hite enclaves” in Buffalo, New York); Steve Neavling & Charlie LeDuff, *Part 4: Police Response Times Are Slowest in Detroit’s Poorest Neighborhoods*, DETROIT DEADLINE (Jan. 25, 2019), https://www.deadlinedetroit.com/articles/21515/part_4_police_response_times_are_slowest_in_detroit_s_poorest_neighborhoods [<https://perma.cc/T3X3-VB6J>] (“When Lewis called 911 to report his son had just been robbed at gunpoint, he waited two hours and called back. ‘They said they were sending police,’ Lewis said. ‘They never came.’”).

115. Bell, *supra* note 32, at 2115. Some evidence suggests the presence of more educated and experienced officers correlates with better enforcement outcomes, including a higher likelihood of crime clearances. See, e.g., *Response Time*, PINKERTON (Sept. 23, 2021), <https://pinkerton.com/our-insights/blog/response-time> [<https://perma.cc/LSN7-UN8Q>]; Eugene A. Paoline III & William Terrill, *Police Education, Experience, and the Use of Force*, 34 CRIM. JUST. & BEHAV. 179, 191–93 (2007). Putting such findings into action in communities of color has been hindered by “union contracts and a natural tendency for [senior] officers to move away from patrol work.” *Id.* at 193.

116. See, e.g., Rachel Herron, *I Used to Be a 911 Dispatcher. I Had to Respond to Racist Calls Every Day*, VOX (Oct. 31, 2018), <https://www.vox.com/first-person/2018/5/30/17406092/racial-profiling-911-bbq-becky-living-while-black-babysitting-while-black> [<https://perma.cc/P8X5-KGFS>]

Carbado has written, “the racial logic that Black people should be kept out of certain spaces—and kept in others—has for decades helped to create spaces of life and wellbeing for [W]hite people (‘neighborhoods’) and spaces of premature death for Black people (‘inner cities’).”¹¹⁷ For example, a recent study detailed how White residents attempted to resegregate a formerly White enclave near Los Angeles by capitalizing on their racialized relationships with the police, facilitating the expulsion of Black residents under the guise of “rule following.”¹¹⁸ This type of dynamic “raises the conundrum” Frank Wilderson III describes, “in which for Black people it is impossible to discern where the violence of the state ends and the violence of one’s White neighbors begins.”¹¹⁹

Such accounts are rightfully concerned with the exclusionary effects at the center of these deployments. It is important to underscore how this structural exclusion not only harms Black people and other people of color but begets material benefits to White people as well—benefits they guard through recourse to the police. For example, a 2016 Cato Institute report on a national study of the public’s opinions on policing found that although 63 percent of the American public expressed opposition to racial profiling in policing, two-thirds of White Americans continued to favor that police stop and search people who “look suspicious or out of place.”¹²⁰ Noting the prevalent evidence that racial profiling drives evaluations of who “looks out of place,” the author of the Cato report asks why, if Americans generally reject racial profiling, do so many “support such ostensibly unconstitutional practices” that rely on such profiling?¹²¹ The report attempts to resolve that contradiction by suggesting that the individuals who

(recounting a caller who reported a woman by emphasizing “[s]he’s [B]lack” and “we don’t have people like her in this neighborhood”).

117. Carbado, *supra* note 78, at 47.

118. See, e.g., Rahim Kurwa, *Grounds for Eviction: Race, Mobility, and Policing in the Antelope Valley* ii (2018) (Ph.D. dissertation, University of California, Los Angeles) (finding that White residents in Los Angeles’s Antelope Valley used changes to the municipal code to deploy police to intimidate, impoverish, and evict Black rental voucher holders); see also Justin Louis Mann, *What’s Your Emergency?*, 44 FEMINIST STUD. 766, 769 (2018) (detailing White women’s influence on the policing of public spaces). For descriptions of this dynamic, see Onwuachi-Willig, *supra* note 78, at 1168–85, and Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 696–709 (2020).

119. WILDERSON, *supra* note 13, at 141; see also Bell, *supra* note 118, at 728 (describing how “in areas that seem, to Whites, at risk . . . police presence and private security protects the racialized economic value of White communities”).

120. EMILY EKINS, CATO INST., *POLICING IN AMERICA: UNDERSTANDING PUBLIC ATTITUDES TOWARD THE POLICE. RESULTS FROM A NATIONAL SURVEY* 65–66 (2016). This number was significantly higher than Black Americans (52 percent), though lower than Hispanic Americans (76 percent). Although the study declares that it uses the term “Hispanic” interchangeably with “Latino,” it does not further break out the ethnic category into White-Hispanic and non-White-Hispanic, making it difficult to evaluate the role of racial differences within this category. See *id.* Census data from the same year suggests that approximately 65 percent of Hispanic respondents self-selected their racial category as “White alone.” See U.S. CENSUS BUREAU, 2016: ACS 1-YEAR ESTIMATES DETAILED TABLES: B03002: HISPANIC OR LATINO ORIGIN BY RACE (2016) (comparing total Hispanic population (100 percent—57,398,719) with share that selected their race as “White Alone” (64.75 percent—37,164,589)).

121. See EKINS, *supra* note 120, at 66.

support such stops “may personally feel uncomfortable around individuals who appear out of place and believe their discomfort should govern police stops.”¹²²

Evidence of this discomfort-to-policing pathway abounds in the stories of White people who deploy the police on their Black and Brown neighbors for engaging in noncriminal activities in public space, or for simply enjoying their yards, parks, and pools,¹²³ or for just contemplating the birds and insects.¹²⁴ In this way, White people use their discomfort to reassert exclusive use of ostensibly desegregated spaces, effectively replacing “Whites Only” signs with racialized suspicion, intimidation, and police deployment.¹²⁵ This was all evidenced in the example of Amy Cooper, a White woman who reported Chris Cooper (no relation), a Black birdwatcher in Central Park, to the police. In her call to the police, Amy Cooper suggested Chris Cooper was threatening her by asking her to leash her dog in accordance with the park rules.¹²⁶ Apologizing later, yet still insisting her call had nothing to do with race, Amy Cooper (perhaps inadvertently) made her own legal endearment clear: “When I think about the police, I’m such a blessed person.”¹²⁷

This dynamic exemplifies both the production and material effects of White people’s legally endeared relationship to policing. Whether or not one believes White callers when they insist that their decisions to surveil and report their non-White neighbors for noncriminal enjoyment of public space have “nothing to do

122. *Id.*

123. See, e.g., Minyvonne Burke, *Black Alabama Pastor Says He Was Wrongfully Arrested While Watering His Neighbor’s Flowers*, NBC NEWS (Aug. 25, 2022), <https://www.nbcnews.com/news/us-news/black-alabama-pastor-says-was-wrongfully-arrested-watering-neighbors-f-rna44691> [<https://perma.cc/HN9N-3RMG>]; Christina Zhao, “BBQ Becky,” *White Woman Who Called Cops on Black BBQ, 911 Audio Released: “I’m Really Scared! Come Quick!”*, NEWSWEEK (Sept. 4, 2018), <https://www.newsweek.com/bbq-becky-white-woman-who-called-cops-black-bbq-911-audio-released-im-really-1103057> [<https://perma.cc/9L3V-U32C>]; *White Man Calls Police on Black Mother and Child for Using Neighborhood Swimming Pool*, INDEPENDENT (July 6, 2018), <https://www.independent.co.uk/news/world/americas/north-carolina-racist-911-call-white-man-black-mother-son-winston-salem-swimming-pool-a8434411.html> [<https://perma.cc/576P-JASV>].

124. See, e.g., Anthony Gabbianelli, *Caldwell Mother Says Neighbor’s Call to Police Was Racist*, NJ PROGRESS (Dec. 12, 2022), https://www.newjerseyhills.com/the_progress/news/mother-says-neighbors-call-to-police-was-racist/article_41e8ce3c-0517-5111-ba58-ed889e936325.html [<https://perma.cc/6ZLV-FUCC>]; see also Carbado, *supra* note 78, at 4–13.

125. See Singh, *supra* note 38, at 1097 (“Both the quotidian surveillance that ensures the maintenance of racially valorized and devalorized space and the exemplary spectacles by which forms of overt police violence tutor publics in the value of [W]hiteness as a domain of safety and self-preservation.”); Harris, *supra* note 36, at 1711 (describing the presences of Blacks in White spaces as a trespass on the property of Whiteness); cf. *Black Outdoors: Innovations in the Poetics of Study*, DUKE UNIV. PRESS, <https://www.dukeupress.edu/series/Black-Outdoors-Innovations-in-the-Poetics-of-Study> [<https://perma.cc/W7AU-NRJK>] (“Black Outdoors is dedicated to the study of alternative ecologies and socialities beyond logics of property, sovereignty, and propertied self-possession.”).

126. See Jasmine Aguilera, *White Woman Who Called Police on a Black Man at Central Park Apologizes, Says “I’m Not a Racist.”*, TIME (May 26, 2020), <https://time.com/5842442/amy-cooper-dog-central-park/> [<https://perma.cc/GVW9-87T5>].

127. *Id.*

with race,”¹²⁸ the resulting incidents communicate two powerful social messages central to generating legal endearment. First, noncriminal threats to White racial identity are legally cognizable: both the caller and the police display a mutual understanding about the nature of the threat. Second, regardless of whether police engage the alleged interlopers, their apparent willingness to respond to such calls affirms White people’s prerogative to racially monitor public space.¹²⁹

Not only do police responses to such calls strengthen these beliefs, but they also help maintain the spatial and social segregation arrangements that make legal endearment so resilient, described in Part III.C below.¹³⁰ Over generations, these experiences become naturalized. What was previously understood to be an explicit policing of the color line transforms into “commonsense” responses for the purpose of maintaining law and order.¹³¹

Now that we grasp the experiential dimensions of White people’s relationship to policing, and how these contribute to White people’s legal endearment, we can explore how the benefits White people derive from these arrangements are guarded and maintained through the *structural* and *social* dimensions described below.

C. *The Structural Production of Legal Endearment*

The third dimension in which White people’s relationship to policing produces legal endearment is *structural*. This dimension references the structural elements of everyday life—one’s neighborhoods, schools, jobs, families, and social circles. The idea is straightforward: the racial makeup of the places we live affects both the types of policing we experience and the messages we relate to one another about policing in general.

128. See, e.g., *id.*

129. See Jamelia Morgan, *Policing Marginality in Public Space*, 81 OHIO ST. L.J. 1045, 1047–48 (2020) (“Vague and broad offenses, like disorderly conduct, can facilitate nefarious forms of ‘community participation.’ Indeed, private citizens possess wholly unbridled discretion to call on law enforcement based on what they deem to be unlawful conduct.”). See generally Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. 863 (2020) (examining historic and contemporary examples of the “invocation of the property law concepts of nuisance and trespass to exclude Blacks from spaces racialized as ‘[W]hite’”); Lolita Buckner Inniss, *Race, Space, and Surveillance: A Response to #LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. F. 213 (2020) (arguing that, beyond nuisance and trespass, #LivingWhileBlack incidents implicate *legal geography* and *surveillance* regimes as well).

130. See Addie C. Rolnick, *Defending White Space*, 40 CARDOZO L. REV. 1639, 1702–08 (2019) (describing how “new White spaces” are shaped in the absence of de jure segregation “by law, and law—though less visibly—continues to maintain them”).

131. See IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* 169–90 (2014) (describing how “commonsense” racism emerged as a form of unconscious racism that rejects crass slurs and explicit White supremacy but still blames racial disparities not on regimes of structural exclusion, but rather things like different racial “cultures” and propensities for violence); cf. EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS* (2003) (coining the term “colorblind racism”).

The structural dimension is especially important to understanding legal endearment's resilience. In essence, the ongoing segregation in these venues of social life impedes viewing and understanding the policing of Black, Indigenous, and other people of color as a project of racial domination. Instead, it provides a domain to reassert dominant narratives about White people's experiences and perspectives on policing functioning as a normative and natural baseline¹³² and indexes policing's racial disparities as the natural consequence of people of color's criminality and White innocence.

1. *Spatial Segregation*

Despite the overturning of *Plessy*'s doctrine of "separate but equal" in *Brown v. Board of Education*,¹³³ and the subsequent dismantling of de jure Jim Crow laws, legacies of intentional and de jure racial segregation persist through ongoing de facto racial segregation in the venues of everyday life.¹³⁴ And, as Angela Onwuachi-Willig explores in depth in her article detailing the throughlines between the murders of Emmett Till and Trayvon Martin, contemporary segregation is not simply an echo of past arrangements but is an active project that involves the policing of White space.¹³⁵ She writes that "since the late 1960s and 1970s when courts began to enforce desegregation orders in schools, Whites have become increasingly concerned with ensuring spatial segregation from people of color, particularly Blacks."¹³⁶ Such continuing segregation is not constrained to cities that were in the Jim Crow south—indeed, it has arguably increased most substantially in purportedly progressive northern cities.¹³⁷

132. Kimberlé Crenshaw has described this phenomenon as *perspectivelessness*, wherein "what is understood as objective or neutral is often the embodiment of a [W]hite middle-class world view." Kimberlé W. Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1, 3 (1988). Fred Moten describes a different type of *perspectivelessness*—"[Blackness] is existence under the coercive surveillance of the state though the fundamental condition of this existence is that the very state that watches you can neither see you nor see from your perspective." MOTEN, *supra* note 13, at 18–19.

133. 347 U.S. 483 (1954); *see also* Jens M. Krogstad & Richard Fry, *Public School Enrollment Disparities Exist 60 Years After Historic Desegregation Ruling*, PEW RSCH. CTR. (May 16, 2014), <https://www.pewresearch.org/fact-tank/2014/05/16/public-school-enrollment-disparities-exist-60-years-after-historic-desegregation-ruling/> [<https://perma.cc/RTW8-KKNH>].

134. *See, e.g.*, William H. Frey, *Neighborhood Segregation Persists for Black, Latino or Hispanic, and Asian Americans*, BROOKINGS INST. (Apr. 6, 2021), <https://www.brookings.edu/articles/neighborhood-segregation-persists-for-black-latino-or-hispanic-and-asian-americans/> [<https://perma.cc/95MD-JNZZ>] ("More than a half-century after the civil rights movement and fair housing legislation, [W]hite Americans continue to reside in mostly (and often largely) [W]hite neighborhoods, even as the nation's overall population becomes much more racially and ethnically diverse.").

135. *See generally* Onwuachi-Willig, *supra* note 78.

136. *Id.* at 1154.

137. "Looking at the entire 70-year span [from 1940 to 2010], [residential] segregation increased substantially in 15 of the 20 Great Migration cities." Mimi Abramovitz & Richard J. Smith, *The Persistence of Residential Segregation by Race, 1940 to 2010: The Role of Federal Housing Policy*, 102 FAMILIES IN SOC'Y 5, 10 (2021).

The Twin Cities of Minneapolis and St. Paul exemplify a prominent area with ongoing residential segregation, despite being a prototypical site of stated liberal and progressive ideologies.¹³⁸ Indeed, in the decade before the 2020 uprisings, several prominent publications declared that Minneapolis and St. Paul were “among the best places to live,”¹³⁹ having long enjoyed an image as an “affluent, generous and progressive” urban center.¹⁴⁰ Yet their rankings and progressive reputation consistently omitted that the state “is also putatively one of the worst places for [B]lacks to live,” in what has been described as the “Minnesota Paradox.”¹⁴¹

Although never formally under Jim Crow segregation¹⁴²—like much of the country—the Twin Cities had a private housing market that was shaped through the dual practices of redlining¹⁴³ and racially restrictive covenants,¹⁴⁴ a combination of government, business, and private policies and practices that worked to keep White neighborhoods racially exclusive.¹⁴⁵ As detailed in the

138. See John Eligon & Julie Bosman, *How Minneapolis, One of America's Most Liberal Cities, Struggles with Racism*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/06/01/us/minneapolis-racism-minnesota.html> [<https://perma.cc/955N-UGL8>].

139. See, e.g., Derek Thompson, *The Miracle of Minneapolis*, ATLANTIC (Mar. 2015), <https://www.theatlantic.com/magazine/archive/2015/03/the-miracle-of-minneapolis/384975/> [<https://perma.cc/GS4T-C3GX>] (“No other place mixes affordability, opportunity, and wealth so well. What’s its secret?”).

140. UNIV. OF MINN. L. SCH. INST. ON METRO. OPPORTUNITY, WHY ARE THE TWIN CITIES SO SEGREGATED? 4 (2015), <https://law.umn.edu/sites/law.umn.edu/files/why-are-the-twin-cities-so-segregated-2-26-15.pdf> [<https://perma.cc/3CYS-22WH>].

141. Samuel L. Myers Jr., *The Minnesota Paradox*, ROY WILKENS CTR. HUM. RELS. & SOC. JUST., <https://www.hhh.umn.edu/research-centers/roy-wilkins-center-human-relations-and-social-justice/minnesota-paradox> [<https://perma.cc/9A3J-DW72>].

142. In her memoir, Evelyn Fairbanks recalls that despite formal equality in the Twin Cities, many businesses openly or implicitly refused service to Black Minnesotans in the '50s and '60s. See EVELYN FAIRBANKS, *THE DAYS OF RONDO* 153 (1990).

143. See Price V. Fishback, Jonathan Rose, Ken Snowden & Thomas Storrs, *New Evidence on Redlining by Federal Housing Programs in the 1930s* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 29244, 2021), https://www.nber.org/system/files/working_papers/w29244/w29244.pdf [<https://perma.cc/4TV5-ESP4>] (arguing that despite lending the name to the practice, Home Owners' Loan Corporation (HOLC)'s infamous “redlining” maps “had little effect” on segregation, which was primarily driven by the Federal Housing Administration that “crafted and implemented its own redlining methodology prior to the HOLC”).

144. See generally MAPPING PREJUDICE, <https://mappingprejudice.umn.edu/> [<https://perma.cc/LLE9-HYQH>] (mapping the nearly thirty thousand homes with racial covenants attached to their deeds).

145. See *Minnesota Experience: Jim Crow of the North* (Twin Cities PBS broadcast Nov. 28, 2018), <https://www.tpt.org/minnesota-experience/video/jim-crow-of-the-north-stijws/> [<https://perma.cc/JC2M-5GFJ>] (detailing the effects of racially restrictive covenants in the Twin Cities). For example, as described in the Prologue, my grandparents' home where my mother and aunts were raised was purchased in the early 1960s—after the Minnesota Legislature prohibited the use of racial covenants, but before redlining was made illegal—and was labeled as zone “A2: BEST.” In contrast, the same map labels the entirety of the Rondo neighborhood in which I grew up as zone “D4: HAZARDOUS.” See *supra* notes 22–23 and accompanying text. See HOUS. JUST. CTR., *REDLINING IN ST. PAUL* 6–7 (2019) (tracing the history of land occupation, redlining, and housing disparities in St. Paul, Minnesota). In 1948, the Supreme Court decided the landmark case *Shelley v. Kraemer*, holding that the Fourteenth Amendment prohibited courts from enforcing racially restrictive covenants. See 334 U.S. 1, 23 (1948).

Prologue, a significant degree of the 2020 uprising's turmoil erupted on the very streets that demarcated this historic divide between the redlined Black zones and surrounding White neighborhoods in the Twin Cities. These boundaries traced a long history of segregation, demarcating a line of racial inequality along multiple axes, the effects of which continue to be seen and replicated today.¹⁴⁶

The so-called Minnesota paradox typifies the problem presented at the beginning of the Article: a site with a history of White liberals who champion racial equality while simultaneously producing some of the worst racial disparities in policing in the country.¹⁴⁷ Unfortunately, this is not a unique example; similar patterns hold across much of the United States.¹⁴⁸ And, as Monica Bell has convincingly shown, racial segregation and policing's racial disparities are not simply two parallel phenomena reflecting the ongoing effects of racism.¹⁴⁹ Instead, they reflect "a mutually constitutive relationship between daily practices of urban policing and residential segregation, a relationship of mutual reproduction," with policing acting as "one of many mechanisms that reinforce [and are reinforced by] segregation."¹⁵⁰

One example of this mutually reinforcing relationship is the "geographic target[ing]" and "withhold[ing of] resources from minority communities through a host of policies and practices, including overpolicing, underinvestment, and devaluation."¹⁵¹ The inverse of such negative segregation effects is often

Approximately five years later, the Minnesota Legislature banned the use of such covenants outright. See 1953 Minn. Laws 564.

