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## The Geopolitics of American Policing

Andrew Lanham

*University of Michigan Law School*

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## BOOK NOTICE

### THE GEOPOLITICS OF AMERICAN POLICING

*Andrew Lanham\**

BADGES WITHOUT BORDERS: HOW GLOBAL COUNTERINSURGENCY TRANSFORMED AMERICAN POLICING. By *Stuart Schrader*. Oakland: University of California Press. 2019. Pp. xi, 393. Cloth, \$85; paper, \$29.95

#### INTRODUCTION

On July 9, 2016, Jonathan Bachman, a freelance photographer for Reuters, snapped a photograph of Ieshia Evans, a nurse from Pennsylvania, as she confronted the police at a protest march in Baton Rouge.<sup>1</sup> Evans and the other demonstrators were there to protest the killing of Alton Sterling, a Black man who was shot by the police while he was pinned to the ground.<sup>2</sup> Bachman's picture, titled *Taking a Stand in Baton Rouge*, shows Evans, tall, serene, and bespectacled in a flowing black dress, being handcuffed by two police officers who are clad in heavy riot gear and helmets, looking for all the world like "storm-trooper[s]" dropped in from some dystopian sci-fi future.<sup>3</sup> The officers, one journalist noted, "look better prepared for a war than a peaceful protest"—better suited for a combat zone abroad than for the classic democratic practice of political demonstration here at home.<sup>4</sup> The photo-

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\* J.D., University of Michigan Law School, 2020; Ph.D. Candidate, Yale University. Many thanks for guidance, lessons, and insight to Lloyd Pratt, Amy Hungerford, Wai Chee Dimock, Jackie Goldsby, Julian Mortenson, Richard Primus, Rebecca Scott, Bill Novak, Emily Prifogle, Jason Bell, Carlos Alonso Nugent, and, most of all, Hayley O'Malley. Special thanks to Ben Lempert, Mariel Radek, and the *Michigan Law Review*.

1. *Unrest in Baton Rouge: Anatomy of a Photo*, WNYC (Nov. 10, 2016), <https://www.wnyc.org/story/unrest-baton-rouge/> [<https://perma.cc/T9T7-QLLM>].

2. *Id.*; Richard Fausset, Richard Pérez-Peña & Campbell Robertson, *Alton Sterling Shooting in Baton Rouge Prompts Justice Dept. Investigation*, N.Y. TIMES (July 6, 2016), <https://www.nytimes.com/2016/07/06/us/alton-sterling-baton-rouge-shooting.html> [<https://perma.cc/ZK85-M34R>].

3. Jonathan Bachman, *Taking a Stand in Baton Rouge*, REUTERS: WIDER IMAGE (Aug. 11, 2016), <https://widerimage.reuters.com/story/taking-a-stand-in-baton-rouge> [<https://perma.cc/C7JB-PQUN>]; Teju Cole, *The Superhero Photographs of the Black Lives Matter Movement*, N.Y. TIMES MAG. (July 26, 2016), <https://www.nytimes.com/2016/07/31/magazine/the-superhero-photographs-of-the-black-lives-matter-movement.html> [<https://perma.cc/9H6R-GDY2>].

4. Yoni Appelbaum, *A Single Photo from Baton Rouge That's Hard to Forget*, ATLANTIC: REPORTER'S NOTEBOOK (July 10, 2016, 3:55 PM), <https://www.theatlantic.com>

graph became an instant icon, a symbol of both the militarization of modern American policing and the moral force of Black Lives Matter protesters demanding criminal justice reform.<sup>5</sup>

The picture resonated, too, with deep strands of American visual memory. It echoes the iconic photograph of the civil rights activist Gloria Richardson audaciously pushing away a National Guardsman's bayonet in 1963, or the photo of the anti-Vietnam War protester Jan Rose Kasmir offering a flower to bayonet-wielding National Guardsmen at the Pentagon in 1967.<sup>6</sup> Like those two earlier pictures, Bachman's photograph distills into a single image the long and tangled histories of militarism, domestic policing, and racial subordination that have shaped American life. *Taking a Stand in Baton Rouge* captures the racial violence of modern American domestic and foreign policy alike as it critiques the deployment of excessive force at home and abroad.

Since the beginning of the War on Terror in 2001, and especially since the rise of Black Lives Matter protests in the 2010s, critics have argued both that the War on Terror has been driven by racist ideologies and that domestic police departments have become unnecessarily militarized and have used military-style force against domestic political dissent.<sup>7</sup> In 2014, for example, the ACLU published a report entitled *War Comes Home: The Excessive Militarization of American Policing*, which criticizes post-9/11 federal programs

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/notes/2016/07/a-single-photo-that-captures-race-and-policing-in-america/490664/ [https://perma.cc/C9CL-PB9L]. Of course, peaceful political demonstrators in the United States have also often been subjected to violence. For just one recent example, see Editorial Board, *In America, Protest is Patriotic*, N.Y. TIMES (June 2, 2020), https://www.nytimes.com/2020/06/02/opinion/george-floyd-protests-first-amendment.html [https://perma.cc/R93Y-53SP].

