
**THE EXIGENCIES OF BLACK EXISTENCE: THE BLUE
GAZE, THE STATE OF EXCEPTION, & RACIALIZED
POLICING IN CARCERAL INTERNAL COLONIES**

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INTRODUCTION

Martin Luther King, Jr. Boulevard. I need to turn around. I accidentally turned down the boulevard of “dream[s] deferred,”¹—the boulevard that in many cities throughout America signals your entry into the carceral spaces that we call the hood, the ghetto, the inner city, the bad part of town, or the “whatever you do, don’t go over there” part of town. Everyone knows to stay away from MLK. Irony.

Vice. I see the word liquor in bright red lights, flashing on and off from behind black metal bars. The store owner is inside. The store owner is encased in fear and suspicion. His fear and suspicion are encased inside of bulletproof glass. The bulletproof glass is encased inside of the visual range of a surveillance camera. Leaning over the counter, a customer strains to speak to him through the holes in the bulletproof glass. When they finally understand each other, the owner extends the gray aluminum drawer to the customer. The customer places her money inside of the drawer. The owner retracts the drawer, places the item inside, and extends the drawer back to the customer. The customer retrieves her item. If the item is too large, the owner pushes it through the rotating service window next to the drawer. The exchange is both personal and impersonal.

Enmity.² I swallow the visual landscape of racialized structural violence³ and historical trauma.⁴ A brown brick project building surrounded by a black wrought iron fence emerges. To enter the building, you must maneuver the full-height turnstile gate. More bars. I peer through the disintegrating facades and boarded-up windows of barely standing row houses. With their caved-in ceilings and eerily empty blown-out interiors, they look like they were intentionally destroyed. Perhaps they were the homes of Black radicals. It looks like the aftermath of a Counter Intelligence Program (“COINTELPRO”)⁵ operation or a

¹ See LANGSTON HUGHES, *Harlem*, in MONTAGE OF A DREAM DEFERRED (1951).

² ACHILLE MBEMBE, *NECRO-POLITICS 3* (Steven Corcoran trans., Duke Univ. Press 2019) (2016) (discussing societies of enmity transformed by colonization centering war in democracy, politics, and culture).

³ See Ciji Dodds, *In Fear of Black Revolutionary Contagion and Insurrection: Foucault, Galtung, and the Genesis of Racialized Structural Violence in American Foreign Policy and Immigration Law*, 26 MICH. J. RACE & L. 371, 391 (2021) (describing racialized structural violence as state-sanctioned discipline used to further white supremacy).

⁴ LAWRENCE T. BROWN, *THE BLACK BUTTERFLY: THE HARMFUL POLITICS OF RACE AND SPACE IN AMERICA* 11 (2021) (defining historical trauma as “the premise...that populations historically subjected to long-term, mass trauma exhibit a higher prevalence of disease even several generations after the original trauma occurred.”).

⁵ See *COINTELPRO*, FBI: THE VAULT, <https://vault.fbi.gov/cointel-pro> [<https://perma.cc/R48E-GYJ8>] (last visited Jan. 15, 2024) (listing Black Panther Party as organization COINTELPRO attempted to disrupt); *COINTELPRO Black Extremist Part 17 of 23*, FBI: THE VAULT, <https://vault.fbi.gov/cointel-pro/cointel-pro-black-extremists/cointelpro-black-extremists-part-12-1/view> [<https://perma.cc/E4FV-3JGA>] (last visited Jan. 15, 2024) (compiling reports of FBI monitoring Black Panther Party); see also BROWN, *supra* note 4, at 53.

Philadelphia Police Department bombing⁶—like the homes white supremacists bombed in Chicago between 1917 and 1919.⁷ People sit on the collapsing porches of their homes, which have been declared habitable by the city. I pass depressing school buildings with their barely legible signs, faded paint, barred windows, metal detectors at each entrance, and rusted playgrounds. Neglected storefronts that are partially enclosed by metal accordion gates. Corner stores instead of grocery stores. Carryouts instead of sit-down restaurants. Dilapidated, abandoned factories in need of demolition. I confront the foreseeable consequences of Reaganomics and segrenomics.⁸ Black lives do not matter.

Sabotage. An underground maze of decaying, lead water pipes trigger sewage disruptions and boil water notices. I reduce my speed to navigate through craters and potholes. Piles of black trash bags on the sidewalks. Overflowing trash dumpsters behind buildings. Broken glass, aluminum cans, Styrofoam food containers, empty liquor bottles, and Black & Mild filter tips litter the ground. Faded street signs, broken traffic lights, bent stop signs, and splintered street light poles. Sagging power lines. In the name of crime prevention, at around 8:00 p.m., strategically placed nighttime lighting units, like the types used at construction sites, will emit bright white lights that glare brighter than the lights at Yankee Stadium.⁹ Poor Black people do not deserve restorative sleep. They do not deserve to sleep without piercing light seeping from behind their window shades or penetrating through their closed blinds.

The infrastructure and physical environment traumatize those who are born there, live there, or want to escape but cannot. They announce the population's rank in the racial hierarchy. The infrastructure and physical environment evoke haunting feelings of inferiority, suffering, imminent danger, and death. These are the consequences of endless wars—the War on Blackness, the War on Crime,¹⁰ and the War on Drugs,¹¹ where the state denies its “systematic sabotage

⁶ Lindsey Norward, *The Day Philadelphia Bombed Its Own People* VOX (Aug. 15, 2019, 9:03 AM), <https://www.vox.com/the-highlight/2019/8/8/20747198/philadelphia-bombing-1985-move> [<https://perma.cc/4EAQ-2PKG>] (detailing how Philadelphia Police Department dropped satchel bomb on rowhome occupied by Black liberation group members).

⁷ KWAME TURE & CHARLES V. HAMILTON, *BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA* 153 (Vintage ed., 1992) (1967) (“In Chicago, over a dozen black homes were bombed between July 1, 1917, and July 1, 1919.”).

⁸ BROWN, *supra* note 4, at 13 (defining segrenomics).

⁹ See Peter Nickeas, *Nighttime Lighting Reduces Crime but It's Not a One-Size Fits All Solution, Study Shows*, CNN (Apr. 28, 2022, 2:22 PM), <https://www.cnn.com/2022/04/28/us/lighting-study-new-york-study/index.html> [<https://perma.cc/QD9H-EFK6>] (describing research on nighttime lighting in New York City and how it “displaced” crime while harming residents’ quality of life).

¹⁰ *Id.* (describing coordinated city efforts to reduce crime at experiment cites in New York City public housing).

¹¹ *Drug War History*, DRUG POL’Y ALL., <https://drugpolicy.org/issues/brief-history-drug-war> [<https://perma.cc/3258-ZVT6>] (last visited Jan. 15, 2024) (outlining timeline of war against drugs in United States).

of the enemy's [(Black population's)] societal and urban infrastructure"¹² and explains away the conditions as the results of Black moral failings and pathologies. I am in a theater of war.

KRS-One.¹³ I see the Ford fleet.¹⁴ I become fixated on looking in my rearview mirror. The police are everywhere. They cruise the streets with their blue and red lights flashing and their sirens letting out the occasional, "woop-woop."¹⁵ Officers display their necropower¹⁶ on their hips, walking around and engaging in "mere police questioning"¹⁷ and consensual encounters.¹⁸ They have the Supreme Court's ear.¹⁹ They have the discretion to choose who lives and who

¹² MBEMBE, *supra* note 2, at 82.

¹³ KRS-ONE, *SOUND OF DA POLICE* (Jive 1993).

¹⁴ Robert Ferris, *Why So Many Police Cars Are Fords*, CNBC (Aug. 3, 2020, 12:38 PM), <https://www.cnbc.com/2020/08/03/why-so-many-police-cars-are-fords.html> [<https://perma.cc/L8SW-8LYZ>]; *see also Ford Police Vehicles: Ford Special Service Vehicles*, FORD, <https://www.ford.com/police-vehicles/ssv/> (last visited Jan. 15, 2024).

¹⁵ KRS-ONE, *supra* note 13.

¹⁶ MBEMBE, *supra* note 2, at 78-79 (defining "necropower").

¹⁷ *Florida v. Bostick*, 501 U.S. 429, 434 (1991).

¹⁸ *Florida v. Royer*, 460 U.S. 491, 498 (1983) (holding lack of detention in police encounter means no constitutional rights were infringed); *Bostick*, 501 U.S. at 434 (finding no seizure where police officer approaches individual and asks questions if individual is free to disregard officer); *Arizona v. Johnson*, 555 U.S. 323, 332-34 (2009) (holding traffic stop constituted seizure because individual was not free to terminate encounter with police); *Terry v. Ohio*, 392 U.S. 1, 19 (1968) (finding seizure can still occur in absence of "technical arrest," prompting inquiry of whether seizure was unreasonable); *see THE CAMBRIDGE HANDBOOK OF POLICING IN THE UNITED STATES* 309-11 (Tamara Rice Lave & Eric J. Miller eds., 2019).

¹⁹ *See* MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 17-18 (rev. ed. 2012) (2010) ("The federal court system has effectively immunized the current system from challenges on the grounds of racial bias, much as earlier systems of control were protected and endorsed by the U.S. Supreme Court."); *see also Terry*, 392 U.S. at 22-23 (emphasizing police interests in justifying intrusion into Fourth Amendment rights); *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973) (balancing need for freedom from coercion against need for police questioning); *City of Los Angeles v. Lyons*, 461 U.S. 95, 98-101 (1983) (holding citizen could not enjoin city police department from using chokeholds where police officers applied chokehold to citizen and caused damage to larynx); *Tennessee v. Garner*, 471 U.S. 1, 5 (1985) (noting lower court concluded officer shooting fleeing suspect was authorized by statute because suspect assumed risk of being fired at); *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (holding § 1983 is not source of substantive rights); *Bostick*, 501 U.S. at 434 (holding police questioning does not automatically qualify as seizure); *Whren v. United States*, 517 U.S. 806, 809-13 (1996) (holding unreasonable seizure does not take place when motorist is temporarily detained by officer if there is probable cause to believe traffic law was violated); *Arizona v. Johnson*, 555 U.S. 323, 332-34 (2009) (holding patdown lawful where state argued interrogation was consensual); *Utah v. Strieff*, 579 U.S. 232, 239 (2016) (holding evidence seized after unlawful stop where officer discovered valid, pre-existing arrest warrant after performing stop); *Rivas-Villegas v. Cortesluna*, 595 U.S. 1, 5 (2021) (finding officer placing knee on suspect's back did not violate clearly established right against excessive force, granting officer qualified immunity).

dies.²⁰ Officers are the “masters of violence,”²¹ whom the state has charged with normalizing white supremacist power relations and extrajudicial violence. Police do the dirty work: a few bad apples, a few descendants of the police officers of Redemption²² and Jim Crow, and a few “wicked overseer[s].”²³

The Blue Gaze. The ubiquitous glare of the blue gaze signals to me the depth of the white supremacist police power that bears down on me. Emanating from the eyes of We the People—the collective consciousness of America—the blue gaze is the gaze of racialized policing. It is the downward gaze that America uses to conjure Black criminality and to project it upon Black bodies. Consequently, it is the lens through which the police audit Black bodies in the name of public safety. Within the blue gaze, I am a singular object of suspicion. My criminality is a rebuttable presumption.

Survivor’s Guilt. I resist the contemporary experience of human destruction that has swarmed me with increasing intensity since I turned down the boulevard of dreams deferred. In this carceral space, the racialized state of exception necessitates the nullification of my legal subjecthood due to my Blackness and the exigencies of concentrated Blackness. I want to leave. My liberty makes me feel guilty. I don’t live here. I can leave. I leave.

Where the Black body resides, so resides the suspension of law and juridical order. In this Article, I argue that the concatenation of the blue gaze and the racialized state of exception²⁴ has materialized in numerous predominantly Black cities, towns, and neighborhoods throughout the nation. There, the blue gaze and the racialized state of exception acquire a self-evident topographical presence, appearing as carceral spatial arrangements where racialized policing is the dominant instrumentality of governance. These carceral spaces are internal colonies where the suspension of the rule of law has been deemed necessary to respond to America’s enduring state of emergency and national security threat, which is Black existence.

I conceptualize an internal colony as “a nation within a nation”²⁵ wherein a uniquely American form of internal colonialism has replicated the conditions of slavery, colonialism, imperialism, and incarceration. As defined by Charles Pinderhughes, internal colonialism is

a *geographically-based* pattern of subordination of a differentiated population, located within the dominant power or country. This

²⁰ MBEMBE, *supra* note 2, at 83 (describing contemporary warfare as defined by increasing “gap between high-tech and low-tech means of war”).

²¹ See generally TRISTAN STUBBS, *MASTERS OF VIOLENCE: THE PLANTATION OVERSEERS OF EIGHTEENTH-CENTURY VIRGINIA, SOUTH CAROLINA, AND GEORGIA* (2018).

²² BROWN, *supra* note 4, at 39-41.

²³ KRS-ONE, *supra* note 13.

²⁴ See MBEMBE, *supra* note 2, at 77 (describing colonial zones as states of exception); see also GIORGIO AGAMBEN, *STATE OF EXCEPTION* 1-6 (Kevin Attell trans., 2005) (describing state of exception as “no-man’s-land between public law and political fact”).

²⁵ Charles Pinderhughes, *Toward a New Theory of Internal Colonialism*, 25 *SOCIALISM & DEMOCRACY* 235, 237 (2011).

subordination by a dominant power has the outcome of *systematic* group inequality expressed in the policies and practices of a variety of societal institutions, including systems of education, public safety (police, courts and prisons), health, employment, cultural production, and finance.²⁶

I build on Pinderhughes' definition and assert that America contains internal colonies that are the product of the convergence of the blue gaze and the racialized state of exception. In form and function, internal colonies are designed to be punitive spaces that penalize Black existence predicated upon a state of emergency. Consequently, they are, in fact, carceral internal colonies. Everything about them is intended to be punitive. They are conspicuously scarred by racialized structural violence, historical trauma, economic exploitation, environmental racism, and visually aggressive symbols or mechanisms of incarceration. The dichotomy between the carceral internal colony and the rest of the city, town, or neighborhood is a psychic signpost designed to convey the message that the blue gaze is the thin blue line protecting civilization from the uncivilized territory of the native.

The suspension of the rule of law in carceral internal colonies has been unapologetically acknowledged as a necessary response to the exigencies of Black existence, which are amplified where there is a concentration of Black bodies. America has responded to the exigencies of Black existence by declaring states of emergency and using the war metaphor²⁷ to argue that the only way to respond to these emergencies is to wage wars against them. The first war commenced in 1619, when the colonies, and later the states, openly declared a perpetual race war within society due to the hereditary risks of slavery. The pervasive fear of Black insurrection led to the constitutionalizing of the blue gaze and racialized policing via the slave trade clause, domestic insurrections clause,²⁸ domestic violence provision,²⁹ Second Amendment,³⁰ and Fugitive Slave Clause.³¹ Contemporaneously, the states and the federal government created systems of laws and institutions designed to police every element of Black life and to exact vengeance upon the Black body for every infraction against white supremacy. Throughout the Reconstruction, Redemption, and Jim Crow eras, white supremacists waged war against Black equality, autonomy, and

²⁶ *Id.* at 236 (emphasis in original).

²⁷ AGAMBEN, *supra* note 24, at 21-22 (describing expansion of executive power during World Wars I and II).

²⁸ U.S. CONST. art. I, § 8, cl. 15 ("To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions[.]").

²⁹ *Id.* art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.").

³⁰ *Id.* amend. II.

³¹ *Id.* art. IV, § 2, cl. 3.

uppityism.³² Black equality was equated to white subjugation. Then, in response to the evolution of racism, which was marked by the bifurcation of our legal system into de jure colorblind laws and de facto, white supremacist-oriented laws, the wars that we continue to fight today formally materialized: the War on Crime and the War on Drugs. These wars are de facto wars against Blackness that have helped transform numerous predominantly Black cities, towns, and neighborhoods into carceral internal colonies.

A carceral internal colony possesses five overlapping features that ensure it “remains continually outside the law’s normal state.”³³

1. Carceral internal colonies are “legal Black hole[s].”³⁴ The rule of law and juridical order have been suspended, predicated upon states of emergency, and Black people have been stripped of their legal subjecthood.
2. The physical boundaries of the carceral internal colony are demarcated by residential segregation, which in some instances rises to hypersegregation.³⁵ In the instance of carceral internal colonies within a larger city, Black people and white people occupy distinctly segregated spaces.³⁶ In the instance of a city or town as a carceral internal colony, the city or town is predominantly Black. In all cases, segregation results from laws, policies, politics, social norms, or spatial wars.³⁷ The physical boundaries of the segregated spaces are maintained using enclosure, isolation, and spatial dominance.
3. The blue gaze and racialized policing are the dominant instrumentalities of governance. Racialized policing is “deemed to operate in the service of ‘civilization,’”³⁸ and police brutality is “attribute[d to] rational objectives.”³⁹ Police inflict anomic violence, status-oriented violence, and juridical violence.⁴⁰
4. Symbols or mechanisms of carcerality, such as metal bars on buildings, bulletproof glass, cameras, or police officers, are pronounced. Symbols

³² See *Charles v. Leo*, 135 N.E.3d 252, 261-62 (Mass. App. Ct. 2019) (describing usage of “racially charged term ‘uppity’” against Black people); see also LEON F. LITWACK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW*, at xiv-xv (1999) (describing rise of minstrelsy and Jim Crow); Phyllis Craig-Taylor, *To Be Free: Liberty, Citizenship, Property, and Race*, 14 HARV. BLACKLETTER L.J. 45, 57 (1998).