146. Researchers tracked and mapped block-level data showing the change in the percentage of Black residents from 1980 to 2010. Overlaying this data onto redlining maps, they found that "[w]hile the proportion of Black residents grew by little more than 1 percentage point in A-graded zones and by 6 points in B-graded zones, it grew by 15 percentage points in C-graded zones and 17 points in D-graded zones." Amalea Jubara & Yaxuan Zhang, *Mapping Block-Level Segregation: The Twin Cities' Black Population, 1980–2010*, MINN. POPULATION CTR. BLOG (Feb. 20, 2021), <https://blog.popdata.org/mapping-segregation/> [<https://perma.cc/99TJ-727T>].

147. See DOJ MPD REPORT, *supra* note 98, at 3–4, 31–47 (describing disparities for Black and Native populations against White populations in Minneapolis). Speaking to this history of progressive racial politics and stark racial disparities, Jennifer Delton argues that championing antiracism and civil rights was an easy political win for Minnesota's DFL leaders in the post-war era because they "were never the major, real political issues for most Minnesotans." JENNIFER A. DELTON, MAKING MINNESOTA LIBERAL xxiv (2002). Because Minnesota was nearly all White, she argues it "provides a unique opportunity to explore the larger effect of race, racial politics, and antiracism in those areas of the nation that do not, apparently, have anything to do with race." *Id.* at xxv.

148. See Rashawn Ray, Andre M. Perry, David Harshbarger, Samantha Elizondo & Alexandra Gibbons, *Homeownership, Racial Segregation, and Policy Solutions to Racial Wealth Equity*, BROOKINGS INST. (Sept. 1, 2021), <https://www.brookings.edu/essay/homeownership-racial-segregation-and-policies-for-racial-wealth-equity/> [<https://perma.cc/993G-ZS7E>] (providing "an empirical analysis and overview of the role that racial residential segregation plays in 17 cities across the United States").

149. See Bell, *supra* note 118, at 687–729 (describing the mechanisms of pro-segregation policing as mass criminalization; patrolling borders; coordinating with other bureaucracies; constructing jurisdiction; constructing neighborhood reputation; and distributing racialized economic value).

150. *Id.* at 655.

151. Christopher Coes, Jennifer S. Vey & Tracy Hadden Loh, *Separate and Unequal: Persistent Residential Segregation Is Sustaining Racial and Economic Justice in the U.S.*, BROOKINGS INST. (Dec.

mirrored through beneficial services, investments, and valuation in other spatially bounded White areas.¹⁵² Understanding how geographically targeted policing maintains White advantages makes plain the role of segregation in building White legal endearment.

The literature on space- and race-based policing is robust, consistently showing that wealthy, majority-White neighborhoods are subject to an entirely different deployment of policing—in both degree and kind—than majority non-White neighborhoods.¹⁵³ Today, these spatial deployment decisions are often carried out in increasingly automated ways using machine learning and algorithms that are trained on historic crime and arrest data to “predict” where future crimes will occur.¹⁵⁴ These new technologies can replicate older ones¹⁵⁵ by providing officers with algorithmic cover (a different type of code switching) to engage in racial profiling within spatially bounded hot spots.¹⁵⁶ The datasets upon which these algorithms are built not only determine policing’s hot spots but also its blind spots; White enclaves that have escaped heavy policing in the past have not generated the same degree of data, thus escaping algorithmic scrutiny in the present.¹⁵⁷

16, 2020), <https://www.brookings.edu/articles/trend-1-separate-and-unequal-neighborhoods-are-sustaining-racial-and-economic-injustice-in-the-us/> [<https://perma.cc/7PF7-EBDX>] (tracing how “[p]ublic policy and industry practice have produced a separate and unequal landscape of American neighborhoods”).

152. Recent research suggests residential segregation begets broader spatial segregation within sites *outside* of one’s neighborhood. See Jennifer Candipan, Nolan Edward Phillips, Robert J Sampson & Mario Small, *From Residence to Movement: The Nature of Racial Segregation in Everyday Mobility*, 58 URB. STUD. 3095 (2021).

153. See Anthony A. Braga, Rod K. Brunson & Kevin M. Darkulich, *Race, Place, and Effective Policing*, 45 ANN. REV. SOCIOLOG. 535, 538–43 (2019) (describing historic drivers of racial disparities in policing and how differential policing experiences vary not only by race, but also space). See generally DAANIK A GORDON, *POLICING THE RACIAL DIVIDE* (2022) (explaining how policing of different neighborhoods contributes to the racial divide).

154. See generally Andrew G. Ferguson, *Policing Predictive Policing*, 94 WASH. U. L. REV. 1109 (2017) (examining the evolution of predictive policing and providing a practical and theoretical critique). See also Jessica M. Eaglin, *Racializing Algorithms*, 111 CALIF. L. REV. 753, 758 (2023) (arguing that “racial assumptions expressed in the law are fundamental to the expansion of algorithms as criminal legal practice while algorithms sustain ways of thinking in society that legitimate race and racial hierarchy in the information age”).

155. See, e.g., Lawrence W. Sherman & David Weisburd, *General Deterrent Effects of Police Patrol in Crime “Hot Spots”*: A Randomized, Controlled Trial, 12 JUST. Q. 625, 630 (1995) (describing the “Minneapolis experiment” that initiated “hot spots” policing strategies).

156. Compare David Weisburd, *Does Hot Spots Policing Inevitably Lead to Unfair and Abusive Police Practices, or Can We Maximize Both Fairness and Effectiveness in New Proactive Policing?*, 2016 U. CHI. LEGAL F. 661, 678 (2016) (“A police focus on crime hot spots can be correlated with race, but the correlation is a coincidence rather than a cause.”); with STOP LAPD SPYING COALITION, *AUTOMATING BANISHMENT: THE SURVEILLANCE AND POLICING OF LOOTED LAND* 14 (Nov. 2021) (“By speculatively criminalizing areas and then sending officers on missions to ‘suppress crime’ in these areas with vague profiles of who to look for, these programs ensured lethal and racialized police violence.”).

157. See, e.g., Will Douglas Heaven, *Predictive Policing Algorithms Are Racist. They Need to Be Dismantled*, MIT TECH. REV. (July 17, 2020), <https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/> [<https://perma.cc/Y3K8-JRU9>].

Not only does spatial segregation affect police deployment through department policies and technologies that classify some spaces as criminal and others as innocent, but it also has doctrinal implications that can increase (or diminish) law enforcement's power. As Paul Butler argues, the Court's rulings in *Terry v. Ohio*¹⁵⁸ and *Illinois v. Wardlaw*¹⁵⁹ mean that "police have more power in high-crime neighborhoods than in low-crime neighborhoods."¹⁶⁰ Carbado emphasizes this point in arguing that the Supreme Court has transformed the Fourth Amendment's protections against unreasonable state intrusion into a racialized policing tool.¹⁶¹ Noting that the Court has largely left it to police to define which areas are "high crime neighborhood[s]," Carbado suggests that the term often functions "as 'code for poor Black ghetto.'" At least one study found that the police were "8–9 percent more likely to call any particular block a 'high crime area' when it was entirely Black compared to a block with no Black residents, regardless of actual crime rates."¹⁶²

The inverse to these insights is that as soon as the police cruiser crosses from a "high-crime" neighborhood (read *Black*) into a "low-crime" neighborhood (read *White*), the officer's powers to stop-and-question or stop-and-frisk any of its residents—assuming, of course, that they are racially congruent with the overall neighborhood's makeup¹⁶³—is constitutionally diminished. Not only do police choose not to stop, question, and frisk White people at the same rates as people of color, but the Court also removed one of their tools to do so, at least within neighborhoods that (one might imagine) resemble the Justices' own.

In addition, racial segregation creates a pattern where spatially bounded risks and subsidies—such as localized highway pollution or access to greenspace—accrete in a relatively stable, racially predetermined manner across generations.¹⁶⁴ In this way, ongoing racial segregation is both a symbolic and

158. 392 U.S. 1 (1968).

159. 528 U.S. 119 (2000).

160. Paul Butler, *The White Fourth Amendment*, 40 TEX. TECH. L. REV. 245, 254 (2010).

161. See generally DEVON W. CARBADO, UNREASONABLE: BLACK LIVES, POLICE POWER, AND THE FOURTH AMENDMENT (2022) (providing a systemic critique of the Supreme Court's development of Fourth Amendment doctrine).

162. *Id.* at 114–16. The study Carbado references found that police cited "high crime area" as a basis for 55 percent of their stops, and—perhaps unsurprisingly—that the NYPD had labeled "98 percent of New York City blocks as 'high crime areas; at one time or another.'" *Id.* at 116; see also SENT'G PROJECT, RACE AND PUNISHMENT: RACIAL PERCEPTIONS OF CRIME AND SUPPORT FOR PUNITIVE POLICIES 17 (2014), <https://www.sentencingproject.org/reports/race-and-punishment-racial-perceptions-of-crime-and-support-for-punitive-policies/> [<https://perma.cc/YT2L-S7CB>] ("Even after accounting for differing crime rates and other measures of disorder, researchers have found that the percentage of young [B]lack men is one of the best predictors of the perceived severity of neighborhood crime.").

163. Cf. Bennett Capers, *Policing, Place, and Race*, 44 HARV. C.R.-C.L. L. REV. 44, 71–72 (2009) (describing how minority individuals must weigh their own racial incongruity within majority White neighborhoods and how it might make them vulnerable to policing interactions).

164. For example, when large sections of the historically Black Rondo neighborhood in St. Paul, MN, were bulldozed for the construction of highway I-94, White residents outside of the neighborhood

material investment in future White people.¹⁶⁵ And, as Bennett Capers has described, the police play a critical role in ensuring that these spatial subsidies remain racially circumscribed.¹⁶⁶ To paraphrase Cheryl Harris, the law and its enforcement agents elevate and ratify White expectations with regard to property.¹⁶⁷ I pose that White people return the favor by elevating and ratifying the police through legally endeared support.

Lastly, spatial segregation provides a masking effect that keeps those living in White enclaves from witnessing firsthand the type of high-frequency, pervasive, and harmful policing that other neighborhoods regularly experience and witness. This erects barriers to literally seeing problem policing. And, as described below, the lack of an opportunity to witness non-White racialized experiences of policing becomes compounded through racially segregated social networks.

2. *Social Segregation*

In addition to ongoing spatial forms of racial segregation, racially homogenous White social networks (classified in the literature as *homophily*) are also pervasive.¹⁶⁸ Just as the afterlives of de jure residential segregation continue to flourish, so too do the social effects of other forms of state-sanctioned segregation. From segregated schools to antimiscegenation laws and

were able to enjoy improved interstate transportation and its attendant suburban and business booms without the suffering the fractured social ties, declines in property values, and continuing negative health effects of abutting a highway. “Minorities today disproportionately live near the urban freeways that displaced them, and suffer as a result.” Bill McKibben, *A Hotter Planet Takes Another Toll on Human Health*, NEW YORKER (Jan. 19, 2023), <https://www.newyorker.com/news/daily-comment/a-hotter-planet-takes-another-toll-on-human-health> [<https://perma.cc/ZAL3-S86B>] (tracing the ongoing health disparities wrought by redlining that are exacerbated by a warming climate); *see also A Once-in-a-Lifetime Opportunity to Repair a Terrible Injustice.*, OUR STREETS: TWIN CITIES BOULEVARD, <https://www.twincitiesboulevard.org/> [<https://perma.cc/SPG7-WW2M>] (proposing a highway redevelopment project to promote “healthier air, much needed economic opportunity, and accessible, affordable, and sustainable transportation access” and to “use the reclaimed highway land to prioritize . . . those who have been harmed or displaced by I-94”).

165. *But see* Cheryl I. Harris, *Reflections on Whiteness as Property*, 134 HARV. L. REV. F. 1, 6 (2020) (“Whiteness does not confer immunity from disaster on all [W]hite bodies, however. Poor and working-class [W]hites suffer greatly in all areas; the gap between them and wealthier [W]hites is profound, and, by all metrics, growing.”).

166. *See* Capers, *supra* note 163, at 71.

167. *See* Harris, *supra* note 165, at 9.

168. “Homophily, the tendency for similar actors to be connected at a higher rate than dissimilar actors, is a pervasive social fact.” Jeffrey A. Smith, Miller McPherson & Lynn Smith-Lovin, *Social Distance in the United States*, 79 AM. SOCIO. REV. 432, 432 (2014). This study of homophily from 1985 to 2004 found that “[r]ace, the most important divide in our society, has not changed much at all.” *Id.* at 451. Indeed, spatial segregation begets social segregation, and vice versa. “Spatial separateness allows social relationships to be structured along racial lines, which in turn has the effect of perpetuating and reinforcing social and economic inequality.” Capers, *supra* note 163, at 71 (arguing, in part, that the way race is policed encourages segregation, not integration); *see also* MARIA KRYSAN & KYLE CROWDER, *CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION* 5–6 (2017) (arguing that segregated social networks contribute to “social structural sorting”—perpetuating and amplifying existing racial segregation).

prohibitions on interracial marriage, each institution echoes the ongoing racial insularity of White people's classmates and school friends, familial bonds, and romantic partners.¹⁶⁹ This insularity is consistently borne out by studies that confirm that Whites' core social networks remain the most racially homogenous, even when controlling for other factors such as relative population diversity.¹⁷⁰

One recent survey asked respondents to "name people with whom they 'discussed important matters' in the previous six months" to determine who comprised their core social networks.¹⁷¹ It found that, "[a]mong [W]hite Americans, 91 percent of people comprising their social networks [were] also [W]hite, while five percent are identified as some other race."¹⁷² Similar studies show that such racial homogeneity extends beyond core networks, suggesting that Whites' broader acquaintanceship networks also "show[] a high degree of segregation on the basis of race."¹⁷³

The effect is that many White people socialize primarily and often exclusively with other White people. This White epistemic universe produces what Russell Robinson would call "perceptual segregation," which describes how "[B]lack and [W]hite people obtain information through different informational networks, which results in racialized pools of knowledge."¹⁷⁴ Robert Jones, one author of the above studies, suggests that segregated social networks prevent White people from hearing about and considering first-person

169. See Sean F. Reardon & Ann Owens, *60 Years After Brown: Trends and Consequences of School Segregation*, 40 ANN. REV. SOCIO. 199, 201–12 (2014) (describing ongoing trends and consequences of de jure school segregation); Gretchen Livingston & Anna Brown, *Intermarriage in the U.S. 50 Years After Loving v. Virginia*, PEW RSCH. CTR. (May 18, 2017), <https://www.pewresearch.org/social-trends/2017/05/18/intermarriage-in-the-u-s-50-years-after-loving-v-virginia/> [<https://perma.cc/EW39-9T28>] (describing ongoing trends and consequences of de jure laws banning interracial marriages and noting that despite increases across all racial groups in racial intermarriage, Whites "remain the least likely of all major racial or ethnic groups to marry someone of a different race or ethnicity"); Gretchen Livingston, *Among U.S. Cohabitors, 18 Percent Have a Partner of a Different Race or Ethnicity*, PEW RSCH. CTR. (June 8, 2017), <https://www.pewresearch.org/short-reads/2017/06/08/among-u-s-cohabiters-18-have-a-partner-of-a-different-race-or-ethnicity/> [<https://perma.cc/H88S-PAGN>] ("Of the major racial and ethnic groups, [W]hite adults who are in a cohabiting relationship are the least likely to be living with a partner of a different race or ethnicity.").

170. See, e.g., Daniel A. Cox, Ryan Streeter, Samuel J. Abrams & Jacqueline Clemence, *Socially Distant: How Our Divided Social Networks Explain Our Politics*, SURVEY CTR. ON AM. LIFE (Sept. 30, 2020), <https://www.americansurveycenter.org/research/socially-distant-how-our-divided-social-networks-explain-our-politics/> [<https://perma.cc/9Z85-ZUSV>]; see also Thamos A. DiPrete, Andrew Gelman, Tyler McCormick, Julien Teitler & Tian Zheng, *Segregation in Social Networks Based on Acquaintanceship and Trust*, 116 AM. J. SOCIO. 1234, 1270 (2011) (finding that "[s]egregation in American social networks" extends beyond core networks to "broader acquaintanceship networks as well").

171. Cox et al., *supra* note 170.

172. Daniel Cox, Juhem Navarro-Rivera & Robert P. Jones, *Race, Religion, and Political Affiliation of Americans' Core Social Networks*, PUB. RELIGION RSCH. INST. (Aug. 3, 2016), <https://www.prii.org/research/poll-race-religion-politics-americans-social-networks/> [<https://perma.cc/8LLH-W7EM>].

173. DiPrete et al., *supra* note 170, at 1258.

174. Russell K. Robinson, *Perceptual Segregation*, 108 COLUM. L. REV. 1093, 1106, 1120 (2008).

accounts of racially motivated police violence from those they trust, rather than through polarized media narratives.¹⁷⁵ He suggests “these are not stories most [W]hites are socially positioned to hear.”¹⁷⁶ Put differently, White people’s racially insular networks amplify White experiences and perspectives on policing while simultaneously suppressing evidence to the contrary.¹⁷⁷

To illustrate this point, I return to Minneapolis, less than a year after George Floyd was murdered. On March 31, 2021, Darnella Frazier—the teenager who captured and disseminated the infamous bystander video—testified in the murder trial of Derek Chauvin, the Minneapolis Police officer shown pressing his knees into Floyd’s neck and back.¹⁷⁸ When the prosecutor asked Frazier to describe how witnessing Floyd’s murder affected her, she explained:

When I look at George Floyd, I look at my dad. I look at my brothers, I look at my cousins, my uncles—because they’re all Black. I have a Black father, I have a Black brother, I have Black friends. And I look at that and I look at how that could have been one of them.¹⁷⁹

We may read her testimony expansively, going beyond the prosecutor’s prompt to describe how witnessing Floyd’s death affected her, and instead ask how being Black affected her ability to bear witness.¹⁸⁰ Through that shared experience, Frazier describes Floyd as kith and kin, allowing her to both testify to his particular death and anticipate her own community’s vulnerability to a similar fate.¹⁸¹ In other words, Frazier’s testimony signals that she understood

175. See Robert P. Jones, *Self-Segregation: Why It’s So Hard for Whites to Understand Ferguson*, ATLANTIC (Nov. 25, 2014), <https://www.theatlantic.com/national/archive/2014/08/self-segregation-why-its-hard-for-whites-to-understand-ferguson/378928/> [https://perma.cc/7CKH-YARH]. “Cultural differences may exist in sources of vicarious exposure to police, as Black individuals tend to be more likely than White individuals to obtain vicarious information about interactions with police from family, friends, and neighbors, whereas White individuals tend to be more likely to receive this information from the media.” Keisha April, Lindsey M. Cole & Naomi E.S. Goldstein, *Let’s “Talk” About the Police: The Role of Race and Police Legitimacy Attitudes in the Legal Socialization of Youth*, 42 CURRENT PSYCH. 15422, 15423 (2023) (summarizing earlier research on vicarious accounts of policing) (citations omitted).

176. Jones, *supra* note 175.

177. “Racial and ethnic diversity in Americans’ social networks makes one more sensitive to race issues. Notably, [W]hite Americans with racially diverse social networks appear more attuned to the perspectives of Americans of color.” Cox et al., *supra* note 172.

178. Washington Post, *Darnella Frazier, Young Witnesses Offer Emotional Testimony in Chauvin Trial*, YOUTUBE (Mar. 30, 2021), <https://www.youtube.com/watch?v=g-GKW8ScdKQ> [https://perma.cc/R9G8-CJJC].

179. *Id.*

180. Frazier’s literal acts of *witnessing* and *testifying* exemplify two components of what T. Anansi Wilson has described as “Thinking Blackly.” See T. Anansi Wilson, *Furtive Blackness: On Blackness and Being*, 48 HASTINGS CONST. L.Q. 141, 171 (2020).

181. This interplay between identification with the particularized individual and the racial collective recalls Michael Dawson’s articulation that Black people experience the sense of a “linked fate.” See MICHAEL C. DAWSON, BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS 77 (1994). In recounting his commitment not to watch Frazier’s video of Floyd’s final moments, Carbadó presumably recognized such a linked fate. “Nevertheless, I watched it—and more than once, participating in the conspicuous racial consumption the video invited. Each time I did so, I

his murder not in isolation but as part of a broader structure of policing violence, indexing his life and death in an archive of the Black experience of policing in which it was impossible to not imagine her father, brothers, uncles, and cousins in Floyd's place.