5. *Id.*; Cole, *supra* note 3. I drafted this piece in the spring of 2020, before the powerful demonstrations over the summer against the police killings of George Floyd, Breonna Taylor, and others, before the more widespread uptake of calls to defund police departments, and before a fierce public debate erupted about the use of nonlethal force against protesters. See, e.g., Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (July 10, 2020), https://www.nytimes.com/article/george-floyd-protests-timeline.html [https://perma.cc/X6DZ-XAHZ]; Editorial Board, *supra* note 4; Andrew J. Bacevich, *Defund the Police. And the Military, Too.*, NATION (June 24, 2020), https://www.thenation.com/article/society/defund-police-military/ [https://perma.cc/8YBS-CEGL]. Those events make it only more important to attend critically to the histories of policing and militarism in the United States.

6. Phillip Jackson, *The Defiant One: Why You Should Know Civil Rights Icon Gloria Richardson*, ROOT (July 7, 2015, 3:00 AM), https://www.theroot.com/the-defiant-one-why-you-should-know-civil-rights-icon-1790860453 [https://perma.cc/42VT-W9VT]; Jan Rose Kasmir as told to Abigail Radnor, *That's Me in the Picture*, GUARDIAN (Nov. 7, 2014, 11:00 AM), https://www.theguardian.com/artanddesign/2014/nov/07/jan-rose-kasmir-anti-vietnam-rally-pentagon [https://perma.cc/D42J-FANW]; Cole, *supra* note 3.

7. E.g., NIKHIL PAL SINGH, RACE AND AMERICA'S LONG WAR, at xv, 1–9, 13–14 (2017); Lyle Jeremy Rubin, *A Former Marine Explains All the Weapons of War Being Used by Police in Ferguson*, NATION (Aug. 20, 2014), https://www.thenation.com/article/archive/catalog-ferguson-police-weaponry [https://perma.cc/R7Z-7U5]; John Eligon, *One Slogan, Many Methods: Black Lives Matter Enters Politics*, N.Y. TIMES (Nov. 18, 2015), https://www.nytimes.com/2015/11/19/us/one-slogan-many-methods-black-lives-matter-enters-politics.html [https://perma.cc/TWM6-TRFU].

that provide surplus military weapons, vehicles, and body armor to local cops.<sup>8</sup> Politicians from across the political spectrum have introduced the Stop Militarizing Law Enforcement Act to block such transfers.<sup>9</sup> Taking a longer-term view, the historian Nikhil Pal Singh argues that the War on Terror is inextricably tied to America's past as both a colonial power that has subjugated people of color abroad and a white supremacist society here at home.<sup>10</sup> "[F]oreign policy and domestic politics," he writes, have "develop[ed] in a reciprocal relationship," producing "mutually reinforcing approaches to managing social conflict"—similar state practices to govern racially stratified societies at home and away.<sup>11</sup> Singh especially criticizes the use of military-grade equipment by domestic police forces waging a "war on drugs" that has jailed millions of people "deemed dangerous to the U.S. body politic," the "majority black and brown, and poor."<sup>12</sup> The Movement for Black Lives succinctly expressed this critique in its Platform statement in 2016, linking excessive domestic policing with aggressive American foreign policy and arguing that "militarism[] and white supremacy know no borders."<sup>13</sup> The Platform consequently condemned both "anti-Black racism" and "war," "demand[ing] an end to the wars against Black people," wherever they occur.<sup>14</sup>

Despite the clear threads connecting domestic policing with military hegemony, however, we tend not to see the excesses of the modern American carceral state in relation to their wider geopolitical context.<sup>15</sup> The discourse of criminal justice reform tends, instead, to focus on specific legal changes that could occur domestically, such as the elimination of mandatory minimum sentences or bail reform.<sup>16</sup> While the Movement for Black Lives' Platform statement does depict a larger ideological struggle in which racist

8. ACLU, WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING 3, 11, 17, 22 (2014).

9. Stop Militarizing Law Enforcement Act, S. 1856, 115th Cong. (2017) (sponsored by Senators Rand Paul (R), Brian Schatz (D), and Ron Wyden (D)).

10. SINGH, *supra* note 7, at 1–34.

11. *Id.* at 8.

12. *Id.* at 7.

13. Platform, MOVEMENT FOR BLACK LIVES (last updated Aug. 1, 2016), <https://web.archive.org/web/20160801231434/https://policy.m4bl.org/platform/> [<https://perma.cc/86CQ-9TPN>]; see Vann R. Newkirk II, *The Permanence of Black Lives Matter*, ATLANTIC (Aug. 3, 2016), <https://www.theatlantic.com/politics/archive/2016/08/movement-blacklives-platform/494309/> [<https://perma.cc/E4HL-3KEV>]; *End the War on Black People*, MOVEMENT FOR BLACK LIVES (last updated Apr. 13, 2019), <https://web.archive.org/web/20190413230927/https://policy.m4bl.org/end-war-on-black-people/> [<https://perma.cc/5SYB-9HV4>].

14. Platform, *supra* note 13.

15. Pp. 1–2, 15; SINGH, *supra* note 7, at 8–9.

16. E.g., RACHEL ELISE BARKOW, PRISONERS OF POLITICS 17–18, 58–61 (2019); Shon Hopwood, *The Misplaced Trust in the DOJ's Expertise on Criminal Justice Policy*, 118 MICH. L. REV. 1181, 1184 (2020) (reviewing BARKOW, *supra*); ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME (2018); JAMES FORMAN JR., LOCKING UP OUR OWN 236 (2017).

foreign and domestic policy are two sides of the same coin, that view remains outside the mainstream policy-reform conversation.

