

DUNWODY DISTINGUISHED LECTURE IN LAW

POLICING AS PUBLIC GOOD: REFLECTING ON THE TERM “TO PROTECT AND SERVE” AS DIALOGUES OF ABOLITION

*Tracey Meares and Gwen Prowse**

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INTRODUCTION

This Essay is based on a lecture that was to be delivered in person in March 2020 but was cancelled as a result of the initial ravages of the COVID-19 pandemic. That a discussion of policing in the United States was cancelled because of what may well turn out to be the most

* Tracey L. Meares is Walton Hale Hamilton Professor and Co-Founder of the Justice Collaboratory at Yale Law School. Gwen Prowse is a joint-PhD candidate in the Departments of Political Science and African American studies at Yale University.

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significant public health crisis of this decade, if not this century, is important as these two subjects are intimately related. Sociologists and others have long noted that crime, and especially violent crime, is concentrated in places.¹ Research is also clear that the state's primary response to concentrated violence in communities has been to send police and other apparatus of the criminal legal system to respond to crime rather than to provide state supports and other resources better aimed at preventing the circumstances that render certain neighborhoods susceptible to violence.² Criminal legal system exposure is, however, fundamentally linked to underlying inequalities in distributions of wealth and power, and those inequalities are concentrated geographically. Police contact, imprisonment, and other aspects of system exposure burden the same neighborhoods that are weighed down by lack of affordable housing, inadequate schools, food insecurity, lead poisoning, poor water quality, and so on—a state of affairs that has persisted in some places for generations. Indeed, political scientist Lisa Miller calls the state's failure (or refusal) to protect those living in racially-marginalized communities from violence through comprehensive, preventative measures *racialized state failure*.³

This is where the COVID-19 crisis intersects with policing and violence. Exogenous crises, whether pandemics or natural disasters, interact with extant inequalities and compound them. From the COVID-19 pandemic, to the HIV/AIDs crisis, to Hurricane Katrina, recent history shows how disasters expose and amplify the spatial dimensions of racialized state failure.⁴ That the same activists and organizers who were calling for police abolition were also enacting local mutual aid projects to fill the state's void in the pandemic is not coincidence. Rather, it illustrates how current calls for police abolition and defunding are simply an extension of their long-standing work to transform the state's orientation toward racially subjugated citizens. When participants in uprisings across the country call for defunding armed first responders, as well as greater investment in both community organizations and government services better targeted at supporting communities in need, it can be understood as a call to reimagine how the state responds to projects of public safety. To be sure, one can understand this dialogue as

1. Tracey L. Meares, *Place and Crime*, 73 CHI.-KENT L. REV. 669, 669–70, 684 (1998).

2. Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race–Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565, 569–70 (2017).

3. See Lisa L. Miller, *The Invisible Black Victim: How American Federalism Perpetuates Racial Inequality in Criminal Justice*, 44 L. & SOC. REV. 805, 835–37 (2010).

4. For an in-depth analysis of these intersections, see Alyasah Ali Sewell, *Policing the Block: Pandemics, Systemic Racism, and the Blood of America*, 19 CITY & COMMUNITY 496, 497 (2020).

a jumping off point for reconceiving the fundamentals of the relationship between the state and the citizens that comprise it.

In the pages below, this Essay highlights how ordinary people discuss a reconceptualization of policing in ways that respond to the current moment. The data comprise a set of over 850 conversations recorded and transcribed between 2016 and 2018, and that took place between dyads of people located across fourteen neighborhoods among six cities: Baltimore, Chicago, Los Angeles, Milwaukee, Mexico City, and Newark. As detailed below, these conversations were collected through an innovative technology, “Portals,” which allowed the conversationalists to speak to one another as if they were in the same room even though they were actually hundreds or even thousands of miles away from one another.⁵ Each conversation, initiated by a prompt, encouraged the speakers to discuss their experiences with police and with violence.⁶ These conversations yield rich insight regarding how people who regularly have contact with what political scientists Joe Soss and Vesla Weaver call the “second face of the state.”⁷

A critical aspect of people’s experiences with this second face has to do with how and when police use force during encounters with members of the public, and whether that force is excessive either in the eyes of the person with whom an officer is dealing, or in the eyes of the law, or both. How people reconcile their treatment by police, particularly important state agents, and how people understand their place and status in society is the central problem here. Research supports the conclusion that opinions of, and ideas about, the police provide people with information relevant to the formation of their social identity.⁸ Further, one can hypothesize what actions people will take based on how they identify themselves. Much social science literature predicts that people will disengage from the state as a result of negative police treatment. For example, legal scholars argue that excessive police force can lead to distrust in the law and police as legal actors.⁹ Sociologists discuss a version of retreat by documenting a phenomenon of legal cynicism, which could explain lower rates of calling police even in situations of

5. For more about the Portals and the project, see *The Idea*, PORTALS POLICING PROJECT, <http://www.portalspolicingproject.com/the-idea> [<https://perma.cc/33MC-KT8H>].

6. For more on the Portals methodology, see the Appendix.

7. Soss & Weaver, *supra* note 2, at 567.

8. See Ben Bradford et al., *Officers as Mirrors: Policing, Procedural Justice and the (Re)Production of Social Identity*, 54 BRIT. J. CRIMINOLOGY 527, 528 (2014); Ben Bradford, *Policing and Social Identity: Procedural Justice, Inclusion, and Cooperation Between Police and Public*, 24 POLICING & SOC’Y 22, 24 (2014).

9. See Monica C. Bell, Essay, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2059 (2017); Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1511 (2016); Tracey Meares, *The Legitimacy of Police Among Young African-American Men*, 92 MARQ. L. REV. 651, 655–56 (2009).

serious need.¹⁰ Political scientists similarly predict disengagement from politics as a result of interaction with the criminal justice system; this disengagement is reflected in, and typically measured by, voting patterns.¹¹

The notion of “police abolition,” currently very prominent in both academic and popular media, potentially reflects disengagement in that it could mean repudiation of state assistance for public safety projects. One complication around terms such as “police abolition” and its close cousin, “defund the police,” is that the phrases mean different things to different people—even within the movement itself.¹² In the specific context of police excess, one obvious goal of abolition discourse is simply to reduce excessive violent harm, in addition to excessive stopping, frisking, surveilling, and so on; however, especially in the context of policing, there remains the question of alternatives. No serious person believes that police abolitionists are arguing that people should be able to commit crime against one another with impunity.¹³ Rather, the question is: “What are alternative approaches to promoting public safety?” One alternative police abolitionists might be proposing is that communities ought to police themselves without any kind of state intervention.¹⁴ Such a proposal might entail disengagement from the state. A different approach

10. See Matthew Desmond et al., *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857, 858 (2016); David S. Kirk & Andrew V. Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 AM. J. SOC. 1190, 1228 (2011); Robert J. Sampson & Dawn Jeglum Bartusch, *Legal Cynicism and (Sub)cultural? Tolerance of Deviance: The Neighborhood Context of Racial Differences*, 32 L. & SOC’Y REV. 777, 783–84 (1998).

11. See TRACI BURCH, *TRADING DEMOCRACY FOR JUSTICE* 171 (2013); see also AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP* 16–17 (2014) (noting that people who have been incarcerated “come to see participation in political life not only as something that is unlikely to yield returns, but as something to be actively avoided”). But see HANNAH L. WALKER, *MOBILIZED BY INJUSTICE* 4–5 (2020) (“[I]n a study of voter registration and turnout, Burch found that ex-prisoners vote at higher levels than similarly situated individuals who had not served time.” (citation omitted)).

12. See Sean Illing, *The “Abolish the Police” Movement, Explained by 7 Scholars and Activists*, VOX (June 12, 2020, 11:00 AM), <https://www.vox.com/policy-and-politics/2020/6/12/21283813/george-floyd-blm-abolish-the-police-8cantwait-minneapolis> [<https://perma.cc/5AAY-UV7Q>].