It is difficult to imagine that this type of witnessing and testimony would be accessible to a White bystander. Their (presumably) White father, uncles, and cousins could not be projected into Floyd's place. Indeed, they more likely might be projected into Chauvin's role instead.¹⁸² Questions about their relative safety on the bottom of a police officer's knee would not be implicated.¹⁸³ Our imagined White bystander never has to imagine that being White makes them or their community vulnerable to police violence. Instead, their Whiteness insulates and protects them against such violence, allowing them to isolate Floyd's death outside of their own racialized experience of policing (even if they view his murder as horrific).¹⁸⁴ This minimizes the framing of racial violence into excessive, aberrational, punctuated moments, while masking the routine production of racial hierarchy through policing in which such exceptional moments of violence arise. To do otherwise would require a deeper recognition

carried a trauma that blurred the lines between 'look what they did to him'/'this could happen to me'/'this is happening to me.'" Carbado, *supra* note 78, at 14.

182. See James Johnson & Len Lecci, *Does Empathy Undermine Justice? Moderating the Impact of Empathic Concern for a White Policeman on Responses to Police Interracial Violence*, 59 BRIT. J. SOC. PSYCH. 752, 765 (2020) (finding that "[a]s White participants were able to empathize with the White officer, they were less likely to punish him and less likely to assume that his actions were motivated by racism," which "reflect[s] the 'dark impact' of empathy because the scenario involved benign behaviour by the Black motorist and an aggressive and inappropriate response by the officer"); James Johnson & Len Lecci, *How Caring is "Nullified": Strong Racial Identity Eliminates White Participant Empathy Effects When Police Shoot an Unarmed Black Male*, 10 PSYCH. VIOLENCE 58 (2020) (finding that as a victim's racial characteristics became more stereotypically "Black," White study participants exhibited less empathy toward a unarmed victim of a police shooting and were less likely to indicate that a White police officer was at fault); Kathy Frankovic, *The Trial of Derek Chauvin: Most Americans Believe He Should Be Found Guilty*, YOUGOV (Apr. 7, 2021), <https://today.yougov.com/politics/articles/35124-derek-chauvin-most-americans-believe-guilty> [<https://perma.cc/7J82-XNMC>] (reporting that while 4-in-5 of Black Americans believed that Derek Chauvin should be found guilty for murdering Floyd, only half of White Americans did).

183. Here, I draw upon a dual meaning of *relative*, indicating both one's kinship relationships and experience as compared to someone of another race.

184. See Matthew R. Fischer, *Impartiality, Social Network Effects, and Collective Memory: Three Essays on Trust in Police 96* (2019) (Ph.D. dissertation, University of Louisville) (finding that "previously unaddressed factors, *social network effects* and *collective memory*, influences trust in police") (emphasis added); cf. Tracy K. Smith, *Acknowledging a Collective Memory Through Protest*, N.Y. TIMES (July 20, 2015), <https://www.nytimes.com/roomfordebate/2014/12/15/what-does-the-style-of-a-protest-say-about-a-movement/acknowledging-a-collective-memory-through-protest> [<https://perma.cc/5HVV-ZYX9>] (arguing that "racial violence, the seeming imperviousness of police to justice even in the face of obvious guilt, and, perhaps most broadly and most disconcertingly, the legal system's glaring disregard for [B]lack lives—are part of an old, old story" that is part of a "deeply rooted knowledge" of Black collective memory).

of how one's legally endeared relationship to policing legitimates the institution that produces such violence.¹⁸⁵

The mitigating effects of diverse networks on White people's interpretations of racial violence are not universal and should not be overstated, particularly regarding interpretations of police violence. Research suggests that "White Americans are unique in their views about the nature of African American deaths at the hands of law enforcement." For example, most White research participants in one study indicated that such killings are isolated incidents. Responses did not vary significantly based on participants' social networks, political views, or age groups.¹⁸⁶

That most White people in this study interpreted racialized police violence in this manner even in the presence of diverse networks suggests that their legal endearment toward policing is both resilient and deeply rooted. Legal endearment's resilience stems from the interoperating and mutually reinforcing symbolic, experiential, and structural dimensions of White people's relationship to policing. Its deep roots reflect that White people's legal endearment toward policing is cultivated and maintained through White-specific socialization messages about race, discrimination, and policing, which begin in childhood.¹⁸⁷ I describe these messages below.

D. *The Social Production of Legal Endearment*

The final dimension in which White people's relationship to policing produces legal endearment is *affective* socialization. By *affect*, I refer to the automatic positive emotional response that policing engenders in many White people.

This focus on affective socialization follows in a growing body of legal scholarship—categorized as *law and emotion*—that "seeks to illuminate the affective features of legal problems; investigate these features through an interdisciplinary approach; and integrate resulting understandings into practical, normative proposals."¹⁸⁸ Although this subfield began as a direct challenge to

185. "If one has no connection with the people who are on the receiving end of what is dismissed as merely overzealous policing, then one is all too likely to identify with the victims of crime and not with the victims of police violence." Robert Bernasconi, *When Police Violence Is More Than Violent Policing*, 14 CENTENNIAL REV. 145, 148 (2014).

186. See Cox et al., *supra* note 172.

187. Research suggests White children receive White-specific socialization messages "largely invisible to [White caregivers], while they are conveyed to children in a consistent, persistent and enduring fashion." Eleonora Bartoli, Ali Michael, Keisha L. Bentley-Edwards, Howard C. Stevenson, Rachel E. Shor & Shannon E. McClain, *Training for Colour-Blindness: White Racial Socialization*, 1 WHITENESS & EDUC. 125, 126 (2016) (quotation omitted).

188. Terry A. Maroney, *A Field Evolves: Introduction to the Special Section on Law and Emotion*, 8 EMOTION REV. 1, 2 (2015) (citing Kathryn Abrams & Hila Keren, *Who's Afraid of Law and the Emotions?*, 94 MINN. L. REV. 1997, 2033–68 (2010)).

some forms of legal rationality and objectivity,¹⁸⁹ it has since evolved into “an interdisciplinary effort aimed at exploring many dimensions of human affective response.”¹⁹⁰

Kathryn Abrams and Hila Keren suggest that the field of law and emotions has underexplored the affective labor that women or people of color must undergo to “assimilate into environments designed around the biographies, life patterns, or cultural norms of dominant groups.”¹⁹¹ Similar value derives from understanding how dominant group biographies, life patterns, and cultural norms are formed in the first place—and, in particular, the affective influence they have on dominant group evaluations of policing.¹⁹² Indeed, recent work in the field suggests that an interdisciplinary approach to affect might be especially helpful in understanding “collective decision-making” and “the emotional dynamics of groups,” especially as they relate to the law’s influence on “social norms and on structuring effective and just institutions.”¹⁹³ Through an interdisciplinary exploration of evolving research within the developmental sciences below, I consider how the emotional dynamics that structure White people’s collective affect toward policing might be generated, in part, through White-specific socialization messages.¹⁹⁴

189. See, e.g., Angela P. Harris & Marjorie M. Shultz, “*A(nother) Critique of Pure Reason*”: *Toward Civic Virtue in Legal Education*, 45 STAN. L. REV. 1773 (1993) (challenging legal pedagogy’s emphasis on objectivism and highlighting the value of acknowledging emotions to reveal unnamed assumptions underlying legal analysis and to direct attention to normative commitments).

190. Abrams & Keren, *supra* note 188, at 2003.

191. *Id.* at 2015. The authors suggest that early critical race feminist accounts that “relate[d] the experience of women of color in elite institutions” did just this, “highlighting the often agonizing emotions that emerge in that context.” *Id.* (citing as an example Margaret Montoya, *Mascaras, Trenzas, y Grenas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185, 197–98 (1994)).

192. See Richard K. Sherwin, *Too Late for Thinking*, 15 LAW, CULT. & HUMANS. 30, 41 (2019) (“The issue . . . is not whether affects, feelings, and emotions play a role in the construction of social, political, and legal meaning. They do. The more challenging question is how this occurs, and with what impact upon our social, political, and legal institutions?”).

193. Susan A. Bandes & Jeremy A. Blumenthal, *Emotion and the Law*, 8 ANN. REV. L. & SOC. SCI. 161 (2012); see also Sara Ahmed, *Affective Economies*, 22 SOC. TEXT 117, 119 (2004) (“In . . . affective economies, emotions *do things*, and they align individuals with communities . . . through the very intensity of their attachments. Rather than seeing emotions as psychological dispositions, we need to consider how they work, in concrete and particular ways, to mediate the relationship between the psychic and the social, and between the individual and the collective.”).

194. My focus here on White-specific socialization messages should not be taken to suggest that there are no other influential affect-building messages on policing that are dispersed throughout broader society, including through depictions of police in popular media. See, e.g., Mary Beth Oliver, *Portrayals of Crime, Race, and Aggression in “Reality-Based” Police Shows: A Content Analysis*, 38 J. BROAD. & ELEC. MEDIA 179, 179 (1994) (describing how television shows such as “Cops” overrepresented violent crime, White people as police officers, Black and Hispanic people as criminals, and crime clearance rates). It is undoubtedly true that these broader positive messages on policing build and reinforce this affective valence. See, e.g., Valerie J. Callanan & Jared S. Rosenberger, *Media and Public Perceptions of the Police: Examining the Impact of Race and Personal Experience*, 21 POLICING & SOC’Y 167, 167 (2011) (finding that “[c]onsumption of crime-related media increased confidence in the police among White respondents[] but had no effect on Latinos or African-Americans”). My point,

One subset of a recent but rapidly growing area of childhood development research that focuses on White racial socialization strategies seeks to develop an understanding of how White people's affective relationship to policing is formed.¹⁹⁵ This branch of research builds on prior work suggesting that White people understand their racial experiences and racial identities to comprise “the default category or the invisible norm,”¹⁹⁶ and that children as young as three months old are aware of racial differences and “begin to internalize implicit biases and racial stereotypes from their environments by age [three].”¹⁹⁷ White racial socialization literature finds that those ideas are developed through socialization messages that avoid discussing race or racial discrimination.¹⁹⁸ And new research suggests that those socialization messages are shaped, to a large degree, by the social context in which White children and their families live, suggesting that the persistent spatial and social segregation described in Part II.C “shapes parents’ understandings of racial issues, their motivation to teach children about those issues, and the specific lessons they wish to communicate.”¹⁹⁹ In this way, we can understand that the social construction of race occurs, in large part, at home.²⁰⁰

For example, whereas researchers found that non-White caregivers tend to stress explicit racial education, including instilling cultural pride and guarding against bias, “when given the opportunity to educate their children about racial discrimination . . . most White parents had little to say.”²⁰¹ Simultaneously,

however, is that there is a type of heretofore underexplored White-specific socialization that meaningfully communicates messages about policing from a very young age, and from trusted individuals.

195. See Lisa B. Spanierman, *Confronting Whiteness in Developmental Science: Disrupting the Intergenerational Transmission of White Racism*, 32 J. RSCH. ON ADOLESCENCE 808, 808–09 (2022) (summarizing the results of the approximately two-dozen studies of White racial socialization). “There is no greater indictment of developmental science than the fact that it has failed to produce empirical research that explains: (1) how White youth learn to be racist, (2) when White youth learn to be racist, (3) the specific individuals who teach White youth to be racist, (4) the specific institutions that reinforce racist beliefs among White youth, and (5) the consequences of White youth’s racist behaviors in childhood, adolescence and adulthood including domestic terrorism.” (emphasis removed). Eleanor K. Seaton, *What’s Whiteness Got to Do With It?*, 32 J. RSCH. ON ADOLESCENCE 938, 940 (2022) (discussing the pressing need for further research into White racial socialization).

196. Marcus Bell, *Invisible No More: White Racialization and the Localness of Racial Identity*, 15 SOC. COMPASS 1, 1 (2021).

197. Gail M. Ferguson, Lauren Eales, Sarah Gillespie & Keira Leneman, *The Whiteness Pandemic Behind the Racism Pandemic: Familial Whiteness Socialization in Minneapolis Following #GeorgeFloyd’s Murder*, 77 AM. PSYCH. 344, 348 (2022) (summarizing earlier research).

198. See Ana Lisa Padron Eberline & Carolyn K. Shue, *Family Communication About Race and Culture: Do White Families Talk About Race?*, 73 COMM’N STUD. 171, 172, 183–84 (2022) (finding that Whites’ primary socialization messages about race take form as egalitarian, colorblind universalism, with “[W]hite privilege . . . found to be the least discussed strategy” among participants).

199. Tanya Nieri & Justin Huft, *Contextual Factors in Ethnic-Racial Socialization in White Families in the United States*, 114 SOCIETIES 1, 9 (2023).

200. See *supra* Part II.A.

201. Chardée A. Galán, Shannon Savell, Melvin Wilson & Daniel S. Shaw, *Observational Approach to Examining White Parents’ Racial Socialization Practices with Adolescent Youth*, 32 J. RSCH. ON ADOLESCENCE 883, 890 (2022).

White children “receive[] the message that they should not notice or talk about race, lest they may appear racist, and that racism is steadily becoming a thing of the past.”²⁰² Instead of addressing race and discrimination head-on, White caregivers tend to stress “colorblindness” as their primary racial socialization strategy while avoiding more explicit messages about race.²⁰³

Yet researchers have found that “even when explicit messages about race are not openly conveyed, White parents still impart implicit messages through their behaviors and what they do *not* say.”²⁰⁴ As one researcher of White socialization describes, one of the most prominent of these implicit messages is to *actively forget* about race, racism, and racial meanings. “The process of forgetting may be integral to becoming (and remaining) White. If ‘forgetting’ is a ‘socially organized’ and active part of identification processes, then what we choose to forget, to exclude, to keep silent, and [to keep] private is also key to that identity.”²⁰⁵ Such implicit messages have been found to systematically socialize Whites to deny and forget racial meanings²⁰⁶ while simultaneously relying upon racial stereotypes, “which [are] used to explain inequities.”²⁰⁷ This reliance leads to an inability “to detect, understand, or intervene with racism.”²⁰⁸ Socialization messages that stress colorblindness, racial avoidance, and forgetting racial meanings—paired with others suggesting that racial inequalities result from “intrinsic or essential differences between racial groups”—have been shown to develop anti-Black biases in children as young as four years of age and “may lead children to avoid playing with Black peers.”²⁰⁹

202. Bartoli et al., *supra* note 187, at 132–33.

203. *Id.* at 133; cf. Baldwin Clark, *supra* note 83, at 3051–54 (detailing the anti-CRT movement’s use of “colourblind vocabulary” to push an “explicitly colour conscious” agenda).

204. Bartoli et al., *supra* note 187, at 126 (italics in original).

205. “Given . . . White’s social immersion in color-blind discourse, racial pressure to forget looms large.” Dreama G. Moon, “*Be/coming*” *White and the Myth of White Ignorance: Identity Projects in White Communities*, 80 W.J. COMM’N 282, 297 (2016) (quotation omitted). One recent study suggests that avoiding the subjects of race and racism continues far past childhood. See Koji J. Takahashi, Hakeem J. Jefferson & Allison Earl, *White Racial Identity, Political Attitudes, and Selective Exposure to Information About Racism*, PREPRINT (June 2, 2023) (on file with author) (finding “consistent evidence that White Americans were disinclined to read information about racism, even when it affirmed their attitudes”). “These findings illustrate how threats to White racial identity shape how people select information about racism—one of the most well-tested remedies for pervasive underestimations of racial inequality.” *Id.* (citations omitted).

206. See Baldwin Clark, *supra* note 83, at 3054–56 (describing how the contemporary movement to ban critical race theory and other forms of race-conscious education actively work to shield White children from grappling with this country’s racial history, deployed in the language of White innocence). See, e.g., Brittany Farr, *Concealing Martial Violence*, ENTER. & SOC’Y 1, 7 (2023) (arguing that the affective economy that mobilized fear of Black rebellions allowed White people to “easily justify and erase such wide-scale violence” of the 1919 Elaine Massacre—a White race riot where hundreds of White men killed hundreds if not thousands of Black farmers).

207. Bartoli et al., *supra* note 187, at 133.

208. *Id.*

209. Michael T. Rizzo, Tobias C. Britton & Marjorie Rhodes, *Developmental Origins of Anti-Black Bias in White Children in the United States: Exposure to and Beliefs About Racial Inequality*, 119 PNAS 1, 2 (2022).

White racial socialization strategies that stress White perspectives as “normal” and universal, avoid discussions of discrimination and racial violence, emphasize colorblindness, and equate safety with other-group avoidance all work together to shape White people’s affective orientation toward policing. Indeed, early precursors to legitimacy theory (discussed in Part III.A) suggest that White people’s baseline belief in police legitimacy reflects a generally supportive affective orientation toward authority, which “children develop . . . during the socialization process.”²¹⁰

In this way, White people are socialized into legal endearment to policing. For example, one recent study found significant racial discrepancies in Black and White parents’ socialization messages to their children about the police. Black parents were much more likely than White parents to communicate the need for their children to remain safe during police interactions and to show police “unequivocal compliance”—regardless of whether Black parents viewed the police as legitimate or not.²¹¹ The same was not true of White parents. Despite emphasizing overall positive socialization messages about the police, White parents were less concerned with communicating messages to their children about complying with the police and far less likely to communicate with their children about strategies to stay safe during interactions with the police.²¹² Instead, White parents tended to communicate different implicit messages about staying safe and race—including avoiding “certain areas, which happen to be Black”²¹³—and suppressing interracial relationships.²¹⁴

210. “If legitimacy is a belief that develops during socialization and is then maintained as an affective residue, this will have important implications for legal authorities. . . . If such a cushion of support does not exist, leaders in need of discretionary authority will be unable to generate it quickly. On the other hand[,] beliefs in legitimacy of authority, once developed, will be stable over long periods.” TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 66–67 (1990).

211. See April et al., *supra* note 175, at 15422 (finding a racial difference in the socialization of children to comply with police commands, and suggesting that “it may be the case that individuals who have a greater belief in police legitimacy may want their children to comply with police because of respect or deference toward the police, whereas others may be motivated to want their children to comply with police because of concerns for their children’s safety”). *But see* Kevin Drakulich, Eric Rodriguez-Whitney & Jesenia Robles, *Why White Americans More Frequently Fail to View the Police Critically: A Subtle but Vital Shift in Focus*, 19 DU BOIS REV. 1, 21–22 (2022) (finding that White people’s racial resentment “significantly mediated the effect of [racial differences]” between White people’s and Black people’s views of the police, suggesting that “views about the police are *primarily* shaped by views of race, specifically views that minimize historical and contemporary discrimination and are rooted in a resentment of perceived efforts to upset the racial status quo”).

212. See April et al., *supra* note 175.

213. “Parents did not view these as race-related values, but rather values about character.” Bartoli et al., *supra* note 187, at 131. “The parents in our study *knew* that race matters, but they *wanted* it *not* to matter.” *Id.* at 132.

214. See Timothy J. Lensmire, *How White Supremacy is Reproduced in the Relations of White People to Other White People, With Some Notes on What This Means for Antiracist Education*, 36 INT’L J. QUALITATIVE STUD. EDUC. 1496, 1500 (2022) (finding that attachment to White identity was motivated, for some, by fear “of other [W]hite people: a fear of [W]hite parents whose love and support might prove dependent on . . . pledging allegiance to [W]hiteness”).

Additionally, researchers have been especially motivated to understand White racial socialization on policing following the murder of George Floyd and the 2020 uprisings. One study, consisting of qualitative interviews with a group of thirty mostly middle- and upper-class White parents in Ohio, found that although several parents expressed abstract support for Black Lives Matter (BLM), many of them pivoted quickly to discussing the violence of rioters and protestors.²¹⁵ “Similarly, after expressing support for BLM, some parents went on to talk about respect for the police and seeing ‘both sides.’ For example, one parent stated, ‘. . . it breaks my heart because I would say almost every police officer I know is a good person and does a great job.’”²¹⁶ Others suggested not wanting to publicly support BLM “due to not wanting to upset friends or family who are police officers.”²¹⁷

Another study limited its scope to messages about Floyd’s death that White mothers who lived within the Twin Cities communicated to their children. It found that “regardless of geography, [many participants] viewed themselves as *outsiders* to the problem of police brutality and systemic racial oppression.”²¹⁸ That is, many White parents who lived in the same city and were served by the same police department whose officers murdered Floyd communicated to their children that they were politically disconnected from the events.