³³ MBEMBE, *supra* note 2, at 67.

³⁴ Leti Volpp, *Imaginations of Space in Immigration Law*, 9 L., CULTURE & HUMANS. 456, 458 (2012).

³⁵ BROWN, *supra* note 4, at 12.

³⁶ *Id.*

³⁷ *Id.* at 70.

³⁸ MBEMBE, *supra* note 2, at 77.

³⁹ *Id.*

⁴⁰ See Nirej Sekhon, *Essay, Police and the Limit of Law*, 119 COLUM. L. REV. 1711, 1743-48 (2019) (categorizing types of police violence and detailing harms they cause).

or mechanisms of carcerality replicate the conditions and sensations of incarceration and project criminality upon the population.

5. Racialized structural violence has damaged the infrastructure. Blight, municipal neglect, pollution, a dearth of affordable and nutritious food, resource deprivation, or segrenomics⁴¹ evince the state's indifference to or antipathy for the residents' health, safety, and welfare. The physical environment bears the trauma of racialized structural violence as residents and visitors face urban decay.

In Part I, I define the blue gaze, which is a construct that I created to explain why and how the criminalization and dehumanization of Blackness impacts the way society and the rule of law engages with Black people. The construct is primarily informed by the theories of Frantz Fanon. The blue gaze is a noun and a verb. As a noun, it is the lens through which society and the rule of law views and interprets Blackness. As a verb it effectuates the “persistent production of [B]lackness as abject, threatening, servile, dangerous, dependent, irrational, and infectious,”⁴² thereby fueling racialized policing. In Part II, I explain and analyze the racialized state of exception. Part III examines the defining features of carceral internal colonies, hereinafter referred to as “internal colonies.” Finally, in Part IV, I analyze Baltimore as an example of an internal colony.

My blackness was there, dark and unarguable. And it tormented me, pursued me, disturbed me, angered me.

—Frantz Fanon⁴³

I. THE BLUE GAZE

Within the blue gaze, she is singular. Her “[v]isibility is a trap.”⁴⁴ The blue gaze induces in her “a state of conscious and permanent visibility,”⁴⁵ calculated to coerce her into performative respectability. She knows that performative respectability will not save her. Her criminality is a foregone conclusion. She has two choices. She can own her body and claim her space. Or, she can make

⁴¹ BROWN, *supra* note 4, at 13 (“[S]egrenomics is the economic weaponization of government-enforced racial segregation.”).

⁴² Saidiya Hartman, *The Burdened Individuality of Freedom*, reprinted in *AFRO-PESSIMISM* 31, 34 (2017), https://monoskop.org/images/f/f2/Wilderson_III_Frank_B_et_al_Afropessimism_2017.pdf.

⁴³ FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 88 (Charles Lam Markmann trans., Grove Press Inc. 1967) (1952).

⁴⁴ MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 200 (Alan Sheridan trans., Vintage Books 2d ed., 1995) (1975) (explaining function of Bentham's Panopticon as it relates to hypersurveillance and discipline).

⁴⁵ *Id.* at 201.

herself small, to diminish herself, to acquiesce to We the People's belief that she has no "corporeal entitlement to spatiality."⁴⁶

The eyes of We the People are satiated by the imagery of diminished Black bodies. We the People constructed the blue gaze based upon the principle that power should be visible to the souls of Black people and felt by the bodies of Black people. Power should not hide. Power should be brazen and unrepentant. We the People intended the blue gaze to be an expressive power that stimulates fear and sends and "creates . . . a message of racial . . . inferiority[.]"⁴⁷

The blue gaze consecrates the message of racial inferiority and the capricious anger of white supremacists. We the People did not design the blue gaze to be a subtle mechanism for granting white supremacists the power to engage in racialized policing. We the People designed the blue gaze to amplify white supremacy by granting power to white supremacists in the loudest and most disruptive ways. Hence, racialized policing was intended to function in the loudest and most disruptive ways. A gazer should police and intervene in the lives of Black people arbitrarily and spontaneously. Black people should expect to be surveilled and regulated, even if they cannot see who or what is watching them. People gaze. Systems and institutions gaze. Consequently, the blue gaze produces and sustains power relations not only between Black people and white supremacists, but also between Black people and the systems and institutions that uphold white supremacy. We the People hoped the blue gaze would evolve to become white supremacist power perfected.

The pursuit of perfect power breeds obsession. The gazer's eyes are trained upon her. The gazer observes and examines her to construct a biographical profile. The gazer believes that he possesses the ability to observe and examine that which is visible and that which is invisible. It is not enough for the gazer to examine the present. The gazer tries to discern the story of her life, starting from the moment she existed inside her mother's womb because in the gazer's mind, the Black womb re/produces criminals and thus, re/produces criminal culpability.⁴⁸ The Black womb is a precursor to prison.

A prison archipelago. This was the plan crafted by John T. Brown, the head of Georgia's prison system in 1875, to prepare for a class of Black prisoners who he believed would surely emerge from the ashes of emancipation in which Black women's maternal capacity lay buried; he argued that, deprived of maternal moral instruction, "these young vagrants will get out of their long shirts and into 'Georgia Stripes.'" He envisioned a carceral

⁴⁶ Shannon Sullivan, *The Racialization of Space: Toward a Phenomenological Account of Raced and Antiracist Spatiality*, in 2 THE PROBLEMS OF RESISTANCE: STUDIES IN ALTERNATE POLITICAL CULTURES 86, 94 (Steve Martinot ed., 2001).

⁴⁷ Chan Tov McNamara, *White Caller Crime: Racialized Police Communication and Existing While Black*, 24 MICH. J. RACE & L. 335, 370 (2019) (explaining concept of "expressive harm" as it relates to discriminatory acts).

⁴⁸ Sarah Haley, *Flesh Work and the Reproduction of Black Culpability*, in ANTIBLACKNESS 131, 131-32 (Moon-Kie Jung & João H. Costa Vargas eds., 2021) (exploring relationship between criminalization of Black women and reproduction from Black feminist lens).

island plantation, located just off Savannah, for the production of “sea island cotton, rice and sugar cane.” . . . Although the prison isle of maternal deviance never came to fruition in Georgia, the construed relationship between Black maternal abjection and carceral state building held.⁴⁹

Partus sequitur ventrem,⁵⁰ that which is born follows the womb.⁵¹ Whereas the child born of an enslaved Black mother was automatically a slave⁵² and the property of the mother’s master, in the afterlives of slavery and Jim Crow, presumed maternal deviance imparts presumed delinquency upon her unborn child.⁵³ Black people are born burdened by the blue gaze.

Confession and absolution. The blue gaze is an American construct that disfigures Blackness by tethering it to criminality and predation, to divert onto Black people the “intimate shame”⁵⁴ and the guilt that America bears as a consequence of its original sin. The juridico-political, sociopolitical, and White supremacist origins of this nation shaped the blue gaze. White supremacists created the blue gaze to rationalize enslaving and terrorizing Black people and to respond to the hereditary risks of slavery—insurrection and retribution. The Founders perpetuated the blue gaze to negate the manifest hypocrisy of calling oneself an egalitarian democracy when one was a slavocracy. They chose not to disrupt the existing order by refusing to establish abolition as a mandate of the American Revolution. They ignored that America could exist solely as “a republic only in name”⁵⁵ so long as slavery existed. Instead, the Founders calibrated the Declaration of Independence and the Constitution to effectuate the denial of legal subjecthood to Black people predicated on the dehumanization, propertization, and criminalization of Blackness.⁵⁶ The Constitution’s proslavery provisions legitimized State racism, the “internal racism of

⁴⁹ *Id.* at 132 (citation omitted).

⁵⁰ 1 THOMAS R.R. COBB, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA 68 (1858) (denoting “property laws” of enslaved Black Americans in 1800s); see also Jennifer L. Morgan, *Partus Sequitur Ventrem: Law, Race, and Reproduction in Colonial Slavery*, SMALL AXE, Mar. 2018, at 1, 1-17 (exploring treatment of enslaved Black women as it relates to reproduction and ownership of their kin); THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619-1860, at 43-49 (Thomas A. Green & Hendrik Hartog, eds. 1996) (detailing history of *partus sequitur ventrem* and its application by enslavers).

⁵¹ COBB, *supra* note 50, at 69 (explaining this rule has been universally recognized among nations recognizing slavery).

⁵² *Id.* at 68 (“The issue and descendants of slaves, in the maternal line, are slaves.”).

⁵³ Haley, *supra* note 48, at 131, 134.

⁵⁴ MBEMBE, *supra* note 2, at 131 (analyzing Fanon’s theory of transitivity as it relates to internalized racism felt by racial minorities).

⁵⁵ Slaughter-House Cases, 83 U.S. 36, 110 (1872) (Field, J., dissenting) (“The fourteenth amendment . . . makes it essential to the validity of the legislation of every State that this equality of right should be respected.”).

⁵⁶ Dodds, *supra* note 3, at 402-03.

permanent purification”⁵⁷ directed at society’s most impure, corrosive element: Blackness. Hence, the blue gaze defined who is included in “We the People.”

Taney was correct.⁵⁸ The blue gaze emanates from the eyes of We the People, which is the collective consciousness of America comprised of the state, law, society, institutions, systems, and individuals. It is, therefore, the downward gaze that We the People uses to examine and obtain knowledge⁵⁹ about Black people in anticipation of discovering deviance or criminality.

It is the gaze of racialized policing that centers the Black body as a permanent object of suspicion and guilt. Within the lens of the blue gaze, the Black body is “the depository of maleficent powers.”⁶⁰ Black is menacing.⁶¹ Black deforms. Black disfigures “all that has to do with beauty or morality.”⁶² Black people are the terrifying other.⁶³ Black liberty is lawlessness. Black justice is white injustice.

The disposition of those eyes⁶⁴ is governed by white supremacy, and when they make contact with Blackness, their most basic instincts are triggered. Due to the convergence of the physical reality of Black skin and the subjective reality of the longstanding presumption of criminality attached to Black skin,⁶⁵ the eyes of We the People have become permanently trained upon Black people. The consequence, by design, is that racialized policing is an impulse. It is an instrumentality of governance, undertaken by private citizens and police officers. Existing while Black in the visual or auditory presence of a gazer can trigger a criminal investigation. The gazer’s pupils will vacillate between dilation and constriction because the sight of the Black body elicits the pleasure of anger from within. The gazer’s eyes are instinctually trained upon the Black person—the “terrifying object.”⁶⁶ Hair-trigger violence.

⁵⁷ See MICHEL FOUCAULT, *SOCIETY MUST BE DEFENDED* 62 (Mauro Bertani, Alessandro Fontana, François Ewald & Arnold I. Davidson eds., David Macey trans., 1997).

⁵⁸ *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404 (1857) (enslaved party) (holding enslaved persons are not U.S. citizens), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

⁵⁹ FOUCAULT, *supra* note 44, at 251-52 (describing “legal punishment” process to re-educate “the delinquent”).

⁶⁰ FRANTZ FANON, *THE WRETCHED OF THE EARTH* 41 (Constance Farrington trans., 1963) (describing inherently criminal perception of Native Americans by European colonists).

⁶¹ See Dylan Rodríguez, “*Mass Incarceration*” as *Misnomer: Chattel/Domestic War and the Problem of Narrativity*, in *ANTIBLACKNESS*, *supra* note 48, at 171, 173.

⁶² FANON, *supra* note 60, at 41.

⁶³ MBEMBE, *supra* note 2, at 42-44 (detailing physical and mental “barriers” societies have constructed to objectify classes of people deemed undesirable).

⁶⁴ RALPH ELLISON, *INVISIBLE MAN* 3 (1952) (describing “invisibility” of Black men in America as neglected and simultaneously hypersurveilled).

⁶⁵ Rodríguez, *supra* note 61, at 173 (arguing earliest African slaves’ insistence on retaining their African culture “was central to the earliest iterations of racial criminalization as antiblack political-cultural repression”).

⁶⁶ MBEMBE, *supra* note 2, at 42-43 (conceptualizing “master-desire” whereby dominant societal class projects fantasies of violence and eradication onto “undesirable” groups).

The violent tenor of the blue gaze exposes the brutality of America's rule of law and democracy.⁶⁷ The term "law enforcement" is a misnomer. Police have been granted the discretion to obfuscate, weaponize, and manipulate the rule of law. Thus, racialized policing functions outside of the law, above the law, and yet calls upon the legitimacy of the rule of law to ratify the destruction of Black bodies.

Racialized policing is the "daily exercise of tyranny"⁶⁸ resulting from the fetishization of Black obedience: the fetishization of having the power to inflict a thousand tiny lesions⁶⁹ and the fetishization of having the power to inflict gratuitous violence. Police officers' anger and profane displays of necropower transform the streets into scaffolds where the spectacle of law and order consecrates their message of racial inferiority.

Racialized policing attempts to recreate the power dynamic between the master and slave, described by Thomas Jefferson as "a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other."⁷⁰ Akin to slave patrolling, modern racialized policing is centered around arbitrarily intervening in the lives of Black people in order to find evidence of deviance or criminality. Intervening continually normalizes and reinforces the power relations between Blackness, policing, and racism. The normalization of the power relations is accomplished through displays of necropower, where police advertise their discretion to determine who lives and who dies, and who is the "'right kind' of dead"⁷¹ Black person: Tyre Nichols, George Floyd, Oscar Grant, Eric Garner, Tamir Rice, Breonna Taylor, Elijah McClain, Philando Castile, Alton Sterling, and Natasha McKenna.

II. THE RACIALIZED STATE OF EXCEPTION

The blue gaze establishes Black existence as a continuous emergency, and therefore, a permanent existential threat to America. Utilizing the theories of Giorgio Agamben, Walter Benjamin, and Achille Mbembe,⁷² I argue that the

⁶⁷ *Id.* at 16-17 ("[Modern democracies] have integrated forms of brutality into their culture, forms borne by a range of private institutions acting on top of the state, whether irregular forces, militias, or other paramilitary or corporatist formations.").

⁶⁸ LEWIS P. SIMPSON, *MIND AND THE AMERICAN CIVIL WAR* 27 (1989).

⁶⁹ MBEMBE, *supra* note 2, at 58 (estimating hundreds of thousands of individuals throughout world suffer "daily racist injuries").

⁷⁰ THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* 172 (Paris, 1785).

⁷¹ Shatema Threadcraft, *North American Necropolitics and Gender: On #BlackLivesMatter and Black Femicide*, 116 S. ATL. Q., 553, 553 (2017) (arguing social justice politics have focused on Black death as rallying cry for change, at detriment of Black life).

⁷² See AGAMBEN, *supra* note 24, at 1-6 ("[T]he state of exception constitutes a 'point of imbalance between public law and political fact' that is situated—like civil war, insurrection and resistance—in an 'ambiguous, uncertain, borderline fringe, at the intersection of the legal and the political.'" (citation omitted)); WALTER BENJAMIN, *TOWARD THE CRITIQUE OF*

state has used the blue gaze to legitimize the creation of permanent race-based states of exception where systemic and gratuitous police violence has been openly or subversively sanctioned as necessary to respond to the emergency of Black existence. Filtered through the lens of the blue gaze, the attachment of criminality, predation, deviance, and madness to Black skin is the historical normative basis of the right to classify Black existence as an emergency and Black people as the target of the state of exception. As the target, Black people have been traditionally governed by the force of the rule of law without the protection of the rule of law.

Applying Achille Mbembe's articulation of the state of exception to the blue gaze, a state of exception arises when power—which does not exclusively refer to state power—declares a state of emergency and avers that it necessitates the suspension of laws and juridical order to combat the fictionalized enemy.⁷³ To sustain and eventually install the state of exception as the permanent rule of law, power “continuously refers and appeals to the exception, emergency, and a fictionalized notion of the enemy” and “labors to produce these same exceptions, emergencies, and fictionalized enemies.”⁷⁴ Power strips the fictionalized enemy of legal subjecthood predicated upon the emergency. The enemy's understanding and relationship to the rule of law is defined by the suspension of the rule of law.⁷⁵ In the racialized state of exception, law and violence are cocreative forces. The suspension of the rule of law is primarily symbolized by the law's deference to the police's lawmaking function,⁷⁶ which is expressed in the police's *ex post facto* rationalizations of excessive force and other constitutional violations.