A new book by Stuart Schrader<sup>17</sup> begins to fill in the gap. In the polemically titled *Badges Without Borders: How Global Counterinsurgency Transformed American Policing*, Schrader reconstructs two histories of Cold War America and shows how they surprisingly intertwine: first, the U.S. national security state's efforts to train foreign police forces in order to control events abroad and, second, the evolution of domestic policing within the United States (pp. 2–5). Drawing on extensive archival research, Schrader argues that from the 1950s to the 1970s, the United States exported tactics of police repression to newly independent postcolonial nations, establishing a form of neo-imperialism in which America exercised power at a distance by training foreign cops to suppress leftist movements (pp. 4–6, 11). Then, in the late 1960s, the United States reimported those techniques to be used here, on the domestic scene, training and funding local cops to control political demonstrations, infiltrate radical organizations, and stop and frisk minority populations (pp. 2–6, 210, 270–71). Precisely the same politicians, police experts, and government agencies, Schrader shows, built both the foreign police-assistance program and the domestic “War on Crime” that was launched in the late 1960s and that led to modern mass incarceration (pp. 3, 9). The structural racism of our contemporary carceral state emerged hand in hand with the Cold War geopolitics of the national security state.<sup>18</sup>

Schrader's fascinating history is an important resource for anyone concerned about the shape and scope of American policing and state power today. It tells us that modern American policing has a fundamentally geopolitical genealogy. As a result, criminal justice reformers should approach domestic policy issues as part of a broader project of global justice. While Schrader's book seems pitched mainly for an audience of historians and social theorists, this Book Notice seeks to bring its insights to bear on legal academic discussions of criminal justice and national security, too. In Part I, I recount Schrader's twin histories of overseas police assistance and domestic police reform. Then, in Part II, I argue that this history has crucial implications for legal studies, law reform, and grassroots political mobilization today, as it shows that our analyses of mass incarceration and the national security state have to intertwine. Finally, I draw on my own archival research into the antiwar and civil rights movements to contend that the history of progressive protest politics provides a dynamic model of precisely the kind of capacious, multifaceted activism and analysis that Schrader's book aims to inspire.

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17. Lecturer and Assistant Research Scientist in the Department of Sociology and Associate Director of the Program in Racism, Immigration, and Citizenship, Johns Hopkins University.

18. Pp. 4–5; see also SINGH, *supra* note 7, at xi, xiv–xv, 8–10.

## I. EXPORTING AND REIMPORTING POLICE REPRESSION

In July 1967, amid the series of urban revolts known as the “long, hot summer,” with the smoke still rising over Detroit, Lyndon Johnson took to the airwaves to lay out a plan to reestablish order.<sup>19</sup> Shortly afterward, his advisor Walter Rostow wrote to him, comparing Johnson’s new domestic policy proposals with the counterinsurgency tactics that the Johnson Administration was already employing abroad (pp. 42–43). “At home your appeal is for law and order as the framework for economic and social progress,” Rostow wrote. “Abroad we fight in Vietnam to make aggression unprofitable while helping the people of Vietnam[—]and all of Free Asia—build a future of economic and social progress. The equivalent of domestic law and order on the world scene is that nations forego the use of violence . . . .” (p. 43; alteration in original, citation omitted). Rostow was apparently unembarrassed to compare the government’s response to citizens expressing their outrage in the streets of Detroit with the brutal guerrilla warfare being waged in the jungles of Vietnam. But he did have a point about the strategic parallels between domestic “law and order” politics and Cold War geopolitical maneuvering: in both arenas, the U.S. federal government sought to partner with local police forces, either in the states or abroad, as the front lines to repress unrest.<sup>20</sup>

This shift to a law-and-order mindset transformed America. By 1968, Johnson’s law-and-order approach had culminated in his declaration of a War on Crime and the passage of the watershed Omnibus Crime Control and Safe Streets Act of 1968.<sup>21</sup> Johnson’s successor, Richard Nixon, who campaigned on a platform of “law and order,” then declared a War on Drugs that one of his advisors later admitted was designed to “disrupt” and repress “the antiwar left and black” political activists.<sup>22</sup> The result has been an enormous expansion of the U.S. prison system, which now amounts to a novel way to govern the population, what critics call the carceral state.<sup>23</sup>

*Badges Without Borders* argues that Rostow’s comparison of domestic law-and-order politics with counterinsurgency in Vietnam was neither a his-

19. P. 43; MALCOLM McLAUGHLIN, *THE LONG, HOT SUMMER OF 1967: URBAN REBELLION IN AMERICA*, at xii–xiii (2014).

20. See p. 44; see also pp. 9, 30. Rostow sent Johnson a list of parallel policies “At Home” and “Abroad,” including “Federal partnership with the States” and “US partnership with regional organizations.” P. 44 tbl.1.

21. Pp. 8–9, 137–39; Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197.

22. Pp. 9, 261; Richard Nixon, Address Accepting the Presidential Nomination at the Republican National Convention in Miami Beach, Florida (Aug. 8, 1968), <https://www.presidency.ucsb.edu/documents/address-accepting-the-presidential-nomination-the-republican-national-convention-miami> [<https://perma.cc/D2TB-7B36>]; Dan Baum, *Legalize It All*, HARPER’S MAG. (Apr. 2016), <https://harpers.org/archive/2016/04/legalize-it-all/> [<https://perma.cc/9NRZ-J6GA>].

