

FROM AUTHORITARIAN POLICE STATE TO BLACK-INCLUSIVE DEMOCRACY

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INTRODUCTION

On May 25th, 2020, almost four dark years into Donald Trump’s authoritarian rule, America glimpsed, in George Floyd’s murder, four centuries of policing terror that defines the Black experience in America. The practices of American policing institutions in Black communities and against Black people are predatory. These practices result from a racialized, paternalistic attitude toward Black people and Black

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communities, and they fail to sufficiently address pervasive inequities Black people and Black communities have faced over centuries. Aggressive policing tactics—while rejected by the communities in which they are employed as ineffective, dangerous, and destabilizing to Black communities and families—have continued without community consent. Recently, these practices and policies have come under scrutiny due to several highly publicized, heinous police killings of Black people.¹ This police terror must cease. Lawmakers, executive branch officials, and policing institutions must be held accountable by measures designed through “inclusive policymaking.” Such Black-led policies should be fashioned from a community that has built its internal power through collective decision-making, cultivating its cultural strength and political knowledge. The policies would derive from Black community members in neighborhood-based sites that build power with storytelling and political education. To aid policymaking, the state should catalyze civic participation and community-building by providing civic and cultural centers to support the community transformation inclusive policymaking entails and by grounding its new policies in values of humility and empathy that promote democratic participation, including Black community agency and dignity.

I. PATTERN OF AUTHORITARIAN POLICING PRACTICES

Marlies Glasius, a professor of International Relations within the University of Amsterdam’s Department of Politics, defines authoritarian practices as “a pattern of actions, embedded in an organized context, sabotaging accountability to people (‘the forum’) over whom a political actor exerts control, or their representatives, by disabling their access to information and/or disabling their voice.”² Professor Glasius argues that authoritarian practices can and do occur in nations where democratic elections are held.³ This Essay applies the authoritarianism framework developed by Professor Glasius to American policing practices in low-income Black American communities and against Black individuals.⁴ Further, this Essay argues that these practices share the attributes of

1. Associated Press, *Police Chokeholds Come Under Scrutiny Around the World Following George Floyd’s Death*, L.A. TIMES, (June 5, 2020), <https://www.latimes.com/world-nation/story/2020-06-05/police-chokeholds-scrutinized-worldwide-after-george-floyd-death>.

2. Marlies Glasius, *What Authoritarianism Is...and Is Not: A Practice Perspective*, 94:3 OXFORD ACAD.: INT’L AFFS., 515, 527, (2018), <https://academic.oup.com/ia/article/94/3/515/4992409> [<https://perma.cc/EV2W-GQ7K>].

3. *Id.* at 529.

4. This paper references Black people and Black communities in the sense of their subjugation to racialized disparate treatment, and primarily, by policing institutions and by police officers who are principally non-Black.

Professor Glasius' definition of authoritarian⁵: they comprise a pattern of abusive actions sanctioned by the judiciary and under the direction of executive and legislative authority, and by their very nature, these policing practices simultaneously suppress political participation by Black people and disable the Black community's voices. This Essay argues for reform centered around extrapolations of pro-democratic features of accountability; as Professor Glasius outlines it: a neighborhood infrastructure that facilitates the inclusion and leadership of impacted Black people on policymaking around policing and other matters that impact their well-being.⁶

Ranging from "broken windows" policing, which purports to achieve neighborhood safety by hyper-focusing on petty offenses⁷ to "stop and frisk" patrols, pretextual traffic stops, and racial profiling, American policing practices against Black Americans comprise a pattern of frequent, abusive, and punitive actions, primarily by local, state, and at times, federal policing institutions who carry them out under color of law.⁸ These policies have a surveillance aspect.⁹ They rely on police discretion disproportionately and lead to frequent and degrading¹⁰ contacts for minor infractions that are characterized by what scholar Gustafson labels as symbolic street level "ceremonies."

The racialized nature of authoritarian policing practices against Black people transcend age, gender, class, and neighborhood boundaries and are felt most intensely in highly policed, lower income Black communities. In its sweep and totality, and separately from the enduring cultural practices that bind, police terror corrals black people into an "Occupied Black State".¹¹ In a paper on Black experiences in heavily policed lower income communities, political science scholar Vesla M. Weaver and her colleagues capture this result through one resident's

5. Marlies Glasius, *What authoritarianism is...and is not: a practice perspective*, OXFORD ACADEMIC: INTERNATIONAL AFFAIRS, May 2018, at 527, 515-33, <https://academic.oup.com/ia/article/94/3/515/4992409> [<https://perma.cc/36TA-2NYE>].