13. See Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOS. REV. (Aug. 1, 2017), <https://bostonreview.net/law-justice/tracey-l-meares-policing-public-good-gone-bad> [<https://perma.cc/ELS7-68MB>] (arguing that this view is a caricature of abolitionist views).

14. See Dorothy E. Roberts, Foreword, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 47 (2019) (“Some abolitionists are implementing local social-change projects, based on principles of mutual aid rather than competition and profit, to foreshadow and move toward a society that has no need to cage people.”).

might be to fundamentally restructure the policing service as it currently exists.¹⁵

To answer these questions, the Portals Policing Project collects and analyzes hundreds of conversations concerning police, policing, and violence. This Essay focuses on a key phrase, “Protect and Serve” (and its variants), and argues that even when people are unrelentingly negative in their characterization of police and policing, they are more likely to argue for an aspirational vision of policing rather than state disengagement and self-policing. The argument here is that this analysis is very relevant to the current discussion regarding police abolition where a key question is how people who regularly experience the strong hand of the state think about what role the state should play in their lives. This Essay concludes by suggesting that when listening to the public safety recommendations race-class subjugated communities offer, these ideations should be understood as part of a reconstructive process—imagining new state formations—as opposed to an erasure of the state in its entirety.

I. SETTING THE STAGE: THE PROBLEM OF EXCESSIVE FORCE AS A JUMPING OFF POINT FOR DIALOGUES

Last year marked the 30th anniversary of *Graham v. Connor*.¹⁶ This case sets the legal standard for civil rights lawsuits in which plaintiffs allege that police officers have engaged in excessive force.¹⁷ *Graham* was notable when it was decided. In *Graham*, the U.S. Supreme Court unanimously held that a plaintiff’s claim that a police officer used excessive force when making a seizure of their person should be evaluated according to an objective reasonableness standard under the Fourth Amendment of the U.S. Constitution rather than a more generalized substantive Due Process standard which, as courts at that time interpreted, required a plaintiff to demonstrate that an officer used force “maliciously and sadistically.”¹⁸ Because proving an officer’s subjective intent retrospectively was usually exceedingly difficult, the *Graham* decision was considered a victory for the plaintiff.¹⁹ Many thought that an objective reasonableness test would be more friendly to plaintiffs.²⁰ But, in the thirty years since the decision came down, both

15. Megan Quattlebaum & Tom Tyler, *Beyond the Law: An Agenda for Policing Reform*, 100 B.U.L. REV. 1017, 1027–44 (2020).

16. 490 U.S. 386 (1989).

17. *See id.* at 397–99.

18. *Id.* at 397, 399 (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

19. *Mr. Graham and the Reasonable Man*, WNYC STUDIOS (Nov. 20, 2017), <https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/mr-graham-and-reasonable-man> [<https://perma.cc/92NX-72P8>].

20. *Id.*

scholars and public commentators perceive *Graham* as limited medicine to treat the very serious problem of police force against members of the public generally and people of color specifically.²¹

Graham's limitations are important to the argument presented here. The Court's shaping of liability standards affects officer training.²² Therefore, it is a factor that potentially shapes the everyday experiences that people have with police. These encounters ultimately shape how people understand not only their relationship with police, but also how they understand themselves as members of a political community.²³

A nationally representative Gallup poll published three years after *Graham* was decided documented the best estimates of the prevalence of police use of force at that time. Describing the results of that poll, University of South Carolina criminology professor and use of force expert, Geoff Alpert, noted that 5% of all respondents and 9% of non-white respondents reported that they had in their lifetime "been physically mistreated or abused by the police."²⁴ Alpert further noted that observational studies, likely applying a more stringent definition of excessive force, largely supported the polling data.²⁵ Since 1999, the Bureau of Justice Statistics (BJS) has administered the Police-Public Contact Survey (PPCS) every three years as a supplement to the National Crime Victimization Survey.²⁶ The PPCS collects data from people aged sixteen or over.²⁷ A BJS report summarizing the data notes that, during the first decade of the second millennium, the rate of people nationally who experienced threat or use of nonfatal force remained largely

21. See Rachel A. Harmon, *When Is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1130–31 (2008); Osagie K. Obasogie & Zachary Newman, *The Futile Fourth Amendment: Understanding Police Excessive Force Doctrine Through an Empirical Assessment of Graham v. Connor*, 112 NW. U. L. REV. 1465, 1493–94, 1496–97 (2018); David H. Gans, *The Supreme Court Enabled Horrific Police Violence by Ignoring Constitutional History*, SLATE (June 3, 2020, 1:13 PM), <https://slate.com/news-and-politics/2020/06/supreme-court-enabled-george-floyd-murder-police-violence.html> [https://perma.cc/GM65-WA8P]; Charles Lane, *A 1989 Supreme Court Ruling Is Unintentionally Providing Cover for Police Brutality*, WASH. POST (June 8, 2020, 6:57 PM), https://www.washingtonpost.com/opinions/a-1989-supreme-court-ruling-is-unintentionally-providing-cover-for-police-brutality/2020/06/08/91cc7b0c-a9a7-11ea-94d2-d7bc43b26bf9_story.html [https://perma.cc/NW9U-TPSF].

22. See Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 VA. L. REV. 211, 285 (2017).

23. See Vesla Weaver, Gwen Prowse, & Spencer Piston, *Too Much Knowledge, Too Little Power: An Assessment of Political Knowledge in Highly Policed Communities*, 81 J. OF POLITICS 1153, 1158–62 (2019).

24. Geoffrey P. Alpert & William C. Smith, *How Reasonable Is the Reasonable Man?: Police and Excessive Force*, 85 J. CRIM. L. & CRIMINOLOGY 481, 482 (1994).

25. See *id.*

26. SHELLEY HYLAND ET AL., U.S. DEP'T OF JUSTICE, POLICE USE OF NONFATAL FORCE, 2002–11 at 10 (2015).

27. *Id.*

flat;²⁸ importantly, Blacks were much more likely to experience force at all, especially during street stops.²⁹ This same BJS report indicates that most people who experienced police use of force perceived the force used as excessive.³⁰

When examining BJS reports of police use of force, it is important to remember that most people in any given year never have any contact with the police.³¹ So, while national rates of force experience hover between 2% and 5%,³² it may be more helpful to recall that those rates involve millions of individuals and even more incidents, as some individuals have multiple experiences. Moreover, because Blacks and other people of color experience police force at rates disproportionate to whites—when combined with the reality of geographical concentrations of violence—one begins to see that national-level surveys, while valuable for some purposes, likely are of limited utility when trying to understand how people who regularly experience force in police encounters, or who are connected with people who do, understand the authorities who use this force.

Qualitative data can provide a fuller picture of the nature of concentrated police experiences and, therefore, a better sense of how such experiences inform the dynamics of civic identity formation discussed above. Work by policing scholars who have assessed the quality of the relationships among the police and populations of people who have a great deal of contact with authorities indicates, unsurprisingly, that distrust in police is particularly high among younger men. Moreover, their work suggests that this distrust is associated with the amount and recency of police contact.³³ One of the questions in a brief survey administered to Portals participants concerned levels of trust in police.³⁴

28. *Id.* at 5.

29. *Id.* at 4 (describing how 14% of Blacks, as compared to 5.9% of Hispanics and 6.9% of whites, experienced non-fatal force during street stops).

30. *Id.* at 6.