23. SINGH, *supra* note 7, at 7–8; ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME* 1–4 (2016).

torical accident nor a felicitous simile that Rostow happened upon. Rather, Schrader contends, Rostow and a host of other midcentury technocrats carefully crafted both American military hegemony and the War on Crime as interrelated projects to manage racially divided societies and to control dissent (pp. 3–6, 9). Consequently, although the 1960s finally saw the achievement of formal racial equality under the law by way of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and Supreme Court decisions like *Katzenbach v. McClung*,<sup>24</sup> that decade also saw the genesis of a new racialized carceral state that enforced subtler, more structural forms of racial inequality (pp. 4–5). *Badges Without Borders* narrates how that novel form of domestic racial oppression arose in tandem with the neo-imperialism of the post-1945 national security state.

Schrader argues that American domestic policing and military hegemony coevolved in a dynamic, decades-long process of experimentation as police experts shared ideas across borders (pp. 257–58). It's useful, though, to take Schrader's twin stories one at a time: first, the rise of global police assistance, and then the evolution of policing within the United States.

#### A. Policing America's Empire

Schrader's story begins in Germany and Japan in 1945. As part of its post-war effort to reconstruct the Axis powers, the United States sought to reform the local police in both countries (pp. 60–69). So the United States shipped in a band of police experts who had been involved in their own local police reforms in American cities in the 1930s: August Vollmer, the godfather of modern police professionalization and a veteran of counterinsurgency operations in the Philippines in the early twentieth century; Vollmer's student, O.W. Wilson, the chief of police in Wichita, Kansas; Wilson's own mentee, Theo Hall, a Wichita cop who cowrote a 1944 report on American race relations and urban unrest entitled *The Police and Minority Groups*; and Byron Engle, head of the reform-minded police-training program in Kansas City (pp. 27, 52–69). In the United States, these men had led a nationwide movement to professionalize policing by purging political corruption, routinizing tasks to limit officers' discretion, building expert bureaucracies and disseminating expertise through manuals and periodicals, and generally creating a neutral cadre of beat cops evenhandedly enforcing the law (pp. 11–12, 52–71). Now, they would bring their professionalizing impulses to the projects of denazification and democratization (pp. 65, 73).

The police-reconstruction programs in postwar Germany and Japan bore further fruit in the following years, as the United States increasingly relied on police training to intervene abroad. In 1954, the Eisenhower Administration promulgated National Security Council Action 1290d, which called for a formal program of police assistance to help foreign nations maintain

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24. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437; 379 U.S. 294 (1964).

internal security (p. 85). Eisenhower also created the International Cooperation Administration (ICA), which worked with the State Department, the Pentagon, and the Central Intelligence Agency (CIA) to construct the 1290d program (p. 85). The program aimed to equip foreign police forces and to train them in surveillance, crime control, riot control, and antiguerrilla action (p. 85). As it turned out, the ICA was just the first of a spiraling alphabet soup of federal agencies and institutions founded in the following two decades to train foreign cops, from the Overseas Internal Security Program (OISP) to the Special Group (Counter-Insurgency) (SGCI), the Office of Public Safety (OPS), the Agency for International Development (AID), the Inter-American Police Academy (IAPA), and the International Police Academy (IPA) (pp. 6, 36, 85, 103, 111). Through these groups, foreign police assistance became a cornerstone of Cold War policy.

The ideology behind foreign police assistance was a mix of modernization theory and counterinsurgency theory, both of which came to prominence in the 1960s (pp. 81–82). In that decade, America's Cold War strategy shifted from the Eisenhower-era doctrine of nuclear weapons-based "massive retaliation" to the Kennedy-era doctrine of "flexible response," which emphasized counterinsurgency in the so-called Third World (pp. 86–87). Counterinsurgency employed local police to limit indigenous "subversion," and it deployed foreign aid for economic development and modernization (pp. 86, 104–05). Crucially, though, American experts believed that internal security had to come before economic development: modernization could only occur after the population was secure (pp. 90, 99). Achieving that security was the job of the foreign police-assistance program, eventually consolidated in the Office of Public Safety, or OPS.

OPS was founded in 1962, and Byron Engle, a veteran of police professionalization in both Kansas City and Japan, became its first director (pp. 53, 108–11). Over the next decade, hundreds of OPS advisors trained local police in countries from Honduras to Saudi Arabia to Vietnam, teaching them traffic control, riot control, marksmanship, surveillance, statistics gathering, and the use of new technologies to monitor the population and to coordinate police action (pp. 20, 151–65, 260). OPS built a regional teletype system in the Americas to track criminals, and it distributed 30,000 police radios worldwide—a communications revolution that helped inspire the creation of the 9-1-1 system in the United States (p. 151). OPS also developed new tear-gas technologies for riot control, which were then brought back to the United States and are still used on protesters today (pp. 206–08, 213). And it ran the International Police Academy (IPA), which trained foreign and domestic cops through simulations in the futuristic Police Operations Control Center (POCC) that challenged them to manage urban unrest in a fictionalized Baltimore.<sup>25</sup> Eleven IPA graduates went on to become the heads of their home countries' police forces (p. 187).