6. *Id.*

7. Sarah Childress, *The Problem With "Broken Windows" Policing*, FRONTLINE (June 28, 2016), <https://www.pbs.org/wgbh/frontline/article/the-problem-with-broken-windows-policing/> [<https://perma.cc/HD4Z-K9NS>].

8. See generally Brandon Hasbrouck, *Abolishing Racist Policing with the Thirteenth Amendment*, 68 UCLA L. REV. (2020), https://www.uclalawreview.org/abolishing-racist-policing-with-the-thirteenth-amendment/#_ftnref3 [<https://perma.cc/475L-9YT8>].

9. See generally Vesla Weaver et al., *Withdrawing and Drawing In: Political Discourse in Policed Communities*, J. OF RACE, ETHNICITY AND POL. (2020), <https://isps.yale.edu/research/publications/isps20-03> [<https://perma.cc/FUE8-2HGW>].

10. See generally Kaaryn Gustafson, *Degradation Ceremonies and the Criminalization of Low-Income Women*, 3 U.C. IRVINE L. REV. 297 (2013).

11. By "Occupied Black State" I mean the physical spaces inhabited by Black people, with respect to racialized surveillance, control, and subjugation by police agents of the state and the resulting social, economic, political, and physical harm against Black community members.

reaction of frustration and dismay regarding aggressive policing after being stopped by police officers for “drinking out of [a] paper bag[.]”¹²

These street-level tactics are the implementation of legislative and regulatory mandates that serve the interests of policymakers to raise revenue,¹³ to justify their budgets¹⁴, or to ostensibly disrupt crime¹⁵, but not to serve the communities which they govern. The courts have ingrained in law these racially discriminatory policing practices. Discussing the Court’s rulings since the “original stop and frisk case,” scholar Paul Butler stated, “For the last roughly fifty years, since *Terry v. Ohio*, the Supreme Court has been expanding police power with the design of controlling black men.”¹⁶ Largely through Fourth Amendment jurisprudence, the Court has upheld nearly unfettered discretion by police officers around using reasonable suspicion in situations that involve circumscribing Black people’s autonomy when in contact with the police, particularly in communities that have high crime levels.¹⁷

These practices, however, have not been viewed as effective in lowering crime.¹⁸ In addition to enforcing minor infractions at the street level that present dubious value to the community, scholars have documented “distorted responsiveness”¹⁹ in which policing institutions fail to respond where the community needs police involvement the most.²⁰

The pattern of racialized authoritarian policing practices fuel the American carceral state and fashion the Occupied Black State through the disproportionate levels of arrest, pre-trial detention, prosecution,

12. Gwen Prowse et al., *The State from Below: Distorted Responsiveness in Policed Communities*, URB. AFFS. REV. 1423, 1437 (2019); see *infra* notes 19, 20, 39, 59, 73 and accompanying text.

13. THE SENT’G PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE 5 (2018). See *infra* notes 18, 22, 23 and accompanying text.

14. See Robert Vargas et al., *Capitalizing on Crisis: Chicago Police Responses to Homicide Waves 1920-2020*, SocArXiv (Oct. 12, 2020), <https://osf.io/preprints/socarxiv/2d9cn>

15. See Vargas et al., *supra* note 14.

16. Paul Butler, *Equal Protection and White Supremacy*, 112 NW. U. L. REV. 1457, 1459 (2018).

17. See Paul Butler, *The White Fourth Amendment*, 43 TEX. TECH L. REV. 245 (2010) (arguing that the Fourth Amendment legitimizes the conflation of race and suspicious behavior subject to police determination).

18. THE SENT’G PROJECT, *supra* note 12, at 4; see also Emma Pierson et al., *A Large-scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736 (2020). See *infra* notes 22, 23 and accompanying text.