The American government has consistently used the “metaphor of war”⁷⁷ to argue that an issue or event constitutes a state of emergency necessitating the partial or total suspension of laws to combat fictionalized enemies. In some instances, the government has openly acknowledged the suspension of laws, but in other instances, there has been an unspoken understanding that laws would be suspended. The government has continuously referred to and appealed to exceptions, emergencies, and fictionalized enemies. Likewise, the government

VIOLENCE: A CRITICAL EDITION 54-55 (Peter Fenves & Julia Ngeds., Bd. of Trs. of the Leland Stanford Junior Univ. trans., 2021) (1921) (exploring distinction between sanctioned violence and unsanctioned violence and pondering its implications on positive law and natural law); MBEMBE, *supra* note 2, at 77 (describing societal function of “colonies” as “the zone where the violence of the state of exception is deemed to operate in the service of ‘civilization’”).

⁷³ MBEMBE, *supra* note 2, at 70 (examining how state of exception has become basis of “right to kill”).

⁷⁴ *Id.*

⁷⁵ *Cf.* AGAMBEN, *supra* note 24, at 53.

⁷⁶ BENJAMIN, *supra* note 72, at 287 (describing police power as “formless” to exemplify the nearly limitless discretion police have in enforcing the rule of law).

⁷⁷ AGAMBEN, *supra* note 24, at 21 (detailing times throughout American history when Congress and the President used wartime to seize power and dodge democratic processes).

produces and reproduces the same exceptions, emergencies, and fictionalized enemies.

I argue that the federal and state governments have consistently invoked the war metaphor to produce and reproduce states of emergencies, necessitating the de facto suspension of laws and juridical order, for the stated—and sometimes unstated—purposes of combating this nation’s fictionalized enemy, Black people. Hence, the government has installed racialized states of exception as the permanent rule of law. These emergency-occasioned states of exception are the norm. Racialized states of exception allow federal and state governments to exert dissociative necropower by transferring, to the police, concrete representations and mechanisms of necropower, weapons, and broad legal discretion to brutalize and kill Black people.

The War on Crime and the War on Drugs are examples of when the State (federal, state, or local governments) has used the war metaphor to declare, produce, or reproduce states of emergency that have resulted in racialized states of exception where Black people have been stripped of their legal subjecthood. Each war has been waged like a legal civil war.⁷⁸ Poverty, crime, and drugs are neither people nor countries. They are lived conditions, occurrences, and things. However, the abstractions and social meanings attached to them have been historically ascribed to Blackness, and Black people have disparately borne the adverse consequences. Evidence has shown that Black people have been maliciously targeted, and crime prevention and public health have been used as pretext. Therefore, the wars on crime and drugs have been wars waged against Black people.

President Lyndon B. Johnson launched the War on Crime as a contemporary to the war on poverty.⁷⁹ Upon commencing the war on poverty, Johnson argued that crime, riots, and poverty in Black communities were caused by Black dysfunctionality.⁸⁰ Further, he disregarded the Kerner Commission Report,⁸¹ which determined that crime and riots in the Black community were complex issues driven by racism.⁸² For instance, the Report stated:

Race prejudice has shaped our history decisively; it now threatens to affect our future.

⁷⁸ *Id.* at 2 (defining modern totalitarianism as establishment of “a legal civil war that allows for the physical elimination . . . of entire categories of citizens who . . . cannot be integrated into the political system” and arguing “the voluntary creation of a permanent state of emergency . . . has become one of the essential practices of contemporary states”).

⁷⁹ *See generally* ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 50-65 (2016) (describing Johnson declaring War on Crime at same time antipoverty legislation was being enacted in 1964).

⁸⁰ *Id.* at 77.

⁸¹ THE NAT’L ADVISORY COMM’N ON CIV. DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1967).

⁸² HINTON, *supra* note 79, at 127 (describing Johnson’s unwillingness to pursue any domestic policy options suggested by the Kerner Commission Report).

White racism is essentially responsible for the explosive mixture which has been accumulating in our cities since the end of World War II. Among the ingredients of this mixture are:

Pervasive discrimination and segregation in employment, education, and housing, which have resulted in the continuing exclusion of great numbers of Negroes from the benefits of economic progress. . . .

Frustrated hopes are the residue of the unfulfilled expectations aroused by the great judicial and legislative victories of the civil rights movement and the dramatic struggle for equal rights in the South. . . .

The police are not merely a "spark" factor. To some Negroes police have come to symbolize white power, white racism, and white repression[, and] . . . many police do reflect and express these white attitudes. The atmosphere of hostility and cynicism is reinforced by a widespread belief among Negroes in the existence of police brutality and in a "double standard" of justice and protection—one for Negroes and one for whites.⁸³

Johnson ignored the facts, and hence, the real emergency. Instead, he adopted the law and order, race-crime construct⁸⁴ as his official position.⁸⁵ He declared crime as a state of emergency and increased federal investment in local police forces,⁸⁶ championing legislation such as the Law Enforcement Assistance Act and the Omnibus Crime Control and Safe Streets Act of 1968.⁸⁷

Johnson's successor, President Richard Nixon, campaigned as the "Law and Order" candidate and appealed to the "silent majority."⁸⁸

It is time for an honest look at the problem of order in the United States. Dissent is a necessary ingredient of change, but in a system of government that provides for peaceful change, there is no cause that justifies resort to violence. . . . I pledge to you, we shall have order in the United States.⁸⁹

⁸³ *Id.* at 5.

⁸⁴ See ALEXANDER, *supra* note 19, at 197-200 (showcasing how social and governmental structures led to conflation of blackness with crime).

⁸⁵ See generally HINTON, *supra* note 79, at 63-95 (illustrating Johnson's use of more punitive and aggressive law enforcement measures to quell 1965 Watts Riots).

⁸⁶ Matthew D. Lassiter, Policing and Soc. Just. HistoryLab, *National and Local War on Crime*, DETROIT UNDER FIRE, <https://policing.umhistorylabs.lsa.umich.edu/s/detroit-underfire/page/national-and-local-war-on-crime> [<https://perma.cc/ETV5-VG7K>] (last visited Jan. 15, 2024).

⁸⁷ See Elizabeth Hinton, *Why We Should Reconsider the War on Crime*, TIME (Mar. 20, 2015, 7:00 AM), <https://time.com/3746059/war-on-crime-history/> [<https://perma.cc/DQ94-5YEL>] (describing implementation of programs to further Johnson's War on Crime).

⁸⁸ ELAINE TYLER MAY, *FORTRESS AMERICA: HOW WE EMBRACED FEAR AND ABANDONED DEMOCRACY* 72 (2017) (describing how Nixon reached out to former southern Democrats with message in addressing street violence and political unrest).

⁸⁹ ALEXANDER, *supra* note 19, at 46-47.

Nixon knew that law and order was a racist dog whistle.⁹⁰ By commanding the country to “wage an effective war against this enemy within,”⁹¹ Nixon implicitly called for a war against Black people.⁹² Nixon’s racial animus was a constituent element of the War on Drugs and the expansion of the War on Crime.⁹³ He explicitly stated that his goal was to incarcerate Black people. He intentionally focused on drugs deemed more prevalent in the Black community.⁹⁴ Note, the concept of prevalence can be a construct under certain circumstances. Racialized policing means that Black people are disproportionately targeted, and therefore, may appear to disproportionately possess certain drugs, according to the information provided by police departments.⁹⁵ This is a form of confirmation bias. Further, Nixon portrayed the War on Drugs as an emergency⁹⁶ that required increased federal funding for the police, police militarization, and mass incarceration.

President Ronald Reagan officially reignited the War on Drugs by declaring a state of emergency, in which he called drugs a national security threat.⁹⁷ He pushed for legislation that increased federal spending on the war; Congress subsequently passed the Comprehensive Crime Control Act of 1984, which established mandatory minimum sentences and eliminated federal parole.⁹⁸ Congress also passed the 1986 Anti-Drug Abuse Act, which became known for its draconian mandatory five-year minimum.⁹⁹ The Act required judges to sentence a person to at least five years in prison if they were found guilty of

⁹⁰ *Id.* at 47.

⁹¹ *See generally* HINTON, *supra* note 79, at 134-79.

⁹² ALEXANDER, *supra* note 19, at 48 (explaining “[a] backlash against blacks was clearly in force” via Nixon’s rhetoric on War on Drugs).

⁹³ HINTON, *supra* note 79, at 134-79 (showcasing how Nixon’s crime policies had detrimental impact on Black communities); *see also* ALEXANDER, *supra* note 19, at 44, 46-48 (asserting Nixon used race to further “law and order” campaign message).

⁹⁴ *See* Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, BRENNAN CTR. FOR JUST. (May 10, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs> [<https://perma.cc/X2R2-PRBK>] (illustrating Nixon advisors associating heroin with Black people to disrupt their communities).

⁹⁵ *Id.* (describing “Black people being disproportionately arrested, convicted, and imprisoned for possession and distribution of crack cocaine”).

⁹⁶ ALEXANDER, *supra* note 19, at 48 (noting Nixon referred to illegal drugs as “public enemy number one”).

⁹⁷ *See* Ted Galen Carpenter, *Collateral Damage: The Wide-Ranging Consequences of America’s Drug War*, CATO INST., <https://www.cato.org/sites/cato.org/files/pictures/drugwarevent/carpenter.html> [<https://perma.cc/V6P2-TMXT>] (last visited Jan. 15, 2024) (“President Ronald Reagan gave substance to that metaphor by issuing a presidential directive that drug trafficking constituted a national security threat.”).

⁹⁸ Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473, 98 Stat. 1976 (1984) (showcasing how “parole” was struck out of U.S. code and new sentencing guidelines created to reflect “seriousness of crimes”).

⁹⁹ Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986).

possessing five grams of crack cocaine.¹⁰⁰ However, a person would have to possess five hundred grams of powdered cocaine to receive the same sentence.¹⁰¹ This is an example of a colorblind law imbued with racism. The use of powdered cocaine was more prevalent in the white community than in the Black community, where the use of crack cocaine was more prevalent due to its cost.¹⁰² The disparity between the drug possession quantity was racially biased and fueled the mass incarceration of Black people.¹⁰³

Reagan and his successors, Presidents George H. W. Bush,¹⁰⁴ William J. Clinton,¹⁰⁵ and George W. Bush, appealed to, reproduced, and escalated the wars.¹⁰⁶ Each president increased federal funding to law enforcement agencies and pushed legislation that perpetuated mass incarceration.¹⁰⁷ These actions also led to the increased militarization of the police. For example, Reagan's 1988 Anti-Drug Abuse Act gave funding to the military to train law enforcement officers and multiplied the number and prevalence of Special Weapons And Tactics ("SWAT") forces.¹⁰⁸ President George H. W. Bush's Program 1033¹⁰⁹ authorized the U.S. Department of Defense to transfer military equipment and

¹⁰⁰ *Id.* at 100 Stat. 3207-3 (forcing sentences no less than five years and no more than forty years for possessors of cocaine-based drugs).

¹⁰¹ *Id.*

¹⁰² See Taifa, *supra* note 94 (establishing most crack arrests made in Black communities given disproportionate impact of drug penalties).

¹⁰³ See generally DEBORAH J. VAGINS & JESSELYN MCCURDY, *CRACKS IN THE SYSTEM: TWENTY YEARS OF THE UNJUST FEDERAL CRACK COCAINE LAW* (2006), <https://www.aclu.org/other/cracks-system-20-years-unjust-federal-crack-cocaine-law?redirect=cpreirect/27181> [<https://perma.cc/46FD-K5BJ>] (showcasing how crack's low cost made it more accessible for African Americans, thus leading to harsh sentencing for community).

¹⁰⁴ National Defense Authorization Act, Pub. L. No. 104-201, § 1033, 110 Stat. 2422, 2639 (1997) (allowing local law enforcement to purchase weapons and ammunition from Department of Defense).

¹⁰⁵ Violent Crime Control and Law Enforcement Act, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (providing billions of federal funding for local law enforcement and establishing programs to deter crime).

¹⁰⁶ E.g., The Uncertain Hour, Marketplace, *30 Years Ago, George H.W. Bush Held Up a Bag of Crack on Live TV. Where'd He Get It?*, WHY? (Mar. 26, 2019), <https://why.org/articles/30-years-ago-george-hw-bush-held-up-a-bag-of-crack-on-live-tv-where-d-he-get-it/> [<https://perma.cc/9PHS-XY6L>].

¹⁰⁷ Aaron Morrison, *50-Year War on Drugs Imprisoned Millions of Black Americans*, ASSOCIATED PRESS (July 23, 2021, 1:35 PM), <https://apnews.com/article/war-on-drugs-75e61c224de3a394235df80de7d70b70> [<https://perma.cc/VNB8-X5LK>].

¹⁰⁸ Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1302, 100 Stat. 3207, 3207-41 (1986) (providing grants for local and state governments to train officers); see generally ACLU, *WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING* (2014) (explaining how justifications for using SWAT teams have been expanded in recent decades).

¹⁰⁹ National Defense Authorization Act, Pub. L. No. 104-201, § 1033, 110 Stat. 2422, 2639 (1997).

weapons to local and state police departments.¹¹⁰ Clinton's 1994 Crime Bill, The Violent Crime Control and Law Enforcement Act of 1994,¹¹¹ was the broadest and most expensive in the nation's history. The bill incentivized mass incarceration and the expansion of the prison industrial complex.

Police militarization was not solely caused by executive and legislative responses to the wars. For instance, police militarization first dates back to the use of militias for slave patrolling.¹¹² Slave patrols commonly operated as civil-military institutions within the militia structure.¹¹³ Once the Civil War came to an end, slave patrols were ultimately reconstituted as police forces.¹¹⁴ Former confederate soldiers used their military experience to create the organizational structure of these police forces and to incorporate military strategy and tactics into their operations. Police militarization was also the result of the early twentieth-century police reform era that was partially driven by the migration of Black people from southern states to northern cities.¹¹⁵ August Vollmer, the father of modern policing, advanced police reform on the principle "that the military techniques of war could be applied to the police war against criminal enemies."¹¹⁶ Police reformers used America's imperial-military's organizational structure, operational structure, training formats, and tactical techniques to professionalize policing and refine methods of racialized policing.¹¹⁷

This "imperial feedback"¹¹⁸ model of police training reinforced a binary Manichaean view of Black people. Under this view, Black people are the uncivilized natives that possess traits associated with "evil, disorder, and inferiority" juxtaposed against white traits associated with "good, civilization,

¹¹⁰ *1033 Program FAQs*, DEF. LOGISTICS AGENCY, <https://www.dla.mil/Disposition-Services/Offers/Law-Enforcement/Program-FAQs/> [<https://perma.cc/GER6-QHSM>] (last visited Jan. 15, 2024) (illustrating Defense Logistics Agency's responsibility to dispose of unused U.S. military property to local law enforcement).

¹¹¹ An Act to Control and Prevent Crime, Pub. L. No. 103-322, 108 Stat. 1796 (1994) (providing local law enforcement financial and logistical support to fight and deter crime).

¹¹² See CAROL ANDERSON, *THE SECOND: RACE AND GUNS IN A FATALLY UNEQUAL AMERICA* 34 (2021) ("[S]tate's 'slave patrol laws became very stringent' and the model for legislation was 'copied elsewhere in the South.'"); STEPHEN KANTROWITZ, BEN TILLMAN & THE RECONSTRUCTION OF WHITE SUPREMACY 28 (2000) (explaining how slave patrol laws and militias were tasked to maintain oversight of slave force early in nation's founding).

¹¹³ SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* 65 (2001).

¹¹⁴ *Id.* at 192-93, 201.

¹¹⁵ BROWN, *supra* note 4, at 3.

¹¹⁶ Julian Go, *The Imperial Origins of American Policing: Militarization and Imperial Feedback in the Early 20th Century*, 125 AM. J. SOCIO. 1193, 1208 (2020).

¹¹⁷ ALEXANDER, *supra* note 19, at 74 (highlighting how increased federal funding led local law enforcement to adopt military components and practices).

¹¹⁸ Go, *supra* note 116, at 1198 (explaining modern state formations were not isolated from one another and have been entangled with colonial sphere).

and superiority.”¹¹⁹ Black people are governed by their id; they have impulse control issues and a criminal mindset. Black life is savage life. “[S]avage life is just another form of *animal life*”¹²⁰ The police mission is a civilizing mission. Therefore, when this binary view of Blackness is combined with paramilitary style training, it results in the us vs. them, warrior-style policing model.¹²¹

Los Angeles, California (“LA”), embodied the racialized state of exception. LA’s history of racialized policing in majority Black neighborhoods, predicated upon crime and drug emergencies, is undisputed. LA could be considered ground zero of the War on Drugs. I am not arguing that crime and drugs were not issues of import. I argue that the real emergency was the conditions that gave rise to the pervasiveness of crime and drugs. These conditions were known but ignored due to racism. Moreover, Black nationalism and the Civil Rights Movement were considered emergencies, alongside drugs and crime.