A third study sampled two groups of White parents of White adolescents: one group in 2019 and one group in 2020. It found that although parents in the 2020 sample were twice as likely to discuss race and policing as parents in the 2019 sample, the 2020 discussions were less likely than the 2019 sample to acknowledge racism, even while specifically referencing the murder of George Floyd.²¹⁹ “Thus, although the high rates of discussion in 2020 may appear, at first, to indicate progress toward racial justice, the content of these discussions suggests otherwise.”²²⁰

White racial socialization messages about the specific responses to the murder of George Floyd and subsequent events show the interoperation of the experiential, structural, and social dimensions of White people’s relationship to policing. We might understand a White parent who describes their “heart being broken” by the events—not because of Floyd’s death, but because the police they know are “good people”—to reflect an affective relationship toward policing.

215. See McKenna Freeman, Andrew Martinez & Vaishali V. Raval, *What Do White Parents Teach Youth About Race?*, 32 J. RSCH. ON ADOLESCENCE 847 (2022).

216. *Id.* at 851.

217. *See id.* at 852.

218. Ferguson et al., *supra* note 197, at 359 (italics in original).

219. See Jamie L. Abaied, Sylvia P. Pery, Aya Cheaito & Vanessa Ramirez, *Racial Socialization Messages in White Parents’ Discussions of Current Events Involving Racism with Their Adolescents*, 32 J. RSCH. ON ADOLESCENCE 863, 876–77 (2022) (finding White parents were likely to use Floyd’s murder to communicate messages downplaying racism and emphasizing colorblindness, rioting, and looting).

220. *Id.* at 877.

There is also an experiential and structural component in their messaging: “Every police officer *I know*” (structural) “. . . does a *great job*” (experiential). One is left to wonder whether these types of messages reflect actual personal experiences of being policed by a particular officer, observation of that officer’s work in White communities, or direct observation of that officer’s work with non-White people. The experiential and structural dimensions suggest that the above options are unlikely. Instead, research into White racial socialization indicates that these types of assertions about the “goodness” of police reflect generalized affective beliefs, developed at an early age, about the role of police in the White epistemic universe.²²¹

One might then infer that a central solution to overcoming legal endearment would be to raise White awareness of and empathy for the racialized experiences of policing that Black people and other people of color face on a regular basis.²²² Certainly, generational ruptures—such as the 2020 uprisings—have achieved mass awareness and seemed to momentarily raise empathetic responses. But these changes tend to be fleeting, as empathy alone cannot dismantle the structural mechanisms that give rise to legal endearment and ensure its resiliency.²²³

221. See also Rebecca Onion, *Playing Good Cop*, SLATE (Aug. 27, 2020), <https://slate.com/human-interest/2020/08/officer-friendly-police-copaganda-history.html> [<https://perma.cc/XW4S-PHNN>] (describing “Officer Friendly” program from 1970s–1990s that sent police into kindergarten through second-grade classrooms as a form of policing “socialization—making children into the kinds of adults who respected the police”).

222. Cf. “*Solidarity is Not a Market Exchange*”: *An Interview with Robin D.G. Kelley*, BLACK INK (Jan. 16, 2020), <https://black-ink.info/2020/01/16/solidarity-is-not-a-market-exchange-an-interview-with-robin-d-g-kelley/> [<https://perma.cc/E52J-ZCG5>] (“[E]mpathy . . . requires identifying with the person you’re empathizing with. And sometimes you only identify with those whom you recognize. . . . We can begin to understand not by simply imposing our own selves but by stepping *outside of ourselves*.”) (italics in original).

223. In June 2020, 60 percent of White Americans expressed at least some support for Black Lives Matter, as did 87 percent of Black Americans. Just three months later, White support fell to 45 percent, while Black support increased to 89 percent. See Deja Thomas & Juliana M. Horowitz, *Support for Black Lives Matter Has Decreased Since June but Remains Strong Among Black Americans*, PEW RSCH. CTR. (Sept. 16, 2020), <https://www.pewresearch.org/fact-tank/2020/09/16/support-for-black-lives-matter-has-decreased-since-june-but-remains-strong-among-black-americans/> [<https://perma.cc/9L3V-U32C>]; see also Kevin Drakulich, Kevin H. Wozniak, John Hagan & Devon Johnson, *Whose Lives Mattered? How White and Black Americans Felt About Black Lives Matter in 2016*, 2021 L. & SOC. REV. 227 (2021) (finding similar disparities). As legal endearment makes clear, the barriers to building empathy are structural. Furthermore, I am skeptical that White supremacy results simply as a failure of empathy. Such a limited description suggests that racial discrimination and racism stem from “ignorance toward the racial subaltern conditions and a lack of enlightenment” as opposed to “[f]oregrounding [the] racial violence” that is central—not incidental—to the production of American society. See Susanne Leeb, Kerstin Stakemeier & Denise Ferreira da Silva, *An End to “This” World: Denise Ferreira da Silva Interviewed by Susanne Leeb and Kerstin Stakemeier*, TEXTE ZUR KUNST (Apr. 12, 2019), <https://www.textezurkunst.de/en/articles/interview-ferreira-da-silva/> [<https://perma.cc/W9PG-RHQY>]. “Every [W]hite person I interviewed expressed to me that they knew relations between the police and communities of color were strained prior to 2020.” Muriel Ambrus, *Contextualizing Resistance in Minneapolis Post-George Floyd: Race, Class, and the Paradox of “Nice,”* 12 RAGE, CHANGE & LIBERATION 1, 18 (2022) (describing interviews of Minneapolis residents on the topics of

Furthermore, the mechanisms of White racial socialization are reinforced constantly. As LaToya Baldwin Clark has recently explored, the White socialization pressure to forget about the significance of racial meanings is actively replicated in a national movement to ban critical race theory (CRT) and antiracist education more broadly.²²⁴ The anti-CRT movement originated as a backlash to the 2020 racial justice uprisings following the murder of George Floyd.²²⁵ In response to widespread awareness of police violence, the anti-CRT movement is pushing for a “curriculum [that is] race-neutral and emotionally attentive to White peoples’ lack of responsibility and White children’s general innocence.”²²⁶ By tracing the anti-CRT movement’s origins and goals, we can begin to appreciate how its proposed curriculum is likely to have the effect of reproducing White people’s legal endearment with the police.

White socialization strategies provide a final clue on reconciling the paradox presented at the beginning of the Article between stated White support for racial equality and continuing support for policing, even when confronted with significant evidence of policing’s racially subordinating effects in Black, Indigenous, and other communities of color.²²⁷ These strategies work to diminish (and even forget) how police contribute to racial discrimination.²²⁸ At the same time, they stress a combination of egalitarianism through colorblindness, safety through cross racial avoidance, and merit as the driver of racial disparities.²²⁹ Together, these strategies give form to White people’s affective orientation to policing, transforming evidence of policing’s racial disparities into the natural consequences of law-and-order policing that simply responds to the criminality and dangerousness of communities of color, and reifies the perceptions of White innocence and safety.²³⁰

race and policing before and after Floyd was murdered, suggesting racial ignorance of the problem is not borne out); *see also supra* note 182 (suggesting White people exhibit less empathy with Black victims of police violence and more empathy with White officers perpetrating such violence).

224. *See generally* Baldwin Clark, *supra* note 83.

225. *See* TAIFHA ALEXANDER, LA TOYA BALDWIN CLARK, KYLE REINHARD & NOAH ZATZ, CRT FORWARD: TRACKING THE ATTACK ON CRITICAL RACE THEORY 7–9 (2023).

226. Baldwin Clark, *supra* note 83, at 3037.

227. *Cf.* Matthew W. Hughey, *Superposition Strategies: How and Why White People Say Contradictory Things About Race*, 119 PNAS e2116306119, at 1 (2022) (“Both racist and antiracist attitudes are simultaneously alive and dead in the same individual or group. Contradictory White discourse helps maintain a sense of self-efficacy and coherent White racial identity within conflictual and politically supercharged social situations, as well as within racially unequal social structures.”).

228. “The patterns that emerge in what we remember and what we do not remember belie any randomness; [they] expose a pattern of [W]hiteness at work.” Wander et al., *supra* note 62, at 24.

229. Baldwin Clark shows how recent fights over antiracist education seek to preserve White socialization dynamics in the classroom. She suggests the combination of colorblindness and claims of egalitarianism fuel a project of White innocence that “resists racial awareness, race consciousness, and racial remedies.” *See* Baldwin Clark, *supra* note 83, at 3063.

230. *Cf.* Cao, *supra* note 104, at 12 (“According to the symbolic interactionist perspective, when people express approval or disapproval of a particular act according to their own moral standard, they never react solely to the act itself. Their reaction is commonly contingent on the characteristics of the actor (e.g., ethnicity/race, class) and/or situational circumstances.”).

Having now grasped the interoperation of the four dimensions of White people's relationship to policing—the symbolic, the experiential, the structural, and the social—and how they give rise to White people's legal endearment with policing, I now turn to a discussion about how the theory can be applied in practice. To do so, I examine some of the ongoing scholarly and policy debates on police reform and abolition and demonstrate how taking notice of legal endearment in these debates raises important questions about how we define, diagnose, and tackle the problem of racialized policing.

III.

MAKING LEGAL ENDEARMENT VISIBLE IN LEGAL AND POLICY DEBATES ON POLICE REFORM AND ABOLITION

During the past decade, the problems of racialized policing have been brought into renewed focus.²³¹ For ten years, mass protests, riots, uprisings, grassroots groups, and movement groups have amplified a seemingly constant string of police killings—many of unarmed Black children, adolescents, and adults, of all genders.²³² Bystander cellphone videos documenting these deaths have forced a popular confrontation of recorded moments of extraordinary violence and sparked a larger conversation about the everyday indignities of policing that befall communities of color.²³³

This renewed focus on racialized police violence has been especially prevalent following the global uprisings for racial justice that followed the killings of George Floyd, Tony McDade, and Breonna Taylor in the summer of 2020, marking a shift for many from pushing for more liberal-to-progressive policing reforms to calling for police *abolition* altogether.²³⁴ The scale of these

231. Indeed, at the time of publication, it will be the ten-year anniversary of the birth of the #BlackLivesMatter hashtag following the acquittal of George Zimmerman for killing Trayvon Martin and the movements it went on to inspire. See Elizabeth Day, *#BlackLivesMatter: The Birth of a New Civil Rights Movement*, GUARDIAN (July 19, 2015), <https://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement> [<https://perma.cc/58F3-APG8>] (detailing the history of the #BlackLivesMatter hashtag and subsequent organization).

232. See *Fatal Force*, WASH. POST (Feb. 6, 2024), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/RZP3-D5VN>] (tracking 8,759 fatal police shootings since 2015, and finding that Black people are disproportionately killed by police, particularly young men).

233. Critical race theorists have been at the forefront of legal scholarship examining this relationship. See KIMBERLÉ W. CRENSHAW & ANDREA J. RITCHIE, *SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN 1* (2015) (drawing attention to Black women's vulnerability to police violence, which often goes unnamed); CARBADO, *supra* note 161 (demonstrating how Fourth Amendment doctrine developed to produce repeated encounters for Black people with the police, increasing the chances they will be exposed to police violence); Paul Butler, *The System is Working the Way It's Supposed To: The Limits of Criminal Justice Reform*, 2019 FREEDOM CTR. J. 75, 81 (2019) (questioning liberal reform efforts that attempt to "fix a system that is not actually broken," arguing that "[t]he most far-reaching racial subordination stems not from illegal police misconduct, but rather from legal police conduct").

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

protests and the accompanying calls to defund and abolish the police required serious engagement with movement goals,²³⁵ regardless of agreement or discord with their approaches.²³⁶

Such engagement has reinvigorated debates within legal scholarship and policy circles about how to frame the problem of racialized policing, leading scholars to grapple with movement calls to radically transform policing and how law and policy may respond to such calls.²³⁷ Examples include Amna Akbar's normative endorsement of abolitionism's nonreformist goals,²³⁸ Jocelyn Simonson's development of the power-shifting framework for understanding movement demands and accompanying reforms,²³⁹ Barry Friedman's approach to disaggregating the police function,²⁴⁰ Jessica Eaglin's work to contextualize

[<https://perma.cc/BFJ6-CE9S>]; Peter O'Dowd & Samantha Raphelson, *Abolishing the Police '100%' Means Just That*, WBUR (July 17, 2020), <https://www.wbur.org/hereandnow/2020/07/17/black-lives-matter-activist> [<https://perma.cc/SJL9-BMGV>] (interviewing Miski Noor, organizer with Black Visions Collective of Minnesota).

235. "You've already got folks on the ground [in Minneapolis] that have had two cycles of budget fights around defunding the police based on divestment. So the part of this people don't understand is the continuity of these ideas. They don't just come out of nowhere. People aren't just yelling stuff randomly. It got picked up nationally because people were, like, 'This makes sense.'" Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, NEW YORKER (May 7, 2021), <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition> [<https://perma.cc/2JL6-D2R3>] (quoting Mariame Kaba, who described the organizing work of Black Visions Collective, Reclaim the Block, and MPD150 in the years before Floyd was murdered).

236. See generally David A. Sklansky, *Police Reform in Divided Times*, 2 AM. J.L. & EQUAL. 3, 23–27 (2002) (arguing against some central demands of the line of abolition through defunding police departments, while acknowledging the benefits of calls to shift responsibilities for certain types of social crises away from police); Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOS. REV. (Aug. 1, 2017), <https://www.bostonreview.net/articles/tracey-l-meares-public-good-gone-bad/> [<https://perma.cc/7JZL-9GAS>] (arguing that "policing as we know it must be abolished before it can be transformed," including redefining its central function as a public good).

237. Many scholars, I should note, engaged the ideas of police abolition before the summer of 2020. See, e.g., Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020) [hereinafter *Abolitionist Horizon*]; Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 67 UCLA L. REV. 1108 (2020); Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613 (2019); Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1 (2019); Akbar, *Radical Imagination*, *supra* note 12.

238. See Akbar, *Abolitionist Horizon*, *supra* note 237, at 1788; Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 90, 97–106 (2020) [hereinafter *Demands & Political Economy*] (tracing the history of "non-reformist-reforms" from André Gorz to Ruth Wilson Gilmore's rearticulation as "changes that, at the end of the day, unravel rather than widen the net of social control through criminalization").

239. Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 778 (2021) ("[T]he power lens opens up discussions of reform to first-order questions about how the state should go about providing safety and security in our time, with or without the police as we know it.").

240. Barry Friedman, *Disaggregating the Policing Function*, 169 U. PA. L. REV. 925, 926 (2021) (arguing for "mov[ing] police to the background, bringing in other agencies of government to address the actual problems police face on a day-to-day basis. . . . [and] reduc[ing] criminalization").

the call to “defund the police,”²⁴¹ David Sklansky’s evaluation of the competing political and social responses to abolition,²⁴² Jamelia Morgan’s response to abolitionist anxieties,²⁴³ or Rachel Barkow’s meditation on abolition’s possibilities and perils.²⁴⁴

Although the above scholars debate the relative merits of one type of policing reform over another, they appear to some extent to agree that policing’s racial disparities can shape a subordinating experience of policing for people of color.²⁴⁵ This focus on policing’s subordinating effects, though understandable, has meant that White people’s relationship with policing has remained largely underexamined in the debates over police reforms in law and policy.²⁴⁶ To be clear, I do not suggest that the focusing on policing’s subordinating effects is misguided. Indeed, Monica Bell has powerfully demonstrated how sustained attention to Black people’s estranged relationship to policing has profound implications for our understanding and evaluation of prevailing police reform proposals.²⁴⁷ Instead, I argue that there is a lot to gain by giving sustained attention to policing’s superordinating effects as well.

Applying the theory of legal endearment in the context of White people’s relationship to policing provides us with three insights that are otherwise missed in the current discourse on policing reform: one descriptive, one evaluative, and

241. Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. 120, 120 (2021) (distinguishing between four alternative interpretations of the call to “defund” the police, and “encourag[ing] the public to embrace the state of confusion produced by the demand”).

242. Sklansky, *supra* note 236, at 3–5.

243. Jamelia Morgan, *Responding to Abolition Anxieties: A Roadmap for Legal Analysis*, 120 MICH. L. REV. 1199, 1206–19 (2022).

244. Rachel E. Barkow, *Promise or Peril?: The Political Path of Prison Abolition in America*, 58 WAKE FOREST L. REV. 245, 250–57 (2023).

245. Critical race scholars have described policing’s racializing function—that is, how policing is one modality through which racial meanings are both produced and experienced. But these accounts tend to focus on the racializing effects of policing on non-White groups, particularly Black, Latine, and Muslim American communities, including my own past work. *See generally* Emmanuel Mauleón, *Black Twice: Policing Black Muslim Identities*, 65 UCLA L. REV. 1326 (2018) (examining the overlapping regimes of policing and counterterrorism surveillance directed at Black Muslims); Devon W. Carbado, *(E)racizing the Fourth Amendment*, 100 MICH. L. REV. 946 (2002) (examining the parallel development of Fourth Amendment doctrine and racial ideologies); AZIZ, *supra* note 58 (examining the racializing effects of Islamophobia on Muslims and people of Middle-Eastern and Arab descent more broadly). I use the term “Latine” (pronounced lah-TEEN-eh) where others might use “Latinx” or “Latino/a” as a gender-neutral alternative to the umbrella term “Latino” for people of Latin American descent. This reflects both personal and political preferences, charting the ease of incorporation into my personal speech as well as following several experiences within Latin American contexts where ungendered “-e” alternatives are being adopted with greater frequency than alternative forms. *See* Tess Garcia, *Latine or Latinx? What Young People of American Descent Think of These Terms*, TEEN VOGUE (Oct. 12, 2022), <https://www.teenvogue.com/story/latine-vs-latinx-what-young-people-think> [https://perma.cc/5JUD-B445].

246. There are, of course, exceptions, such as Angela Onwuachi-Willig’s brilliant cross reading of the cases of Emmett Till and Trayvon Martin, which exposes “their shared role in policing the boundaries of [W]hiteness as a means of preserving the material and the psychological benefits of [W]hiteness.” Onwuachi-Willig, *supra* note 78, at 1113.

247. *See* Bell, *supra* note 32, at 2086–89.

one analytical. First, by emphasizing the symbolic, experiential, structural, and social dimensions of White people's relationships to policing as described in Part II, we can reexamine much of the existing data on policing's racial disparities to gain a more fulsome description of the problem of racialized policing. This description emphasizes that the White relationship to policing is just as racialized as any other. Second, as I discuss below, legal endearment provides us with yet another tool for evaluating and responding to policing reform proposals.

Finally, the theory of legal endearment helps us analyze how the current discourse and strategies for addressing the problems of racialized policing are themselves shaped by such endearment. That is, even when we discuss how to best address racially subordinating forms of policing, our conceptions about the appropriate or ideal form for policing (to which we are pegging our reform goals) is itself informed by the dominant group's legally endeared attachments to policing. Putting a finer point on it, legal endearment operates as an unmarked barrier to achieving transformative policing reforms by setting the terms of the reform debate itself. And these terms, I argue, are more favorable to the maintenance of the institution of policing, rather than the functions that that institution is intended to serve: public safety and security for all. That is, White legal endearment to policing impedes attempts to reimagine a system of public safety and security that does not necessarily rely on policing at its center. This is because such legal endearment emphasizes a view that policing is necessary for maintaining order and security, because police help ensure a White-dominant racial order and White people's security.

Accordingly, the theory of legal endearment can help us better evaluate the strengths, weaknesses, and deep resistance to more radical reforms that aim to decouple the attainment of public safety and security from the system of policing we know today. My hope is that by focusing on White people's legally endeared relationship to the police, we may carve out an additional path to more transformational structural reforms. Below, I take some first steps along that path.