31. ELIZABETH DAVIS ET AL., U.S. DEP'T OF JUSTICE, CONTACTS BETWEEN POLICE AND THE PUBLIC, 2015 at 1 (2018).

32. *Id.*

33. See, e.g., Jacinta M. Gau & Rod K. Brunson, *Procedural Justice and Order Maintenance Policing: A Study of Inner-City Young Men's Perceptions of Police Legitimacy*, 27 JUST. Q. 255, 272–73 (2010); Tom R. Tyler et al., *Street Stops and Police Legitimacy: Teachable Moments in Young Urban Men's Legal Socialization*, 11 J. EMPIRICAL LEGAL STUD. 751, 759, 774–75 (2014); see also Rod K. Brunson, "Police Don't Like Black People": African-American Young Men's Accumulated Police Experiences, 6 CRIMINOLOGY & PUB. POL'Y 71, 78, 84, 87 (2007) (discussing study findings showing that Black male youths came to view aggressive policing practices as normal features of their interactions with police); Ronald Weitzer & Steven A. Tuch, Research Notes, *Perceptions of Racial Profiling: Race, Class, and Personal Experience*, 40 CRIMINOLOGY 435, 449 (2002) ("The feeling that one has personally experienced racial profiling is a strong predictor of attitudes toward the police.")

34. See *infra* Appendix D.

Just over half of Milwaukee participants who were under thirty years old said they *never* trusted the police.³⁵ And just under half of those stopped more than seven times in their lifetime never trusted the police.³⁶

There is qualitative research that goes back quite some time. For example, Elijah Anderson's 1990 study, "Police and the Black Male," details a world of almost constant police surveillance for young Black men.³⁷ Twenty years later, sociologist Victor Rios detailed the lifeworlds of young Black and Latino men in Oakland and recounted the following account of a typical interaction between a friend of one of Rios's research subjects and an Oakland police officer who "patrolled" the grounds near the high school the kids attended:

The officer stared us down. He drove down the street, made a U-turn, and drove slowly right behind us. "Shit! That's the mothafucker that beat down Marquill the other day in front of McDonald's, remember?" I remembered: two weeks before, a Black male student walked into the school at the end of the lunch period, his extra-long white T-shirt soiled with black tar and his lip busted open, with red flesh showing. One of his friends asked him, "What happened?" "The Narcs, they beat my ass." He replied in monotone, with little emotion as he walked, head bowed, to the boys' bathroom.³⁸

The Portals Policing Project provides insight into the experiences of people who are familiar with both regular interpersonal violence in their homes and the state's dictated response to that violence, which is often objectively violent (or at least perceived as such). Thinking about the facets of violence is important. Security is one of the most important goods that the state can provide its citizens, but of course feeling safe and

35. See generally Gwen Prowse et al., *The State from Below: Distorted Responsiveness in Policed Communities*, 56 URB. AFF. REV. 1423 (2020) (discussing the results of the Portals project); Vesla Weaver et al., *Too Much Knowledge, Too Little Power: An Assessment of Political Knowledge in Highly Policed Communities*, 81 J. POL. 1153 (2019) [hereinafter Weaver et al., *Too Much*] (same); Vesla Weaver et al., *Withdrawing and Drawing In: Political Discourse in Policed Communities*, J. RACE, ETHNICITY, & POL., Jan. 28, 2020, at 1 [hereinafter Weaver et al., *Withdrawing*] (same); *Publications*, PORTALS POLICING PROJECT, <https://www.portalspolicingproject.com/the-research> [<https://perma.cc/T9UC-K7BQ>] (providing links to the published research stemming from the Portals project).

36. See generally Prowse et al., *supra* note 35 (discussing the results of the Portals project); Weaver et al., *Too Much*, *supra* note 35 (same); Weaver et al., *Withdrawing*, *supra* note 35 (same); *Publications*, *supra* note 35 (providing links to the published research stemming from the Portals project).

37. ELIJAH ANDERSON, *STREETWISE* 190 (1990).

38. VICTOR M. RIOS, *PUNISHED* 81 (2011). See generally BRYAN STEVENSON, *JUST MERCY* (2014) (discussing the concept of getting proximate).

unthreatened as a general matter cannot pertain merely to private predation. Safety should also include security from government overreach.³⁹

A. *About Portals*

Portals are immersive, connected environments providing essentially full-body “Zoom” experiences that give people in distant locations the sense of sharing the same room with one another.⁴⁰ Artist and innovator, Amar Bakshi, began Portals as a law student in New Haven, Connecticut by using the technology to connect people thousands of miles apart in standard intermodal shipping containers painted dark gold.⁴¹ Bakshi and a partner, John Farrace, made other modifications to ensure that the spaces were uniform, secure, and intimate. Finally, Bakshi and a third partner, Michelle Moghtader, paired Portals in Tehran and the Lower East Side in New York City.⁴² As a result, Shared Studios was born. While Shared Studios began as an art project designed to connect people in far-flung places across the globe, the Authors have used Portals domestically to connect people in neighborhoods and cities where experiences with both police and interpersonal violence were expected to be higher than the rates of such experiences nationally.⁴³ For example, one of the Portals was located in Milwaukee, specifically in the 53206 zip code, which has been reported to have the highest incarceration rate in the country.⁴⁴

The Portals Policing Project, launched in April of 2016, began by pairing two Portals: one in Moody Park in Milwaukee, Wisconsin, and the other in Military Park in Newark, New Jersey. Later that year, another Portal was added in the Bronzeville/Grand Boulevard area of Chicago, Illinois, and by mid-2017, Portals were operating in Lexington Market in Baltimore, Maryland; downtown Los Angeles, California; and Mexico City, Mexico. In all, the Authors recorded approximately 866

39. See Tracey L. Meares, Keynote Address, *Policing in the 21st Century: The Importance of Public Security*, 2016 U. CHI. LEGAL F. 1, 5.

40. See *The Medium*, PORTALS POLICING PROJECT, <http://www.portalspolicingproject.com/the-medium> [https://perma.cc/T9X9-NSNK].

41. Amar C. Bakshi, *Lessons from the Launch of Portals*, SHARED STUDIOS (May 4, 2016), <https://www.sharedstudios.com/story-of-portals> [https://perma.cc/XY2J-KFP7].

42. See *id.*

43. See *The Idea*, *supra* note 5.

44. See, e.g., *Director’s Statement*, MILWAUKEE 53206, <https://www.milwaukee53206.com/about/directors-statement/> [https://perma.cc/U4BB-B7FP]. But see D.L. Davis, *Is Milwaukee’s 53206 ZIP Code Really Tops in Incarceration Rates?*, POLITIFACT (Sept. 10, 2019), <https://www.politifact.com/article/2019/sep/10/milwaukees-53206-zip-code-really-tops-incarceratio/> [https://perma.cc/6UTY-QY7Q] (“The report [that appears to be the genesis of this claim] did not claim 53206 as the most-incarcerated in the state but that was a leap that many easily made. And because the state was the worst in the nation, a second leap—that 53206 is worst in the nation—wasn’t far away.”).

conversations (approximately 430 hours of deliberation) in fourteen neighborhoods across six cities, making Portals the most extensive collection of first-hand accounts of the police—by those who are policed—to date.

These conversations provide a deeper and broader understanding of the experiences with police from a segment of the population that is often missed in the data captured in nationally representative surveys. Portals dialogues are not a random sample. The conversations the Authors collected differ from survey data in other ways, too. In a survey, a respondent essentially is in conversation, if one could call it that, with the researcher herself. The respondent answers questions posed for the researcher that the researcher has validated, so that the researcher might compare the respondent's answers to other respondents. This kind of uniformity is critical for hypothesis testing. But grasping how people understand and make connections in their own minds and with each other about their place and role in society requires a different kind of analysis. For this work, an approach that Katherine Cramer calls “deep listening” is more appropriate as it allows participants to define their experiences on their own terms.⁴⁵

B. *Theoretical Frameworks for Analyzing the Dialogues*

Scholars of educational studies have argued that through public school curricula the state teaches individuals about their status.⁴⁶ One can examine what the state says explicitly to citizens and observe the state's behavior and orientation towards individuals as an attempt to understand what the state teaches. If, for example, one posits that an important role of the state is to provide security to individuals, then one can deduce lessons about that security by both examining what authorities say they are doing to carry out this task and observing how the state carries out the task of providing that security—including the ways in which the state objectively fails to do so.⁴⁷ Typically, educational scholars of curricula have discussed the ways in which the state makes citizens by training their attention on the key institution the state claims to provide such education—schools.⁴⁸ More recently, however, scholars from other

45. See KATHERINE J. CRAMER, *THE POLITICS OF RESENTMENT* 5 (2016); see also MELISSA VICTORIA HARRIS-LACEWELL, *BARBERSHOPS, BIBLES, AND BET* 2 (2004) (“[O]ne important element in understanding how black people interpret and make sense of the political world is to listen in on their everyday talk.”). See Appendix Section B. Data Collection for an explanation of the approach of engaging strangers for this kind of qualitative analysis.