White supremacy was embedded in the culture, and police brutality was endemic. Police did not hide their racial animus. The 1965 Watts Rebellion and the Southern California Black Panther Party movement catalyzed the Los Angeles Police Department’s (“LAPD’s”) militarization.¹²² The LAPD practiced “saturat[ed] policing[.]”¹²³ militarized policing was vertical and horizontal. The LAPD Air Support Division was formed in 1974 and was the “largest ‘airborne municipal law enforcement system in the world’”¹²⁴ The LAPD formed multiple street units, some with derogatory names that doubled as racist dog whistles, that targeted poor, predominantly Black neighborhoods using military tactics and equipment:¹²⁵ SWAT (1971),¹²⁶ TRASH (Total Resources against Southeast Hoodlums—1973),¹²⁷ CRASH (Community

¹¹⁹ Rachael Mackenzie MacLean, *Rewriting Rebellions: The Manichean Allegory and Imperial Ideology in the Works of H.G. de Lissier 7* (Apr. 29, 2016) (English Honors Thesis, University of Tennessee, Knoxville), (available at https://trace.tennessee.edu/cgi/viewcontent.cgi?article=2951&context=utk_chanhonoproj [<https://perma.cc/ZW5S-WV7V>]) (showcasing differing views on Black and white people used by colonizers to “civilize” the colonized).

¹²⁰ MBEMBE, *supra* note 2, at 77.

¹²¹ See generally Seth Stoughton, *Law Enforcement’s “Warrior” Problem*, 128 HARV. L. REV. F. 225, 228 (2015) (“Officers learn to treat every individual they interact with as an armed threat and every situation as a deadly force encounter in the making.”).

¹²² Donna Murch, *Ferguson’s Inheritance*, JACOBIN (Aug. 5, 2015), <https://jacobin.com/2015/08/ferguson-police-black-lives-matter/> [<https://perma.cc/7E75-HZTL>].

¹²³ Donna Murch, *Crack in Los Angeles: Crisis, Militarization, and Black Response to the Late Twentieth-Century War on Drugs*, 102 J. AM. HIST. 162, 166 (2015).

¹²⁴ *Id.*

¹²⁵ *Id.* at 165-66, 173.

¹²⁶ L.A. POLICE DEP’T, 150TH ANNIVERSARY YEARBOOK TIMELINE 21 (2019), <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/10/timeline-page-21.pdf> [<https://perma.cc/5YPG-PHJF>].

¹²⁷ Murch, *supra* note 123, at 165.

Resources Against Street Hoodlums—1979),¹²⁸ Operation Safe Streets (1979),¹²⁹ and the Hardcore Drug Unit.¹³⁰ The police exercised minimal, if any, effort to distinguish between regular, law-abiding residents and criminals.¹³¹ While Reagan did not officially reignite the nationwide war on drugs until October 14, 1982,¹³² LA had already declared a drug crisis emergency, which merged into the formal War on Drugs.¹³³

I argue that the Supreme Court’s decision in *City of Los Angeles v. Lyons*¹³⁴ failed to sanction the LAPD’s systemic racism and police brutality, and thus, the racialized state of exception arose. In *Lyons*, the racialized state of exception was demonstrated by the Court’s reorientation of its Article III standing requirements under the guise of separation of powers considerations.¹³⁵ In form and function, the Court’s decision all but prevents Black people from bringing an action for equitable relief from the systemic deprivation of constitutional rights caused by racialized policing.

An LAPD officer choked Adolph Lyons until he went unconscious, urinated, and defecated on himself during a traffic stop for a burned-out taillight.¹³⁶ Lyons sought injunctive relief and presented the Court with evidence of pervasive racial profiling and race-based police brutality.¹³⁷ He proved that LAPD officers disproportionately killed and choked Black men.¹³⁸ The Court looked the other

¹²⁸ L.A. POLICE DEP’T, 150TH ANNIVERSARY YEARBOOK TIMELINE 23 (2019), <https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/10/timeline-page-23.pdf> [<https://perma.cc/PCF5-6XQJ>] (explaining CRASH was first implemented in five areas in 1977, then assigned to all eighteen divisions by 1979).

¹²⁹ *Our History*, L.A. CNTY. SHERIFF’S DEP’T, <http://shq.lasdnews.net/pages/PageDetail.aspx?id=203> [<https://perma.cc/2U6J-PARL>] (last visited Jan. 15, 2024) (explaining LA County Sheriff’s Department created Operation Safe Streets in 1979).

¹³⁰ Murch, *supra* note 123, at 165.

¹³¹ *Id.* at 173 (highlighting clear racial bias of late twentieth-century Wars on Drugs and gangs in LA, primarily targeting and imprisoning “entire generation of black and brown youth”).

¹³² Andrew Glass, *Reagan Declares ‘War on Drugs,’ October 14, 1982*, POLITICO (Oct. 14, 2010, 4:44 AM), <https://www.politico.com/story/2010/10/reagan-declares-war-on-drugs-october-14-1982-043552> [<https://perma.cc/72YP-FVZB>].

¹³³ Murch, *supra* note 123, at 164-66.

¹³⁴ 461 U.S. 95, 102-14 (1983) (holding respondent, having been subject to a chokehold, did not have standing for injunctive relief under Article III).

¹³⁵ *Id.* at 112 (highlighting importance of finding “irreparable injury” to exercise caution when granting injunctions against state officials involved in enforcement of state criminal laws).

¹³⁶ Transcript of Oral Argument at 31, *Los Angeles v. Lyons*, 461 U.S. 95 (1983) (No. 81-1064) (providing statement of counsel for respondent, explaining damages done to respondent by stranglehold).

¹³⁷ *Id.* at 30-31 (providing statement of counsel for respondent, which pointed to statistics related to application of strangleholds in the court record).

¹³⁸ *Id.* (highlighting higher likelihood of Black men to be strangled and to suffer death therefrom); Brief for Respondent at 9, *Los Angeles v. Lyons*, 461 U.S. 95 (1983) (No. 81-1064).

way. It characterized Lyons's claim that he reasonably feared that himself and others similarly situated would be choked by LAPD as a conjectural and abstract injury statement, and moreover, "[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects."¹³⁹ As Justice Thurgood Marshall argued in the dissent, the Court's ruling "immunizes from prospective equitable relief any policy that authorizes persistent deprivations of constitutional rights as long as no individual can establish with substantial certainty that he will be injured, or injured again, in the future."¹⁴⁰

Due to decisions like *Lyons*, the Supreme Court has established that the Constitution is functionally suspended in besieged predominantly Black neighborhoods and cities, as proven by its excessive force, qualified immunity, and search and seizure decisions.¹⁴¹ These decisions demonstrate that police officers are above the law and can create and operate pursuant to their own laws.¹⁴²

One may reasonably infer that the LAPD viewed the decision as a victory because their vicious brand of racial profiling and brutality persisted and escalated throughout the 80s, 90s, and 2000s.¹⁴³ Police officers mocked the decision and continued business as usual.

"When I came on the job all my training officers were big guys and knowledgeable, some ni****d get in their face, they just spin 'em around, choke 'em out until they dropped."

"We stopped the choke because a bunch of N***** have a bunch of these organizations in the south end, and because all N***** are choked out and killed—twelve in ten years. Really is extraordinary, isn't it?"

"We basically get impatient with him being so fucking stupid. Which I thought he was. So I just handcuffed him and went the scenic route to the station. We searched him again and found the gun. Went over to the baseball diamond and talked to him. When I left, Dana goes, 'No blood Mark.' 'No problem, not even any marks, Dana.' Just body shots. Did you ever try to find a bruise on a Ni****. It is pretty tough, huh?"

¹³⁹ *Lyons*, 461 U.S. at 95-96 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)).

¹⁴⁰ *Id.* at 137 (Marshall, J., dissenting).

¹⁴¹ *Id.* (characterizing significance of *Lyons* as showing "wrath and outrage cannot be translated into an order to cease the unconstitutional practice").

¹⁴² Rhiannon Hamam, *The 1980s Supreme Court Case That Made it Almost Impossible To Hold Police Accountable*, BALLS & STRIKES (June 13, 2023), [https://ballsandstrikes.org/wild-pitches/la-v-lyons-impossible-to-hold-police-accountable/\[https://perma.cc/Z75M-F6L2\]](https://ballsandstrikes.org/wild-pitches/la-v-lyons-impossible-to-hold-police-accountable/[https://perma.cc/Z75M-F6L2]).

¹⁴³ See, e.g., Katie Nodjimbadem, *The Long, Painful History of Police Brutality in the U.S.*, SMITHSONIAN MAG. (May 29, 2020), [https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/\[https://perma.cc/Y5HV-DCQK\]](https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/[https://perma.cc/Y5HV-DCQK]) (highlighting reports of police brutality against Black community from early 19th century to modern times).

“People there don’t want n***** in their town. People there don’t want Mexicans in their town. They don’t want anybody but good people in their town, and anyway you can do to get them out of there that’s fine with them. We have no n***** where I grew up.”¹⁴⁴

Using a combination of the imperial-feedback model and the slave-patrol model, police lay siege to many predominantly Black neighborhoods, cities, and towns under the pretext of fighting crime or drugs.¹⁴⁵ They have transformed them into spaces where “government by terror”¹⁴⁶ and “to live by the sword”¹⁴⁷ are now societal norms. Police are an occupying force that inflict “small massacres”¹⁴⁸ daily. Death is no longer tragic.¹⁴⁹ It is expected. Arbitrary and extreme violence is banal.

III. CARCERAL INTERNAL COLONIES

“The town belonging to the colonized people [, or at least the native town, the Negro village] . . . is a place of ill fame, peopled by men of evil repute. They are born there, it matters little where or how; they die there, it matters not where, nor how. It is a world without spaciousness; men live there on top of each other. The native town is a hungry town, starved of bread, of meat, of shoes, of coal, of light . . .” In this case, sovereignty means the capacity to define who matters and who does not, who is disposable and who is not.¹⁵⁰

The internal colony is the juridico-political¹⁵¹ and sociopolitical space within which the order and disorder created by the blue gaze, racialized state of exception, and racialized policing have validity.¹⁵² The blue gaze and the racialized state of exception cease to exist solely as invisible forces. They are externalized and acquire physical and sensorial dimensions. The racialized state of exception is permanent. The suspension of the rule of law is the law.¹⁵³

¹⁴⁴ Defense Amended Offer of Proof Re: Fuhrman Tapes, *California v. Simpson*, No. BA 097211 (Cal. Super. Ct. Aug. 22, 1995), <https://www.mdcbowen.org/p2/bh/fuhrman.htm> [<https://perma.cc/M5HP-ZKCG>].

¹⁴⁵ See discussion *supra* notes 104-35 (explaining origin of police militarization and its relations to racially-biased law enforcement against drugs).

¹⁴⁶ MBEMBE, *supra* note 2, at 35-36 (explaining characteristics of “government by terror”).

¹⁴⁷ *Id.* at 31 (emphasis omitted) (explaining concept of “living by the sword” in context of governance).

¹⁴⁸ *Id.* at 38.

¹⁴⁹ *Id.* (illustrating how “necropolitical” power establishes indifference to death through “small massacres”).

¹⁵⁰ *Id.* at 79-80 (emphasis omitted) (quoting FANON, *supra* note 61, at 37-39 (1963)).

¹⁵¹ See Marta Harnegger, *The Juridico-Political Structure*, 15 THEORETICAL REV. 20, 20 (1980) (defining concept of “juridico-political” system within society).

¹⁵² Cf. GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* 19 (Daniel Heller-Roazen trans., 1998).

¹⁵³ See *infra* Section III.A (characterizing internal colony as carceral spaces where Black individuals are systematically denied legal subjecthood).

Therefore, lawlessness defines the relationship between the law and Black people. For those who reside in the internal colony, the rule of law that governs those who live beyond its boundaries is aspirational. Racialized policing is the dominant instrumentality of governance because it has been designed to accomplish the oppressive aims of the blue gaze and the racialized state of exception.¹⁵⁴

The blue gaze is panoptic.¹⁵⁵ The blue gaze and racialized policing seize “power over the [Black] body in an individualizing mode,”¹⁵⁶ and “power that is not individualizing but . . . massifying, that is directed”¹⁵⁷ at the Black population. Furthermore, racialized policing produces violent feedback systems. Racialized policing begets racialized structural violence, and racialized policing aggravates and increases racialized structural violence.¹⁵⁸ The resulting conditions create actual states of emergency and sustain the rationales for existing states of emergency.¹⁵⁹ States of emergency are leveraged to necessitate racialized states of exception. Racialized states of exception create new states of emergency, thus “produc[ing] a situation in which the emergency becomes the rule”¹⁶⁰ Correlatively, racialized policing creates a violent feedback system where violence begets violence, calling for an extension of the state of emergency and an extension of the racialized state of exception. The systems are defined by production and reproduction.

The constitutive features of the internal colony are explained below. The features ensure that the internal colony remains a punitive space that penalizes and stigmatizes Black existence.¹⁶¹

A. *Legal Black Holes*

Internal colonies are carceral spaces that prove America’s disdain for Black legal subjecthood. Carceral spaces are designed to control, discipline, punish, enclose, and isolate undesirable, dangerous populations. Hence, internal colonies are legal black holes. The rule of law and juridical order have been suspended predicated upon racialized states of emergency. Consequently, Black

¹⁵⁴ See *infra* Section III.C (explaining concept of hyperpolicing as form of governance in Black populations).

¹⁵⁵ FOUCAULT, *supra* note 44, at 195-204 (explaining concept and effect of Panopticon, which uses imbalance of power in visibility as a discipline mechanism).

¹⁵⁶ FOUCAULT, *supra* note 57, at 243, 254-60.

¹⁵⁷ *Id.*

¹⁵⁸ See *infra* Section III.C.1 (explaining anomic violence by police against Black communities lead to normalization of pervasive violence and an expectation of victimization by residents).

¹⁵⁹ See *infra* Section III.B (characterizing internal colony as territories that normalize operations of blue gaze and racialized policing under pretext of stated emergencies).

¹⁶⁰ AGAMBEN, *supra* note 24, at 22.

¹⁶¹ See *infra* Sections III.A-E (explaining features of internal colony that deprive rights of Black communities, such as legal, residential, and other basic human rights).

people have been stripped of their legal subjecthood and yet remain subject to the disciplinary and punitive power of the rule of law.

For American citizens, to live inside of a carceral space means to live as a *citizen, with an asterisk—to live knowing that you are being deprived of the Constitution while power attempts to gaslight you into believing that the Constitution contemplates and encompasses your existence. You feel stateless because you are stateless. Thus, internal colonies create and maintain a relationship of resentment between Black people and the rule of law and Black people and society. Black rebellions are exercises of affirmation and reclamation. Black people seek to reclaim the rights not granted to them by the laws of man but those that the “Laws of Nature and of Nature’s God entitle them”¹⁶²

B. *The Carceral Space: Residential Segregation & Hypersegregation*

The internal colony is structured to be a governable territory that enables the efficient operation of the blue gaze and racialized policing in response to a stated emergency. Stated emergencies have evolved to account for the transition from legalized racism to racism that is technically illegal.¹⁶³ Internal colonies are segregated spaces and, in most instances, hypersegregated spaces.

Hypersegregation “describe[s] metropolitan areas in which African Americans were highly segregated on at least four of the five dimensions” . . . Unevenness is the degree to which blacks and whites are unevenly distributed across neighborhoods in a metropolitan area; isolation is the extent to which African Americans live in predominantly black neighborhoods; clustering is the degree to which neighborhoods inhabited by African Americans are clustered together in space; concentration is the relative amount of physical space occupied by African Americans within a given metropolitan environment; and centralization is the degree to which blacks reside near the center of a metropolitan area.¹⁶⁴

Residential segregation and hypersegregation are the results of a confluence of factors. These factors are responses to the emergency of Black existence, which, as previously noted, morphs depending on the acceptability of legal racism.¹⁶⁵ Residential segregation is the result of laws, policies, politics, and social norms, including but not limited¹⁶⁶ to self-perpetuating residential

¹⁶² THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

¹⁶³ See discussion *infra* notes 156-64 (explaining how New Deal policies and Federal Housing Administration were in line with white supremacists’ efforts to prevent racial integration).

¹⁶⁴ BROWN, *supra* note 4, at 12 (quoting Douglas S. Massey & Jonathan Tannen, *A Research Note on Trends in Black Hypersegregation*, 52 DEMOGRAPHY 1025, 1027 (2015)).

¹⁶⁵ See *infra* Section II (illustrating use of states of emergency declared in context of crime and drugs that led to racialized states of exception).