19. See Prowse et al., *supra* note 12, at 1425. See *infra* notes 20, 39, 59, 73 and accompanying text.

20. *Id.* at 1446. See *supra* notes 12, 19 and accompanying text. See *infra* notes 39, 59, 73 and accompanying text.

incarceration and sentencing of Black people.²¹ Studies generally reveal bias toward Black people by actors across the criminal legal process, including police officers, prosecutors, and judicial officers.²² This systemic and unequal application of laws has tragic results: a Black man has a one in three chance of being arrested over his lifetime and of being imprisoned;²³ Black women’s incarceration rate is twice the rate of white women;²⁴ and the overall incarceration rate for Black Americans is more than three times higher than the general population.²⁵ The collateral consequences impact the incarcerated individual, their family members, and their communities. This dims their future employment and occupational licensing prospects, impedes their access to voting, and elevates the likelihood of perpetuating intergenerational poverty and incarceration through dire educational, employment, and health outcomes for their children.²⁶

II. PRACTICES ROOTED IN HISTORY

Current racially disparate criminal policies and practices are rooted in laws and policies states imposed on Black people since the Reconstruction period. These include punitive laws that solely applied to Black people with the intention of retaining control over formerly enslaved Black Americans: Black Codes,²⁷ “pig laws”²⁸ for agricultural crimes, punitive laws for vagrancy, and leasing offenders for their labor.²⁹

21. Elizabeth Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, VERA INST. OF JUST. 2 (2018), www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf [https://perma.cc/5YC9-9KDS]. See *infra* notes 29, 31 and accompanying text.

22. See, e.g., THE SENT’G PROJECT, *supra* note 12. See *infra* note 23, 24.

23. See THE SENT’G PROJECT, *supra* note 12, at 9. See *supra* notes 8, 11, 15 and accompanying text.

24. See THE SENT’G PROJECT, FACT SHEET: INCARCERATED WOMEN AND GIRLS 2 (2019), <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf> [https://perma.cc/6FUP-HSNZ] (reporting on Black women incarceration in 2017).

25. REP. DON BEYER OF THE JOINT ECON. COMM., 116TH CONG., REP. ON THE ECONOMIC STATE OF BLACK AMERICA IN 2020, at 21 (Comm. Print 2020).

26. See Margaret E. Finzen, *Systems of Oppression: The Collateral Consequences of Incarceration and Their Effects on Black Communities*, 12 GEO J. ON POVERTY L. & POL’Y 299, 307 (2005) (discussing the effect of occupational and licensing restrictions on a convicted felon’s opportunity to obtain employment). See also Jeffery Robinson, *The Racist Roots of Denying Incarcerated People Their Right to Vote*, ACLU: SPEAK FREELY (MAY 3, 2019, 10:45 AM), <https://www.aclu.org/blog/voting-rights/racist-roots-denying-incarcerated-people-their-right-vote> [https://perma.cc/B45H-KKX8].

27. See Audrey Robinson-Nkongola & Jack G. Montgomery, *Wandering the Web—Laws that Affect the Life of Americans from Slavery to the 21st Century*, 28:2 AGAINST THE GRAIN 83 (2016), <https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=7341&context=atg> [https://perma.cc/MTV4-K4WZ].

28. See *id.*

29. Hinton et al., *supra* note 21.

From a legal system in which prisons re-enslaved Black people to work on plantations to a current system of prisons disproportionately populated with “the descendants of slaves,” policing practices perpetuate the structural racialized domination of Black Americans.³⁰ This four-century old treatment takes the modern form of inequitable administration of laws that are ostensibly race-neutral.³¹

III. SUBJUGATION OF BLACK PEOPLE AND OCCUPATION OF BLACK COMMUNITIES

Authoritarian policing practices in Black communities lead to dominance of Black people that may be endemic to policing. Studies have affirmed concerns about brutal and racially motivated policing practices.³² There is evidence the training and disposition of some police officers make them prone to violent behavior.³³ Studies have shown that white police officers who police Black neighborhoods tend to show hegemonic behaviors that reinforce Black people’s lower status in the social hierarchy.³⁴ Social dominance theory holds that groups assigned lower societal status (Black people) are accorded worse treatment (brutality and death) by those who hold the power (the police) to maintain the hierarchy.³⁵ As such, the police are a central figure in reinforcing the hierarchy.³⁶ This may explain their view of themselves as warriors, which, when combined with their hierarchy enforcement role, leads them to an antagonistic world view against the public generally and predisposes them to prejudge and brutalize Black people as perpetrators particularly.³⁷

Finally, the police, violence-prone and predatory, assume the role of an occupying force and register a demobilizing toll on political power in Black communities. Black voices captured by Vesla Weaver and her colleagues through the Portals conversations study³⁸ with people in

30. See Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261, 268 (2008), https://scholarship.law.upenn.edu/faculty_scholarship/576 [<https://perma.cc/LZW4-MPR5>].