46. See, e.g., Jean Anyon, *Social Class and the Hidden Curriculum of Work*, 162 *J. EDUC.* 67, 89–90 (1980).

47. See, e.g., Lisa L. Miller, *What's Violence Got to Do With It? Inequality, Punishment, and State Failure in US Politics*, 17 *PUNISHMENT & SOC'Y* 184, 185 (2015).

48. See, e.g., Anyon, *supra* note 46, at 68.

disciplines outside of education have looked outside of schools to other state institutions, such as prisons, welfare agencies, and the military, to examine how people learn through experiences with social policy.⁴⁹ Similarly, in the education literature, critical scholars have looked to some of these locations to discuss how institutions outside of schools create “public pedagogy” that could be said to educate citizens.⁵⁰ Relying on curriculum theory here better identifies a clear structure regarding the lessons of citizenship by pointing to three types of curricula: (1) the explicit or *overt* curriculum, which is the intended body of learning; (2) the implicit curriculum, which includes lessons inherent in the experience of following a lesson plan, as well as a hidden curriculum that is antithetical to the state aims of the overt curriculum; and (3) null curriculum, which includes conspicuously absent lessons.⁵¹

Portals dialogues offer an especially rich dataset for thinking about the application of curriculum theory as a frame for understanding how Portals participants both make sense of their relationships with police as legal authorities and engage with policing as social policy as specific instantiations of their more general relationship with the state. Relying in part on the curriculum theory frame, political scientists Weaver, Piston, and Prowse recently analyzed Portals dialogues among only Black participants—233 out of the 800 plus conversations.⁵² Among other ideas, Weaver, Piston, and Prowse explored how this subset of participants discussed the notion of “Protect and Serve” to their actual experiences with police and policing, noting the frequent reference of participants to some variant of the term “Protect and Serve” as an example of the overt curriculum that they do not experience and the hidden curriculum they must learn in its stead.⁵³

The term “Protect and Serve” has come to signify a way to characterize a policing ideal (i.e., how police *should* operate vis-à-vis the public) and therefore the motto is an important signifier of the formal or overt curriculum of policing.⁵⁴ According to its internally produced

49. See Donald P. Moynihan & Joe Soss, *Policy Feedback and the Politics of Administration*, 74 PUB. ADMIN. REV. 320, 321–22 (2014) (surveying literature of “policy feedback” in which people through their participation in various social policies participate in political relations and therefore gain understandings about rights and obligations of citizenship).

50. See Benjamin Justice, *Curriculum Theory and the Welfare State*, 4 ESPACIO, TIEMPO Y EDUCACIÓN 19, 21 (2017) (describing recent work on “public pedagogy”).

51. See *id.* at 23–24 (explaining three different types of curricula).

52. Weaver et al., *Withdrawing*, *supra* note 35, at 1155.

53. See *id.* at 1159–60.

54. Cf. Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 159, 172 (2014) (discussing the way in which the Fourth and Fifth Amendments to the Constitution could be considered part of the formal or overt curriculum of policing in that the legal regime flowing from these Amendments “is designed

magazine, *Beat*, the Los Angeles Police Department conducted a contest for the motto of their police academy in 1955.⁵⁵ The winning motto, submitted by Officer Joseph S. Dorobek, was the phrase “To Protect and to Serve,” which became the motto of the academy and then, in 1963, the Los Angeles City Council passed an ordinance to make the motto applicable to the department as a whole.⁵⁶ The shortened phrase “Protect and Serve” has proliferated as a motto for other agencies—including outside of the United States.⁵⁷

In a recent issue of the journal *Urban Affairs*, the Authors and a colleague explain in an analysis of Portals conversations that the experience many Portals participants have had with police and policing in their neighborhoods is too often inconsistent with what many might think the phrase “Protect and Serve” connotes.⁵⁸ If, when people think about the phrase “Protect and Serve” they think of it as an idea consistent with the regular provision of safety and security, then an overarching theme of the dialogues is that the police neither responded regularly or swiftly when called upon for serious crises or provided protection on the many occasions that they interacted with members of the public.⁵⁹ Instead, the police hounded people for non-serious matters and were overly aggressive in their interactions for petty transgressions.⁶⁰

While literature on “policy feedbacks” explains that this kind of interaction will shape a person’s perception of herself as a political actor, regardless of whether a state actor purports to act as a pedagogue in claiming to teach that person a different lesson, that literature is quite inductive in orientation.⁶¹ In contrast, a curriculum approach encourages a deductive analysis of what the state as a pedagogue intends, just as one might interrogate a teacher’s syllabus. By doing so, one can identify the lesson as written, the lesson as delivered, and finally, the lesson learned.

to convey concern for rights” and instill the principle that “[p]eople’s interests in autonomy, privacy, and bodily integrity ought not be subject to the whim of an individual police officer”).

55. See *The Origin of the LAPD Motto*, L.A. POLICE DEP’T, http://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128 [<https://perma.cc/8RP9-86QM>].

56. See *id.*

57. See, e.g., Amos Oyesoji Aremu, *Urbanization and Community Policing in Nigeria*, in URBANIZATION, POLICING, AND SECURITY 219, 222 (2009) (discussing the motto of the Nigeria Police: “[T]o protect and serve with integrity”); Dylan Kerrigan, *Transnational Anti-Black Racism and State Violence in Trinidad*, SOC’Y FOR CULTURAL ANTHROPOLOGY (June 29, 2015), <https://culanth.org/fieldsights/transnational-anti-black-racism-and-state-violence-in-trinidad> [<https://perma.cc/DTF7-ZV6X>] (noting the motto of the Trinidad Police Department: “[T]o protect and serve with pride”).

58. Prowse et al., *supra* note 35, at 1438 (noting that several participants specifically mocked the “Protect and Serve” motto).

59. See *id.* at 1435–43.

60. See *id.* (labeling this kind of “Janus-faced” interaction as “distorted responsiveness”).

61. For more on policy feedbacks, see generally Andrea Louise Campbell, *Policy Makes Mass Politics*, 15 ANN. REV. OF POL. SCI. 333 (2012) (explaining the policy feedback concept).

So far, this Essay has addressed the juxtaposition between the stated lesson (i.e., the police are state agents ready to serve and protect all citizens) and the lesson as delivered (i.e., the police are rarely around when needed most, and, when they are present, they are meddlesome, petty, and even brutal). In concluding that everyday policing on the streets of Chicago, Baltimore, Milwaukee, Los Angeles, and Newark too often is incongruent with its stated ideal, Portals participants' observations line up with decades of qualitative police scholarship referenced above.⁶² Much of that work, however, does not hone in on the topic of interest here—how these interactions shape conclusions about citizenship and identity and how such conclusions predict whether and how individuals will want to engage with the state. When people experience the clash between the overt and hidden curricula, how does that disharmony impact their expectations of the state?