¹⁶⁶ Self-perpetuating residential segregation patterns, spatial racism, spatial war, and serial forced displacement overlap. However, I have identified them as separate results because of

segregation,¹⁶⁷ spatial racism,¹⁶⁸ spatial war,¹⁶⁹ and serial forced displacement.¹⁷⁰

For example, White supremacists launched spatial wars designed to prohibit residential integration and punish Black and white people who integrated or facilitated residential integration. White supremacists terrorized and intimidated Black people who moved into or attempted to move into white neighborhoods.¹⁷¹ The exigencies of Black existence were deigning to believe one could live among white people or in an all-white neighborhood.¹⁷² New Deal policies and the Federal Housing Administration (“FHA”) caused and enforced residential segregation and hypersegregation. The New Deal did not offer federal funding for integrated public housing and built public housing in segregated neighborhoods.¹⁷³ The FHA’s lending rules promoted redlining and sanctioned greenlining and yellowlining.¹⁷⁴ Predominantly Black neighborhoods were designated as risky and denied federally insured loans.¹⁷⁵ The FHA prohibited “loans to individuals that would allow for the ‘ingress of undesirable racial or nationality groups’ into the neighborhood.”¹⁷⁶ It also refused to guarantee Black people’s federally secured mortgages, with non-white people only receiving 2%

their differences. For example, serial forced displacement includes the disparate impact of the 2008 foreclosure crisis and Hope VI program. *See Starting Over: Michael Ohlrogge Tracks Post-Foreclosure Outcomes During the Great Recession*, NYU L.: NEWS (Jan. 6, 2021), <https://www.law.nyu.edu/news/ideas/michael-ohlrogge-great-recession-foreclosures> [<https://perma.cc/7ZUB-C8H9>] (explaining impact of Great Depression on individuals who lost their homes to foreclosure). *See generally* ANDREW CUOMO, U.S. DEP’T OF HOUS. & URB. DEV., HOPE VI BUILDING COMMUNITIES TRANSFORMING LIVES (1999).

¹⁶⁷ MARIA KRYSAN & KYLE CROWDER, CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION 7-10 (2017) (providing examples of federal policies that reinforced residential separation based on race).

¹⁶⁸ *See* BROWN, *supra* note 4, at 3-4; *see also* John A. Powell, *Dreaming of a Self Beyond Whiteness and Isolation*, 18 WASH. U. J.L. & POL’Y 13, 29-32 (2005) (explaining how organization of metropolitan areas contributes to continued racial distribution of advantages and disadvantages); John A. Powell & Marguerite L. Spencer, *Giving Them the Old “One-Two”*: *Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433, 442-48 (2003) (explaining spatial racism in context of gentrification).

¹⁶⁹ BROWN, *supra* note 4, at 70.

¹⁷⁰ *Id.* at 13.

¹⁷¹ *Black Family Killed After Refusing To Leave White Neighborhood in California*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/dec/16> [<https://perma.cc/3E5H-NUBF>] (last visited Jan. 15, 2024) (illustrating history of injustice where Black family was killed after refusing to move out of white section of Fontana).

¹⁷² BROWN, *supra* note 4, at 70; *see also* KRYSAN & CROWDER, *supra* note 167, at 7-10 (providing various political and social obstacles that limited access to White neighborhoods).

¹⁷³ KRYSAN & CROWDER, *supra* note 167, at 7 (illustrating how New Deal programs maintained already segregated public housing).

¹⁷⁴ *See id.* at 7-8.

¹⁷⁵ *Id.* at 8.

¹⁷⁶ *Id.* at 7-8.

of FHA insured mortgages.¹⁷⁷ The FHA's 1938 underwriting rules stated that "restrictive covenants should strengthen and supplement zoning ordinances."¹⁷⁸ Private individuals and state, local, and municipal governments enacted restrictive covenants prohibiting the sale or renting of homes to Black people.¹⁷⁹ Black people who moved into white neighborhoods faced vigilante violence. Their homes were vandalized, they were threatened, they were injured, or bribed to leave.¹⁸⁰

The 1968 Fair Housing Act did not remedy the issue, because despite *Buchanan v. Warley*,¹⁸¹ and *Jones v. Alfred H. Mayer Co.*,¹⁸² the U.S. Department of Housing and Urban Development failed, intentionally or unintentionally, to monitor compliance and implement the integration directive.¹⁸³ Contemporaneously, there were traditional forms of residential segregation that persisted over time, such as racial steering, zoning, subjecting Black people to hostile living conditions, disproportionately denying Black applicants, and not responding to housing inquiries from Black people.¹⁸⁴ Finally, predatory lending such as targeting Black people for subprime loans enforced residential segregation and destabilized neighborhoods economically and socially.¹⁸⁵

Ferguson, Missouri, is a prime example of hypersegregation. Ferguson was a notorious sundown town.¹⁸⁶ Restrictive covenants prohibited Black people from purchasing, leasing, or occupying homes in Ferguson and other white St. Louis suburbs.¹⁸⁷ The FHA reinforced the restrictive covenants in Ferguson.¹⁸⁸ The FHA also subsidized homebuilders that created white-only subdivisions and implemented its redlining policy, under which it refused to insure mortgages on homes in Black neighborhoods or within close proximity.¹⁸⁹ The rules and

¹⁷⁷ *Id.*

¹⁷⁸ FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT § 930(3) (1938).

¹⁷⁹ See KRYSAN & CROWDER, *supra* note 167, at 7-9.

¹⁸⁰ See BROWN, *supra* note 4, at 67-70.

¹⁸¹ 245 U.S. 60, 82 (1917) (holding city ordinance prohibiting sale of property to Black individuals in white-majority neighborhoods or buildings unconstitutional).

¹⁸² 392 U.S. 409, 438-44 (1968) (holding Congress could regulate sale of private property to prevent racial discrimination).

¹⁸³ KRYSAN & CROWDER, *supra* note 167, at 9 (examining why residential segregation persists despite outlawing of housing discrimination).

¹⁸⁴ *Id.* at 10-11.

¹⁸⁵ *Id.* at 11.

¹⁸⁶ Richard Rothstein, *The Making of Ferguson: Public Policies at the Root of Its Troubles*, ECON. POL'Y INST. (Oct. 15, 2014), <https://www.epi.org/publication/making-ferguson/> [<https://perma.cc/7SYT-63H7>] (discussing history of racial-isolation policies in Ferguson, Missouri).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ See RICHARD ROTHSTEIN, *THE COLOR OF LAW* 96-99 (2017).

policies were byproducts of the federal government's residential segregation program aimed at building more homes for white families and moving them to the suburbs, and reciprocally forcing Black families into inner city housing.¹⁹⁰

Because the FHA refused to guarantee Black people's mortgages, Black people were forced to borrow from private lenders and pay homes at unconscionable prices and interest rates.¹⁹¹ Private lenders frequently required Black people to enter into installment contracts where the lender could repossess and sell their homes if they missed or were late on making one payment.¹⁹² To mitigate the risks, some Black residents rented out sections of their homes to other families, creating crowded conditions in single-family home neighborhoods.¹⁹³

The St. Louis government instituted a housing segregation program and enacted racist zoning laws that created apartheid-like conditions in Black neighborhoods.¹⁹⁴ The government pushed Black people into overcrowded and subpar public housing,¹⁹⁵ where they paid higher rent prices than white residents and had fewer municipal services. Racist zoning laws permitted industrial pollution, liquor stores, and brothels in Black neighborhoods but not in white neighborhoods.¹⁹⁶

Housing inequality limited the economic mobility of Black renters and homeowners. They were excluded from higher-paying employment, and the majority of available jobs were in the suburbs, resulting in higher commuting costs. When residents could get better employment, typically in factories, the unions banned them from membership.¹⁹⁷ Suppressed wages and inflated mortgage and rent costs made it difficult for Black residents to save money and achieve upward economic mobility.

Citing the city's decline, St. Louis instituted a redevelopment scheme to attract white, white-collar professionals. The government destroyed Black neighborhoods pursuant to slum clearance policies and provided vouchers and subsidies to Black people to push them into the suburbs.¹⁹⁸ The government redeveloped the city for commercial uses and expanded St. Louis University's campus.¹⁹⁹ As Black people moved into the suburbs, blockbusting and white flight ensued.²⁰⁰ White residents sold their homes and moved to the city or other

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* at 97.

¹⁹⁴ BROWN, *supra* note 4, at 71 ("St. Louis became the first city to approve residential racial zoning through referendum in 1916," using Baltimore as a template and "inspiration").

¹⁹⁵ Rothstein, *supra* note 186.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* (examining public policies that created racial segregation in Ferguson, Missouri).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

white suburbs. The pattern of housing, employment, and municipal inequality followed Black residents, transforming Ferguson into a suburban ghetto:²⁰¹ an internal colony governed by an overwhelmingly white government and police force.

The physical and nonphysical boundaries of the internal colony are maintained using enclosure, isolation, and spatial dominance. This Section mainly summarizes how physical boundaries are maintained. Nonphysical boundaries are maintained through structures and systems discussed in more detail in the Section on infrastructure. Spatial dominance, enclosure, and isolation are symbiotic processes. Police leverage them to exercise disciplinary and punitive power over Black bodies by designating “how Black people are allowed to ‘be,’ where Black people are allowed to go and when, and what choices Black people are allowed to make.”²⁰² Spatial dominance ensures that the costs of “being somewhere that you have no business being” is high.²⁰³ The costs include time, dignity, bodily integrity, and safety. Enclosure and isolation are structured to effectuate the permanent seizure and control of the physical body of the individual and the physical body of the people. Further, enclosure and isolation are structured to constrain the individual’s and the people’s senses of imagination and potentialities.²⁰⁴

Spatial dominance, enclosure, and isolation necessitate restraints on movement and capricious violence, proving the permanence of slavery, colonialism, and imperialism. Police create conditions akin to slavery, Redemption, and Jim Crow by implementing similar techniques of surveillance, harassment, examination, and violence.²⁰⁵ Police recreate the conditions of colonialism and imperialism by implementing the aforementioned techniques and militarized policing.

As such, police abandon the Constitution and excessive force becomes the lexicon of the law. Unconstitutional stops, searches, seizures, frisks, and arrests are brutality’s conduits. The abandonment of the Constitution triggers the skeletal muscle memory of American policing, causing modern police to assume the functions and characteristics of slave patrollers and colonial and imperial police and soldiers. Modern police are a gendarmerie. The police’s primary

²⁰¹ Peter Dreier & Todd Swanstrom, *Suburban Ghettos Like Ferguson Are Ticking Time Bombs*, WASH. POST (Aug. 21, 2014, 12:23 PM), <https://www.washingtonpost.com/posteverything/wp/2014/08/21/suburban-ghettos-like-ferguson-are-ticking-time-bombs/> (discussing suburban racial and economic disparities in Ferguson).

²⁰² ANGELA J. HATTERY & EARL SMITH, *POLICING BLACK BODIES: HOW BLACK LIVES ARE SURVEILLED AND HOW TO WORK FOR CHANGE* 8 (2018) (discussing control, regulation, and surveilling of Black individuals outside of literal use of police force).

²⁰³ SPATIAL POLICING: THE INFLUENCE OF TIME, SPACE, AND GEOGRAPHY ON LAW ENFORCEMENT PRACTICES, Location 1871 (Charles E. Crawford ed., 2010) [hereinafter SPATIAL POLICING].

²⁰⁴ See Johan Galtung, *Violence, Peace and Peace Research*, 6 J. PEACE RSCH. 167, 168 (1969).

²⁰⁵ See BROWN, *supra* note 4, at 39, 62-63.

purpose is to prevent and suppress insurrections, meaning expressions of civil rights, autonomy, and nondeferential behavior. Police enforce loitering laws analogous to how patrollers enforced assembly and vagrancy laws, focusing on breaking up congregations of Black people without cause.²⁰⁶ When the police stop, frisk, search, or question Black people for existing or being where the police have determined they are not allowed to be, police are enforcing restraints on locomotion using methods akin to the pass systems of slavery and apartheid.²⁰⁷

C. *Racialized Policing as Governance*

Police are fluent in the language of violence. Police inflict anomic violence, status-oriented violence, and juridical violence²⁰⁸ as a means of arranging for the confiscation and annihilation of Black bodies. The rule of law and violence, in all its configurations and dimensions, become one due to the concatenation of the racialized state of exception and the blue gaze. This often results in a form of policing that I argue falls within the category of hyperpolicing. Lawrence T. Brown defines hyperpolicing as:

[A] system of aggressive racial profiling and militarized policing based on a combination of U.S. Supreme Court decisions, presidential executive orders, and federal laws that authorize the disproportionate policing strategies in Black neighborhoods. Because of its aggressiveness and resulting brutality, hyperpolicing breeds mistrust as police do not “protect and serve” Black neighborhoods with the same courtesy and respect afforded to other communities. Hence, Black neighborhoods are often paradoxically hyperpoliced yet underprotected.²⁰⁹

Sometimes, hyperpolicing and racialized policing may be used interchangeably. However, I contend that racialized policing may occur in the absence of militarization in order to include policing that occurs in internal colonies that do not have militarized police forces.

²⁰⁶ See generally Dorothy E. Roberts, *Foreword: Race, Vagueness, and the Social Meaning of Order-Maintenance Policing*, 89 J. CRIM. L. & CRIMINOLOGY 775 (1999) (exploring racialized context of Chicago antiloitering laws).

²⁰⁷ See Jennifer Mason McAward, *Defining the Badges and Incidents of Slavery*, 14 U. PA. J. CONST. L. 561, 585 (2012) (arguing public or widespread private action towards formerly enslaved groups of people that mimics laws of slavery has effect of de facto enslavement or legal subjugation); SPATIAL POLICING, *supra* note 203, at Location 1871; see also MBEMBE, *supra* note 2, at 100-01 (“Movement, incidentally, is the very essence of human bodies, but these bodies are assumed to have illegally broken into certain spaces and places where they should never have been—places that they now pollute by their presence alone and from which they must be expelled.”).

²⁰⁸ See Sekhon, *supra* note 40, at 1743.

²⁰⁹ BROWN, *supra* note 4, at 11.

1. Anomic Violence

“I hunt people — it’s a great job, I love it.”²¹⁰ “[A]nomic violence’ describes violence that does not serve any function beyond the psychological gratification of the officers who inflict it.”²¹¹ “Anomic violence describes blows that are delivered for their own sake, or, at best, to sate an appetite born of frustration, anger, or sadism.”²¹² In the internal colony, the “appetite born of frustration, anger, or sadism”²¹³ is a function of the intrusive impulses of white supremacy. The intrusive impulses are satisfied through pornotroping, which is the process of reducing the Black body to flesh and deriving sensual pleasure from reducing the Black body to a state of sheer powerlessness.²¹⁴ Furthermore, anomic violence in the internal colony is self-indulgent. It involves the “excessive or unrestrained gratification of one’s own appetites, desires, or whims.”²¹⁵

Anomic violence allows officers to sate their appetites by recreating the degradation ceremonies²¹⁶ that marked the conditions of enslavement, Jim Crow, colonialism, and imperialism. The excessive and unrestrained gratification that officers derive from engaging in anomic violence is a white supremacist-high that cannot be *trained* out of them. In particular, excessive force allows officers to live out their fantasies of annihilation.²¹⁷ Dehumanization enables the officer to conceptualize the person’s life as bare life.

For example, the Ferguson Police Department (“FPD”) used its canine patrol to recreate the conditions of slavery and segregation-era policing, in which Black people understood that their bodies were edible flesh,²¹⁸ thereby obtaining pleasure from reducing the Black body to a state of sheer powerlessness. Dogs are historic signifiers of white supremacy’s perversions. Slaveowners, overseers,

²¹⁰ Lauren Sue, ‘I Hunt People—It’s a Great Job’: Ohio Deputy/Pastor Brags Before Killing Casey Goodson Jr., DAILY KOS (Dec. 27, 2020, 2:05 PM), <https://www.dailykos.com/stories/2020/12/27/2004342/> [https://perma.cc/EY25-SWJW].

²¹¹ See Sekhon, *supra* note 40, at 1744.

²¹² *Id.* at 1747.

²¹³ *Id.*

²¹⁴ See Hortense J. Spillers, *Mama’s Baby, Papa’s Maybe: An American Grammar Book*, 17 DIACRITICS 64, 67 (1987) (exploring various characterizations used to describe roles of Black women); see also Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457, 487 (1997).

²¹⁵ *Self-Indulgence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/self-indulgence> [https://perma.cc/TJR8-QNL5] (last visited Jan. 15, 2024).

²¹⁶ MARKUS DIRK DUBBER, *THE POLICE POWER: PATRIARCHY AND THE FOUNDATIONS OF AMERICAN GOVERNMENT* 34-35 (2005) (analyzing origins and development of police power and criminal law).

²¹⁷ See MBEMBE, *supra* note 2, at 64.