31. Hinton et al., *supra* note 21, at 3.

32. See Jim Sidanius et al., *Social Dominance Orientation, Hierarchy Attenuators and Hierarchy Enhancers: Social Dominance Theory and the Criminal Justice System*, 24 J. Applied Soc. Psychol., February 1994, at 338, 360.

33. See Inae Oh, *Minneapolis Banned Warrior-Style Police Training. Its Police Union Kept Offering It Anyway*, Mother Jones, May 28, 2020, <https://www.motherjones.com/crime-justice/2020/05/bob-kroll-minneapolis-warrior-police-training/> [<https://perma.cc/35AV-KBM3>].

34. See Sidanius et al., *supra* note 29, at 360.

35. See *id.* at 340.

36. See *id.* at 342.

37. See *id.* at 341–42.

38. See *A Policed People’s Account of the State*, PORTALS POLICING PROJECT, <https://www.portalspolicingproject.com/> [<https://perma.cc/59TL-WEFD>] (last visited Sept. 29, 2020) (explaining the Portals conversations as part of a study involving 850 conversations in six

highly policed neighborhoods characterize the impact of these predatory policing practices against Black people. These Black voices lead to Black people responding with an intentional and dignified retreat from interactions with the face of the state and the police, and from civic engagement.³⁹ Compounding the physical threat to Black bodies, these state actors inflict a psychic terror on the occupied Black community that suppresses participation and faith in government.⁴⁰

These practices have been made possible through increased police funding at the local level augmented by federal dollars.⁴¹ In recent years, budgets for police activities have tripled despite falling crime rates.⁴² The sharp drop in violent crime and property crime since the 1990s has not seen a commensurate reduction in police spending.⁴³ Cash assistance benefits like Temporary Assistance of Needy Families, safety net, and housing programs receive substantially less funding than police budgets, although police spending is less than spending on education and aggregate spending on public welfare.⁴⁴

IV. SABOTAGING ACCOUNTABILITY BY DEFLECTING BLACK COMMUNITY PRIORITIES

While resolving social and economic problems in Black communities ranks as a top concern to Black Americans, state and local officials favor spending on police departments. Policymakers defend their use of and investment in these policing strategies, with a popular argument for these strategies being that Black communities clamor for crime control as a priority.⁴⁵

cities in highly policed communities in which residents discussed with one another topics of policing and incarceration; gender and age diverse, a majority of, but not all, participants were Black).

39. Vesla Weaver, Gwen Prowse & Spencer Piston, *Too Much Knowledge, Too Little Power: An Assessment of Political Knowledge in Highly Policed Communities*, 81 J. POL., no. 3, 1155, 1163 (2019).

40. *See id.*

41. Brian Naylor, *How Federal Dollars Fund Local Police*, NPR (June 9, 2020), <https://www.npr.org/2020/06/09/872387351/how-federal-dollars-fund-local-police> [https://perma.cc/J98V-6ZSL].

42. Polly Mosendz & Jameelah D. Robinson, *While Crime Fell, the Cost of Cops Soared*, BLOOMBERG L. (June 4, 2019, 4:00 AM), <https://news.bloomberglaw.com/white-collar-and-criminal-law/while-crime-fell-the-cost-of-cops-soared> [https://perma.cc/NAG5-FAMX].

43. Richard C. Auxier, *What Police Spending Data Can (and Cannot) Explain Amid Calls to Defund the Police*, URB. INST. (June 9, 2020), <https://www.urban.org/urban-wire/what-police-spending-data-can-and-cannot-explain-amid-calls-defund-police> [https://perma.cc/SR5E-FKXG].

44. *Id.*

45. *See* Aaron Ross Coleman, *How Black People Really Feel about the Police, Explained*, VOX (Jun. 17, 2020, 8:30 AM), <https://www.vox.com/2020/6/17/21292046/black-people-abolish-defund-dismantle-police-george-floyd-breonna-taylor-black-lives-matter-protest> [https://perma.cc/D9G4-AQ28].