One common refrain noted across social science and legal literatures is the idea of a wide prevalence of withdrawal of people of color from race-class subjugated communities from engagement with the state, state authorities, and law. In the legal literature that idea is encapsulated by the notion of legal estrangement,⁶³ and, in the sociological literature, the research discusses legal cynicism and its connection to criminal activity or behaviors such as willingness to call on authorities in cases of emergency.⁶⁴ The social psychological literature focuses on ideas about the link between public legitimacy and the extent to which people comply with law, cooperate with, and otherwise engage with authorities.⁶⁵ Recently, in addressing the political science literature in the *Journal of Race Ethnicity and Politics*, Weaver, Prowse, and Piston conclude—while relying upon both historical examples and Portals data—that some political scientists have been too quick to determine that negative interactions work only in a destructive direction.⁶⁶ Specifically, they suggest that negative interactions motivate people to turn to one another

62. See generally, e.g., *AGAINST THE WALL* (Elijah Anderson ed., 2008) (discussing, both in the abstract and by specific example, the various challenges faced by Black male youth); RIOS, *supra* note 38 (exploring the experience of several delinquent Black and Latino boys over three years); Brunson, *supra* note 33 (discussing the results of forty in-depth interviews with African-American adolescent males regarding their experiences with police); Rod K. Brunson & Jody Miller, *Gender, Race, and Urban Policing: The Experience of African American Youths*, 20 *GENDER & SOC'Y* 531 (2006) (analyzing in-depth interviews with African American youths regarding their experiences with, and perception of, the police).

63. See, e.g., Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *YALE L. J.* 2054, 2066–67 (2017).

64. See *id.* at 2066 (identifying the origins of the term “legal cynicism” in sociological literature).

65. See *id.* at 2073–74 (discussing the origins of the legitimacy theory).

66. Weaver et al., *Withdrawing*, *supra* note 35, at 3–4, 6–7.

as a form of power building, which serves as a foundation for future collective struggle.⁶⁷

In the Portals conversations, an examination of the many invocations of “Protect and Serve” demonstrates a similar phenomenon.⁶⁸ Although there are sparse instances in which Portals participants discuss policing that they found to be protective or that represented the police doing the best that they could, the characterization of policing experiences in the context of the “Protect and Serve” trope was overwhelmingly negative across discussions. In this context, the Authors’ question was how and whether the participants’ response reflected current ideas about police abolition that are increasingly prominent in the media. Specifically, the Authors wanted to know whether participants’ views reflected a desire for a more privatized vision of community control, or whether they argued for a different vision of abolition—one that could be argued as more consistent with the historical grounding of abolition grounded in Reconstruction.

II. ALTERNATIVE VISIONS OF POLICING

This Part focuses on data from the Portal Policing Project. Sections A and B examine the many invocations of the term “Protect and Serve” to explore how participants understand their relationship to policing specifically and the state more generally. Section C relies upon curriculum theory to offer insight to the analysis.

A. *Policing Ourselves: “Privatized Policing”*

While many people think of private policing as the kind of policing in which individuals, groups, or organizations hire non-sworn private agents to provide security services, one might also characterize the idea of communities providing their own policing as a form of “private” policing.⁶⁹ In the Portals dialogues pertaining to “Protect and Serve,” the Authors observe the promotion of self-policing as one reaction to the state’s failure to align its formal and implicit curricula. That is, one reaction by some conversationalists to the hidden curriculum of “Protect

67. *See id.*

68. Across all 833 Portals conversations, the phrase “Protect and Serve” was mentioned in 122 conversations in the entire group. There was at least one mention of the term in every kind of city pairing, although there was variation in the rate of the mentions of the term from a low (excluding the single mention in a Mexico City and Los Angeles dialogue) of 8% among conversations among participants from Baltimore and Chicago to a high of 35% among Chicago and Milwaukee dialogues.

69. *See generally* Elizabeth E. Joh, *Conceptualizing the Private Police*, 2005 UTAH L. REV. 573 (considering vigilantism as a potential form of private policing); David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165 (1999) (providing an in-depth review of private policing, including private policing through community volunteers, to spark further scholarly discussion).

and Serve” is to advocate for policing themselves.

Consider the following excerpts beginning with this conversation between a thirty-one-year-old Black woman in Milwaukee (M) and a thirty-three-year-old Black woman in Chicago (C):

Milwaukee/Chicago January 2017

M: . . . So police officers, and the firefighters and the doctors, they pay for aldermen. Then they kids go to college, they pay for the governors, the congressman. Now we pay for the police, the firefighters. They don’t understand that. So, if we have to keep giving y’all our money and y’all gunning us down, guess what? I don’t have to deal with that. I’m gonna be an entrepreneur where my money don’t even go to the force.

C: Yeah we gonna have to do something else. And that’s the thing is that . . .

M: And I can get my own Black brothers and sisters to protect me.

C: Yes.

M: And police my own community.

And later in the same conversation:

M: Don’t call them, and don’t say nothing to them, and handle our own.

C: Handle our own.

This conversation between a twenty-four-year-old Latino man from Los Angeles (Bystander LA) and a forty-one-year-old white woman from Baltimore (B) from January 2018 also reflects this idea and is particularly interesting because it is focused on an often-problematic tool of policing, the consensual search. Both participants describe having been stopped by police more than seven times in their lifetime.⁷⁰

70. The term “consent search” is a misnomer in that it is extraordinarily difficult to determine whether a person has truly consented to a search voluntarily. This is especially true given that the U.S. Supreme Court has determined that officers are not required to inform a person that they have a right to refuse a search. *See* *Schneckloth v. Bustamonte*, 412 U.S. 218, 248–49 (1973). In *Schneckloth*, the Court determined that the assessment of whether consent to a search was given voluntarily should be determined through balancing the state’s need for the search against the individual’s desire to be free from state intrusion. *See id.* at 227; *see also* Tracey L. Meares & Bernard E. Harcourt, *Foreword: Transparent Adjudication and Social Science Research in Constitutional Criminal Procedure*, 90 J. CRIM. L. & CRIMINOLOGY 733, 737–38

B: And you say, listen, I'm not gonna consent to a search. You know. I know what my rights are and I don't have to do that. . . . You only have as much power as I give you. They are supposed to work for us. They are supposed to protect us and serve us and be there to help us when we need help.

Bystander LA: Cops don't do that.

B: They don't do that.

Bystander LA: This is why I fear away from them. Like I'd rather call someone else to help us than have a cop help us. You get me? We'd rather have like a neighbor come and help us with something that we need help with.

Finally, consider this dialogue between an eighteen-year-old Black man in Milwaukee (M) and a thirty-eight-year-old Black man in Los Angeles (LA):

LA: Are you talking about protect and serve their own? I don't think they, they protecting us, you know what I'm saying?

M: Mm-hmm. But shit, they like, protecting each other.

LA: Yeah.

M: And they serve (inaudible).

LA: I mean, I think every, every neighborhood don't need no police, though. We, you know what I'm saying? We can protect our own, you know what I'm saying? We get up in the morning, you go to school, you go to work, don't hustle, do what we want to do, you know what I'm saying? They come back no problem. The only problem you got is, is the police, you know what I'm saying?

Each of these examples is a fairly clear description of what it might look like for community members to police more privately. That is, attempt to police themselves without direct involvement from the state.

(2000) (discussing *Schneckloth* in the broader context of modern criminal procedure). Some policing agencies have adopted policies requiring police to inform individuals that they have a right to refuse their request to search. For example, the Department of Justice found that the Baltimore Police Department violated individuals' constitutional rights when conducting these searches and has required BPD to adopt a policy to inform individuals they have a right to refuse. See Joint Motion for Entry of Consent Decree at 1, *United States v. Balt. Police Dep't*, 290 F. Supp. 3d 420 (D. Md. 2017) (No. 17-cv-00099).

It is this kind of dialogue that supports efforts by some right-leaning organizations to claim that police overreach has motivated those who regularly experience the second face of the state to argue for a smaller state footprint.⁷¹ To the extent that this characterization is correct, Section II.B provides some evidence that demanding less of the state is a less prevalent attitude than simply demanding something different from the state.