²¹⁸ See Bénédicte Boisseron, *Afro-Dog*, 118 TRANSITION 15, 20 (2015) (exploring connections between race and perceptions of dogs); DOJ, C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 31 (2015) [hereinafter FPD REPORT], https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/5N4G-4UVE].

private citizens, slave catchers, and slave patrollers used dogs to terrorize and torture enslaved and free Black people. Under North Carolina's fugitive slave law, the pursuer could "tear [the fugitive] in pieces with dogs."²¹⁹ Images of white police officers using their dogs to attack Black children are the foremost images of the Civil Rights Movement and generated international pressure.²²⁰ Modern police forces, like the Baton Rouge Police Department, also use dogs to terrorize Black children and teenagers.²²¹

Concerning the FPD, the DOJ stated, "[t]hey appear to use canines not to counter a physical threat but to inflict punishment."²²² In every documented canine bite, the victim was Black.²²³ Further, the FPD demonstrated a pattern of deploying canines against Black people in situations where there was a low objective threat posed.²²⁴ Officers commanded dogs to bite people in situations where there was no threat, or there were enough officers present to contain the threat.²²⁵ Due to the prevalence of racialized policing in Ferguson, where the DOJ found demonstrable proof that the FPD targeted Black people and exposed them to excessive force, the DOJ determined that "race may play an impermissible role in officers' decisions to deploy canines."²²⁶

As a result of constant anomic violence in the internal colony, omnipresent latent violence and manifest violence have been normalized as standard living conditions. Police inflict violence with impunity. Residents expect to be the victims of police violence, either directly or indirectly.

2. Status-Oriented Violence

Police respond to challenges to their authority with indignance due to the fetishization of Black obedience and docility. They inflict status-oriented violence to reconstitute the power dynamic between them and the victim that

²¹⁹ Deborah A. Rosen, *Slavery, Race, and Outlawry: The Concept of the Outlaw in Nineteenth-Century Abolitionist Rhetoric*, 58 AM. J. LEGAL HIST. 126, 134 (2018) (internal quotation omitted) (describing examples of "fugitive slave" statutes to explore topic of outlawry in antebellum period).

²²⁰ See *The Civil Rights Act of 1964: A Long Struggle for Freedom, Birmingham, Alabama, Protests*, LIBR. OF CONG., <https://www.loc.gov/exhibits/civil-rights-act/multimedia/birmingham-protests.html> [<https://perma.cc/S6KX-QQW6>] (last visited Jan. 15, 2024).

²²¹ See Bryn Stole & Grace Toohey, *The City Where Police Unleash Dogs on Black Teens*, MARSHALL PROJECT (Feb. 12, 2021, 6:00 AM), <https://www.themarshallproject.org/2021/02/12/the-city-where-police-unleash-dogs-on-black-teens> [<https://perma.cc/HQ5U-XV4J>] (reporting on use of police dogs against Black teens in Baton Rouge, Louisiana); see also Madalyn K. Wasilczuk, *The Racialized Violence of Police Canine Force*, 111 GEO. L.J. 1125, 1126, 1151, 1202 (2023) (describing patterns of police dog violence in Baton Rouge).

²²² FPD REPORT, *supra* note 218, at 33.

²²³ *Id.* at 31.

²²⁴ *Id.*

²²⁵ *Id.* at 31-33 (describing three situations where FPD officers used canines on hiding or fleeing nonviolent offenders, including two teenagers, who posed little, if any, threat to officer or officers present).

²²⁶ *Id.* at 31.

they think has been damaged by the challenge to their authority. Status-oriented violence is the “quotidian violence that attends policing in poor minority communities. It describes violence meted out for ‘disrespecting’ the police.”²²⁷ I would classify status-oriented violence as subjecting an individual to the racialized structural violence of the criminal justice system by unconstitutionally harassing, arresting, detaining, or inflicting violence upon them for challenging one’s authority. Police who view themselves as disrespected see violence as a permissible means of commanding respect from the victim and observers. Disrespect in the internal colony means not responding to the police with reflexive obedience.

One example of status-oriented violence is when an officer responds to an individual exercising their First Amendment rights with physical retaliation. The exercise could be an insult, questioning the officer’s conduct, or as some officers describe it, anything that could be described as “pissing off the police.”²²⁸ Another example of status-oriented violence occurs when an officer physically assaults or arrests a bystander for filming police conduct or objecting to police conduct.

3. Juridical Violence

Juridical violence “finds expression in excessive force doctrine: This is police violence in the service of a discrete crime-control goal.”²²⁹ The Fourth Amendment to the Constitution allows police to use violence, i.e., force that is “‘objectively reasonable’ in light of the facts and circumstances confronting [the officer], without regard to [the officer’s] underlying intent or motivation.”²³⁰ To determine reasonableness, the court assesses several factors, including: the totality of the circumstances, proportionality of the force,²³¹ the crime’s severity, if the person is an imminent threat to the officers or others, and if the person is actively resisting or attempting to evade arrest by fleeing.²³² The court weighs

²²⁷ Sekhon, *supra* note 40, at 1743 (footnote omitted).

²²⁸ See, e.g., MINN. DEP’T OF HUM. RTS., INVESTIGATION INTO THE CITY OF MINNEAPOLIS AND MINNEAPOLIS POLICE DEPARTMENT 15 (2022), <https://mn.gov/mdhr/mpd/findings/> [<https://perma.cc/N42F-YLKL>] [hereinafter, MDHR REPORT] (“A high-level MPD leader explained that officers often arrest and cite individuals with obstruction or disorderly conduct ‘for things that could fall under the category, arguably, of pissing off the police.’”); see also DOJ, C.R. DIV. & U.S. ATT’Y’S OFF., DIST. OF MINN., CIV. DIV., INVESTIGATION OF THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT 48-56 (2023) (describing how MPD violates peoples’ First Amendment rights by, among other examples, using pepper spray on journalists and destroying protestors’ recording equipment); see also FPD REPORT, *supra* note 218, at 24-28 (describing numerous instances where FPD engages in First Amendment violations).

²²⁹ Sekhon, *supra* note 40, at 1743.

²³⁰ *Graham v. Connor*, 490 U.S. 386, 397 (1989).

²³¹ SETH W. STOUGHTON, JEFFREY J. NOBLE & GEOFFREY P. ALPERT, EVALUATING POLICE USES OF FORCE 19 (2020) (noting Court added more factors to consider by “recognizing the importance of the proportionality of the force used and the totality of circumstances”).

²³² See *Graham*, 490 U.S. at 396.

“the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”²³³ Excessive force is unconstitutional.²³⁴

The standard is deficient. First, it defers to the police’s perception and grants police broad authority to commit acts of violence. Based on the republican theory of governance, the law should center the individual, not the state.²³⁵ Furthermore, the standard is colorblind. The standard does not account for race’s quantifiable impact on policing. Finally, the standard is amorphous and vague, which makes it easy to rationalize excessive force *ex post facto*. As a result, excessive force is pervasive and has been normalized. Police manipulate the excessive force standard and hide behind qualified immunity to commit unconstitutional violence. Police disregard criminal procedure and exercise their quasi-lawmaking authority to create and implement their own procedures, standards, and norms that the population knows it must abide by or face reprisal. The potentiality for excessive force is present in every interaction.

4. The Absence of Empathy

Officers lack empathy for the impact that policing and the criminal justice system have on the life chances of the individual and their humanity. Police treat their law enforcement jobs like they are playing a video game where the goal is to collect as many Black bodies as possible. Police disregard the collateral consequences of lawful and unlawful arrests. “This cavalier institutional attitude towards guilt and criminal culpability is largely, though not solely, deployed against the most socially vulnerable and stigmatized populations: the poor, people of color, the homeless, and the addicted.”²³⁶ The result is that Black people disproportionately plead guilty to offenses that they are innocent of, or they do not take full advantage of their right to a defense to mitigate the collateral consequences of being arrested.²³⁷

²³³ *Id.* (quoting *Tennessee v. Garner*, 471 U.S. 1, 8 (1985)).

²³⁴ See *STOUGHTON ET AL.*, *supra* note 231, at 13 (noting plaintiffs can file lawsuits when police use excessive force during arrests).

²³⁵ See Mortimer NS Sellers, *Republicanism: Philosophical Aspects*, in *INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES* 477, 477 (James D. Wright ed., 2d ed. 2015) (“Republicanism is the doctrine that public power should always serve the common good of all those subject to its rule.”).

²³⁶ Alexandra Natapoff, *The High Stakes of Low-Level Criminal Justice*, 128 *YALE L.J.* 1648, 1663 (2019).

²³⁷ See *Race and Wrongful Conviction*, INNOCENCE PROJECT, <https://innocenceproject.org/race-and-wrongful-conviction/> [https://perma.cc/22Y7-5XZ4] (last visited Jan. 15, 2024) (noting of all exonerees since 1989 who pled guilty, 75% are “Black or brown people”); see also Natapoff, *supra* note 236, at 1677-78 (listing “license suspensions and the loss of credit, jobs, and money” as collateral consequences of conviction).

Officers appear to operate pursuant to “the cardinal principle of slavery,—that the slave is not to be ranked among *sentient beings*,”²³⁸ which underwrites the continued dehumanization of Black people. For them, racialized extrajudicial violence has entertainment value. It is the spectacle of the civilizing process. The decision to exercise necropower is as easy as pushing a button on a controller. “I will choke you. I will kill you”²³⁹ “I hope they stomp his ass.”²⁴⁰ Racialized policing is institutionalized and carried out in ways that are religious—liturgical exercises filled with rituals, wrath, and repetitive “like a vendetta.”²⁴¹

5. Us versus Them: Compulsory Obedience & Docility

Black people are the enemy.²⁴² Police training is rooted in using the blue gaze. Officers frequently receive scenario training that is based on racist tropes to impersonate Black people and the conditions within Black neighborhoods.²⁴³ Unsurprisingly, many use anti-Black language.²⁴⁴ In Minneapolis, based on body camera footage, interviews, disciplinary records, and community member statements, officers have called Black people the n-word, monkeys, Black bitches, orangutans, nappy head, and cattle.²⁴⁵ Hence, police operate pursuant to the principle that Black people are the *other*. This is further reinforced by the paramilitary style training that officers receive in some jurisdictions, cultivating a warrior mindset where officers are supposed to exhibit aggression to any challenge automatically. Officers are trained to view every citizen as a threat, and therefore to command unquestioning obedience.²⁴⁶

²³⁸ GEORGE M. STROUD, A SKETCH OF THE LAWS RELATING TO SLAVERY IN THE SEVERAL STATES OF THE UNITED STATES OF AMERICA 22-23 (Philadelphia, Kimber & Sharpless, 1827) (“Nevertheless, the cardinal principal of slavery,—that the slave is not to be ranked among *sentient beings*, but among *things**—is an article of property—a chattel personal,—obtains as undoubted law in all of these states.” (emphasis in original)).

²³⁹ Artemis Moshtaghian & Ray Sanchez, *Two Baltimore Police Officers Indicted in Case Involving Alleged Assault of Teen*, CNN (July 17, 2021, 1:01 PM), <https://www.cnn.com/2021/07/17/us/baltimore-police-officers-indicted/index.html> [<https://perma.cc/JAH8-DDN8>] (quoting Officer Maxwell Dundore).

²⁴⁰ Joseph Margulies, “*I Hope They Stomp His Ass*,” JUSTIA: VERDICT (Jan. 30, 2023), <https://verdict.justia.com/2023/01/30/i-hope-they-stomp-his-ass> [<https://perma.cc/WT4B-2EWH>] (quoting unnamed officer).

²⁴¹ Johan Galtung, *Cultural Violence*, 27 J. PEACE RSCH. 291, 302 (1990) (“With the violent structure institutionalized and the violent culture internalized, direct violence also tends to become institutionalized, repetitive, ritualistic, like a vendetta.”).

²⁴² See, e.g., MDHR REPORT, *supra* note 228, at 40 (finding community members are positioned as “the enemy” of MPD officers based on culture set by veteran officers).

²⁴³ *Id.* at 41.

²⁴⁴ See, e.g., *id.* at 38 (noting some MPD officers have been documented using racial slurs, in addition to misogynistic and “otherwise disrespectful language”).

²⁴⁵ *Id.*

²⁴⁶ See generally Stoughton, *supra* note 121 (describing how law enforcement training reflects “warrior concept” and promotes “warrior mindset” among officers); see, e.g., MDHR

Aside from training, the us-versus-them style of policing and the requirement that Black people display unquestioning obedience and docility is a vestige of slave patrolling and institutionalized white supremacy within law enforcement. Training is a part of the problem. But I argue that it is a small part of the problem. You are either a white supremacist, or you are not. It is in you, or it is not. People can be radicalized, but the past and present have shown that white supremacy flows through society's veins. It manifests itself in every institution and among every type of person. The law enforcement profession has been the domain of white supremacists because police officers have been granted broad powers and discretion and because police have a history of being allowed to commit state-sanctioned racialized violence.

The compulsory docility-obedience mandate often manifests itself in excessive force cases when an individual does not allow himself to be "captured." To be captured is to be stopped and placed under the control of the police officer for lawful or unlawful purposes. A person's body and time can be captured. The unstated rule of Black capture is a status-oriented rule that necessitates immediate compliance with an officer's directions, and the failure to comply is utilized to rationalize the use of force. The rule of Black capture is a declarative three-part rule that provides:

First, mere pursuit is sufficient to give a white supremacist the right to control and possess a black body. The pursuer may effectuate his right "without bodily touch or manucaption," even if the pursuer is not "within reach or doesn't have a reasonable prospect of taking." Second, a pursuer may justify any use of force as a legitimate means of enforcing or reconstituting the historical, asymmetrical power-relation between white supremacy and blackness. In the pursuer's mind, the power relation is enforced or reconstituted when the person is physically restrained, controlled, trapped, wounded, or killed. Third, black people have no right to "self-ownership," and thus, no right to self-defense. Black people have an "obligation to conform" their instincts of self-preservation to their "condition of inferiority" and demonstrate reflexive obedience under all circumstances.²⁴⁷

The status-oriented violence that flows from the docility-obedience mandate can be seen in viral videos of police brutality where people try to escape, refuse to stop, walk away from police, or engage in any conduct that demonstrates a refusal to yield to the officer's authority to capture the person. The officer perceives the conduct as an intolerable challenge to his authority and responds with physical violence.

REPORT, *supra* note 228, at 40-44 (describing how MPD paramilitary-style training creates culture of "unquestioned compliance," which in turn sets tone of officer interactions with community members).

²⁴⁷ Ciji Dodds, *The Rule of Black Capture & the Ahmaud Arbery Case*, 14 GEO. J.L. & MOD. CRITICAL RACE PERSPS. 31, 33-34 (2022) (footnotes omitted).

6. Spatial Dominance

Police occupy spaces loudly and obtrusively as a display of dominance and authority. Spatial dominance is achieved physically and psychologically. Physical spatial dominance manifests as large concentrations of officers, police vehicles constantly patrolling, helicopter units circling (on patrol or for specific purposes), and police executing lawful and unlawful stops, searches, frisks, and seizures. Additionally, physical spatial dominance is achieved through violence. Routine displays of violence of any nature establish literal physical dominance of the subject, observers, and those who learn about the encounter.

Psychological spatial dominance is also achieved through routine displays of violence. Violence impacts the psyches of the individual and the population because acts of violence prove to them that they are assailable and inconsequential within the internal colony's boundaries. Violence communicates to the victim and the population that their lives are disposable. Theoretically, to retain one's life, one must submit to the system of domination that dictates where one is allowed to be and how one is allowed to be. One's existence is defined by one's willingness to be dominated or to accept the consequences of resisting domination. However, one's existence is not secured by obedience. Police arbitrarily inflict violence upon compliant individuals to establish psychological spatial dominance through illogic and unpredictability. Thereby, police create an environment wherein the inevitability of violence dominates the individual's and the population's psyches.

The law enforcement apparatus described above and the carceral symbols and mechanisms described in the subsequent sections are other ways that police establish psychological spatial dominance. Carceral symbols and mechanisms ensure that individuals are aware that they are constantly surveilled and examined within a space and subject to tangible threats of detention, arrest, incarceration, and violence.

Finally, physical and psychological spatial dominance can be achieved through militarized policing. When an individual is confronted with police officers in tactical gear and camouflage, who are anxiously waiting for an opportunity to try out their new flash-bang grenades, tanks, mine-resistant vehicles, or AR-15 semiautomatic rifles, the individual must acknowledge the power differential. From the perspective of the officer, militarized policing reinforces the warrior mindset that conceptualizes Black neighborhoods as war zones and Black people as enemy combatants.

D. *Symbols and Mechanisms of Carcerality*

Black people know that the internal colony is a carceral space designed to contain them based on the presumption of criminality that supersaturates their bodies. Symbols of carcerality and mechanisms of carcerality are objects, persons, or practices that replicate the visual and physical conditions of incarceration. An object, person, or practice can be both a symbol and a mechanism of carcerality.

A symbol of carcerality signals to the person that their criminality is a rebuttable presumption.