In a recent poll, a majority of Black participants indicated that they had greater concern about police brutalizing minorities than about local crime, and they found it to be a “good idea” that the City Council of Minneapolis vowed to break up their police force.⁴⁶

Confidence in local police is considerably low among Black Americans. Just 14% of Black people express “a lot of confidence” in their local police, and 41% some confidence, while 42% of white people say they have a lot of confidence in their local police and 39% say they have some confidence.⁴⁷ In fact, Black communities have a mix of priorities: As James Forman, Jr. described it, “Surveys fail to wrestle with the myriad ways in which American racism narrowed the options available to black citizens and elected officials in their fight against crime.”⁴⁸ Emily Bazelon theorizes that surveys may show Black people supporting police hiring “partly because they don’t see the government providing other resources for making their neighborhoods safe.”⁴⁹ In fact, when asked about strategies to foster improved relationships with the police, nearly three-quarters of participants ranked “holding police officers responsible for the misconduct.”⁵⁰

V. THE PRIORITY OF BLACK POVERTY VERSUS PATERNALISTIC POLICYMAKING

This prioritization of policing by policymakers’ clashes with the stark reality of disproportionate poverty levels among Black people. There is a large income and wealth gap between Black and white households.⁵¹ This chasm has been deepened by the COVID-19 pandemic.⁵²

46. *Id.*

47. Rich Morin & Renee Stepler, *The Racial Confidence Gap in Police Performance*, PEW RESEARCH CENTER: SOCIAL DEMOGRAPHIC TRENDS (Sept. 29, 2016), <https://www.pewresearch.org/social-trends/2016/09/29/the-racial-confidence-gap-in-police-performance/> [https://perma.cc/MZ5T-YZW6].

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

49. Emily Bazelon, *A Discussion About How to Reform Policing*, N.Y. TIMES (June 13, 2020), <https://www.nytimes.com/interactive/2020/06/13/magazine/police-reform.html> [https://perma.cc/GY4C-RV85].

50. BLACK FUTURES LAB, *MORE BLACK THAN BLUE: POLITICS AND POWER IN THE 2019 BLACK CENSUS* 8 (2019), <https://blackfutureslab.org/wp-content/uploads/2019/05/More-Black-than-Blue.pdf> [https://perma.cc/9HZZ-MJLM].

51. Kriston McIntosh, *Examining the Black-white Wealth Gap*, BROOKINGS (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> [https://perma.cc/Z9KS-7BKH] (“At \$171,000, the net worth of a typical white family is nearly ten times greater than that of a Black family (\$17,150) in 2016.”).

52. Greg Rosalsky, *How The Crisis Is Making Racial Inequality Worse*, NPR: PLANET MONEY (May 26, 2020, 6:30 AM), <https://www.npr.org/sections/money/2020/05/26/860913793/how-the-crisis-is-making-racial-inequality-worse> [https://perma.cc/2CYN-CUW7].

By emphasizing policing over economic and social progress, policymakers have effectively ignored the panoply of policies favored by the Black community, opting for a paternalistic approach that subordinates Black communities' voices regarding their own needs. By sizable numbers of greater than 85%, Black participants in the Black Census Project reported they favored economic and social priorities: raising the minimum wage to \$15 an hour; providing affordable health care; increasing wages to sustain families; decreasing college costs; and providing affordable housing.⁵³ Concerning the police, Black respondents overwhelmingly expressed concern over police officers in the community using excessive force and killing Black people.⁵⁴ Nearly 90% believe that the government should play a role in solving social and economic problems that include: providing adequate housing for people who lack it; providing affordable and quality health care for all Americans; and addressing the gap between the rich and poor.⁵⁵

Paternalism has been defined as “the interference of a state or an individual with another person, against their will, and defended or motivated by a claim that the person interfered with will be better off or protected from harm.”⁵⁶ As federal and local policymakers have witnessed a pressing range of structural injustices burdening the Black community, they have poured funding into policing,⁵⁷ opting for a paternalistic approach that subordinates Black community preferences to focus on a broad array of concerns, denying both Black agency and Black community influence.

Instructive in the paternalistic approach that informs policing policy is the ubiquitous “protect and serve” motto⁵⁸ used by police departments. The motto, which has been litigated, is an ironic⁵⁹ symbol to highly policed Black people because it gives credence to the misleading idea that policing places primacy on protecting Black community members rather than causing harm. The Supreme Court has ruled that the police are not

53. BLACK FUTURES LAB, *supra* note 47, at 8.

54. *Id.*

55. *Id.* at 11.

56. Gerald Dworkin, *Paternalism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Fall 2020), <https://plato.stanford.edu/archives/fall2020/entries/paternalism/> [<https://perma.cc/92ZE-QSQ4>].

57. *State and Local Finance Initiative: Police and Corrections Expenditures*, URBAN, <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/police-and-corrections-expenditures> [<https://perma.cc/JKT2-K8W9>] (last visited Sept. 11, 2020).