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25. Pp. 182–85. American strategic planners in the 1950s and 1960s increasingly focused on predicting the future, developing new techniques to simulate possible outcomes and choose

U.S. police assistance ultimately blanketed the globe. Schrader counts fifty-two countries that received some form of police assistance from 1962 to 1974 (p. 7). The program helped limit labor activism worldwide, and it groomed police advisors who went on to work everywhere from wartime Vietnam to contemporary Iraq (pp. 142–43). Critically, OPS was also accused of supporting brutal dictators and teaching torture and assassination (pp. 143, 186, 260). On the basis of such criticisms, Congress shut down OPS's foreign operations in 1974 (p. 260). But in its relatively short twelve-year lifespan, OPS's foreign adventures remade the world. They also provided a template for potent new forms of policing back home.

### B. *Law and Order Comes Home*

In 1964, after a summer of riots in Harlem, Philadelphia, Jersey City, and elsewhere, Arnold Sagalyn, the director of the Treasury Department's Office of Law Enforcement Coordination and a friend of Engle's, wrote to one of Johnson's aides that "a basic need . . . exists to help our police departments cope with increasing crime, and to maintain the standard of law and order in our 'Great Society'" (pp. 113, 122–24, 129–30). Sagalyn therefore proposed a series of police reforms, explicitly based on the overseas police-assistance program. The "expertise and resources" of OPS, he wrote, "could provide a nucleus" for a "technical police assistance program which could provide local and state communities with the guidance, training, and help they urgently need" (p. 126). Using "police training grants," the federal government could fund and train local cops from L.A. to Boston just like it did in South America and South Vietnam (p. 126). OPS was thus the model for the War on Crime.<sup>26</sup>

Sagalyn's reform proposals eventually took shape as the Law Enforcement Assistance Administration (LEAA), which was created by the Omnibus Crime Control and Safe Streets Act of 1968 (pp. 113, 131). LEAA distributed grants to local police forces, and throughout the 1970s, Schrader reports, it

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among them, from nuclear war games to oil price futures. R. John Williams, *World Futures*, 42 *CRITICAL INQUIRY* 473, 473, 520, 524–25 (2016). The RAND Corporation was central to this intellectual movement toward simulations and futurology. *Id.* at 477–82. The POCC, as Schrader describes it, is a striking example of this trend, demonstrating how the shift toward planning for various possible futures specifically enabled police action to manage populations. RAND, unsurprisingly, was at the forefront of police planning from the 1950s to the 1970s. Pp. 242–54.

26. P. 114; *see also* p. 8 ("At the close of the Johnson administration, an internal assessment declared that OPS's program across the globe contributed 'the international dimension to the Administration's War on Crime by assisting police institutions to carry out their role as the first line of defense against those influences which seek to destroy free societies through the erosion of public order.'" (citation omitted)). One reason for the various foreign-domestic parallels in modern policing might be path dependence: once the government had invested resources in developing a model of crime control and had purchased large amounts of equipment, it was easiest to adapt that model to domestic circumstances and to ship that surplus equipment back home. *See generally* PAUL PIERSON, *POLITICS IN TIME* (2004). Thanks to Ben Lempert for this point.

was the fastest-growing federal program—a truly impressive feat given the boom in federal agencies and agency budgets in the period.<sup>27</sup> LEAA's block-grant approach also fulfilled a longstanding conservative dream: undermining the (already woefully limited) federal welfare state by replacing federally run poverty-relief programs with grants made directly to local governments acting on their own initiative (p. 140). LEAA embodied Nixon's "New Federalism" by wielding the federal purse through decentralization and devolution to the states (pp. 140–41). Moreover, just as counterinsurgency theory posited that security must come before economic development, policing grants "inserted a division between social-welfare programs and law enforcement," making it easier to cut federal welfare funding while boosting spending on security (pp. 4, 90, 125). Police reforms in the 1970s consequently helped to alter central features of the structure of American government: they weakened the federal welfare state; they changed the relationship between state and federal governments; and they rearranged the lines of accountability between U.S. citizens and their local and national representatives, as local discretion increasingly became the channel for federal spending.

Substantively, LEAA grants funded police training and helped local police departments purchase tear gas and surplus military body armor, vehicles, and gas masks (pp. 139, 197). Post-9/11 programs that provide surplus military gear to local cops just echo these earlier policies that shipped equipment from Vietnam back home.<sup>28</sup> Tear gas in particular was developed as a weapon of war in Vietnam—the military pumped it into tunnels and blanketed whole battlefields with it to drive guerrillas out into the open—and then it was returned to America's streets, where it's still used on protesters today (pp. 192–207, 213). Tear gas is banned by the laws of war, and the U.S. military refrains from using it in combat under an executive order issued by President Ford, but tear gas is routinely employed by American police against domestic political demonstrators, as was noted by commentators during the protests in Ferguson, Missouri, in 2014.<sup>29</sup> Schrader calls this re-deployment of tear gas "a stark repatriation of counterinsurgent knowledge

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27. Pp. 137–38. On the agency boom, see CASS R. SUNSTEIN, *AFTER THE RIGHTS REVOLUTION: RECONCEIVING THE REGULATORY STATE* 24–28 (1990).