To begin, I show how legal endearment can help us better understand some of the unmarked assumptions of one strain of liberal policing reforms—that of legitimacy theory and procedural justice. I then evaluate the abolitionist proposal to “defund the police,” paying attention to both subtractive (reducing police budgets) and additive (reinvesting those budgetary resources) moves to ask how legal endearment might inform our analysis of whether any specific budgetary commitment is understood as a “reformist” or “nonreformist” reform. Finally, I examine how legal endearment can shape our current discourse on policing reforms, by analyzing the common critique that police abolition and its more radical reform proposals are politically unpopular and therefore political nonstarters. I also suggest that understanding the role of legal endearment in erecting a barrier to such reforms should make us question the value or meanings to be drawn from such measures of popularity.

A. *Evaluating Liberal Police Reform Proposals: Legitimacy Theory and Procedural Justice*

Accounting for legal endearment can help shed light on why some liberal police reforms continue to face resistance and why, even when successful, their implementations have not yielded the types of transformative possibilities their proponents might expound.²⁴⁸ To demonstrate the value of considering legal endearment, I examine the scholarship on police legitimacy and procedural justice. This body of scholarship provides a fruitful backdrop for this analysis, both because of its profound influence on the field and because of unnamed assumptions regarding White people's support for the police and beliefs in police legitimacy. Namely, this scholarship takes for granted the presumption that people should view the institution of policing as legitimate. It also either assumes that we already understand why White people exhibit such high support for the police and that such support is unproblematic, or that this high degree of support need not be examined. Legal endearment challenges those assumptions head-on.

1. *Legitimacy Theory and Procedural Justice Background*

For more than a quarter century, scholars have explored how different organizational authorities—from law enforcement to business leaders—obtain legitimacy from those over whom they exercise their authority.²⁴⁹ Critically, early research suggested that the greatest antecedent to increasing perceptions

248. See, e.g., Tracey L. Meares, *The Legitimacy of Police Among Young African-American Men*, 92 MARQ. L. REV. 651, 666 (2009) (“Legitimacy in law enforcement . . . is [a] movement with the potential to transform the way this nation does law enforcement, achieves community safety, and heals longstanding rifts between police and minority communities.”). *But see* Derecka Purnell, *What Would Have Saved Tyre Nichols’ Life?*, GUARDIAN (Jan. 30, 2023), <https://www.theguardian.com/commentisfree/2023/jan/30/what-would-have-saved-tyre-nichols-life> [https://perma.cc/58F3-APG8] (noting that many of the common police reforms that liberal scholars advocate—from increased department diversity, to body-worn cameras, to increased use of force and de-escalation training, to a requirement to intervene, to comprehensive reporting requirements—were all implemented in the Memphis Police Department, whose officers beat Tyre Nichols to death following a traffic stop). See also RODRIGUEZ, *supra* note 57, at 215–16 (2021) (“While liberal-to-progressive reformism attempts to protect and reproduce the institutional and cultural-political coherence of existing state and extra-state carceral/policing systems by adjusting, fixing, and/or refurbishing them, abolitionist praxis addresses the historical roots of those systems in relation to oppressive, continuous, targeted violence (war).”).

249. See Jeffrey A. Lenowitz, *On the Empirical Measurement of Legitimacy*, 61 NOMOS 293, 321 n.2 (2019) (collecting sources). “Authorities draw on legitimacy because it is easier to influence behavior than by so doing than through deterrence.” TYLER, *supra* note 210, at 66. I focus on Tyler’s initial work linking procedural justice, legitimacy, and compliance, both because of the clarity with which he explains the conceptual relationships and to elevate the font from which much of the literature flows. See Justice Tankebe, *Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy*, 51 CRIMINOLOGY 103, 104 (2013) (“Tyler’s work marked a watershed, instigating an explosion in legitimacy research, which has so far shown that procedural fairness is the pivotal point to which judgments about legitimacy are tethered.”) (citation omitted). Tyler’s influence has even turned his name into an adjective form of legitimacy. See, e.g., Robert P. Peacock, Sanja Kutnjak Ivkovich, Maarten Van Craen, Irena Cajner Mraovic, Krunoslav Borovec & Marko Prpic, *External Procedural Justice: Do Just Supervisors Shape Officer Trust and Willingness to Take the Initiative With the Public?*, 33 INT’L CRIM. JUST. REV. 109, 110 (2023) (describing “Tylerian” legitimacy) (emphasis added).

that an authority's power was legitimate was to emphasize procedural justice. Since then, legitimacy theory and procedural justice have remained at the forefront of research and reforms in policing, shifting the conversation on policing's racial disparities and how to best resolve them.

The influence of legitimacy theory and procedural justice is difficult to overstate.²⁵⁰ For example, following the highly publicized police killings of Michael Brown and Eric Garner in 2014, President Barack Obama convened the Task Force on 21st Century Policing, whose final report recommendations drew heavily on legitimacy theory.²⁵¹ Indeed, a panoply of familiar reform proposals—from community policing,²⁵² to improved training,²⁵³ to community review boards,²⁵⁴ to implementing body-worn cameras,²⁵⁵ to democratic policing²⁵⁶—have all traced their origins to legitimacy theory.

At its core, the study of police procedural justice supports two findings: first, police can increase their perceived legitimacy by focusing on the fairness

250. A 2013 review “identified 963 unique sources (e.g., published or unpublished documents) on police legitimacy and/or procedural justice and policing. . . . Of the 933 sources [the researchers] obtained, 163 studies reported on 176 police-led interventions aimed at improving legitimacy.” Lorraine Mazerolle, Sarah Bennett, Jacqueline Davis, Elise Sargeant & Matthew Manning, *Legitimacy in Policing: A Systematic Review*, 9 CAMPBELL SYSTEMATIC REV. 1, 43 (2013).

251. See Exec. Order No. 13,684, 3 C.F.R. § 13684 (2015); PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 1 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [<https://perma.cc/BE9C-VUYD>]. “Building trust and nurturing legitimacy on both sides of the police/citizen divide is the *foundational principle* underlying the nature of relations between law enforcement agencies and the communities they serve.” *Id.* (emphasis added).

252. See *Community Policing and Procedural Justice*, CTR. FOR EVIDENCE-BASED CRIM. POL’Y, <https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/community-policing/> [<https://perma.cc/V39T-8GER>].

253. See CCJ TASKFORCE ON POLICING, PROCEDURAL JUSTICE TRAINING: POLICY ASSESSMENT 1 (2021), https://assets.foleon.com/eu-central-1/de-uploads-7e3kk3/41697/procedural_justice_training.234ca94dfcf5.pdf [<https://perma.cc/2Z9Z-PHHH>] (recommending that police adopt both community and internal procedural justice policies).

254. See Robert E. Worden, Heidi S. Bonner & Sarah J. McLean, *Procedural Justice and Citizen Review of Complaints Against the Police: Structure, Outcomes, and Complainants’ Subjective Experiences*, 21 POLICE Q. 77, 78–80 (2018) (discussing the relationship between procedural justice and citizen oversight).

255. See Barak Ariel, Alex Sutherland, Darren Henstock, Josh Young, Paul Drover, Jayne Skyes, Simon Megigks & Ryan Henderson, “Contagious Accountability”—A Global Multisite Randomized Controlled Trial on the Effect of Police Body-Worn Cameras on Citizens’ Complaints Against the Police, 44 CRIM. JUST. & BEHAV. 293, 301–04 (2017).

256. See Rick Trinkner, Tom R. Tyler & Phillip Atiba Goff, *Justice from Within: The Relations between a Procedurally Just Organizational Climate and Police Organizational Efficiency, Endorsement of Democratic Policing and Officer Well-Being*, 22 PSYCHOL., PUB. POL’Y, & L. 158 (2016) (finding that procedurally fair departmental environments increased officer support for the principles of democratic policing); Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1881 (2015) (drawing on legitimacy research to support the participation of communities in setting police policies and procedures). Tracey Meares has likewise suggested that the implementation of procedural justice can, in turn, boost democratic participation. See Tracey Meares, *Policing and Procedural Justice: Shaping Citizens’ Identities to Increase Democratic Participation*, 111 NW. U. L. REV. 1525 (2017).

of the procedures through which they exercise their authority;²⁵⁷ and second, fair procedures can help insulate perceptions of police legitimacy even when an individual experiences an undesired outcome during a police interaction, such as a traffic citation or an arrest.²⁵⁸ As Tracey Meares summarized, “[I]n their interactions with legal authorities, people want to believe that the authority with whom they are dealing [with] believes ‘that they count.’ And, people make this judgment based on how they are treated, as they cannot usually read minds.”²⁵⁹

Accordingly, procedural justice is an attractive focus for those interested in policing reforms in that it purports to raise perceptions of police legitimacy,²⁶⁰ and such raised perceptions of legitimacy in turn build voluntary compliance with authority—all without recalibrating the underlying laws being enforced.²⁶¹

257. See Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC’Y REV. 513, 535 (2003) (“The key assumption upon which procedural justice-based policing is based is that evaluations of legitimacy are primarily based on procedural fairness.”). Advocates have developed four tenets of procedural justice to determine whether someone will interpret a given police interaction as fair. See LORRAINE MAZEROLLE, ELISE SARGEANT, ADRIAN CHERNEY, SARAH BENNETT, KRISTINA MURPHY, EMMA ANTROBUS & PETER MARTIN, *PROCEDURAL JUSTICE & LEGITIMACY IN POLICING* 3 (2014). First, the subject should feel that they are treated with dignity and respect; second, they believe the police have trustworthy motives for the interaction; third, they believe police are neutral in their decision making; and fourth, there is an opportunity for individual feedback and community participation in crafting policing policy. See, e.g., DANIELA GILBERT, STEWART WAKELING & VANGHN CRANDALL, *PROCEDURAL JUSTICE AND POLICE LEGITIMACY: USING TRAINING AS A FOUNDATION FOR STRENGTHENING COMMUNITY-POLICE RELATIONSHIPS* 1, 2 (Julia Reynolds ed., 2015) (addressing the *dignity* prong); STANFORD SPARQ & CAL. DEP’T OF JUST., *PRINCIPLED POLICING TRAINING: PROCEDURAL JUSTICE AND IMPLICIT BIAS* (2016) (addressing the *motivation* prong); Worden et al., *supra* note 254, at 78–80 (addressing the *feedback* and *participation* prongs) (citations omitted); Zoë Hobson, Julia A. Yesberg, Ben Bradford & Jonathan Jackson, *Artificial Fairness? Trust in Algorithmic Police Decision-Making*, 19 J. EXPERIMENTAL CRIMINOLOGY 166, 170–71 (2023) (addressing the *neutrality* prong). *But see* Annie Gilbertson, *Data-Informed Predictive Policing Was Heralded as Less Biased. Is It?*, MARKUP (Aug. 20, 2020), <https://themarkup.org/the-breakdown/2020/08/20/does-predictive-police-technology-contribute-to-bias> [<https://perma.cc/DH78-LN25>].

258. See TYLER, *supra* note 210, at 94.

259. Meares, *supra* note 256, at 1531–32.

260. Legitimacy can describe both “the perceived obligation to obey the law and as support for legal authorities.” TYLER, *supra* note 210, at 45. *But see* Tankebe, *supra* note 249, at 124 (studying “a tendency to conflate legitimacy and a related but distinct concept: obligation”).

261. This flexibility is seen as one of procedural justice’s benefits. “Because there is no single, commonly accepted set of moral values against which to judge the fairness of outcomes or policies [within a pluralistic society], such evaluations are difficult to make. People can however agree on the fairness of procedures for decision making.” TYLER, *supra* note 210, at 109. Legitimacy theory has its critics. See e.g., STOP LAPD SPYING COAL., *BURNING BRIDGES: ABOLISHING OUR RELATIONSHIP WITH THE STATE* 1, 10 (Aug. 2022) (“The state ‘courts’ us, puts on dress clothes, and rolls out reform—they negotiate for legitimacy through the dressed up violence of reform.”). Some challenge the metrics through which legitimacy is measured. See, e.g., Lenowitz, *supra* note 249, at 319 (critiquing the theory’s descriptive, empirical, and moral distortions); Erin M. Kearns, Emma Ashooh & Belén Lowrey-Kinberg, *Racial Differences in Conceptualizing Legitimacy and Trust in Police*, 45 AM. J. CRIM. JUST. 190, 190 (2020) (finding “numerous between-race and within-race differences in citizen-driven conceptualizations of legitimacy and trust”). Others suggest legitimacy theory may conflate related concepts such as a perceived obligation to obey. See Tankebe, *supra* note 249, at 103. Still others question its focus on raising perceptions of legitimacy, distinct from building “substantive” fairness. David Melamed, *The Effects of Legitimacy and Power on Perceptions of Fairness*, 45 SOCIO. FOCUS

2. *The “Legitimacy” and “Illegitimacy” Deficit Diagnoses*

Legitimacy theory also responds to decades of research confirming deep and persistent disparities between different racial groups’ evaluations of the police—particularly between White people and Black people.²⁶² These differences can resemble chasms: one study found more than a fifty-point difference between the confidence White people expressed in police (79 percent) and that of Black people (28 percent).²⁶³ Similarly large gaps are found in the procedural justice literature when comparing the differences between White and Black perceptions of police legitimacy.²⁶⁴

Within this literature and its offshoot reforms, scholars, policymakers, and law enforcement officials have leveraged these disparities to diagnose a “legitimacy deficit” within communities of color.²⁶⁵ That is, communities of color—and particularly Black people—exhibit lower perceptions of police legitimacy than do White people. Although there are different theories to explain this so-called “legitimacy deficit,”²⁶⁶ the upshot is that deep divides between communities of color and the police lead to reduced voluntary cooperation with police authority and more coercive forms of policing in these communities.

Responding to this “legitimacy deficit” diagnosis, reform proposals focus on repairing the relationship between communities of color and the police.²⁶⁷ Motivated by this articulation, scholars, advocates, and policing agencies have directed significant efforts to implement legal, organizational, and regulatory reforms aimed at increasing procedurally just policing. In essence, those reforms conclude that treating people of color more fairly should raise both the perceived

125, 139 (2012) (showing legitimacy’s role in obtaining “the acquiescence of the structurally disadvantaged”). Tyler has raised similar concerns about some procedural justice interventions: “If the focus on having opportunities to speak draws people’s attention away from the tangible benefits they might receive from the authorities . . . [p]eople may be satisfied in situations that should be viewed as unfair if judged on objective grounds.” TYLER, *supra* note 210, at 147. The state of community advisory boards bears this out. See Julian Clarke & Barry Friedman, *Community Advisory Boards: What Works and What Doesn’t (Lessons from a National Study)*, 47 AM. J. CRIM. L. 159, 162 (2020) (“Too often [community advisory boards (CABs)] are a result of pro forma efforts by policing agencies to signal a commitment to working with the public—without really working with the public.”).

262. “A recent meta-review of ninety-two studies found that people of color . . . held consistently lower evaluations of the police than non-Hispanic White Americans across a variety of different dimensions of views about the police.” Drakulich et al., *supra* note 211, at 57 (2023) (citing Jennifer H. Peck, *Minority Perceptions of the Police: A State-of-the-Art Review*, 38 POLICING 173–203 (2015)).

263. See Bobo & Thompson, *supra* note 109, at 456. For background on the parallel line of literature measuring *confidence* in policing (which has folded into the conversation on police legitimacy), see Cao, *supra* note 104, at 3, 6.

264. See generally Ivan Y. Sun & Yuning Wu, *Legitimacy and Its Consequences with a Special Gaze at Race/Ethnicity*, in UNDERSTANDING LEGITIMACY IN CRIMINAL JUSTICE, *supra* note 108, at 59–75 (collecting and reviewing studies within legitimacy scholarship that measure racial and ethnic differences in perceptions of police legitimacy).

265. Bell, *supra* note 32, at 2058.

266. See Sun & Wu, *supra* note 264, at 60–62 (detailing the “group-position” and “sense-of-injustice” models to understanding why such racial disparities persist).

267. See, e.g., PRESIDENT’S TASK FORCE, *supra* note 251.

legitimacy of police within these communities and voluntary compliance and cooperation.²⁶⁸

The legitimacy deficit diagnosis of racialized policing is largely missing a robust analysis of why White people exhibit such high and enduring support for police. This support is either taken for granted, seen as unproblematic, or at the very least not an area of policy concern. In this way, the legitimacy deficit framing “highlights positive views about the police as the ideal or goal, and negative views or perceptions of police bias as a problem to be addressed.”²⁶⁹ Such a view, however, is not inevitable, as shown in these hypotheticals:

Imagine instead that researchers understood Black people’s perceptions of police legitimacy to operate as the unnamed baseline, against which White people’s perceptions of legitimacy were evaluated. Here, the view that police were *illegitimate* would not be cast as aberrational, but as appropriate, especially in light of the historical role that police have played in enforcing racially disparate access to public and private spaces, maintaining the color line, and meting out racial violence.²⁷⁰ In this hypothetical, the problem researchers would attempt to resolve might be described as a White “*il*-legitimacy deficit,” instead of a Black “legitimacy deficit.” Such a description would challenge us to craft solutions that raised White people’s perceptions of these illegitimate aims of policing, and perhaps even to curtail the police’s powers in

268. For examples of scholarly work engaging legitimacy theory and procedural justice, see Engel, *supra* note 87, at 445 (supporting Tyler’s findings “that citizens’ perceptions of injustice are based on normative . . . rather than instrumental factors”); Kristina Murphy & Adrian Cherney, *Understanding Cooperation with Police in a Diverse Society*, 52 BRIT. J. CRIMINOLOGY. 181, 196 (2012) (“[T]reating non-minority group members with procedural justice when they question the legitimacy of the law can improve their cooperation levels. For the ethnic minority group, in contrast, it was found that procedural justice had a counterproductive effect on cooperation levels for those who questioned the legitimacy of the law.”). For advocacy engagement, see, for example, GILBERT ET AL., *supra* note 257. For law enforcement engagement, see, for example, Robert E. Worden & Sarah J. McLean, *Research in Brief: Police Legitimacy, Procedural Justice, and the Exercise of Police Authority*, 11 POLICE CHIEF MAG. 14 (Nov. 2015) (casting doubt on procedural justice’s legitimacy-raising potential following a study showing “the effects of police action on citizens’ sense of procedural justice have more to do with *whether* police authority is exercised than with *how* it is exercised”) (emphasis added).

269. Drakulich et al., *supra* note 211, at 58. The supposed links between perceptions of legitimacy, experiences of procedural justice, obedience to the law, and contact with the criminal justice system are highly contested. Bell, *supra* note 32, at 2060–61 nn.15–16 and accompanying text. “Indeed, in many of the cases that have most catalyzed the Black Lives Matter movement, the victims of police violence were not disobeying the law, were complying with officers’ demands, or were suspected of violating petty laws that are likely unworthy of strong enforcement efforts or penalties.” *Id.* at 2059–60. In contrast, Monica Bell has offered a different diagnosis of the problem: one of *legal estrangement*. She argues that the problem represented by the so-called “legitimacy deficit” is better explained not as a crisis of legitimacy that can be addressed through procedural justice interventions, but instead as the result of “structural[] ostraciz[ation] through law’s ideals and priorities.” *Id.* at 2086.

270. See *supra* Parts II.A–C.

significant ways.²⁷¹

Under a different hypothetical, neither White nor Black peoples' perceptions about the police would hold much sway over diagnosing and addressing policing's racial disparities. Instead, they might be understood as related and dynamic variables, exerting mutual influence, unidirectional influence, or true independence. That is, whereas current reform proposals seek to "close the gap" by raising Black levels of perceived legitimacy to the same heights as their White counterparts, this hypothetical suggests that whatever caused Black levels of perceived police legitimacy to go up might simultaneously cause White levels to drop, or vice versa. There may even be a situation where both levels drop or rise together, causing researchers to ponder whether they move together because they are causally bounded, showing parallel reactions to some third input, or exhibiting some other type of relationship.²⁷²

The point is not that the hypotheticals I provide are descriptively more accurate than the mainstream legitimacy deficit diagnosis. Nor are the hypotheticals free of additional complications.²⁷³ Instead, I raise them both to show that the mainstream procedural justice model—in which White perceptions of legitimacy are largely ignored except as level setters for non-Whites—is not self-evidently the correct approach or the only reasonable framing of racially disparate measures of police support.²⁷⁴

These hypotheticals highlight that although most scholars of legitimacy might readily accept that Black views of police are shaped by racialized policing, the same insight has not been applied to White support.²⁷⁵ It is critical, however, to understand that durable levels of White support for the police are not operating in a vacuum.²⁷⁶ Acknowledging that this support reflects legal endearment helps

271. Because legitimacy theory's point of departure is always oriented to increasing organizational legitimacy, this type of project would necessarily fall outside of the scope of procedural justice.