58. See Stuart Schrader, *To Protect and Serve Themselves: Police in US Politics Since the 1960s*, 31 PUB. CULTURE (Issue 3) 601, 601 (2019).

59. See Prowse et al., *supra* note 12, at 16 (“[O]ne 55-year-old Black woman admitted being confused: ‘I don’t know what they want us to do, or how they want us to feel.’ For some participants, the experience of distorted responsiveness lead to the conclusion that police protection was a hoax. Several mocked a common motto of police—‘Protect and Serve.’”).

required to protect citizens outside of police custody.⁶⁰ The motto serves as a reminder of the government's failure to protect and serve Black communities.

Rather than serving and protecting, American policing has its foundation in performing authoritarian practices. As Brandon Hasbrouck observes, "The institution of policing was designed to protect and serve the racial hierarchy blessed by the U.S. Constitution itself."⁶¹

The precursors of contemporary policing institutions were used to protect private property interests,⁶² to suppress labor uprisings in the northern cities and towns,⁶³ to pursue and return enslaved people, and later, to monitor newly emancipated Black people,⁶⁴ not to protect vulnerable communities. Stuart Schrader describes the police as a professionalized, "entrepreneurial" force with autonomy⁶⁵ and "political wherewithal" who possess economic strength and access to resources.⁶⁶ Over the course of American history, the police have protected none other than themselves and served none other than themselves.⁶⁷ In fact, the police have operationalized the policies of paternalism into authoritarian behaviors.

This paternalism frames a biased regulatory and legal paradigm that claims to benefit the Black community while authorizing policing that brutalizes Black people. This paternalism legitimizes authoritarian policing.

VI. AUTHORITARIAN POLICE SILENCING OF BLACK CULTURAL VOICE

American policing has also appeared in more conventional authoritarian forms through efforts to silence oppositional Black cultural expression on political issues. Professor Glasius explains in her description of authoritarian practices that voices subject to sabotage can be expressed in rap music.⁶⁸ Two specific examples demonstrate this. First, federal police agents sought to silence rap music containing political messages protesting poverty and oppressive police presence in

60. See *Deshaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200–01 (1989).

61. See Hasbrouck, *supra* note 8, at 202.

62. See Schrader, *supra* note 55, at 602.

63. See Malaika Jabali, *If You're Surprised by How the Police Are Acting, You Don't Understand US History*, GUARDIAN: OPINION (June 5, 2020, 5:30 PM), <https://www.theguardian.com/commentisfree/2020/jun/05/police-us-history-reform-violence-oppression> [<https://perma.cc/TK4Q-MNN9>].

64. See Gary Potter, *The History of Policing in the United States*, EKU ONLINE (June 25, 2013), <https://plsonline.eku.edu/sites/plsonline.eku.edu/files/the-history-of-policing-in-us.pdf> [<https://perma.cc/L5W5-GQXS>].

65. See Schrader, *supra* note 55, at 604–05.

66. See *id.* at 607.

67. See *id.* at 602.

68. See Glasius, *supra* note 2, at 528.

Black communities—the popular 1990s N.W.A. rap song, “F--- Tha Police.”⁶⁹ Second, according to British-born Black rap star 21 Savage’s lawyers, federal agents in U.S. Immigration and Customs Enforcement (ICE) detained the artist on February 3, 2019 for overstaying his visa following his release of a popular video for a song that criticized American immigration enforcement policies.⁷⁰

This structurally biased paternalistic policymaking that has resulted in authoritarian policing can be transformed. As Kaaryn Gustafson concluded in her paper on the criminalization of poverty, “U.S. policymakers recognize crime as a social problem but refuse to recognize poverty as a social problem. Thus, it is criminals whose actions arouse political and media attention.”⁷¹ This decision-making by state actors, which ignores or supplants the voices of Black communities, has justified authoritarian policing practices and has demobilized subjugated Black communities. Dorothy Roberts calls police terror one leg of the trifecta of anti-democratic systems, along with mass incarceration and capital punishment, intended to impose “a racist order” in America.⁷²

VII. DISABLING BLACK VOICES

Authoritarian policing frames the Black experience as an “Occupied Black State”, culminating in disempowering Black voices. First, as discussed earlier, police surveillance in Black communities drives people’s disengagement from civic life.⁷³ Second, mass incarceration, fed by aggressive policing tactics, serves to disenfranchise and marginalize Black communities, stressing social networks for collective power.⁷⁴ Third, as historic targets of voter suppression tactics, Black people have faced escalated voter suppression campaigns since the 2013 Supreme Court decision in *Shelby County v. Holder*,⁷⁵ which effectively struck down a key Voting Rights Act of 1965 provision requiring certain states