28. Pp. 197–98; see ACLU, *supra* note 8.

29. Pp. 200, 213; Başak Çali, *Tears in Our Eyes: Third State Obligations in International Law*, EJIL: TALK! (July 30, 2015), <https://www.ejiltalk.org/tears-in-our-eyes-third-state-obligations-in-international-law/> [<https://perma.cc/E3EN-KDY4>]; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, arts. I(5), II(7), *opened for signature* Jan. 13, 1993, 112 Stat. 2681-856, 1974 U.N.T.S. 317 (entered into force Apr. 29, 1997); Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571, 94 L.N.T.S. 65; Sarah Kliff, *Tear Gas Is Banned in International Warfare—But Reportedly in Use in Ferguson, MO*, VOX (Nov. 24, 2014, 7:52 PM), <https://www.vox.com/2014/8/14/6001995/ferguson-missouri-tear-gas-painful> [<https://perma.cc/6APW-UZNC>]; Rubin, *supra* note 7.

as domestic policing” (p. 194). To adapt a Vietnam War-era phrase, the war came home.<sup>30</sup>

It wasn’t just the LEAA that repatriated techniques developed by the overseas police-assistance program, either. OPS, the Army, the Federal Bureau of Investigation, and the International Association of Chiefs of Police (IACP) all ran foreign and domestic police-training programs in the 1960s and 1970s (pp. 171–87). And under then-Governor Ronald Reagan, California used LEAA grants to build the California Specialized Training Institute (CSTI), which trained cops from across the country and around the world in disaster response, counterterrorism, and especially riot control (pp. 187–88).

CSTI also revealed the politics of the new movement toward police professionalization. A handwritten note from a meeting of a Gubernatorial Task Force, Schrader reports, stated, “CSTI—Why created[:] Watts, People’s Park,” referring to urban Black rebellion and youth revolt (p. 188). Tellingly, when then-President Reagan nominated Louis Giuffrida, who had been the first director of CSTI, to head the Federal Emergency Management Agency, Giuffrida faced backlash for having once advocated a plan for the mass internment of “American Negroes” in the event of civil unrest (pp. 187–88). In the guise of law and order, policing would now help to maintain racial hierarchy and to suppress left-wing dissent.

The many Cold War innovations in domestic policing and foreign police assistance that Schrader describes still shape the modern United States and our approach to both domestic policy and foreign affairs. OPS was shuttered under charges of complicity with human rights abuses in the 1970s, but the War on Drugs waged in South America by the Drug Enforcement Agency continues OPS’s counterinsurgency tactics and foreign police training abroad.<sup>31</sup> And on the home front, the War on Crime, the War on Drugs, the Reagan-era evisceration of the welfare state, and the rise of “broken windows” and stop-and-frisk policing have remade American criminal justice into a novel system of structural violence with a severely disproportionate impact on racial minorities.<sup>32</sup> Policing, Schrader’s history implies, has been a tool of both a racialized project of neo-imperial hegemony abroad and a racialized project of social control through mass incarceration here at home. Those two projects, indeed, were conceived together. Unwinding their pernicious effects will require tackling them together, too.

## II. THE GEOPOLITICS OF SOCIAL JUSTICE

Schrader concludes *Badges Without Borders* by arguing that in light of the history he tells, scholars and reformers should emphasize the deep interconnections between domestic and foreign policy (p. 272). This Part takes up that call. First, in Section A, I trace the lessons that Schrader’s history holds

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30. P. 195; see TODD GITLIN, *THE SIXTIES* 391 (rev. trade ed. 1993).

31. See pp. 143–44, 260–62.

32. Pp. 253–73; see also HINTON, *supra* note 23, at 1–27.

for legal scholarship and law reform. I contend that his book crucially expands our genealogies of mass incarceration and police-powers regulation, that it illustrates the value of interdisciplinary and transnational research on law and society, and that it demonstrates the analytic and practical necessity of treating criminal justice reform as an integral part of a larger global demand for social justice. In Section B, I then draw on my own research to argue that twentieth-century American political protesters, especially in the antiwar and civil rights movements, have long understood the interlocking injustices of domestic policing and national security and have consistently practiced the kind of coalitional, cross-movement, grassroots politics that will be needed to curb the excesses of mass incarceration and the national security state. The history of progressive protest politics lights the way for further activism today.

### A. *Globalizing Criminal Justice Reform*

Schrader joins a small but important group of legal, political, and cultural historians whose work ranges beyond the traditional disciplinary borders between foreign and domestic affairs to explore the entanglements between geopolitics and domestic life in modern America.<sup>33</sup> In particular, his book echoes the all-too-often elided point that the pursuit of empire has fundamentally shaped American law.<sup>34</sup> Such a global lens offers new angles on civil rights, criminal justice, police-powers regulation, and law reform.

For legal scholars especially, *Badges Without Borders* can be seen as a mirror image of Mary Dudziak's powerful claim that Cold War pressures helped enable the racial civil rights gains of the 1950s and 1960s.<sup>35</sup> Inverting Dudziak's story about Cold War civil rights, Schrader shows that midcentury geopolitics generated new forms of structural racism through a combination of OPS actions abroad and LEAA grants here at home. Schrader's and Dudziak's narratives thus form an elegant pair, revealing both the gains and the losses in racial equality produced by the Cold War. Legal scholars, cultural critics, and political historians would do well to continue crossing such disciplinary boundaries to unearth the cross-border genealogies of such surprisingly transnational phenomena as American policing and racial civil rights.