272. Each of these hypotheticals might call to mind different pictures of *what exactly* is happening in policing to produce these effects, and does it resemble anything that we have today?

273. For example, one might question if a policing reform that increases Black people's level of satisfaction with the police would *necessarily* decrease White evaluations of legitimacy, or if it is a case-by-case evaluation. Or a particular reform could significantly alter intraracial dynamics that might not be captured in group-level measures (for example, a reform that caused White men's perceptions of policing legitimacy to increase dramatically, while White women's perceptions plummet).

274. Cf. Cao, *supra* note 104, at 3, 12 ("Black and White Americans have different 'cognitive landscapes,' grounded in their distinct lived realities, about whether the police are racially biased. Reality is socially constructed, and an inclusive society cannot ignore reality from the different cognitive landscapes.") (citations omitted).

275. See Eve L. Ewing, *I'm a Black Scholar Who Studies Race. Here's Why I Capitalize 'White.'*, ZORA (July 1, 2020), <https://medium.com/zora/im-a-black-scholar-who-studies-race-here-s-why-i-capitalize-white-f94883aa2dd3> [<https://perma.cc/6A9T-J9VL>] ("Perhaps the only thing more remarkable than the powers of this shield [of Whiteness] is its seeming invisibility, which permits White people to move through the world without ever considering the fact of their Whiteness.")

276. Cf. Nopper, *supra* note 96 ("Affluent, [W]hite suburbanites being shielded from the violence of carceral systems while others are not offered the same opportunity is not a model of abolition. It is just an expression of relative power and racism.").

us better understand White people's acquiescence in and support for an institution of policing deeply linked to racial subordination.²⁷⁷ Doing so helps us avoid the common pitfall that Brendan Roediger has described as *progressive legal legitimation*, "an approach that proceeds to prescribe from the traditional 'medication list' of liberal reforms (substantive, procedural, and 'democratizing') without grappling with whether a system or apparatus is so inextricably bound up with the maintenance of race and class hierarchy that it should be dismantled."²⁷⁸ Accounting for legal endearment can help us flip the presumption of institutional legitimacy and begin to answer why, in spite of ever-growing evidence of policing's role in producing racial inequality, do White people not view policing as *illegitimate*?

B. Evaluating Radical Police Reform Proposals

Whereas liberal police reforms often rely on a baseline presumption of policing's institutional legitimacy, abolitionists do not share that presumption. Instead, they situate policing as a historic and persisting form of racial and class control that was intended to subjugate poor Black, Indigenous, and other people of color and marginalize their participation in social, economic, and political spheres.²⁷⁹ Departing from this point, abolitionists do not seek to rehabilitate a "broken" system of policing, but to dismantle a system that is "working" as intended. That is, they recognize policing as a system whose racial violence is constitutive, not aberrational.²⁸⁰

To accomplish these aims, abolitionists make two linked demands: (1) divest from policing and incarceration; and (2) invest in alternative, long-term, community-driven solutions to public safety.²⁸¹ Although the divestment call to

277. See Goff, *supra* note 34, at 29; see also Singh, *supra* note 38, at 1098 ("If [W]hite supremacy is understood as a form of group-differentiated power and pleasure that accrues value, the racial distribution and directionality of the legitimate violence it exerts over those regarded as 'dangerous and inconvenient' publicly confirms it and performs its most essential work.").

278. Brendan D. Roediger, *Abolish Municipal Courts: A Response to Professor Natapoff*, 134 HARV. L. REV. F. 213, 214 (2021) (arguing that *progressive legal legitimation* allows "so many of us to honestly describe and thoroughly critique brutal racist apparatuses . . . but then to conclude that they have 'democratic import' and need 'greater resources'").

279. See, e.g., MPD 150, *supra* note 35 (finding, in part, that "police were established to protect the interests of the wealthy, and racialized violence has always been part of that mission") (bold font omitted). "In abolitionist thinking, policing and incarceration are contingent, rather than necessary, forms of violence, constitutive of the terrain of inequality and maldistribution." Akbar, *Abolitionist Horizon*, *supra* note 237, at 1816–19 (tracing abolitionist descriptions of police origins to slave and border patrols).

280. "There is not a single era in United States history in which the police were not a force of violence against Black people. . . . When a police officer brutalizes a Black person, he is doing what he sees as his job." MARIAME KABA, WE DO THIS 'TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE 14, 25 (2021); see also Butler, *supra* note 233, at 7.

281. See VISION FOR BLACK LIVES, *supra* note 35 ("Divest from surveillance, policing, mass criminalization, incarceration, and deportation. Invest in making communities stronger and safer through quality, affordable housing, living wage employment, public transportation, education, and health care that includes voluntary, harm reduction and patient-driven, community-based mental health and

“defund the police” will forever be remembered as the rallying cry of the 2020 uprisings, abolitionist organizers continually emphasize their simultaneous calls for reinvestment. As abolitionist writer, educator, and organizer Mariame Kaba has articulated, this strategy aims to “redirect the billions that now go to police departments toward providing health care, housing, education, and good jobs. If we did this, there would be less need for the police in the first place.”²⁸²

Abolitionists regularly employ a conceptual framework of “non-reformist reforms” to assess whether a specific proposal or strategy represents a true divestment from policing and therefore a step toward abolition (nonreformist reforms) or whether it might work to further entrench and legitimate the system, thus running counter to the long-term goal of abolition (reformist reforms).²⁸³ The framework of nonreformist reforms is flexible enough that it can be difficult to draw clear lines between what constitutes reformist reforms and nonreformist reforms. To that end, abolitionist theorists, organizers, and scholars have worked to provide more granular criteria to evaluate any demand, strategy, reform, or policy proposal that might arise. For example, Marbre Stahly-Butts and Amna Akbar (for concision, I’ll refer to these authors collectively as “SBA” below) recently put forward five elements for evaluating whether any given demand is nonreformist:

A radical reform: (1) shrinks the system doing harm; (2) relies on modes of political, economic, and social organization that contradict prevailing arrangements and gesture at new possibilities; (3) builds and shifts power into the hands of those directly impacted, who are often Black, brown, working class, and poor; (4) acknowledges and repairs past harm; and (5) improves, or at least does not harm, the material conditions of directly impacted people.²⁸⁴

Akbar and Stahly-Butts then use these guides to evaluate body-worn cameras, “progressive prosecutors,” and reparations, finding (perhaps unsurprisingly) that the first two did not pass the test.²⁸⁵

The theory of legal endearment provides another helpful (if imbricated) framework for evaluating police reform proposals, one that would look to

substance abuse treatment. Invest in community-based transformative violence prevention and intervention strategies, that offers support for criminalized populations.”).

282. KABA, *supra* note 280, at 26.

283. Akbar summarizes the three hallmarks of nonreformist reforms as follows: First, they “advance a radical critique and radical imagination.” Second, they “must draw from and create pathways for building ever-growing organized popular power.” Third, they “are about the dialectic between radical ideation and power building.” Akbar, *Demands & Political Economy*, *supra* note 238, at 103–04, 106. This is a framework whose rich history and deployment has been examined and described recently and at length by other scholars and need not be rehearsed in its entirety here. *See, e.g.*, Amna A. Akbar, *Non-Reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 *YALE L.J.* 2497, 2515–31 (2023) [hereinafter *Non-Reformist Reforms*]; *Demands & Political Economy*, *supra* note 238, at 98–106.

284. Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 *UCLA L. REV.* 1544, 1552 (2022).

285. *Id.* at 1573.

endearing versus *nonendearing* reforms. This additional evaluative framework elevates some considerations that are otherwise missed, by recognizing that White people's attachments to policing can function as an unmarked barrier to achieving any transformative reforms.²⁸⁶ By providing an alternate site of inquiry, the theory of legal endearment underscores the need for us to diminish (or at the very least not further enshrine) White people's legally endeared attachment to the institution of policing.

Legal endearment's evaluative framework interrogates a given proposal's effects on the mechanisms that produce endearment, suggesting that a nonendearing reform has the effect of: (1) disrupting forms of police discretion that benefit White people and harm Black, Indigenous, and other people of color; (2) reducing racially disparate access to beneficial public safety services; (3) reducing policing's role in maintaining spatial segregation; (4) reducing social segregation; and (5) disrupting the socialized affective attachment to policing.

These criteria should supplement the existing SBA factors, making some of their abstract considerations more concrete. Importantly, accounting for legal endearment adds nuance to calls for abolitionist *investments*, where concerns over their reformist or nonreformist nature may not be as apparent.²⁸⁷ Overlapping the LE and SBA frameworks can contribute to a dialectic interplay, helping to quickly raise and then resolve any disjuncture between the two. Put differently, what might be considered nonreformist under one framework may appear more reformist under the other; raising such contradictions quickly helps to develop a more nuanced resolution that could satisfy both.

For instance, consider the abolitionist call to invest in housing as a strategy for achieving public safety and security.²⁸⁸ For the sake of the following hypothetical, let us lay out some assumptions that address two SBA elements by (1) improving the material conditions of the impacted community and (2) building power in the communities most directly impacted. First, let us suppose we are evaluating "Housing Proposal X," which is directed at building new housing to serve a currently unhoused veteran population whose multiple-marginalized identities and housing statuses have led to repeated negative policing interactions.²⁸⁹

286. See *infra* Part III.C.

287. See Stahly-Butts & Akbar, *supra* note 284, at 1577–83.

288. See, e.g., Sophie House & Krystle Okafor, *Under One Roof: Building an Abolitionist Approach to Housing Justice*, 29 POVERTY & RACE 1, 2 (2020) ("Housing policy is as implicated as criminal law in the American schema of racialized social control.").

289. See Sunita Patel, *Embedded Healthcare Policing*, 69 UCLA L. REV. 808, 814–15 (2022) (describing how the community of veterans accessing medical care through the U.S. Department of Veterans Affairs "mirrors the communities most harmed by the police: survivors of trauma and sexual assault, people of color, people with disabilities, women, and low-income, uninsured, and/or transgender veterans" so "subjects of VA policing interventions are often unhoused" or identify as one of these marginalized identities).

Focusing on the LE framework, we might ask how this proposal affects the policing and maintenance of segregated spaces. Proposal X aims to build new affordable public or subsidized housing in a historically segregated White neighborhood. This will have the effect of decreasing residential segregation but not necessarily forms of policing that seek to keep new residents contained.²⁹⁰ To the extent that the previously unhoused residents are racially incongruent within the neighborhood, we might consider if Proposal X resolves one vector of precarity (houselessness) while increasing another (racially “out-of-place” policing).²⁹¹

Second, suppose Proposal X is slated to be provided through Section 8 units or other government subsidies. Because of the subsidies, residents and their use of their homes are subject to additional rules, regulations, and criminal and civil statutes, including embedded surveillance and policing.²⁹² In addition to the directly harmful effects of such policing on residents, one can imagine that the White residents of a previously segregated White neighborhood—now confronted by previously unhoused people of color—might call upon the police to resolve what they perceive as rule breaking and disorder in a way that feeds the cycle of their own legal endearment.

On first read, one might be discouraged by this bleak picture, which underscores how even well-intentioned and targeted investments may be undermined by the fuller context in which they are deployed. This hypothetical’s problems can, however, help us generate better solutions to complex problems. An organizing strategy that accounts for the hypothetical’s pitfalls might be better suited to build political power with the unhoused residents, ensuring their active participation in the decision-making process about where they will live and under what conditions.²⁹³ Such a strategy might mount an advocacy campaign aimed at changing state and local laws and policies that govern the policing and surveillance of public and subsidized housing.²⁹⁴ It might focus on a proactive campaign of litigation against housing discrimination by landlords and realtors that maintain segregation within the entire targeted neighborhood, not just public housing.²⁹⁵ And it might focus on proactively building social

290. See Onwuachi-Willig, *supra* note 78, at 1119; Bell, *supra* note 118, at 167.

291. See *infra* Part II.C.

292. See generally Alexis Karteron, *When Stop and Frisk Comes Home: Policing Public and Patrolled Housing*, 69 CASE W. L. REV. 669 (2019) (examining the development of Fourth Amendment doctrine and its application within the context of public housing and private patrolled housing).

293. See Hilary Malson, “*Tearing Down and Building Up*”: *A History, Theory, and Practice of Abolitionist Housing Justice in the US*, in HANDBOOK ON PLANNING AND POWER 211, 219–223 (Kristina Grange, Michael Gunder & Tanja Winkler eds., 2023) (describing a community organizing approach that helped unhoused individuals move into hundreds of vacant homes owned by the California Department of Transportation, on terms set largely by the unhoused organizers).

294. See Karteron, *supra* note 292, at 728.

295. See, e.g., Complaint, *Lopez v. VNN Props., LLC*, 19ST-CV-46502 (Cal. Super. Ct. Dec. 23, 2019) (advancing affirmative antidiscrimination claims alleging intentional segregation as part of a broader housing justice strategy); *Our Work*, L.A. CTR. FOR CMTY. L. & ACTION (“LACCLA”),

connections between the new and existing residents, working alongside and organizing both. Thus, by the time a new resident arrives, they are less likely to be viewed as a depersonalized stranger against whom existing residents must be secured and more likely to be seen as an invaluable neighbor in whose security other neighbors can invest.²⁹⁶

This expanded approach not only meets many of the SBA elements of radical reform—organizing in new political, economic, and social formations; building power in affected communities; addressing past harms; and improving the material conditions of those most affected—but also provides opportunities to build coalitional support for further political organizing and disrupt legal endearment by diversifying social spheres and spaces. Some might discount this invocation of a multiprong grassroots strategy as just another example of abolitionism’s advancement of utopic hope and denial of pragmatic realities.²⁹⁷ They may be surprised to find that the hypothetical reflects existing multiprong strategies that housing justice advocates and organizers have put into action, through which they are achieving transformative change.²⁹⁸

The point here is not that every radical reform proposal should be aimed at reducing legal endearment, nor that only those that meet the LE criteria qualify as “nonreformist reforms.” Instead, I recommend the LE criteria as a useful shortcut that provides concrete sites of intervention against which to clarify the effects of a given proposal quickly. And, as Akbar recently argued in discussing the necessary antagonism at the heart of nonreformist organizing, attending to White people’s legal endearment with the institution of policing “force[s] people to pick a side,” politicizing and emphasizing the White-racialized, affective

<https://laccla.org/join-us/> [<https://perma.cc/FM3M-3ARL>]; *Who We Are*, HOUS. JUST. FOR ALL, <https://housingjusticeforall.org/who-we-are/> [<https://perma.cc/7JFQ-2J38>] (“The Upstate-Downstate Housing Alliance is a diverse coalition of tenants, homeless people, manufactured-housing residents, and advocates from across New York.”).

296. See Olúfẹ́mi O. Táíwò, *Who Gets to Feel Secure?*, AEON (Oct. 30, 2020), <https://aeon.co/essays/on-liberty-security-and-our-system-of-racial-capitalism> [<https://perma.cc/PQW6-S833>] (“[T]he ways that we seek to secure ourselves can conspire against deeper and more complex articulations of our political commitments. However noble our intentions, racial capitalism tends to draw the ways we aspire to produce safety and stability into its antagonistic gravitational pull, splitting the world into secure winners and precarised losers.”).

297. See Morgan, *supra* note 243, at 1218 (arguing that despite abolitionist successes, “the trope of abolitionists as naïve dreamers remains, likely fueled by those with limited understanding of abolition or its organizing principles”); cf. William M. Paris, *On Protest and Hope as Social Inquiry*, APA BLOG (Dec. 29, 2020), <https://blog.apaonline.org/2020/12/29/on-protest-and-hope-as-social-inquiry/> [<https://perma.cc/KP39-JB9T>] (“I do not think the practical utility of hope should be confined to dreams of a better life which one might think are disconnected from our material conditions. . . . Hope emerges precisely because of painful contradictions in our social reality. . . . [It] can provide both knowledge of how things stand with the world and, crucially, of *real* possibilities for their reconstruction.”).

298. See Malson, *supra* note 293, at 211–23 (describing the history, theory, and contemporary practice of housing justice). See, e.g., LACCLA, *supra* note 295 (describing a strategy of base building, direct action, participatory democracy, and political education in its housing work).

relationship to policing, rather than allowing it to remain unmarked as a neutral baseline.²⁹⁹

Most importantly, taking stock of the different dimensions at which legal endearment is produced while evaluating any reform proposals foregrounds a critical point: the primary site of abolitionist struggles is not in the institutions of prisons or policing but in the society that actively supports, approves of, acquiesces in, or is silent on the violence that these institutions produce.³⁰⁰ To recognize that legal endearment cannot be disrupted through narrow reforms alone is to comprehend that such an undertaking requires more than just “clos[ing] police departments” but necessitates “mak[ing] them obsolete.”³⁰¹

C. *Confronting How Legal Endearment Shapes the Discourse on Race and Policing*

One final payoff of the theory of legal endearment is that it allows us not only to take stock of how legal endearment is being produced (as described in Part II) but also to confront how legal endearment is shaping the current discourse on race, policing, and reform. To demonstrate, I engage a common critique of more radical reform proposals to underscore how a legally endeared orientation toward the police is often assumed, preventing a more fulsome conversation on how to understand and resolve the problems of racialized policing.

One common critique of abolitionist proposals is that they are undemocratic in that they reflect an approach to policing that is politically unpopular, especially with the White majority.³⁰² A version of this critique unfolded in real

299. See Akbar, *Non-Reformist Reforms*, *supra* note 283, at 2564. I owe a debt to Angelo Petrih for raising this connection in his comments on the relationship between the SBA and LE frameworks.

300. Cf. Jeanne Theoharis, *Martin Luther King, Jr.’s Challenge to Liberal Allies, and Why It Resonates Today*, WASH. POST (Feb. 8, 2021), <https://www.washingtonpost.com/outlook/2021/02/08/martin-luther-king-jrs-challenge-liberal-allies-and-why-it-resonates-today/> [<https://perma.cc/6BPR-YCK4>] (“Responding to the criticism that such disruptive tactics were unnecessary and unreasonable, [Martin Luther King Jr.] flipped the script back on public officials and White residents, calling it the ‘harvest of *past apathy to tragic conditions* that were allowed to exist *without any serious concern*.”) (emphasis added).

301. KABA, *supra* note 234. “[T]he object of abolition” is “not so much the abolition of prisons, but of a society that could have prisons, that could have slavery, that could have the wage, and therefore not abolition as the elimination of anything but abolition as the founding of a new society.” Fred Moten & Stefano Harney, *The University and the Undercommons: Seven Theses*, 22 SOC. TEXT 101, 114 (2004); see McLeod, *supra* note 237, at 1613; Friedman, *supra* note 240, at 939–42. “[O]ne cannot squarely address the racial disparities in penal outputs that are principally rooted in racial inequality with solutions that merely address the racial bias held by penal bureaucrats.” Trevor George Gardner, *The Conflict Among African American Penal Interests: Rethinking Racial Equity in Criminal Procedure*, 171 U. PA. L. REV. 1699 (2023) (arguing that criminal reforms aimed at resolving racial disparities must be accompanied by social welfare and employment policies).

302. See, e.g., Adrian Florido & Marisa Peñaloza, *As Nation Reckons With Race, Poll Finds White Americans Least Engaged*, NPR (Aug. 27, 2020), <https://www.npr.org/2020/08/27/906329303/as-nation-reckons-with-race-poll-finds-white-americans-least-engaged> [<https://perma.cc/ZG7A-49WV>] (finding that, at the height of the summer 2020 racial uprisings, only 37 percent of White people

time in summer 2020, when many prominent Democrats responded to protestors' demand to "defund the police" with symbolic gestures,³⁰³ stalled legislation,³⁰⁴ or even outright scorn. Critics of this demand included party leaders like Democratic whip James Clyburn, who blamed the defund movement for the loss of Democratic seats in the 2020 election.³⁰⁵ Obama echoed Clyburn, chastising progressives for invoking a slogan that would turn off voters and lose "a big audience the minute you say it, which makes it a lot less likely you're actually going to get the changes you want."³⁰⁶ The following year, President Joe Biden stressed his opposition to "defund" in his first State of the Union address, stating that "the answer is not to defund the police. It's to fund the police. Fund them. Fund them. Fund them with resources and training. Resources and training they need to protect their communities."³⁰⁷

Proponents of abolition have responded in a variety of ways, including suggesting that abolitionist proposals are far more popular than their critics let on³⁰⁸ and that we not follow the general public's opinion on abolitionist goals but instead prioritize the views of the communities most affected by discriminatory policing.³⁰⁹ Critics rebut that poor and marginalized communities

supported redirecting some funds from the police to other social services, compared to 58 percent of Asians, 65 percent of Latinos, and 69 percent of Black Americans).