69. See Peter Hart, *Straight Outta Compton’s Censorship Lesson*, NAT’L COAL. AGAINST CENSORSHIP (Aug. 25, 2015), <https://ncac.org/news/blog/straight-outta-comptons-censorship-lesson> [<https://perma.cc/HEW3-LCYA>]; see also NWA, F--- THA POLICE (Ruthless Records and Priority Records 1988) (with lyrics including “F--- the police comin’ straight from the underground A young n---- got it bad ‘cause I’m brown And not the other color so police think They have the authority to kill a minority”); Steve Hochman, *Compton Rappers Versus the Letter of the Law: FBI Claims Song by N.W.A. Advocates Violence on Police*, L.A. TIMES (Oct. 5, 1989), <https://www.latimes.com/archives/la-xpm-1989-10-05-ca-1046-story.html> [<https://perma.cc/VG U5-L4JX>].

70. See Gina Chereus, *U.S. Targeted 21 Savage For His Rap Lyrics, Lawyer Says*, REUTERS (Feb. 15, 2019, 9:49 AM), <https://www.reuters.com/article/us-people-21-savage-idUSKCN1Q41TC> [<https://perma.cc/Q59C-LHHC>].

71. Gustafson, *supra* note 10, at 337.

72. Roberts, *supra* note 27, at 284.

73. Prowse et al., *supra* note 12, at 1450.

74. See Roberts, *supra* note 27, at 280.

75. *Shelby County v. Holder*, 570 U.S. 529 (2013).

to obtain federal approval prior to making changes in their election procedures.⁷⁶ The Black Census Project estimates that in 2016, felony convictions were responsible for the disenfranchisement of 2.2 million Black Americans, 7.4% of the Black voting-age population.⁷⁷ In 2016, voter turnout for Black Americans fell to 59.4% from the previous high of 66.6% in 2012.⁷⁸ Together with other forces, the state, through authoritarian policing, has engaged in a pattern of acts disempowering Black communities. This is what Professor Glasius discusses in regimes, and what applies here: “an active practice of disrupting or sabotaging accountability”⁷⁹ to those communities.

VIII. TRANSFORMING OUR BROKEN DEMOCRACY

Authoritarian policing of the Black State is a two-level tragedy of malfeasance by state actors: first, policymakers in local, state, and federal bodies and, second, police institutions, which are their agents. This oppressive authoritarian rule of Black people and Black communities can be abolished, but not with ill-fated pedestrian measures that lack capacity to eradicate systemic practices or to heel hegemonic police officers or their enabling police institutions. It can only be dissolved through a transformation of our approach and our values: we must actualize the participatory democracy for which we have a promise in the United States Constitution.

IX. A DEMOCRATIC APPROACH TO POLICING POLICY

The policies and practices that created the Occupied Black State must and can be disbanded through the state’s commitment to an inclusive transformative participatory policymaking paradigm founded on pro-democratic principles.⁸⁰ While Professor Glasius’ authoritarianism definition does not seek to characterize what might constitute a democracy,⁸¹ her schemata lends itself to envisioning model pro-democratic practices. These possibilities suggest a model for policymakers to disrupt authoritarian policing practices through democratizing their decision-making processes.

76. REP. DON BEYER OF THE JOINT ECON. COMM., 116TH CONG., REP. ON THE ECONOMIC STATE OF BLACK AMERICA IN 2020, at 21 (Comm. Print 2020).

77. BLACK FUTURES LAB, *supra* note 47, at 16.

78. REP. DON BEYER OF J. ECONOMIC COMM., 116TH CONG., REP ON THE ECONOMIC STATE OF BLACK AMERICA IN 2020, at 21 (Comm. Print 2020).

79. *See* Glasius, *supra* note 2, at 521.

80. *See generally* Roberts, *supra* note 27.

81. *See* Glasius, *supra* note 2, at 521.