33. P. 15; *see, e.g.*, SINGH, *supra* note 7, at 8; GREG GRANDIN, *THE END OF THE MYTH* 2–5 (2019); AZIZ RANA, *THE TWO FACES OF AMERICAN FREEDOM* 1–4 (2010); JULIAN E. ZELIZER, *ARSENAL OF DEMOCRACY* 1–8 (2010); VAUGHN RASBERRY, *RACE AND THE TOTALITARIAN CENTURY* 1–3 (2016); MARY HELEN WASHINGTON, *THE OTHER BLACKLIST* 2–4 (2014); MARY L. DUDZIAK, *COLD WAR CIVIL RIGHTS* 14–17 (2000); RICHARD A. PRIMUS, *THE AMERICAN LANGUAGE OF RIGHTS* 177–233 (1999); PENNY M. VON ESCHEN, *RACE AGAINST EMPIRE* 1–6 (1997).

34. On law and empire generally, see John Fabian Witt, *Anglo-American Empire and the Crisis of the Legal Frame (Will the Real British Empire Please Stand Up?)*, 120 *HARV. L. REV.* 754 (2007) (book review). For the American case in particular, *see, for example*, SAM ERMAN, *ALMOST CITIZENS* (2019), and RANA, *supra* note 33.

35. DUDZIAK, *supra* note 33, at 6–17.

More specifically, *Badges Without Borders* makes a critical contribution to the study of criminal justice by expanding its scope to include foreign policy. Recent histories of American law enforcement have traced modern policing to a number of domestic causes, including Prohibition-era battles against bootleggers in the 1920s and 1930s;<sup>36</sup> the rise of the automobile and the concomitant need for more regulation by the police in the 1940s and 1950s;<sup>37</sup> and the support that was offered for “tough-on-crime measures” by “the new black leaders” who were empowered by the political gains of the 1960s in response to “unprecedented levels of crime and violence” and epidemics of heroin and crack that “devastated” Black communities in the 1970s and 1980s.<sup>38</sup> History is rarely monocausal, so all these trends likely played their part. But the important point is that in all these diagnoses—and others<sup>39</sup>—the root cause of racialized mass incarceration is resolutely domestic.<sup>40</sup> Perhaps partly because our historical narratives about modern policing emphasize such domestic origins, most reform proposals also focus on domestic issues, from decriminalization to bail reform, sentencing reform, and progressive prosecution.<sup>41</sup>

What Schrader adds to the conversation is the idea that mass incarceration isn’t just a domestic issue. It’s deeply tied, both materially and ideologically, to American foreign policy. As the Movement for Black Lives argues, racism “know[s] no borders.”<sup>42</sup> *Badges Without Borders* thus provides a necessary complement to the domestic histories scholars have already told, explaining how policing was remodeled from the late 1960s onward on the basis of a “law and order” vision borrowed from the overseas police-assistance program and counterinsurgency in Vietnam. And because the carceral state was built in tandem with global military hegemony, scholars and reformers should analyze and oppose it together with its national security twin (p. 24). That might mean, among other things, ending the War on Drugs at home and abroad; limiting executive branch discretion over immigration and immigration detention;<sup>43</sup> and strengthening legal remedies for

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36. WESLEY M. OLIVER, *THE PROHIBITION ERA AND POLICING* 1–9 (2018).

37. SARAH A. SEO, *POLICING THE OPEN ROAD* 7–8 (2019).

38. FORMAN, *supra* note 16, 10–14.

39. E.g., Alice Ristroph, *What Is Remembered*, 118 MICH. L. REV. 1157 (2020) (reviewing SEO, *supra* note 37) (tracing racial disparities in policing to nineteenth-century foot patrols and vagrancy laws).

40. Seo does flag that Fourth Amendment law developed in the shadow of Cold War anti-totalitarianism, but the rise of the car remains the primary engine in her story. SEO, *supra* note 37, at 7–8, 158–68. Notably, August Vollmer and O.W. Wilson play starring roles as police professionalizers in Seo’s narrative. *Id.* at 64–112. Schrader’s history of Vollmer’s and Wilson’s work abroad thus adds a foreign dimension to Seo’s persuasive account.

41. See, e.g., sources cited *supra* note 16.

42. *Platform*, *supra* note 13.

43. See, e.g., *Trump v. Hawaii*, 138 S. Ct. 2392 (2018); Class Petition for Writ of Habeas Corpus and Class Complaint for Declaratory and Injunctive Relief, *Velesaca v. Decker*, No. 1:20-cv-01803 (S.D.N.Y. Feb. 28, 2020).

the use of excessive force during immigration enforcement, both within the United States and across borders.<sup>44</sup> In pursuit of such wide-ranging goals, the movements for police reform, national security reform, and global justice should advance hand in hand.<sup>45</sup>

Finally, Schrader adds an important element to our picture of the police power.<sup>46</sup> He argues that the “New Federalism” of LEAA block grants and the cross-border exchange of ideas for social control by the police both expanded and modified modern American police-powers regulation by unleashing new, federally funded, arbitrary action by local cops (pp. 4–17, 140–48). Consequently, Schrader says, we need “a new theorization of the police power attentive to its expanding scales of activity and routes of travel” across borders (p. 15).