303. See TÁIWÒ, *supra* note 66, at 4–6 ("In a stunningly clear summary of the first trend, the mayor of Washington, D.C., had "Black Lives Matter" painted on streets near the White House, atop which protestors continued to be brutalized.").

304. Despite winning a unified Democratic House, Senate, and Executive, the federal government failed to enact any legislation that was responsive to any of the protestor's central demands. See, e.g., Legal Def. Fund, Statement on the Failure to Advance the George Floyd Justice in Policing Act of 2021 (Sept. 22, 2021), <https://www.naacpldf.org/wp-content/uploads/9.22.2021-LDF-Issues-Statement-on-JPA-No-Agreement-Final-1.pdf> [<https://perma.cc/BB92-4J56>].

305. See Matthew Brown, *Democratic Whip James Clyburn: 'Defund the Police' Cost Democrats Seats, Hurt Black Lives Matter Movement*, USA TODAY (Nov. 8, 2020), <https://www.usatoday.com/story/news/politics/2020/11/08/james-clyburn-defund-police-cost-democrats-seats-hurt-black-lives-matter/6216371002/> [<https://perma.cc/722X-7JMB>].

306. Kenya Evelyn, *Barack Obama Criticizes "Defund the Police" Slogan but Faces Backlash*, GUARDIAN (Dec. 2, 2020), <https://www.theguardian.com/us-news/2020/dec/02/barack-obama-criticizes-defund-the-police-slogan-backlash> [<https://perma.cc/AE7V-XBJ7>].

307. PBS Newshour, *WATCH: "Fund the Police," Biden Says at State of the Union*, YOUTUBE (Mar. 1, 2022), <https://www.youtube.com/watch?v=GSK2I7tFa0k&feature=youtu.be> [<https://perma.cc/C67C-X4EA>].

308. In June of 2020, Karen Bass, the former Chairwoman of the Congressional Black Caucus and now Mayor of Los Angeles, called the mantra to 'Defund the Police' "probably one of the worst slogans ever." Yet she supported the idea that city and state budget priorities were "lopsided." "Why doesn't the city deal with the social problems so not so much money would have to go to law enforcement?" Eli Yokley, *Movement to 'Defund the Police' Isn't Popular, But Voters Are More Open to Its Goals*, MORNING CONSULT (June 17, 2020), <https://pro.morningconsult.com/articles/defund-the-police-community-programs-polling> [<https://perma.cc/BY5Z-KF7S>] (finding that "'Defund the Police' is an unpopular slogan, but there is support for the underlying premise"). Two years later, Kenneth Meija, who campaigned explicitly on the premise that the Los Angeles Police Department's budget was bloated over other city priorities, was voted in as Los Angeles' City Controller., Madison Pauly, *Hero of 2022: Those LA Police Funding Billboards*, MOTHER JONES (Dec. 30, 2022), <https://www.motherjones.com/politics/2022/12/hero-of-2022-los-angeles-police-budget-defund-kenneth-meija-controller/> [<https://perma.cc/VVU2-Q2PZ>].

309. See Simonson, *supra* note 239, at 802, 812–13.

have the least to gain from abolition³¹⁰ and argue that those communities do not favor abolition.³¹¹

Both Barkow and Sklansky have raised versions of this critique recently, arguing that abolitionist proposals, including defunding and dismantling the police, are political nonstarters and may feed a cycle of backlash.³¹² Both cite the example of a failed proposal to amend the Minneapolis city charter (which was voted down with 56 percent against the measure to 44 percent in favor, a margin of 12 percent³¹³), which would have disbanded the Minneapolis Police Department and replaced it with a Department of Public Safety.³¹⁴ They describe how the amendment proposal failed, in part, because of low support in Ward 5, the voting bloc with the largest Black population in Minneapolis.³¹⁵ Barkow and Sklansky invoke this example to highlight what they argue is the low appetite for abolition in the communities most affected by police violence.³¹⁶

I argue that legal endearment is implicated in both authors' decisions to draw on this example in Minneapolis to suggest that more radical reforms are political nonstarters, especially in the communities most affected by police violence. That is, I suggest that the legally endeared affective orientation toward policing that permeates the policing reform discourse has allowed scholars, policymakers, and other commentators to quickly draw conclusions from the Minneapolis example about the desires of the "most affected" communities vis-à-vis the police. In doing so, commentators have failed to interrogate these claims more deeply or pay attention to what the amendment vote may have revealed about White people's relationship to policing in the city.

To demonstrate how legal endearment is shaping policing reform discourse, it is helpful to first investigate seriously and methodically any claims about what

310. See, e.g., Jaqueline B. Helfgott, *The Movement to Defund the Police Is Wrong, And Here's Why*, SEATTLE TIMES (June 9, 2020), <https://www.seattletimes.com/opinion/the-movement-to-defund-the-police-is-wrong-and-heres-why/> [<https://perma.cc/NQ43-FN2V>] ("If we defund the police, the most affected will be the poor and the marginalized. Wealthy neighborhoods will hire private security as they are already doing, and poorer neighborhoods will have to fend for themselves even more than they already do.")

311. Sklansky, *supra* note 236, at 18.

312. See Barkow, *supra* note 244, at 252–57; Sklansky, *supra* note 236, at 18.

313. The final vote tally was 43.83 percent in favor, 56.17 percent opposed. See *2021 Ballot Questions: City Question 2—Department of Public Safety*, CITY OF MINNEAPOLIS, <https://vote.minneapolismn.gov/results-data/election-results/2021/ballot-questions/> [<https://perma.cc/F8RR-RP9E>].

314. See Barkow, *supra* note 244, at 288–89; Sklansky, *supra* note 236, at 18. For a qualitative analysis regarding the views of North Minneapolis residents, see Michelle S. Phelps, Amber Joy Powell & Christopher E. Robertson, *Over-Policed and Under-Protected: Public Safety in North Minneapolis*, UNIV. OF MINN. CTR. FOR URB. & REG'L AFFS. (Nov. 17, 2020), <https://www.cura.umn.edu/research/over-policed-and-under-protected-public-safety-north-minneapolis> [<https://perma.cc/3AD2-KB8D>] ("Only 15 percent of interviewees reported that they had 'Quite a Lot' or a 'Great Deal' of confidence in the police . . . These residents more frequently (though not always) listed their race/ethnicity as [W]hite.")

315. See Barkow, *supra* note 244, at 289; Sklansky, *supra* note 236, at 18.

316. See Barkow, *supra* note 244, at 290; Sklansky, *supra* note 236, at 18.

Minneapolis's amendment vote results can reveal about the relative levels of Black support for abolitionist proposals. Minneapolis Ward 5, which covers much of the neighborhood of North Minneapolis, is bounded by the Mississippi River and two highways, physically disconnecting the area from the rest of the city save for a few streets and bridges. These physical boundaries, along with the same redlining practices, restrictive covenants, and city policies that concentrated low-income housing within the neighborhood,³¹⁷ have made it one of the most racially insular and underresourced areas of the city for decades. Together, these factors contribute to an environment marked by persistent poverty and the types of crime commonly associated with disinvestment.³¹⁸

Monica Bell has argued that living in such an environment of structural, economic, and political exclusion can lead some Black people to express a “complex, but largely distrustful, perspective on the police,”³¹⁹ which also includes a “pragmatic belief in [their] necessity.”³²⁰ This distrustful yet pragmatic view of policing is echoed by James Forman Jr. in his book *Locking Up Our Own*.³²¹ He shows how, after the tumultuous police violence during the civil rights movement, Black support for the police was expressed cautiously and in explicitly “race-conscious terms.”³²² Many Black political and middle-class community leaders thought that policing represented a site of power that should not be ceded.³²³ But, he suggests, their calls for law enforcement (and, in particular, Black police officers) did not exist in a vacuum: “[T]hey didn’t want only law enforcement. Many adopted what we might think of as an all-of-the-above strategy” including calls for “jobs, schools, and housing.”³²⁴

In Forman’s telling, however, policing was often the only demand that materialized. In true neoliberal fashion, as the social welfare state became dismantled, increased surveillance, incarceration, and policing became the only

317. See EDWARD G. GOETZ, UNIV. OF MINN. CTR. FOR URB. & REG’L AFFS., HOLLMAN V. CISNEROS: DECONCENTRATING POVERTY IN MINNEAPOLIS 4–7 (2002), <https://conservancy.umn.edu/bitstream/handle/11299/204428/H1018.pdf?sequence=1&isAllowed=y> [<https://perma.cc/2LMC-ZCAW>]. In 1992, attorneys for the Minnesota Legal Aid Society and NAACP filed a class action lawsuit on behalf of residents of public housing, “alleging that the public housing and Section 8 programs in Minneapolis had been operated in a manner that helped to create and perpetuate racial segregation.” *Id.* at 1. That case determined that “poor, mostly minority families had been concentrated in a seventy-three-acre site within the Near North Community.” Eric Hankin-Redmon, *How Near North Came to Be One of Minneapolis’ Largest Black Communities*, MINN. POST (Jan. 20, 2020), <https://www.minnpost.com/mnopedia/2020/01/how-near-north-came-to-be-one-of-minneapolis-largest-black-communities/> [<https://perma.cc/P6DN-TFWP>].

318. See Hankin-Redmon, *supra* note 317; see also *Cornerstones: A History of North Minneapolis* (Twin Cities PBS broadcast May 24, 2017), <https://www.tpt.org/cornerstones-a-history-of-north-minneapolis/> [<https://perma.cc/5BQW-LWCP>].

319. Bell, *supra* note 32, at 2091.

320. *Id.* at 2097.

321. See FORMAN, *supra* note 76, at 11.

322. *Id.*

323. *Id.* at 108–10.

324. *Id.* at 12–13.

answers to the problems of safety and insecurity—there was no alternative.³²⁵ Legal scholar and abolitionist lawyer Derecka Purnell has shared her own experience on grappling with how abolition is often framed as a “police-or-nothing” dynamic:

“Police abolition” initially repulsed me. The idea seemed [W]hite and utopic. I’d seen too much sexual violence and buried too many friends to consider getting rid of police in St. Louis, let alone the nation. But in reality, the police were a placebo. Calling them felt like something . . . and something feels like everything when your other option is nothing.³²⁶

Jeremiah Ellison, who represents Ward 5 on the Minneapolis City Council and was an ardent champion of the amendment, suggested that it failed to pass, in part, because its opponents successfully framed it in such a “police-or-nothing” light.³²⁷ Nekima Levy Armstrong, the former president of the city’s NAACP chapter and opponent of the amendment, expressed as much after the vote, writing that if progressives “want to disband the police, they need to come up with ways and methods to keep our people safe.”³²⁸

Taking Barkow’s and Sklansky’s arguments at face value, then, one could suggest that the Minneapolis election results signal less about *whether* Minneapolis’s Black residents wanted to abolish the police and more about *why* they might be hesitant to do so. But even this read overstates their case about the popularity of radical policing reforms in the Minneapolis communities “hardest hit by . . . abusive forms of policing.”³²⁹

325. See David Harvey, *Neoliberalism as Creative Destruction*, 610 ANNALS AM. ACAD. POL. & SOC. SCI. 22, 39 (2007); see also Corrine Blalock, *Neoliberalism and the Crisis of Legal Theory*, 71 LAW & CONTEMP. PROBS. 87 (2014).

326. Derecka Purnell, *How I Became a Police Abolitionist*, ATLANTIC (July 6, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540/> [https://perma.cc/M5JY-U9TM].

327. See What Next, *Where Does Minneapolis Go Now?*, SLATE (Feb. 14, 2022), <https://slate.com/podcasts/what-next/2022/02/minneapolis-leaders-struggle-to-address-policing-abuses> [https://perma.cc/UET4-Y3QS]. Even given the amendment’s defeat, Ellison suggested the vote was significant: “Forty-five percent of voters in Minneapolis walked into the voting booth and decided that they no longer wanted the Minneapolis Police Department to be a part of their day-to-day lives. . . . And that’s not an insignificant sort of declaration to make with your vote.” *Id.* Ellison’s comments are instructive as one response to the question of whether abolitionist proposals are undemocratic, in that he reveals what Jocelyn Simonson has called the power of “contestatory democracy.” Simonson, *supra* note 239, at 778, 844–48 (“This commitment to protecting contestation means that, for police reform, people must be able to engage in collective contestation over the scope and methods of policing, rather than simply provide input into (or merely observe) those methods.”).

328. Nekima Levy Armstrong, *Black Voters Want Better Policing, Not Posturing by Progressives*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/opinion/minneapolis-police-defund.html> [https://perma.cc/GHB8-G9W4].

329. Sklansky, *supra* note 236, at 18 (“[I]t matters that most people oppose defunding, including and often especially in the non[W]hite neighborhoods hit hardest by both crime and abusive forms of policing.”). Identifying whom we look to as the “most” impacted in debates over many forms of race discrimination has been a longtime focus of critical race theory and Black feminist theory, with mixed results. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV.

First, it is worthwhile to ask whether the Ward 5 vote results taken alone capture the full range of views of those most vulnerable to discriminatory policing. Certainly, Ward 5 is home to the highest concentration of the city's Black residents. But as both the Minnesota Department of Human Rights' and the Department of Justice's recent investigations into the Minneapolis Police Department show, the Minneapolis Police Department was found to systematically discriminate against Black *and* Indigenous people during stops.³³⁰ The DOJ report found that while Black people were stopped at 6.5 times the rate of Whites, the Indigenous population was stopped at an even higher rate—7.9 times that of Whites.³³¹

Minneapolis's Indigenous population's votes are simply not captured in the Ward 5 results.³³² Instead, the highest concentration of Indigenous voters reside in Ward 6, Ward 9, and Ward 10. Two of those wards voted roughly 60–40 percent in favor of the amendment, and the third was against at approximately 40–60 percent.³³³ Adding the overall vote totals from the four Wards representing the highest concentrations of Black *and* Indigenous residents (Wards 5, 6, 9, and 10), a different picture emerges: 15,386 (~52 percent) voted *in favor* of the amendment, and 14,296 (~48 percent) voted against. At the very least, this data shows that we should take care to define who we automatically

C.R.-C.L. L. REV. 323, 324–325 (1987); THE COMBAHEE RIVER COLLECTIVE STATEMENT 4 (1977), https://americanstudies.yale.edu/sites/default/files/files/Keyword%20Coalition_Readings.pdf [<https://perma.cc/R3KV-SQ5S>] (“We realize that the only people who care enough about us to work consistently for our liberation are us. Our politics evolve from a healthy love for ourselves, our sisters and our community which allows us to continue our struggle and work.”); *see also* Olúfẹ̀mi O. Táiwò, *Identity Politics & Elite Capture*, BOS. REV. (May 7, 2020), <https://www.bostonreview.net/articles/olufemi-o-taiwo-identity-politics-and-elite-capture/> [<https://perma.cc/94LC-L3QS>] (arguing that the term “identity politics” has been distorted by elites from “building a political viewpoint out of common experience to work toward ‘common problems’” to an “ever-narrower conception[] of group interests”). Identifying a singular “bottom” is complicated. “To the extent that racial identity is not monolithic and there is more than one race at the bottom, it is difficult to know precisely where on the bottom to look and how to make sense of what one sees.” *See* Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283, 1305 (2002). Determining who occupies “the top,” in a society structured by a history of explicit social, political, and legal arrangements of White supremacy, is clearer. *Id.* at 1295–96.

330. MDHR MPD REPORT, *supra* note 98, at 20; DOJ MPD REPORT, *supra* note 98, at 32.

331. Ward 6 voted 40 percent in favor, 60 percent against; Ward 9 voted 60 percent in favor, 40 percent against; Ward 10 voted 59 percent in favor, 41 percent against. Combined, the total votes for and against the amendment between the three wards were 13,231 (~55 percent) in favor, and 10,990 (45 percent) against. *See* Tom Nehil, *How Every Minneapolis Ward Voted on Each of the Ballot Questions*, MINN. POST (Nov. 3, 2021), <https://www.minnpost.com/elections/2021/11/how-every-minneapolis-ward-voted-on-each-of-the-ballot-questions/> [<https://perma.cc/LUD5-S5FC>].

332. Minneapolis' neighborhood demographics tool shows the highest concentrations of Native Americans are in the Whittier, Ventura Village, East Phillips, and Corcoran neighborhoods, with Native Americans comprising 0 percent of the official census estimates of the population in all Ward 5 neighborhoods. *See Minneapolis Neighborhood Demographics by Neighborhood*, MINNEAPOLIS DATASOURCE, <https://www.minneapolismn.gov/government/government-data/datasource/neighborhood-demographics-dashboard/> [<https://perma.cc/WZ4K-5EAE>] [hereinafter MPLS. DATA].

333. *See* Nehil, *supra* note 331.

presume to be included within (and who is excluded from) the “most” affected groups.³³⁴

But even if we consider only those votes from Ward 5, there is an even more compelling reason to be skeptical of drawing broad conclusions about what Minneapolis’s Black community wants from the election results: depressed voter turnout and participation rates. Overall, 54 percent of all registered voters in the City of Minneapolis turned out for the amendment election.³³⁵ In Ward 5, that number was significantly lower—33.9 percent.³³⁶ Precinct-level results within Ward 5 paint an even starker picture: only 27.2 percent of registered voters cast a ballot in the election in Precinct 5-7, which covers Sumner Glenwood, the neighborhood with the highest percentage of Black residents in the city (71 percent).³³⁷ In fact, in only one precinct where Black voters made up more than half the population did the voter participation rate exceed the Ward 5 average at just 38.9 percent.³³⁸

334. A further wrinkle is that of voter age. Studies consistently show that adolescent and young adult young people of color are some of the most vulnerable to repeated and negative policing interactions—a fact borne out in the DOJ investigation into the Minneapolis Police Department. *See* DOJMPD REPORT, *supra* note 98, at 22–24, 38–39 (“MPD officers unholstered or pointed guns at Black and Native American youth at rates 13.5 and 19.6 times higher per capita than [W]hite youth, and at rates 4.7 and 6.8 times higher than [W]hite adults.”) (emphasis added). Yet, for many structural reasons, this population tends to be one of the least likely to vote. *See* Sam Fulwood III, *Why Young, Minority, and Low-Income Citizens Don’t Vote*, CTR. FOR AM. PROGRESS (Nov. 6, 2014), <https://www.americanprogress.org/article/why-young-minority-and-low-income-citizens-dont-vote/> [<https://perma.cc/U2K9-AQHG>]. Moreover, aside from the neighborhood that houses the University of Minnesota campus, the census tracts within Ward 5 have some of the lowest median ages of all of Minneapolis. *See* MPLS. DATA, *supra* note 332. This suggests the election results omit the opinions of one of the largest groups in terms of population, who are also the least likely or unable to vote due to their minor age, yet likely some of the most vulnerable to discriminatory policing. *See also* Alexander A. Boni-Saenz, *The Age of Racism*, 100 WASH. U. L. REV. 1583, 1588 (2023) (exploring “how the social category of age intersects with race in ways that produce unique forms of racial subordination”).

335. *See Official Minneapolis General Election Statistics, November 2, 2020*, CITY OF MINNEAPOLIS 1 (Nov. 1, 2021), <https://vote.minneapolismn.gov/media/-www-content-assets/documents/Minneapolis-General-Election-Statistics---for-web.pdf> [<https://perma.cc/GY9D-67VN>] (reporting citywide turnout of registered voters at 54 percent) [hereinafter *Mpls. Election Stats. Nov. 2, 2021*].

336. *Mpls. Election Stats. Nov. 2, 2021*, *supra* note 335.

337. *Compare City 2021 Municipal Election Voting Statistic Dashboard – November 2, 2021 Municipal Election*, CITY OF MINNEAPOLIS, <https://vote.minneapolismn.gov/results-data/turnout/2021-municipal-interactive-data/> [<https://perma.cc/F6SG-55KG>] [hereinafter *Mpls. Election Dashboard*], with MPLS. DATA, *supra* note 332.