B. *Policing Aspirations: A Role for the State*

As noted above, there are many clear instances of dialogues in which people propose what the Authors characterize as a more privatized vision of policing. This is an admittedly tricky idea. Of course, when it comes to promoting safety and making living spaces secure, there ought to be mechanisms of social norm circulation such that communities are able to police themselves in a sense. Contemporary, progressive law enforcement executives refer to this as the “co-production” of safety in neighborhoods.⁷² Mariame Kaba, a noted proponent of police abolition, imagines a very large role for the state in the production of safety.⁷³ The distinction between the conversations highlighted below and those above is fundamentally about engagement with the state. When Portals conversationalists argue that police too often do not protect and serve and then move to exposition about what police are supposed to do, a better characterization of their conversations is an aspiration for a different relationship with the state rather than a smaller footprint for it. This respondent from Baltimore in conversation with a person from Milwaukee captures the idea:

There’s a few people on the force that would go well beyond police duty. The majority of the task force, they just aren’t all that . . . they just aren’t good, you know, like they don’t care They, they should work to protect us. They have a Hippocratic oath. To protect us.

71. See, e.g., Philip Elliott, *The Koch Brothers Are Pushing for Criminal Justice Changes*, TIME (Jan. 29, 2018, 5:09 PM), <https://time.com/5123969/koch-brothers-criminal-justice-reform/> [<https://perma.cc/446T-BADR>].

72. Steve Herbert, *Policing the Contemporary City: Fixing Broken Windows or Shoring Up Neo-Liberalism?*, 5 THEORETICAL CRIMINOLOGY 445, 446–50 (2001).

73. 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> [<https://perma.cc/4H7M-PVS9>] (“People like me who want to abolish prisons and police, however, have a vision of a different society, built on cooperation instead of individualism, on mutual aid instead of self-preservation. What would the country look like if it had billions of extra dollars to spend on housing, food and education for all?”).

But conversationalists did not simply argue that police should protect people in a general way. They offered specific visions of what that kind of policing would look like. For example, consider this dialogue between an eighteen-year-old Black woman in Milwaukee (M) and a forty-one-year-old Black man in Chicago (C) in 2017:

M: I don't think that the police protect the people like they supposed to be and I don't think that the police do they job as well as they supposed to. The police don't work to protect you, they work to kill you so, if you call the police and have an incident, I feel like they coming to kill you not to come help you.

C: That's deep, that's real deep. That's incredibly deep.

M: I feel like—

C: . . . cops shouldn't be allowed to police neighborhoods that they don't live in.

M: Or I just feel like they should do they job.

Later in this conversation, the Chicago curator probes the conversationalists to describe their understanding of the job of the police:

Curator: What is they job though?

M: To Protect and Serve the people, not kill 'em.

Curator: What does serving the people really look like? How can they serve us?

M: If I was a officer and I was called to, uh, a domestic violence situation or, I don't know, a robbery. . . . Me, personally, I guess I would try to figure out what's going on, try to make it right, whatever. If somebody needs to be taken to jail, take them to jail. If not, you know, try to de-escalate the situation. But they don't do that. When they come, the first thing they do is pull out they guns.

Other conversationalists offered several different viewpoints: that the police should have psychological testing not only to better deal with the stress on the job as a general matter, but also to deal with individuals facing mental challenges; that the police should not be subject to pressure “to get up they numbers and get they money”; and that the police should

be “properly trained,” “pay attention to the real crime that’s occurring,” “stop yelling,” and simply “treat people better.”⁷⁴

The suggestions were often granular and interestingly reflect much of the latest learning on twenty-first century policing ideas and policies that one could rip from today’s headlines.⁷⁵ But more interesting than the specific suggestions is the clear indication that Portals participants are making arguments that the state ought to offer specific services and products to provide people with security, and that Portals participants can clearly identify those things. A small state footprint is not necessarily what they appear to be looking for even though they clearly desire a smaller second face of the state. In this way, the Portals dialogues are congenial to Monica Bell’s recent analysis of seventy-three interviews with parents in Cuyahoga County.⁷⁶ Operating from a sociological frame in which she analyzed how people understand the geographic communities in which they live through what she calls “located institutions” such as the police, Bell found that many respondents discussed “[p]olice [t]rust as an [a]spiration” for the neighborhoods in which they desired to live.⁷⁷ Bell notes:

People can experience the police as harsh while also believing in an ideal vision of police as protectors and guardians of their security where they live. . . . Being able to call the police and have them helpfully respond is, theoretically, one facet of American social citizenship; thus,

74. Indeed looking to the entire Portals Policing Project outside of the “Protect and Serve” excerpts, participants turn away from policing completely and offer a systems analysis of what protection would look like: more jobs, schools, housing, and recognition as this conversation section from a twenty-six-year-old teacher from Baltimore indicates: “Yeah. There’s no safety anywhere around here, they’re just gentrifying our whole city. That’s what’s going on and then taking over. And our police are drug dealers and everyone in law enforcement sucks. That’s just pretty much the gist of law enforcement. Everything around us sucks and all the people are wonderful . . . The houses suck, the jobs suck, but they, they it’s money here, but our school system don’t have any heat, we don’t have any heaters, in our schools, so. But they wanna get a police force for Johns Hopkins which is a hospital here. I don’t understand how they can afford to do that, we don’t even have heat in our schools. Heat or air. Both, we suffer all year. I have like 40 kids in one class.”

75. See generally PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015) (discussing the suggestions of a task force that was charged with “identifying best practices and offering recommendations on how policing practices can promote effective crime reduction while building public trust”); MEGAN QUATTLEBAUM ET AL., THE JUSTICE COLLABORATORY, YALE LAW SCHOOL, PRINCIPLES OF PROCEDURALLY JUST POLICING (2018) (evaluating and recommending best police practices to maximize procedural justice and build and maintain law enforcement legitimacy and public trust).

76. Monica C. Bell, *Located Institutions: Neighborhood Frames, Residential Preferences, and the Case of Policing*, 125 AM. J. SOC. 917, 917 (2020).

77. *Id.* at 948–53.

the master narrative that police should protect the public and ensure their security retains power.⁷⁸

C. *The Curriculum Reconciled*

A close reading of peoples' voices who are deeply impacted by policing, as well as the problems that the state has argued require the kind of policing such people experience, demonstrates that these individuals have a vision of an interaction with the state that provides the safety they believe works for them. Portals participants articulate a number of ideas that policy makers would benefit from listening to, but the argument here is not merely a technocratic one. Decades of research on procedural justice-based legitimacy indicates that listening to people is a factor that generates public trust not only because authorities learn good ideas and should be involved in the co-production of safety, but also because listening is a key factor of treating someone with dignity and respect.⁷⁹

Curriculum theory, however, perhaps points in a different direction. A concern is that tinkering with policy in this way may simply cause one to inch toward reform with no real change. If that is true, then those who seek security aspirationally will perpetually be engaged in that limited project. This concern may motivate the most vocal abolitionists, some of whom have argued that many of the newer technocratic solutions represent reform when transformation is what is needed.

History is instructive as a response. The Thirteenth Amendment of the U.S. Constitution is the legal mechanism that abolished slavery,⁸⁰ but its passage did not magically create a world in which formerly enslaved African Americans suddenly enjoyed the benefits of citizenship they were denied for over 150 years.⁸¹ The tragically short twelve-year Reconstruction Period following the passage of the Thirteenth Amendment was designed to do some of that work.⁸² For decades after

78. *Id.* at 950.

79. See generally Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCHOL., PUB. POL'Y, & L. 78 (2014) (analyzing, through empirical evidence, the factors that tend to lead to a public perception of legitimacy of the legal system and those who enforce it, thereby leading to greater compliance and cooperation from the public); Tom R. Tyler et al., *Cultural Values and Authority Relations: The Psychology of Conflict Resolution Across Cultures*, 6 PSYCHOL., PUB. POL'Y, & L. 1138 (2000) (concluding that citizen acceptance of a legal system is dependent on the cultural values of the citizenry, particularly their "power distance").