1. Examples of objects that symbolize carcerality: Metal bars on public or private buildings, bulletproof glass in public or private buildings, turnstile gates, surveillance cameras in public or private buildings, street cameras, austere public buildings (gray painted walls, cement walls, few windows, etc.), dilapidated public facilities and buildings, limited food sources, and ill-equipped and understaffed hospitals.
2. Examples of practices that symbolize carcerality: Engaging with private storeowners or public officials through bulletproof glass, having to request that a store clerk open a locked case so that you can purchase an everyday item and having the clerk take the item directly to the counter and tell you that you can retrieve the item after you pay for it, passing through metal detectors at schools, being forced to pay for a service before the service is rendered, and police using their sirens periodically for no reason other than as a show of force.
3. Examples of persons that symbolize carcerality: An excessive number of security guards or police officers in schools, streets, hospitals, stores, or restaurants.

A mechanism of carcerality is an instrument of the law enforcement apparatus that can be used to surveil, observe, examine, control, confine, discipline, or punish the individual.

1. Examples of objects as mechanisms of carcerality: Metal bars, surveillance cameras, nighttime crime prevention lights, street surveillance cameras, police weapons, police vehicles, military-grade weapons, military-grade tactical gear, and military-grade vehicles.
2. Examples of practices as mechanisms of carcerality: Regular or sporadic helicopter patrolling, police using their lights and sirens without a purpose, constant police patrols, paddy wagons patrolling, instituting school resource officers, using military-grade weapons and tactics to respond to protests or disruptions, wearing military-grade tactical gear, and forcing police interactions.
3. Examples of persons as mechanisms of carcerality: Uniformed police officers, plainclothes police officers, undercover police officers, security guards, informants, and school resource officers.

Symbols and mechanisms of carcerality indicate that the law enforcement apparatus operates vertically and horizontally, effectuating an all-encompassing enclosure of the body. They subsume internal colonies, sending a signal to those who live outside of the internal colony that it is a space of danger and criminality.

E. *Violent Infrastructure*

Racialized structural violence has destroyed the infrastructure. Residential segregation, blight, municipal neglect, pollution, a dearth of affordable and

nutritious food, resource deprivation, and segrenomics evinces the state's indifference to, or antipathy for, the health, safety, and welfare of the residents. A violent infrastructure exists as a consequence of direct or indirect racial animus. First, a violent infrastructure causes historical trauma, in which "populations historically subjected to long-term, mass trauma exhibit a higher prevalence of disease even several generations after the original trauma occurred."²⁴⁸ Second, a violent infrastructure facilitates economic exploitation. Residents are subjected to predatory policing, price gouging, high rent prices, high tax rates, or predatory lending. Next, the visual landscape includes crumbling buildings and cratered streets. It also includes evidence of racist zoning practices like endemic liquor stores and industrial buildings. The visual landscape and the violent infrastructure inflict unremitting psychological violence by signaling to the residents that they deserve to live in inferior conditions and their lives are not worth protecting.

In conclusion, the features of the internal colonies announce themselves with ruthless clarity. In the next Section, I argue that Baltimore is an internal colony, and I analyze its features. I use the Department of Justice's report as an authoritative source to analyze racialized policing within Baltimore. In some regards, conditions have changed in Baltimore. However, the blue gaze and racialized policing remain instrumentalities of governance.²⁴⁹ I use Baltimore because the DOJ's investigation reveals the federal government's hypocrisy. The federal government had always been aware of the systemic racism in the Baltimore Police Department's practices and the brutal conditions they subjected Black people to, yet the federal government did nothing. Black rebellion forced federal intervention.

²⁴⁸ BROWN, *supra* note 4, at 11 (quoting Michelle M. Sotero, *A Conceptual Model of Historical Trauma: Implications for Public Health Practice and Research*, 1 J. HEALTH DISPARITIES RSCH. & PRAC. 93, 94 (2006)).

²⁴⁹ See Emma Tucker, *Freddie Gray Case Fallout Has Put Baltimore 'Ahead of the Game' with Police Reform. There's Much Work Still To Be Done*, CNN (July 3, 2021, 2:50 PM), <https://www.cnn.com/2021/07/03/us/freddie-gray-baltimore-police-reform/index.html> [<https://perma.cc/G4D9-PD8S>] (describing how in spite of significant reform, many community members have yet to experience "cultural changes" within police department); Ben Conarck, *The Cozy Relationships and Shadowy Disclosures Behind Baltimore's \$8M Police Consent Decree*, BALT. BANNER (June 5, 2023, 8:16 AM), <https://www.thebaltimorebanner.com/community/criminal-justice/ken-ebony-thompson-james-bredar-consent-decree-venable-7D6UEKIBYVEE3FOS7XXDYHU2DI/> [<https://perma.cc/6WQK-3BEJ>] (reporting on concerning familial connection between Baltimore's new acting city solicitor and head of Baltimore Police Department's consent decree monitoring team); J. Cavanaugh Simpson & Ron Cassie, *Under Watch: The Police Spy Plane Experiment Is Over, but the Growing Surveillance of Baltimore Continues.*, BALT. MAG. (Mar. 2021), <https://www.baltimoremagazine.com/section/historypolitics/under-watch-police-spy-plane-experiment-over-but-growing-surveillance-baltimore-continues/> [<https://perma.cc/4D66-RXLA>] (describing how Baltimore police have used cell-site simulators, spy planes, camera networks, and facial recognition technology to surveil city's residents).

IV. BALTIMORE, MD

To be black in the Baltimore of my youth was to be naked before the elements of the world, before all the guns, fists, knives, crack, rape, and disease. The nakedness is not an error, nor pathology. The nakedness is the correct and intended result of policy, the predictable upshot of people forced for centuries to live under fear. The law did not protect us.²⁵⁰

In Baltimore, there is no illusion of equality. “[T]here are ‘two Baltimores:’ one wealthy and largely white, the second impoverished and predominantly black.”²⁵¹ The internal colonies are the clusters²⁵² of predominantly Black neighborhoods throughout the city, whose genealogies reveal the state’s profound commitment to maintaining self-sustaining systems of racism under the guise of responding to states of emergency. The state has gone from openly declaring Black existence as a state of emergency, like using the term the war against the “Negro Invasion”²⁵³ to describe the threat posed by Black people moving into white neighborhoods, to using the War on Crime and the War on Drugs as proxies.

A. *The Carceral Space: Hypersegregation & Serial Forced Displacement*

The federal government, the state, private citizens, churches, banks, real estate agents, Johns Hopkins University, the University of Maryland, the KKK, and other entities implemented hypersegregation and serial forced displacement to form and maintain the boundaries of Baltimore’s internal colonies. Baltimore is one of America’s oldest cities and was one of the largest slave trade ports.²⁵⁴ Residential segregation in Baltimore existed since its founding. In the early 1900s, when Black people moved or attempted to move into white neighborhoods,²⁵⁵ state officials and citizens described it as an attempt to force integration that would result in the depreciation of property values,²⁵⁶ the

²⁵⁰ TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 17 (2015).

²⁵¹ DOJ, C.R. DIV., *INVESTIGATION OF THE BALTIMORE CITY POLICE DEPARTMENT 4-5* (2016) [hereinafter *BPD REPORT*], <https://www.justice.gov/crt/file/883296/download> [<https://perma.cc/M26G-84KJ>].

²⁵² BROWN, *supra* note 4, at 9 (defining “The Black Butterfly” as “the geographic clustering of where Black Baltimoreans live”).

²⁵³ *Id.* at 68.

²⁵⁴ *See generally* CALVIN SCHERMERHORN, *THE BUSINESS OF SLAVERY AND THE RISE OF AMERICAN CAPITALISM, 1815-1860*, at 33-34, 42 (2015) (describing growth of one of United States’ largest slave firms in Baltimore); *see also* Regi Taylor, Editorial, *Inner Harbor Was Epicenter of Brutal African Slavery; Six Generations Later Man of African Ancestry Is Inner Harbor Landlord, Reflect on That*, *BALT. TIMES* (May 26, 2023), <https://baltimoretimes-online.com/news/editorials/2023/05/26/inner-harbor-was-epicenter-of-brutal-african-slavery-six-generations-later-man-of-african-ancestry-is-inner-harbor-landlord-reflect-on-that/> [<https://perma.cc/52RR-7WLE>] (noting Baltimore’s slavery industry was “robust economic engine” driving commerce in region).

²⁵⁵ BROWN, *supra* note 4, at 70.

²⁵⁶ *Id.* at 66.

devolution of the moral standards of neighborhoods, and ultimately, a race war.²⁵⁷ The state and private citizens used the language of colonialism and imperialism, such as “suburban negro colony,” “negro colonies,” “negro settlements,” “white settlements,” and “in-migrant colored people” to describe residential patterns and mobility.²⁵⁸ The state and private citizens declared a state of emergency and responded by launching a spatial war²⁵⁹ consisting of residential segregation laws, vigilante violence, zoning laws, restrictive covenants, and policies. A Black person moving into a white neighborhood was deemed a criminal offense, a public health emergency, and even sufficient “provocation for physical and legal attacks.”²⁶⁰

Vigilantes attacked and terrorized Black people who moved into white neighborhoods by threatening them, bombing their homes, raiding their homes, physically attacking them, vandalizing their homes (breaking windows, breaking doors, splashing paint on the homes, etc.), and inciting race riots.²⁶¹ The Baltimore Sun published the addresses of Black people who moved into white neighborhoods so that they could be targeted.²⁶² White residents formed Home Protective Associations and Improvement Associations to organize their oppositional measures, including sanctioning vigilante violence, devising restrictive and reciprocal covenants, lobbying, and using the police.²⁶³

In 1910, Mayor John Barry Mahool signed the nation’s “first comprehensive residential racial zoning law,” which became the model for laws enacted throughout the nation.²⁶⁴ To further enforce residential segregation, in 1917, Mayor James H. Preston declared a public health emergency necessitating the segregation and quarantine of black communities because there were higher rates of tuberculosis in the Black population.²⁶⁵ Rates were higher in Black communities. However, it was well known that the higher rates were due to incomplete or nonexistent sewage systems, poor water treatment, and crowded living conditions.²⁶⁶ Nonetheless, Black communities were quarantined, uprooted, and displaced. Additionally, Mayor Preston instructed building

²⁵⁷ *Id.* at 66-67.

²⁵⁸ *Id.* at 74-75, 87.

²⁵⁹ *Id.* at 70.

²⁶⁰ *Id.* at 79.

²⁶¹ *See generally id.* at 67-80.

²⁶² *Id.* at 80 (“By publishing the exact addresses of Black homeowners, the *Sun* ensured that the White community could police, intimidate, harass, and ultimately expel the Black threat in their midst.”).

²⁶³ *Id.* at 74, 79, 82, 85, 88 (Lafayette Square Protective Association, Lauraville Improvement Association, The Civic Improvement and Protective Association, Maryland Avenue Association, Madison Avenue Protective and Improvement Association, and Mount Royal Improvement Association).

²⁶⁴ *Id.* at 66; *see also* ROTHSTEIN, *supra* note 189, at 44-45.

²⁶⁵ BROWN, *supra* note 4, at 77.

²⁶⁶ *Id.*

inspectors and health department officials to issue citations to people who rented or sold homes to Black people in white neighborhoods.²⁶⁷

*Buchanan v. Warley*²⁶⁸ did not halt the spatial war. The state and the federal government persisted. In 1933, the federal Home Owner's Loan Corporation redlined Black neighborhoods and those with high percentages of Black residents.²⁶⁹ Baltimore's Residential Security Map was drawn in 1937 and designated black neighborhoods as unsafe and unstable.²⁷⁰ The Housing Authority of Baltimore City segregated public housing and strictly enforced its segregationist policies.²⁷¹ Despite subsequent legal and societal interventions, zoning ordinances, racial steering, urban renewal projects, slum-clearance programs, and subprime lending perpetuated residential segregation and serial forced displacement²⁷² ensuring that Baltimore remains hypersegregated.

B. *Baltimore's Violent Infrastructure*

Words are insufficient to capture the visceral feelings evoked by the physical conditions within Baltimore. I submit these photographs as a glimpse into the primarily Black neighborhoods in the Western District of Baltimore.

C. *Racialized Policing as Governance*

Contemporary Baltimore is the product of the War on Drugs and the War on Crime. Maryland declared states of emergency in Baltimore, citing drug use, the drug trade, and high crime rates.²⁷³ Drug use, the drug trade, and crime were serious problems. However, the criminalization of Blackness and racialization of drugs and crime converged to create a racialized state of exception. The criminalization of Blackness meant that Black people were disproportionately targeted for stops, frisks, searches, and seizures, and therefore, crime statistics

²⁶⁷ *Id.* at 78.

²⁶⁸ 256 U.S. 60, 75, 81-82 (1917).

²⁶⁹ BROWN, *supra* note 4, at 86.

²⁷⁰ *Id.* at 86-87.

²⁷¹ *Id.*

²⁷² *See id.* at 89, 90-95; *Mayor of Balt. v. Wells Fargo Bank, N.A.*, 677 F. Supp. 2d 847 (D. Md. 2010); *Baltimore Settles Landmark Fair Lending Case Against Wells Fargo*, RELMAN COLFAX PLLC (July 12, 2012), <https://www.relmanlaw.com/news-baltimore-settles> [<https://perma.cc/72M4-7RVM>]; *see also* ROTHSTEIN, *supra* note 189, at 112-13.

²⁷³ *See* Kobie Brown, 'Red, White & Baltimore': Charm City and The 'War on Drugs', NBC NEWS (Dec. 1, 2015, 6:28 PM), <https://www.nbcnews.com/news/nbcblk/red-white-baltimore-charm-city-war-drugs-n471746> [<https://perma.cc/UAH9-QQ4Q>]; Neill Franklin, Kristerfer Burnett, Diamonte Brown & Todd Oppenheim, *The Real Baltimore: The Drug War*, REAL NEWS NETWORK (May 4, 2017), <https://therealnews.com/bmore0502warondrugs> [<https://perma.cc/6ZBX-RWLB>]; *see also* Graig Graziosi, *Baltimore Ends War on Drugs With Plot Line Straight From The Wire*, INDEP. (Apr. 8, 2021, 1:42 PM), <https://www.independent.co.uk/news/world/americas/baltimore-drugs-the-wire-b1828185.html> [<https://perma.cc/EY8Y-9NL2>]; BPD REPORT, *supra* note 251, at 14-15; BROWN, *supra* note 4, at 101.

were tainted by racial bias. This has been proven by objective studies showing that white people were more likely to possess contraband.²⁷⁴ Racialized policing was concentrated in Black neighborhoods. Policing was not centered around crime prevention. It was centered around racial subjugation, and the Baltimore Police Department (“BPD”) earned a national reputation for their brutality.

Carceral symbols and mechanisms reminded residents that they were at the epicenter of racialized policing and replicated the conditions of incarceration. Blue light surveillance cameras provided 24-hour surveillance.²⁷⁵ The Baltimore Police Aviation Unit deployed helicopter patrols to enforce minor misdemeanor offenses like gambling.²⁷⁶ Police cars frequently flashed their lights as a show of force. Plain-clothed officers, jump out boys, or knockers arbitrarily harassed and assaulted residents.²⁷⁷

BPD concentrated its law enforcement activities in predominantly Black neighborhoods. BPD targeted, enclosed, isolated, and spatially dominated these neighborhoods by using crime mapping, drawing police district lines, and adhering to residential segregation patterns.²⁷⁸ When the DOJ released its report in 2016, Baltimore was 63% Black, 30% white, and 4% Hispanic or Latino.²⁷⁹ Due to Baltimore’s history of hypersegregation,²⁸⁰ most neighborhoods remained racially homogenous. Additionally, police district lines divided the city almost exclusively along racial lines.

²⁷⁴ See David A. Graham, *The Horror of the Baltimore Police Department*, ATLANTIC (Aug. 10, 2016), <https://www.theatlantic.com/news/archive/2016/08/the-horror-of-the-baltimore-police-department/495329/>; see also Max Ehrenfreund, *The Case That Policing in Baltimore Is Racially Biased, in Seven Charts*, WASH. POST (Aug. 11, 2016, 1:14 PM), <https://www.washingtonpost.com/news/wonk/wp/2016/08/11/the-case-that-policing-in-baltimore-is-racially-biased-in-seven-charts/>.

²⁷⁵ See John Duda, *Looking at Baltimore’s Surveillance Cameras*, IBW21.ORG (Oct. 28, 2013), <https://ibw21.org/editors-choice/looking-at-baltimores-surveillance-cameras/> [https://perma.cc/5XHX-URWV]; see also John Fritze, *City To Remove ‘Blue Light’ Crime Cameras*, BALTIMORE SUN (Oct. 26, 2018, 3:52 PM), <https://www.baltimoresun.com/news/bs-xpm-2008-05-16-0805160191-story.html>.

²⁷⁶ BPD REPORT, *supra* note 251, at 56.