338. *Compare Mpls. Election Dashboard*, *supra* note 337, with MPLS. DATA, *supra* note 332. Given this, it is difficult to use the vote results as evidence of what Minneapolis’ Black community thinks about or desires regarding their police department. Remember that 60 percent of the overall results in Ward 5 came in against the amendment: at the most generous, that captures the view of 20.34 percent of the registered voters. Assuming the 60 percent rate held true in Sumner Glenwood (the neighborhood with the highest percentage of Black residents that had 27.2 percent voter turnout), the vote against the amendment would capture the view of 16.32 percent of registered voters in that precinct. [60 percent (vote against amendment) x 33.9 percent (total Ward turnout) = 20.34 percent; 60 percent (vote against amendment) x 27.2 percent (Precinct 5-7 turnout) = 16.32 percent].

More than revealing anything about how the majority of Ward 5's Black residents feel about abolition, this data reveals just how marginalized the Black community is in Minneapolis's electoral process. As Monica Bell reminds us, there are "a panoply of reasons, ranging from the education gap, to felony disenfranchisement and its chilling effects on turnout in high-incarceration communities, to active efforts at voter suppression, to gerrymandering, to the capture of policymaking through high-stakes lobbying" to understand why "African Americans—particularly if they live in high-poverty communities—have relatively little say" in the democratic process.³³⁹

Research shows that utilizing electoral results and the polling preferences of "most likely voters" can slant our understanding of the general population, privileging the views of older, wealthier, and more politically connected groups.³⁴⁰ Using the same results as a proxy for the beliefs of communities who tend to be younger, poorer, and less politically powerful sets a deeply skewed baseline for democratic popularity. Yet the voting results from Ward 5 were echoed not only in legal scholarship but also across the media as evidence of the sentiments of Minneapolis's Black community's attitude on abolition that, as shown above, the data simply cannot support.

It is here that we find legal endearment at work in shaping the policing reform debate. Across the venues that proclaimed what the Minneapolis amendment vote revealed about the Black community's general disposition toward abolition, few (if any) bothered to ask what the election results might reveal about the priorities of those communities *least* likely to experience discriminatory policing and most likely to reap its benefits—the city's White residents.³⁴¹

The three wards that most opposed the amendment in the city were Wards 7, 11, and 13.³⁴² They also encapsulate some of the most segregated areas of the

339. See Bell, *supra* note 32, at 2143.

340. See, e.g., Benjamin Oreskes, *California Has Made Voting Easier, But Regular Voters Still Skew White And Old, Poll Finds*, L.A. TIMES (Aug. 8, 2023), <https://www.latimes.com/california/story/2023-08-08/despite-making-voting-easier-voters-in-california-are-whiter-and-older-new-poll-finds> [<https://perma.cc/NE22-TNSP>]; Jill Lepore, *Politics and the New Machine*, NEW YORKER (Nov. 8, 2015), <https://www.newyorker.com/magazine/2015/11/16/politics-and-the-new-machine> [<https://perma.cc/7S3D-CSN4>]; Scott Keeter, Nick Hatley, Courtney Kennedy & Arnold Lau, *What Low Survey Response Rates Mean for Telephone Surveys*, PEW RSCH. CTR. (May 15, 2017), <https://www.pewresearch.org/methods/2017/05/15/what-low-response-rates-mean-for-telephone-surveys/> [<https://perma.cc/98DF-XCY6>].

341. "By nearly all of these measures, the typical [W]hite family in the Twin Cities is doing better than the national average for [W]hite families." DOJ MPD REPORT, *supra* note 98, at 3; see also *id.* at 31–41 (finding both that the MPD discriminated against Black and Indigenous individuals *as compared to similarly situated White individuals* in decisions to stop, search, and use force and that MPD patrolled different neighborhoods differently, with a precipitous fall in stops, searches, and uses of force correlated most strongly to the percentage of White people living in a neighborhood, even when controlling for other factors).

342. 54 percent of registered voters cast a ballot in Ward 7, 65.2 percent in Ward 11, and 67.8 percent in Ward 13. See *Mpls. Election Stats. Nov. 2, 2020*, *supra* note 335. With 12,261 votes cast in Ward 7, 7,860 (64 percent) were against and 4,401 were in favor. With 13,790 votes cast in Ward 11,

city, with Wards 7 and 13 estimated to have no Black or Indigenous residents and Ward 11 estimated to have no Indigenous residents and few Black residents, who live among only half its neighborhoods.³⁴³ Located immediately south of North Minneapolis but separated by a series of highways, Bryn Mawr and Kenwood in Ward 7 are two of the wealthiest and Whitest neighborhoods in all of Minneapolis, with Kenwood being the most segregated neighborhood in the entire city (estimated at 99 percent White).³⁴⁴ The three precincts that cover Bryn Mawr and Kenwood voted at much higher rates than the Ward 7 average, with turnout ranging from 70 percent to 75.4 percent.³⁴⁵ The Whitest neighborhood in Ward 11 also had the highest turnout rate in its Ward (91 percent White, 74.2 percent turnout).³⁴⁶ The Whitest neighborhoods in Ward 13 showed a similar trend.³⁴⁷

Here, it is worth raising the final language of the proposed amendment, which these neighborhoods overwhelmingly rejected:

Shall the Minneapolis City Charter be amended to remove the Police Department and replace it with a Department of Public Safety that employs a comprehensive public health approach to the delivery of functions by the Department of Public Safety, with those specific functions to be determined by the Mayor and City Council by ordinance; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could include licensed peace officers (police officers), if necessary, to fulfill its responsibilities for public safety . . . ?³⁴⁸

In the neighborhoods in Minneapolis where the mechanisms of legal endearment churn most efficiently, residents demonstrated deep opposition not

9,010 (65 percent) were against and 4,780 were in favor. With 16,970 votes cast in Ward 13, 12,229 (72 percent) were against and 4,671 were in favor. See Nehil, *supra* note 331.

343. Census data reflects that the entirety of Wards 7, 11, and 13 have an estimated Indigenous residency rate of 0 percent; Wards 7 and 13 have an estimated Black residency rate of 0 percent, whereas half the neighborhoods in Ward 11 have an estimated Black residency rate of 0 percent, while the remaining half range from 8–21 percent. See MPLS. DATA, *supra* note 332. This segregation is no accident. All three wards were listed as “A1 Best” on 1930s HOLC redlining map, which would have prevented any non-White residents from obtaining loans for homes in these areas. See *Mapping the Legacy of Racism in Twin Cities Real Estate* (Oct. 1, 2020), <https://www.mnrealtor.com/blogs/mnr-news/2020/10/01/mapping-the-legacy-of-racism-in-twin-cities-real-e> [https://perma.cc/FW8C-FUSL]. These areas also have some of the highest rates of racially restrictive covenants. See MAPPING PREJUDICE, *supra* note 144.

344. See MPLS. DATA, *supra* note 332. The neighborhood of Kenwood in Minneapolis is the childhood home of Wilderson, who traces his development of his own conception of the theory of *afropessimism* to some of his formative experiences within the deeply segregated neighborhood. See WILDERSON, *supra* note 13, at 141.

345. Compare Mpls. Election Dashboard, *supra* note 337, with MPLS. DATA, *supra* note 332.

346. Compare Mpls. Election Dashboard, *supra* note 337, with MPLS. DATA, *supra* note 332.

347. Fulton: 91 percent White, 73.8 percent turnout; East Harriet: 87 percent White, 74.2 percent turnout. Compare Mpls. Election Dashboard, *supra* note 337; with MPLS. DATA, *supra* note 332.

348. CITY OF MINNEAPOLIS, *supra* note 313.

only to removing the police department but also to considering a different path to public safety. They rejected a “comprehensive public health approach” to issues of safety and security that could also include police officers,³⁴⁹ opting instead to keep the status quo: a police department whose officers brazenly killed George Floyd in broad daylight in front of half a dozen witnesses, which at the time of the vote was under a state and federal investigation into its racially discriminatory practices, and which is now under both state and federal consent decrees because of the overwhelming evidence of the department’s discriminatory practices.³⁵⁰ On the same ballot, these Wards also voted in the highest proportions in the city to shift power away from the City Council (who unanimously voted to disband the police department)³⁵¹ to the mayor (who advocated against the proposal), implementing additional roadblocks to future Council-driven attempts at passing transformative policing reforms.³⁵²

Unlike the proclamations others made about what the Ward 5 vote revealed about the Black community’s stance on abolition, claims about the sentiments of Minneapolis’s White residents in its most segregated areas are significantly more reliable, given the exceptionally high turnout in those areas. Put differently, whatever effect one might give to arguments about Black people’s desires as revealed in the vote results in Ward 5, they must concede a stronger case to make proclamations about the desires of Minneapolis’s Whitest areas here. If media,

349. Cf. Florido & Peñaloza, *supra* note 302 (finding that only 37 percent of White Americans supported diverting some funds from their local police departments to other social services—the only groups with less than 50 percent support—and a more than 21-point difference from Asians (58 percent in support); 28-points from Hispanics (65 percent in support); and 32-point from Blacks (69 percent in support)).

350. See MDHR Report, *supra* note 98; DOJ MPD REPORT, *supra* note 98; Settlement Agreement and Order, *Minnesota v. City of Minneapolis*, No. 27-cv-23-4177 (Minn. Dist. Ct. July 13, 2023); Agreement in Principle Between the United States and the City of Minneapolis Police Department (June 15, 2023).

351. The fight between the elected City Council with the unelected Charter Commission to put the amendment on the ballot raises additional questions about the “democratic” support for abolition. Compare Vanessa Romo, *Minneapolis Council Moves to Defund Police, Establish ‘Holistic Public Safety Force*, NPR (June 26, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/26/884149659/minneapolis-council-moves-to-defund-police-establish-holistic-public-safety-forc> [<https://perma.cc/2YWH-DH9Z>] (describing how the diverse and elected city council voted unanimously to disband the Minneapolis Police Department in favor of a public health approach to public safety), with Deena Winter, *Minneapolis City Council and Charter Commission Spar Over Future of Police Department*, MINN. REFORMER (July 22, 2020), <https://minnesotareformer.com/2020/07/22/minneapolis-city-council-and-charter-commission-spar-over-future-of-police-department/> [<https://perma.cc/28ZQ-FFPW>] (reporting how the Minneapolis Charter Commission blocked the City Council’s attempt to push through a ballot resolution to disband the police in 2020, and noting that a comparison of the racial composition of the two groups was important subtext, with the council being “much more representative of the city’s demographics than the commission” which is comprised of “an unelected group of nearly all [W]hite people”).

352. See CITY OF MINNEAPOLIS, *supra* note 313; Mary L. Kelly & Courtney Dorning, *Minneapolis Mayor Wants ‘Full Structural Revamp,’ Not Abolition of Police Department*, NPR (June 10, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/10/874210961/minneapolis-mayor-wants-full-structural-revamp-not-abolition-of-police-departmen> [<https://perma.cc/M65B-CL9F>].

policymakers, and scholars can argue that abolition should be off the table based on Ward 5's opposition to the amendment, then what should we make of the evidence that this proposal was opposed most, and in significantly greater numbers, by the White communities who benefit most from discriminatory policing?

The theory of legal endearment helps explain, at least in part, the deep resistance White people in Minneapolis had to considering alternative solutions to public safety that did not privilege policing at their center.³⁵³ When we acknowledge the everyday role that policing plays in maintaining racial hierarchy and fabricating White supremacy, we can better understand what was at stake for the residents in these deeply segregated Wards: access to better housing in areas with less environmental pollution and more greenspace, access to better schools and jobs, and the ability to move freely through one's city.³⁵⁴ Each of these benefits has been racially coded and is often guaranteed, in the end, with recourse to the police.

It is unsurprising then that White people's attachment to policing is so durable, or that their opposition to policing alternatives is so strong. The anxiety brought on by abolitionist proposals does not only (or even primarily) reflect fears of increased crime and decreased security, but also the risk of losing a larger body of material and symbolic privileges for which the police act as a backstop.³⁵⁵ They understand that, at some level, the echoes of the call to "defund the police" are resonant with calls to end structural White supremacy and its attendant benefits.³⁵⁶

Given this country's history of resisting disruptions to the racial status quo, abandoning abolitionist proposals because they lack popular support makes little normative sense. Regimes of racial sub- and super-ordination that enjoyed contemporaneous political and legal legitimacy have been at the heart of some

353. Polling during the summer of 2020 found that White people were both significantly more optimistic about policing's ability to deliver meaningful change and simultaneously the least engaged in pushing for such change for all racial groups. See Florido & Peñaloza, *supra* note 302.

354. See *supra* notes 116–130, 164–167 and accompanying text.

355. See Goff, *supra* note 34, at 28 ("Although the word abolition may seem frightening to some, the notion of interrupting the historical legacy of explicit anti-Blackness should not be.").

356. Defunding these benefits by reducing policing is often literal, as brought to prominent attention by the DOJ's report on the Ferguson Police Department. U.S. DEP'T OF JUST., C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 9–15, 66 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/YP7P-NP9H>] (finding that Ferguson employed a strategy of revenue generation through the disproportionate policing of its Black residents, which acted as a tax offset for the city's White residents); Devon W. Carbado, *Predatory Policing*, 85 UMKC L. REV. 545, 552–65 (2017) (describing how economic sanctions shape law enforcement behaviors); cf. Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 UCLA L. REV. 2, 10–17 (2018) (laying out a constitutional argument against the type of economic sanctions leveraged as both tax substitutes and forms of punishment).

of this nation's greatest conflicts.³⁵⁷ Movements that sought to upend those regimes faced staunch opposition, especially from powerful dominant-group majorities who derived significant benefits from those unequal arrangements. As historian Robin D.G. Kelley reminds us, neither those fighting for the abolition of slavery nor for an end to Jim Crow segregation obtained popular support before pressing forward.³⁵⁸ Yet their initial lack of popular support has not remained the yardstick for their successes.³⁵⁹

The theory of legal endearment does not suggest that every politically unpopular proposal is worthwhile or that any will ultimately succeed.³⁶⁰ Instead, it reveals that judging abolitionist demands on the degree of support they obtain from those endeared to the institution of policing rests on the assumption that White people's support for the police is decoupled from its sub- and superordinating effects. Requiring preconsent from the same people from whom abolitionists seek to wrest power is itself a demobilizing strategy that elides how

357. See JOEL OLSON, *THE ABOLITION OF WHITE DEMOCRACY* xiv–xv (2004) (“American democracy has made racial oppression possible, for neither slavery nor segregation nor any other form of racial domination could have survived without the tacit or explicit consent of the [W]hite majority.”).

358. See Daniel Denvir, *The Black Radical Tradition Can Guide Our Struggles Against Oppression: An Interview with Robin D.G. Kelley*, JACOBIN (July 6, 2023), <https://jacobin.com/2023/07/black-radical-tradition-class-struggle-oppression-us-history-racism-freedom-dreams> [<https://perma.cc/WFQ6-Z9QL>]; Robin D.G. Kelley, “*He’s Got the Whole World in His Hands*”: *US History and Its Discontents in the Obama Era*, 45 J. AM. STUD. 185, 194–98 (2011); see also Gareth Davies, Steven F. Lawson & Stephen Tuck, *Responses to Robin D.G. Kelley, “He’s Got the Whole World in His Hands,”* 45 J. AM. STUD. 1, 1–2 (2011) (arguing that Kelley’s argument that “it was largely African Americans who engineered their own freedom” and pressured risk-averse leaders is “powerfully reinforced by the African American freedom struggle of the 1950s and 1960s”); Lydia Saad, *Gallup Vault: Americans Slow to Back Interracial Marriage*, GALLUP (June 21, 2017), <https://news.gallup.com/vault/212717/gallup-vault-americans-slow-back-interracial-marriage.aspx> [<https://perma.cc/XK3C-THUL>] (finding that the majority of White American adults disapproved of interracial marriage until 1994, more than 25 years after the Supreme Court held that antimiscegenation laws were unconstitutional in *Loving v. Virginia*, 388 US 1 (1967)); RJ Reinhart, *Protests Seen as Harming Civil Rights Movement in the ‘60s*, GALLUP (Jan. 21, 2019), <https://news.gallup.com/vault/246167/protests-seen-harming-civil-rights-movement-60s.aspx> [<https://perma.cc/T8YP-DW6P>] (reporting that a significant majority of Americans believed sit-ins, freedom buses, and other forms of nonviolent protest hurt the cause of civil rights in 1963—and it was not until after the riots that followed Dr. King’s assassination in 1968 that a majority of Americans expressed support for nonviolent demonstrations).

359. See, e.g., *Race Relations*, GALLUP, <https://news.gallup.com/poll/1687/race-relations.aspx> [<https://perma.cc/8NR7-Q8E2>] (finding that support for Civil Rights has risen over time).

360. Cf. Amna A. Akbar, *This Could Be Housing; or, What Is a Demand Anyway?*, 121 S. ATL. Q. 261, 272–76 (2022) (describing how some movement demands serve as “organizing document[s] . . . aimed at forging a collective social identity” or are “designed to rebuild cohesion within Black-led organizations around self-determination and an ambitious political economic program”) [hereinafter *This Could Be Housing*]; Robin D.G. Kelley, *Black Study, Black Struggle*, BOS. REV. (Mar. 1, 2016), <https://www.bostonreview.net/forum/robin-kelley-black-struggle-campus-protest/> [<https://perma.cc/4RCU-UH9Z>] (describing how for those pressing radical demands, “winning is not always the point” and “unveiling . . . exploitative practices and . . . deeply embedded structures of racism, sexism, and class inequality can be profound acts of demystification on their own”).

abolitionist demands have already fundamentally changed the Overton window on police reform—regardless of their majoritarian buy-in.³⁶¹

Writing shortly after the vote, Michelle Phelps, a professor of sociology at the University of Minnesota who conducted extensive research on Minneapolis residents' views on race and policing, summarized the results by noting that “[w]hile some may argue that the failure of the amendment to pass confirms that police defunding or abolition is politically toxic, close to half of the electorate voted for it—momentum has never been higher, despite the loss.”³⁶² Framing the Minneapolis example as a cautionary tale for radical reforms instead of recognizing it, like Phelps, as a marker of those reforms' momentum underscores how legal endearment shapes the current policing reform discourse. It helps uncover how such endearment to the institution of policing sets the terms of the policing reform debate itself. These terms are arguably more favorable to the maintenance of the institution of policing than to the functions that the institution is intended to address—attaining public safety and security for all.

This point bears repeating: the theory of legal endearment not only demands that we denaturalize White people's relationship to policing, but it also provides us with a framework to make sense of their attachment to the institution. Doing so exposes how White people's legal endearment—built in the symbolic, experiential, structural, and social dimensions—erects an unmarked barrier to achieving transformative policing reforms, one that loomed large in the Minneapolis election. Surmounting the barriers that legal endearment erects, including how it shapes current reform discourse, requires that organizers, policymakers, and scholars confront, examine, and address them directly. This is the task I hope to begin with this Article.

CONCLUSION

This Article puts forward the theory of legal endearment. The Article describes how dominant groups who derive disproportionate benefits from systems of legal power—especially ones that empower their group over others—tend to develop an affective attachment to the institutions that maintain those unequal arrangements. I argue that White people's legal endearment to the institution of policing acts as an unmarked barrier to achieving transformative policing reforms.

Surmounting the barrier that legal endearment poses requires us to denaturalize White people's relationship to policing. The theory of legal endearment provides a framework to better describe White people's racialized relationship to policing, evaluate the transformative potential of many policing

361. See Akbar, *This Could Be Housing*, *supra* note 360, at 274–76.

362. Michelle S. Phelps, *Why Voters Rejected Plans to Replace the Minneapolis Police Department—And What's Next for Policing Reform*, CONVERSATION (Nov. 4, 2021), <https://theconversation.com/why-voters-rejected-plans-to-replace-the-minneapolis-police-department-and-whats-next-for-policing-reform-171183> [<https://perma.cc/MLK7-CLRQ>].

reform proposals, and understand how such endearment is shaping current policing reform discourse. Accounting for White people's legal endearment to the institution of policing should help us better understand and overcome White people's opposition to more transformative reform proposals in the future.