80. See U.S. CONST. amend. XIII, § 1.

81. See Ebony Love, Note, *Finding a New Path: Using the Fifteenth Amendment to Protect the Voting Rights of Returning Citizens*, 31 U. FLA. J.L. & PUB. POL'Y (forthcoming 2020) (explaining how the language of the Thirteenth Amendment includes a loophole which was exploited to force many emancipated people into servitude).

82. See G. Edward White, *The Origins of Civil Rights in America*, 64 CASE W. RES. L. REV. 755, 772 (2014).

the turn of the century, Reconstruction was often considered a “failure” due to the now-discredited Dunning School of the history of Reconstruction.⁸³ The many successes of Reconstruction were denied.⁸⁴ This was true for decades, even following the publication of W.E.B. DuBois’s magisterial book in 1935 that documented the efforts of at least 4 million formerly enslaved to create space for themselves as citizens in the new social order by re-establishing families, creating schools and churches, purchasing property, defending their newfound legal rights in court, and electing hundreds of magistrates, county commissioners, sheriffs, legislators, and congressmen.⁸⁵ In other words, much of the progressive work of Reconstruction was done by formerly enslaved individuals doing the granular work of citizenship by making demands upon the state.⁸⁶

One way to understand the Portals dialogues is to view the aspirational relationships that individuals desire with police as demands upon the state. Paying attention to these demands channels the idea that political theorist Bonnie Honig offered in her recent article, “*Public Things*.”⁸⁷ There, Honig argued that while many democratic theorists spend a great deal of time discussing who is in or out of the *demos*, the subjects of democracy left out of the discussion are democracy’s objects—public goods.⁸⁸ Thus, the presentation of how Portals participants discuss what one might call private and public visions of security track Honig’s idea that strong democracies require robust discussions of the provision of public goods. Linking this idea to the history of Reconstruction provides a through-line to advance the contemporary arguments regarding abolition.

CONCLUSION

When it comes to changing policing, there must be a serious dialogue concerning what policing is for.⁸⁹ Without a deliberative process to

83. See W.E. BURGHARDT DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* 718–19 (1935).

84. See *id.* at 717.

85. See Eric Foner, *The Supreme Court and the History of Reconstruction—and Vice Versa*, 112 COLUM. L. REV. 1585, 1590 (2012).

86. See Eric Foner, *The Strange Career of the Reconstruction Amendments*, 108 YALE L.J. 2003, 2005–06 (1999); Foner, *supra* note 85, at 1592; Kate Masur, *Civil, Political, and Social Equality After Lincoln: A Paradigm and a Problematic*, 93 MARQ. L. REV. 1399, 1401–03 (2010); STEVEN HAHN, *A NATION UNDER OUR FEET: BLACK POLITICAL STRUGGLES IN THE RURAL SOUTH FROM SLAVERY TO THE GREAT MIGRATION* 164–215 (2003).

87. Bonnie Honig, *Public Things: Jonathan Lear’s Radical Hope, Lars von Trier’s Melancholia, and the Democratic Need*, 68 POL. RES. Q. 623 (2015).

88. See *id.* at 624.

89. See Tracey L. Meares & Tom R. Tyler, *The First Step Is Figuring Out What Police Are For*, ATLANTIC (June 8, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/first-step-figuring-out-what-police-are/612793/> [https://perma.cc/TMH5-DGS7].

determine the shape of public goods as critical to citizenship as safety, society will be stuck with the ad hoc production of a state service organized around force and centered in a history of legalized racial segregation in which problems are never solved but merely addressed by isolating, separating groups, and surveilling.⁹⁰ This dialogue must center on not only a deliberative process that produces clarity about what first responders are both required and allowed to do, but also the state's obligation to produce safety and security for all citizens, which will necessarily mean rethinking state institutions devoted to the support of education, health, and housing. With respect to the last point, a serious reconsideration and perhaps recovery of the very notion of the "police power" is important. At its core, the police power is a means of regulating behavior and enforcing order for the sake of the public health, safety, and general welfare of a state's inhabitants. The requirements that people achieve a certain level of education, are vaccinated against disease, or wear masks to prevent the transmission of COVID-19 are all manifestations of the police power.⁹¹ Thinking about the police power in this fulsome way is a promising way forward.

The Portals dialogues make clear that those who have most at stake in this moment of reconsideration of the police power have a great deal to offer to the conversation. To defund, abolish, or transform police, society needs the kind of commitment from the state that was needed after the last great abolition in this country: Reconstruction. And that history makes clear that both an embrace of the formerly disenfranchised and serious state resources—not merely private ones—are necessary to achieve the desired change.

90. See Patrick Sharkey, *To Avoid Integration, Americans Built Barricades in Urban Space*, ATLANTIC (June 20, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/barricades-let-urban-inequality-fester/613312/> [https://perma.cc/M3Y2-Z3BM].

91. See *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (acknowledging the state's power to require school attendance); *Jacobson v. Massachusetts*, 197 U.S. 11, 38–39 (1905) (upholding a mandatory vaccination statute as a reasonable exercise of the police power); *910 E Main LLC v. Edwards*, No. 20-CV-00965, 2020 WL 4929256, at *13 (W.D. La. Aug. 21, 2020) (denying a preliminary injunction against, *inter alia*, a face covering mandate put in place by the state in response to the COVID-19 pandemic), *appeal docketed*, No. 20-30537 (5th Cir. Aug. 25, 2020).

APPENDIX

For more on the Portals Policing Project, please go to the website, portalspolicingproject.com. For more about the Portals technology, go to sharedstudios.com.

A. Portals Locations

A Portal (from the inside and outside):



The Portals sites were selected largely because of convenience and connections—the existence of community partners who would help run the Portals and share space. The Authors often partnered with local non-profit organizations that have an artistic and justice-oriented mission;

they typically provided the Portal in a central location with high foot-traffic, as well as an enduring connection to the community. They were deeply involved in Portals programming beyond our criminal justice dialogues, including facilitating “shared meals,” movie nights, and art initiatives. In many of the Portals locations, the shipping container became a hub for community life. Youth would gather around the Portals to connect to Shared Studios’ global partnerships and engage in collective art projects. Local residents developed close relationships with curators and often showed their enthusiasm for the project by informally assisting with recruiting participants. At a time where access to public space is dwindling (i.e., library and park closures) or surveilled, the Portals became an alternative infrastructure for facilitating public life.

Table A1: Portals Location Descriptions

City	Neighborhood	Total Participants	Dates	Dominant Race/Ethnicity	Neighborhood Type	Site Type
Milwaukee (227)	Amani/COA Goldin Youth and Family Center	227	April 2016–March 2017 (minimal thereafter)	Black	Segregated	Community Center and public park
Chicago (250)	Grand Boulevard/Harold Washington Cultural Center	53	September 2016–December 2016	Black	Segregated	Cultural Center
	South Chicago Christian Center	94	December 2016–May 2017 and August 2017–October 2017	Black	Segregated	Small thrift store
	Little Village/Instituto del Progreso Latino	58	November 2017–February 2018	Latino	In Transition/Educational	Alternative School
	Back of the Yards/LetUsBreathe Collective	45	March 2018	Black	Segregated	Activist
Los Angeles (521)	South Los Angeles/Mercado la Paloma	217	December 2017–March 2018	Latino	Downtown	Community Market
	Boyle Heights	9		Latino	In Transition	Community Arts
	LA Law Library	188	June 2017–September 2017	Majority Black	Downtown	Public library
	California State University Dominguez	107	November 2017–December 2017	Latino	Educational Institution	College campus

	Dominguez Hills					
Baltimore (462)	Downtown/Le xington Market	162	February 2017–October 2017	Black	Downtown	Community Market
	Station North/Ynot Lot	301	November 2017–March 2018	Black	In Transition	Activist/Arts
Mexico City (118)	Chapultepec Park	118	June 2017–March 2017	Latino	Downtown	Public park
Newark (100)	Lincoln Park and Military Park	100	April 2016–October 2017	Black	In Transition	Public park

B. Data Collection

There were several ways participants were recruited to the Portals. The first and most common strategy was for curators to invite individuals passing by the Portals to participate in a twenty-minute conversation about how they feel about police and the criminal justice system. The majority of participants participated because they were walking by the Portals or heard about the Portals via word of mouth from a previous participant. Other strategies included community publicity through the web, social media, and local radio shows, as well as outreach to local community organizations.