²⁷⁷ See Audie Cornish, *Baltimore Declares End to Plainclothes Policing After Officer Indictments*, NPR (Mar. 9, 2017, 4:34 PM), <https://www.npr.org/2017/03/09/519500047/baltimore-declares-end-to-plainclothes-policing-after-officer-indictments> [https://perma.cc/EMN3-JWJE]; see also Brandon Soderberg & Baynard Woods, *Think Federal Cops in Portland Are Scary? Cops Use ‘Jump-out Boys’ All the Time*, GUARDIAN (July 29, 2020, 6:16 PM), <https://www.theguardian.com/commentisfree/2020/jul/29/think-the-federal-cops-in-portland-are-scary-police-use-these-tactics-all-the-time> [https://perma.cc/VL28-Q3VX].

²⁷⁸ See SPATIAL POLICING, *supra* note 203, at Location 435.

²⁷⁹ BPD REPORT, *supra* note 251, at 12.

²⁸⁰ See *Id.* at 70-71 (“[P]redominantly African-American neighborhoods . . . have been segregated for generations due to government policies that systematically prevented African Americans from acquiring wealth, and obstructed their ability to move into neighborhoods . . .”); ROTHSTEIN, *supra* note 189, at 59-60.

“Lock up all the black hoodies.”²⁸¹ BPD supervisors ordered officers to target Black residents and neighborhoods²⁸² and to make as many arrests, stops, and searches as possible²⁸³ pursuant to its Zero Tolerance policy.²⁸⁴ Police disproportionately stopped, searched, seized, and used excessive force against Black people in predominantly Black neighborhoods.²⁸⁵ Unsurprisingly, BPD rewarded and encouraged racialized police violence and harassment.²⁸⁶

White residents described the police as “respectful and responsive[.]”²⁸⁷ Black residents described the police as disrespectful and negligent.²⁸⁸ “Get your n****r ass out of here.”²⁸⁹ “You know, you’re acting like a real n****r right now”²⁹⁰ The evidence supported Black residents’ contentions. Officers used racial epithets, slurs, monkey noises, and other racist language when speaking to Black people, along with physical threats.²⁹¹ Residents refrained from filing complaints because BPD often retaliated against complainants, and residents believed that complaints were useless.²⁹² They were right. BPD did not properly investigate complaints and typically misclassified racial bias complaints as discourteous behavior or minor conduct issues.²⁹³

²⁸¹ BPD REPORT, *supra* note 251, at 66 (quoting BPD lieutenant’s order that her sergeant instruct officers to “lock up all the black hoodies”).

²⁸² *Id.* at 47.

²⁸³ *Id.* at 5.

²⁸⁴ *Id.* at 41 (“Zero tolerance enforcement made police interaction a daily fact of life”); Jayne Miller, *War Drugs Contributes to Violence in Baltimore*, WBALTV11 (Oct. 26, 2017, 11:00 PM), <https://www.wbalTV.com/article/war-on-drugs-contributes-to-violence-in-baltimore/13100359#> [<https://perma.cc/MUB5-NKWK>]; see also Media Release, ACLU, *ACLU, NAACP File Class Action Lawsuit Over Illegal Arrests in Baltimore City; Propose Remedy Plan To Help Fix Rights Violations*, ACLU OF MD. (June 15, 2006), https://www.aclu-md.org/sites/default/files/pr_naACP_v_bcpd.pdf [<https://perma.cc/HF3U-S8HF>].

²⁸⁵ BPD REPORT, *supra* note 251, at 26 (stating that BPD stops were “concentrated on a small segment of the population”).

²⁸⁶ *Id.* at 17.

²⁸⁷ *Id.* at 5.

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 67.

²⁹⁰ *Id.* at 69.

²⁹¹ *Id.* at 66.

²⁹² *Id.* at 66-67, 151 (discussing reports from residents that complaints “would be fruitless,” and reports from officers that they were “retaliated against” for reporting misconduct).

²⁹³ *Id.* at 66 (“[W]hen individuals successfully make a complaint alleging racial bias, BPD supervisors almost universally misclassify the complaint as minor misconduct . . . that does not reflect its racial elements.”).

1. Anomic Violence: Saartjie Baartman—Pornotroping and the Fetishization of the Black Body

Officers ordered the woman to exit her vehicle, remove her clothes, and stand on the sidewalk to be searched. The woman asked the male officer in charge “I really gotta take all my clothes off?” The male officer replied “yeah” and ordered a female officer to strip search the woman. The female officer then put on purple latex gloves, pulled up the woman’s shirt and searched around her bra. Finding no weapons or contraband around the woman’s chest, the officer then pulled down the woman’s underwear and searched her anal cavity. This search again found no evidence of wrongdoing and the officers released the woman without charges. Indeed, the woman received only a repair order for her headlight.²⁹⁴

BPD officers committed the equivalent of a public sexual assault of a Black woman because she was missing a headlight.²⁹⁵ Without regard for her humanity or dignity, the officers placed her body on display for consumption and voyeurism in the name of crime prevention. Her public strip search was an act of pornotroping—an actual and symbolic act of violence intended to reduce her body to flesh and to reduce her to a state of sheer powerlessness.²⁹⁶ They transformed her into Saartjie Baartman.²⁹⁷ The woman filed a formal complaint and investigators found no objective evidence that she had committed a crime or possessed contraband. However, the male officer involved was punished with a simple reprimand.²⁹⁸ Imagine if those same officers responded to her call for assistance after she had been raped or battered in a domestic violence incident.²⁹⁹

2. Juridical Violence: Freddie Gray

“Freddie Gray broke his own neck,”³⁰⁰ and officers arrested him peacefully, according to a BPD Report.³⁰¹ Kevin Moore, an eyewitness who recorded the

²⁹⁴ *Id.* at 32.

²⁹⁵ *Id.*; Michelle S. Jacobs, *Sometimes They Don’t Die: Can Criminal Justice Reform Measures Help Halt Police Sexual Assault on Black Women?*, 44 HARV. J.L. & GENDER 251, 251 (2021) (arguing police sexual misconduct is widespread and police reform should prevent police sexual misconduct).

²⁹⁶ See Spillers, *supra* note 214, at 67.

²⁹⁷ See generally BLACK VENUS 2010: THEY CALLED HER “HOTTENTOT” (Deborah Willis ed., 2010) (discussing life of Saartjie Baartman, African woman and fetishized freakshow attraction in early 19th century Europe).

²⁹⁸ BPD REPORT, *supra* note 251, at 33.

²⁹⁹ See *id.* at 122.

³⁰⁰ Steven Cohen, *Freddie Gray Broke His Own Neck.*, NEW REPUBLIC (July 18, 2016), <https://newrepublic.com/article/135178/freddie-gray-broke-neck> [<https://perma.cc/TMT9-VEKC>]; Jamil Smith, *Freddie Gray Didn’t Magically Kill Himself*, NEW REPUBLIC (Apr. 30, 2015), <https://newrepublic.com/article/121683/freddie-gray-didnt-magically-kill-himself> [<https://perma.cc/LA93-ES45>].

³⁰¹ Peter Hermann, *Prisoner in Van Heard “Banging Against Walls.”*, WASH. POST (Apr. 29, 2015, 9:10 PM), <https://www.washingtonpost.com/local/crime/prisoner-in-van-said->

arrest stated, “police folded Gray like ‘origami,’ . . . [t]he officer had their knee in his neck. And he was just screaming—screaming for life He couldn’t breathe. He needed an asthma pump, which he let them know They ignored it.”³⁰² On April 29, 2015, protests erupted throughout Baltimore in response to Gray’s death and the apparent police coverup.³⁰³ Like Rodney King and Michael Brown, Freddie Gray was a flashpoint. The people rebelled against the blue gaze, racialized policing, and the racialized state of exception. They rebelled against white supremacy and necropower. They rebelled against the normalization of police brutality.

The protestors were the victims of BPD’s approach to policing as recreational terrorism.³⁰⁴ BPD hunted Black people. The DOJ determined that there was sufficient evidence to conclude that BPD discriminated against Black people in its enforcement activities in violation of the Constitution and federal law.³⁰⁵ In particular, BPD used overly aggressive tactics, escalated encounters, and routinely used unreasonable and excessive force without justification in violation of the Fourth Amendment.³⁰⁶ At the time of Gray’s death, excessive force incidents involved minors, individuals with disabilities, and individuals experiencing mental health crises.³⁰⁷ BPD’s tactics increased the instances of excessive force for the most banal discretionary infractions like loitering.³⁰⁸ Officers commanded obedience and responded with overwhelming physical force in the absence of automatic compliance.³⁰⁹ Moreover, they frequently charged people who questioned or objected to their conduct with failure to obey, resistance, or disorderly conduct.³¹⁰ The threat level of the individual appeared to be inconsequential. Officers consistently used disproportionate force against unarmed individuals who posed little to no threat.³¹¹ Officers were even trained to aim their guns at unarmed, innocent people to “control a scene.”³¹²

freddie-gray-was-banging-against-the-walls-during-ride/2015/04/29/56d7da10-ec6-11e4-8666-a1d756d0218e_story.html.

³⁰² German Lopez, *The Baltimore Protests Over Freddie Gray’s Death, Explained*, VOX (Aug. 18, 2016), <https://www.vox.com/2016/7/27/18089352/freddie-gray-baltimore-riots-police-violence> [<https://perma.cc/L42L-TH6X>].

³⁰³ *Id.*

³⁰⁴ *See id.*

³⁰⁵ BPD REPORT, *supra* note 251, at 47 (“We find reasonable cause to believe that BPD engages in a pattern or practice of discriminatory policing against African Americans.”).

³⁰⁶ *Id.* at 74.

³⁰⁷ *Id.* at 75, 85 (stating frequency of excessive force incidents and giving example of excessive force used on an individual with a mental disability).

³⁰⁸ *Id.* at 76 (describing officers’ use of force “for low-level and highly discretionary violations.”).

³⁰⁹ *Id.* (finding officers “resort too quickly to physical force” when faced with nonimmediate compliance).

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.* at 79.

The excessive force created an environment where violence was in the air that residents breathed. Baltimore residents expected police to harass and assault them, and the police took pride in doing so.

3. The Permanence of Slavery, Colonialism, & Imperialism

a. Policing Dangerous Combinations

“VCID [Violent Crime Impact Division]: Striking fear into loiters [sic] City-wide.”³¹³ Police treated congregations of Black people in Baltimore like slave patrollers treated “dangerous combinations”³¹⁴ of slaves and free Black people. Existing in the presence of other Black people enhanced the presumption of criminality. Police prioritized enforcing loitering and trespassing laws as quality-of-life offenses.³¹⁵ BPD used the term “clearing corners” to describe its practice of breaking up and dispersing congregations of people for standing in areas, such as public corners, sidewalks, steps, or in front of public housing complexes or private businesses,³¹⁶ irrespective of whether the people were breaking the law or whether the police had probable cause or reasonable suspicion.³¹⁷ During these encounters, police forced people to justify their presence and unlawfully arrested them if the police were not satisfied with the person’s response.³¹⁸ Police also forced people to identify themselves and produce identification to check for warrants.³¹⁹ Again, typically, without a lawful purpose.

Hence, the prioritization of quality-of-life offenses was pretextual. Police used clearing corners to force people into interactions that could lead to their arrest for a quality-of-life offense or an offense arising from the encounter.³²⁰ This can happen when an encounter escalates because a person refuses the officer’s orders³²¹ and the officer responds with unnecessary aggression and

³¹³ *Id.* at 24 (describing message depicted on “flyer celebrating loitering arrests [] posted in several BDP districts”).

³¹⁴ MORRIS, *supra* note 50, at 267 (1996) (detailing history of eighteenth-century laws intended to prevent slaves from consulting with each other and conspiring to revolt).

³¹⁵ BPD REPORT, *supra* note 251, at 24 (detailing continuing influence of “zero tolerance era” on BDP officers’ conduct).

³¹⁶ *Id.* at 6-7, 17.

³¹⁷ *Id.* at 6 (“BPD’s stops often lack reasonable suspicion.”).

³¹⁸ *Id.* at 35-38 (identifying pattern of officers arresting people who are lawfully in public without notice, providing several examples).

³¹⁹ *Id.* at 6.

³²⁰ *Id.* at 35-38.

³²¹ *Id.* at 76 (“In these encounters, officers issue commands without explanation rather than communicating respectfully, explaining the purpose for their approach, and providing subjects an opportunity to voice their concerns.”).

force.³²² It can also occur when individuals simply question or object to the officer's conduct.³²³

b. *The Pass System: Restraints on Locomotion*

The DOJ determined that BPD officers demonstrated a pattern or practice of unconstitutionally stopping pedestrians and drivers in concentrated small segments of Baltimore,³²⁴ which sections I classify as the internal colonies, in violation of the Fourth and Fourteenth Amendments.³²⁵ Officers stopped people just for being in areas with high rates of crime or drug activity.³²⁶ BPD argued that the stops were an effective crime prevention technique. However, prosecutors frequently declined to prosecute due to the lack of probable cause.³²⁷ Between January 2010 and May 2015, BPD conducted 300,000 stops, concentrated in Black neighborhoods.³²⁸ Between 2010 and 2014, 44% of those stops occurred in the predominantly Black Western and Central districts.³²⁹ Those districts contained only 12% of Baltimore's residents.³³⁰ As a result, police stopped each resident an average of 1.5 times, hundreds of residents ten times or more, and one particular Black man thirty-four times.³³¹ It was common for police to stop residents multiple times in one week and not charge them with any crime. Racialized policing extended beyond the internal colonies. Throughout Baltimore, 84% of people stopped between January 2010 and June 2015 were Black, despite Black people being only 63% of the city's population.³³² Black people were 41% of the Northern District's population and accounted for 83% of the stops.³³³ Overall, police stopped Black people three times more than white people.³³⁴

Unconstitutional stops are barriers to locomotion that restrain movement akin to the pass systems of slavery, imperialism, and colonialism. There is no such thing as freedom of movement when you know that if you enter the visual range

³²² *Id.* at 76-77 (“The force used by officers in these situations is often unnecessary and disproportional.”).

³²³ *Id.*

³²⁴ *Id.* at 26.

³²⁵ *Id.* at 24.

³²⁶ *Id.* at 29 (describing officer report noting “African American male walking through” such an area as reason for stopping and questioning him).

³²⁷ *Id.* at 6 (finding prosecutors rejected over 11,000 frivolous charges from 2010 to 2015).

³²⁸ *Id.* (noting true number “is likely far higher due to under-reporting”).

³²⁹ *Id.* at 26.

³³⁰ *Id.* (“[T]hese two are the least populated police districts in Baltimore.”).

³³¹ *Id.* (“Countless individuals—including Freddy Gray—were stopped multiple times in the same week without being charged with a crime.”).

³³² *Id.* at 49 (finding that “BPD disproportionately stops African Americans standing, walking, or driving on Baltimore streets”).

³³³ *Id.* at 48-49.

³³⁴ *Id.* at 7 (“BPD stopped African-American residents three times as often as white residents after controlling for the population of the area in which the stops occurred.”).

of a police officer, the officer can stop and detain you without legal cause. Unconstitutional stops enforce the physical and nonphysical boundaries of internal colonies. They can enclose and isolate the imaginations of the person because the person may place limitations on their movement to avoid police interactions. They can also physically enclose and isolate the body by preventing people from moving and simply being.

Baltimore exemplifies the destruction caused by the blue gaze, the racialized state of exception, and racialized policing in Black cities, towns, and neighborhoods. It is a space of glaring carcerality where police power does not hide. Police power is loud and unrepentant. While increasing attention is being paid to internal colonies, the consequences of internal colonialism persist and adversely impact the life chances and potentialities of their residents.

CONCLUSION

The albatross of Blackness. What does it mean to be sealed into “crushing objecthood?”³³⁵ What does it mean to be gazed upon as the descendant of women who had been enslaved or lynched,³³⁶ their children cut out of their wombs, the women who suffered infinite dignitary harms? What does it mean to be viewed as a citizen with an asterisk: a *Citizen, subject to the terms and conditions written in the fine print of the footnotes of colorblind laws, the fine print that retains the memories of the rule of law, the fine print that contains the vestiges of white supremacy? The blue gaze, the racialized state of exception, racialized policing, and carceral internal colonies answer these questions. They evince the permanence of slavery, colonialism, and imperialism and challenge us to reimagine a world where vast populations of Black people do not internalize “government by terror”³³⁷ and “to live by the sword”³³⁸ as societal norms. A world where Black death is tragic.³³⁹

³³⁵ FANON, *supra* note 43, at 82-83 (“For not only must a black man be black; he must be black in relation to the white man.”).

³³⁶ *See id.* at 85 (“All I wanted was to be a man among other men. I wanted to come lithe and young into a world that was ours and to help to build it together.”).

³³⁷ MBEMBE, *supra* note 2, at 35 (explaining goal of government by terror shifts from control to killing “either en masse or in small doses”).

³³⁸ *Id.* at 31 (“[P]olitical struggle increasingly consists in a struggle to know who can develop the most repressive measures faced with the enemy threat.”).

³³⁹ *See id.* at 38.

APPENDIX A: EXIGENCIES PHOTOS