X. ACCOUNTABILITY MEASURES THROUGH INCLUSIVE POLICY-MAKING PRACTICES

Federal, state, and local legislative and regulatory bodies should commit to adopting guiding principles, values, and policies that fortify and advance Black mobilization and power⁸² and should commit to operationalizing these principles, values, and policies through funding civic infrastructures in Black communities. Here are some suggestions:

1. Legislators should center their regulatory framework, processes, and programs around values that promote democratic governance: Black community agency and dignity, humility, and empathy.
2. Inclusive policy-making practices should lead legislature's approach to governance. They should support practices for impacted people that are accountable to and led by Black community members harmed by authoritarian policing.
3. A best interest of the Black community framework for impacted Black communities when passing new laws or regulations should guide development of affirmative laws, regulations, practices, and actions by the state and localities that are purported to benefit Black communities. Such programs and projects should advance Black communities in the areas of physical and mental health needs, supporting human dignity and cultural expression.
4. All policy measures before a legislative or regulatory body for consideration that are likely to have a detrimental impact on Black communities, such as police racial profiling measures, should undergo an analysis of Black Community Adversity Impact (BCAI). The BCAI analysis would serve to highlight needed modifications to mitigate adverse effects upon the safety, mental health, physical health, economic well-being, social well-being, and dignity of Black people.
5. The substantive standards for policymaking in the "best interest" of the Black community should be consonant with the highest quality of life and human dignity, consistent with international human rights principles for children and families.⁸³
6. The principles should be operationalized through funding an infrastructure of neighborhood-based civic-cultural centers in Black communities that serve as venues to facilitate an exchange of ideas for envisioning a future around police dissolution, reform or reduction; and to support, monitor, evaluate, report, and take future action with respect to long-term outcomes. These spaces should provide channels between community members and political officials and should support

82. See Symposium, *Police in America: Ensuring Accountability and Mitigating Racial Bias* Feat. Paul Butler, 11 NW. J. L. & SOC. POL'Y. 385, 396 (2017) (describing the power of community mobilization in addressing policing tactics).

83. See Convention on the Rights of the Child, art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3, 46.

engagement through Black American cultural traditions of storytelling, music, and fine arts as political expression. Among other benefits, this infrastructure would develop and cultivate a pipeline of activists and aspirants to elective office. Through this system, the lifeblood of accountable government and Black community agency and political participation would include sustenance for the dignity and well-being of Black people, Black communities, and a health democracy.

This model would engender state accountability for its policing policies. The proposed infrastructure would facilitate state inclusion of Black community leadership, ideas, concerns, and solutions regarding policing policies and the range of critical inequities that impact Black lives, communities, and futures.⁸⁴

CONCLUSION

As the country crafts policy solutions to the festering problem of police policies and practices that degrade, occupy, and demobilize Black communities, officials around the country should be guided by core values. Central to this is respect for the agency of Black people at the neighborhood, community, and national levels to lead the assessment and problem-solving approach to persistent racialized inequities. As the Black Census authors warn, “Political leaders who rely on the political participation of Black people must pay attention and act on the concerns of Black Census respondents if they want Black communities to remain engaged or mobilize further.”⁸⁵ The proposed model in this paper would foster power, action, and pathways to change with policymakers and allies.

Black-led policymaking in a participatory democratic framework will forge a path to a transformative reality for Black American lives and communities. The oppressive regulatory paradigms by elitist state actors that produce racialized coercive policing propel Black community impoverishment and Black community disempowerment. These approaches can, and should, be reimagined. As Black and allied lawyers and activists advance new possibilities for, while also reducing harm against, Black people, such as through a solidarity economy,⁸⁶ rethinking police budgets, strengthening social citizenships, and liberating Black people from physical, economic, and political oppression, there is more that these lawyers must do. They must prioritize disruption of the anti-democratic forces of the paternalistic policymaking industrial complex that perpetuate the inherently broken policing reform agenda. That flawed agenda aids and abets injustice against Black people. Instead, lawyers

84. Glasius, *supra* note 2, at 525.

85. BLACK FUTURES LAB, *supra* note 47, at 8.

86. Renee Hatcher, *Solidarity Economy Lawyering*, 8 TENN. J. RACE GENDER & SOC. JUST. 23, 24 (2019).

must build a framework for state action that fulfills the promise of our constitutional democracy: Black community agency and Black power that will ensure authoritarian policing is abolished. This can be made possible by prioritizing the well-being and liberation of the Occupied Black State, through enshrining Black civic inclusion and Black civic leadership in all of our public and private institutions and decision-making bodies, from the smallest units of our polity in urban and rural communities to our largest policymaking entities on the global stage. This work is not easy: it must be pursued until it is accomplished!