Once individuals gave consent to participate in a conversation, they would take a brief twenty-question survey on the iPad. The curator would then introduce them to their conversation partner and encourage them to speak for approximately twenty minutes to the following prompt, “There’s a lot in the media about how police interact with the communities in which they work. How do *you* feel about police in your community?” Each of the conversations were recorded and transcribed. Upon leaving the Portal, participants were invited to reflect on their experience in a “Gold Book.” Some participants would write short reflections on something they learned, share why the connection was meaningful, or simply draw a picture to encapsulate these sentiments.

Worth noting is that despite having a procedure for collecting conversations, the data collection process was less streamlined in practice: There were times when more than one participant was in a single Portal; some dialogues lasted less or more than twenty minutes; and sometimes a participant was not on the other end of a Portal to speak with an eager participant in another city, so the curator would step in to support this conversation. To build trust with participants or provide clarity about the project, curators at times would modify the prompt. However, the

Authors accepted these tradeoffs, as the goal was to use a civic infrastructure that limited the gaze of the researcher and gave autonomy to curators and community members looking to build an account of policing from the bottom-up.

Some readers may wonder the extent to which the Portals method, which requires a participant to speak at length with a complete stranger, may affect what participants are willing to divulge. For example, might a participant withhold certain feelings and experiences from a person with whom they have not yet built trust? Ethnographic and experimental evidence seems to suggest the opposite; rather, one might think of the Portals method as one that emulates the “strangers on a plane” setting where speaking in an intimate setting with a certain level of anonymity increases the likelihood of divulging more personal details.⁹² The candor captured through the Portals method allows the Authors to observe the everyday ways participants narrate their experiences with police and the state more broadly. Political scientist Melissa Harris-Lacewell describes an accounting of “everyday talk” as a particularly crucial element for understanding how “black people interpret and make sense of their political world.”⁹³ This is an especially important task for race-class subjugated communities, for whom political scientists tend to flatten the political preferences and ideas to better fit frameworks of a white liberal democratic tradition.⁹⁴

C. Analysis

The Authors used multiple qualitative methods to code and analyze the data collected for the Portals Policing Project. First, the Authors performed a close reading of individual conversations, identifying key themes that recurred within and across the dialogues.⁹⁵ This part of the process is crucial because to build a bottom-up account of policing in race-class subjugated communities, the Authors needed to see how participants narrated their feelings, perceptions, and experiences with police on their own terms. Further, because participants were in dialogue

92. See, e.g., Mario Luis Small, *Weak Ties and the Core Discussion Network: Why People Discuss Important Matters with Unimportant Alters*, 35 *SOCIAL NETWORKS* 470, 470–83 (2013); Leslie K. John, Alessandro Acquisti, & George Loewenstein, *Strangers On a Plane: Context-Dependent Willingness to Divulge Sensitive Information*, 37.5 *J. OF CONSUMER RESEARCH* 858, 858–73 (2011).

93. MELISSA VICTORIA HARRIS-LACEWELL, *BARBERSHOPS, BIBLES, AND BET: EVERYDAY TALK AND BLACK POLITICAL THOUGHT* 2 (2004).

94. *Id.*

95. For a similar methodological account, see CRAMER, *supra* note 45, at 42–44. See generally MATTHEW B. MILES & A. MICHAEL HUBERMAN, *QUALITATIVE DATA ANALYSIS: AN EXPANDED SOURCEBOOK* (2d ed. 1994) (presenting several different methods of qualitative data analysis).

with one another, the Authors learned how different pairings yielded different insights. Two Black mothers may converse with one another, narrating fears and experiences unique to Black motherhood to a sympathetic ear. A Latina college student in Los Angeles may describe her encounters with immigration authorities to a young Black community organizer in Back of the Yards, Chicago. An older Black man may speak to a younger Black man, comparing generational experiences with police and safety deprivation; the older man may share with his younger counterpart wisdom lessons he learned throughout his life. Taken together, these pairings build an archive of what Black feminist scholars describe as “oppositional knowledge” about policing not captured through traditional survey techniques.⁹⁶

Through close reading, the Authors constructed a formal coding guide. The goal of the coding guide was to identify moments in the dialogue that made particular references, used metaphors, described specific encounters with police, or provided a particular theorization of police or the state in general. With the support of research assistants, the Authors coded more than 9,000 excerpts from the dialogues using a qualitative coding software called Dedoose. One researcher coded the initial set of participant responses in the conversations using the coding software Dedoose, and these coded excerpts were later read and, when necessary, revised by other members of the research team. Using this software, the Authors were able to analyze descriptive trends in the dialogues, including correlations between certain codes and participant demographics, as well as code co-occurrence. For example, participants with the lowest levels of trust in police were more likely to describe stories of police violence than their more trusting counterparts. Though the Authors could not identify causal relationships through these coding data, these trends help to illuminate how certain experiences yield particular theories of government and forms of resistance.

Through the process of close-reading and coding excerpts, the Authors found that the phrase “Protect and Serve” was featured prominently across the dialogues, particularly amongst Black participants. To generate the “Protect and Serve” data from this paper and Weaver, Prowse, Piston,⁹⁷ the Authors used a key word search for the phrase and its variants. Following this search, the Authors linked the dialogues with their corresponding survey data and did yet another close reading to understand how “Protect and Serve” appears in context, and amongst which participants.

96. See, e.g., Jennifer C. Nash, “Home Truths” on Intersectionality, 23 YALE J.L. & FEMINISM 445, 461–64 (2011); Patricia Hill Collins, *Black Feminist Thought as Oppositional Knowledge*, 5.3 DEPARTURES IN CRITICAL QUALITATIVE RESEARCH 133, 133 (2016).

97. Weaver et al., *Too Much*, *supra* note 35.

D. *iPad Survey Questions*

Surveys were typically administered orally by the Portal curator prior to dialogues. Questions were delivered in the following order:

1. Age
2. Gender
3. Race
4. Are you Hispanic or Latino?
5. Highest Level of Education Attained
6. Have you ever been a victim of a crime?
7. Has anyone in your family ever been a victim of a crime?
8. Have you ever been stopped by the police for something other than a traffic violation?
9. How many times in your lifetime?
10. How old were you when this first happened to you?
11. When was the last time this happened?
12. I have confidence that the local police department can do its job well.
13. In general, how much do you trust the police?
14. Have you participated in a Portal dialogue before?
15. If yes, how many times?
16. How did you hear about the Portal?

E. Participant-Level Attributes

Participant Characteristics	
Gender	
Male	63%
Female	36%
Race/Ethnicity	
Black/African American	51%
Hispanic/Latino	24%
White	10%
Asian	2%
Native American or Pacific Islander	1.7%
Mixed or “other”	11%
Age	
Under 30	43%
18 years old	15%
Education	
High School Education or Less	48%
Crime Victimization	71%
Trust in Police	
Most of the time	15%
Sometimes	21.8%
Rarely	27.5%
Never	36%

The characteristics described above varied by city. For example, Milwaukee and Chicago participants were younger, more often males, and had more police encounters. Newark had more female participants than other locations. Los Angeles comprised the majority of Hispanic/Latino participants and drew a more educated sample across racial and ethnic groups (e.g., only 14% of Los Angeles participants had a high school education or less).

Figure E1: Police Stops by Gender