In particular, Schrader contends, the Cold War experience of training local cops abroad helped inspire the economistic, cost-benefit infused, statistics-based forms of population control associated with “broken windows” policing and with the pioneering research of Gary Becker and the RAND Corporation.<sup>47</sup> Critics have branded this economistic, “broken windows” approach, which manages social disorder by aggressively policing petty crimes tied to poverty, “neoliberalism.”<sup>48</sup> It was matched in other fields of social policy by Nixon’s and then Reagan’s neoliberal rollbacks of the welfare state.<sup>49</sup> Citing James Baldwin and W.E.B. Du Bois, Justice Sonia Sotomayor’s stinging dissent in *Utah v. Strieff* attacked this form of police surveillance, which the Supreme Court has enabled in its Fourth Amendment jurisprudence, for having a disproportionate impact on racial minorities, arguing that it sends the message that “you are not a citizen of a democracy but the

44. Recent cases have severely circumscribed officer liability in immigration enforcement. *E.g.*, *Hernandez v. Mesa*, 140 S. Ct. 735 (2020); *Tun-Cos v. Perrotte*, 922 F.3d 514 (4th Cir. 2019); *see also* Stella Burch Elias, “Good Reason to Believe”: *Widespread Constitutional Violations in the Course of Immigration Enforcement and the Case for Revisiting Lopez-Mendoza*, 2008 WIS. L. REV. 1109, 1124–40.

45. On global justice, *see*, for example, JEDEDIAH PURDY, *AFTER NATURE: A POLITICS FOR THE ANTHROPOCENE* 268 (2015), and SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* 219–20 (2018).

46. On police-powers regulation, *see* WILLIAM J. NOVAK, *THE PEOPLE’S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* 13–16 (1996).

47. Pp. 235–36, 242–57; George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, *ATL. MONTHLY*, Mar. 1982, at 29, <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> [<https://perma.cc/7V54-SRHA>]; *see also* MICHEL FOUCAULT, *THE BIRTH OF BIOPOLITICS* 248–60 (Michel Senellart ed., Graham Burchell trans., 2008).

48. FOUCAULT, *supra* note 47, at 239–48; JORDAN T. CAMP, *INCARCERATING THE CRISIS* 3–11, 136–37 (2016); Christina Heatherton, *U.S. Police: Broken Windows Neoliberalism*, *FUNAMBULIST*, Nov.–Dec. 2016, at 28.

49. *See* DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 43–48 (2005); WENDY BROWN, *UNDOING THE DEMOS: NEOLIBERALISM’S STEALTH REVOLUTION* 20–21 (2015); Keeanga-Yamahtta Taylor, *Reality Has Endorsed Bernie Sanders*, *NEW YORKER* (Mar. 30, 2020), <https://www.newyorker.com/news/our-columnists/reality-has-endorsed-bernie-sanders> [<https://perma.cc/7S9Q-AKPQ>].

subject of a carceral state, just waiting to be cataloged.”<sup>50</sup> That technique of cataloguing populations perceived to be dangerous, Schrader shows, was shaped by the foreign police-assistance program. Thus, since the 1960s, the evisceration of federal antipoverty programs has combined with the aggressive policing of impoverished neighborhoods and racialized populations to build a structurally racist state.

Schrader has an unnecessarily cynical view of police-powers regulation, though. He sees the police power primarily as a tool for social control and threat prevention by the cops, when in fact the kinds of social-welfare programs that he advocates, and even federal civil rights laws, are paradigmatic instances of the police power.<sup>51</sup> But Schrader is right both that the police power can become the kind of repressive regulatory mechanism that he describes and that understanding the invidious deployment of the police power against racial minorities within the United States requires understanding its global connections. Both *Korematsu* and *Trump v. Hawaii*, after all, were fundamentally about the federal government’s police powers in the context of national security.<sup>52</sup> Indeed, Justice Felix Frankfurter’s concurrence in *Korematsu* explicitly treated Japanese American Internment as analogous to the federal police power to regulate interstate commerce.<sup>53</sup>

As progressive legal scholars have argued, however, the government’s police powers can also be a means for the people, acting in concert as a democratic public, to enhance their own welfare.<sup>54</sup> Deploying the police power more democratically, especially through social-welfare programming, seems crucial to any pathway out of the carceral state.<sup>55</sup> The trick is to balance expansive government police powers in the welfare state with limitations on the police power to protect civil rights and civil liberties—the balance that was called for in the famous footnote four of *Carolene Products*,<sup>56</sup> but that always seems in danger of slipping away. As law reformers advocate the exercise of governmental police powers and agency expertise today,<sup>57</sup> they should remember Schrader’s history of technocratic police powers gone awry, and we should all take our cues from the social justice activists who

50. *Utah v. Strieff*, 136 S. Ct. 2056, 2070–71 (2016) (Sotomayor, J., dissenting).

51. See pp. 15–17. On welfare programs and the police power, see NOVAK, *supra* note 46, at 13–16. Notably, the Civil Rights Act of 1964 was passed under the federal power to regulate interstate commerce, not the power to protect equality. *Katzenbach v. McClung*, 379 U.S. 294, 305 (1964).

52. *Korematsu v. United States*, 323 U.S. 214, 220 (1944); *Trump v. Hawaii*, 138 S. Ct. 2392, 2418–20 (2018). On police powers and immigration, see NOVAK, *supra* note 46, at 210–12, 211 n.84; MARKUS DIRK DUBBER, *THE POLICE POWER* 139–41 (2005).

53. 323 U.S. at 225 (Frankfurter, J., concurring).

54. William J. Novak, *The Progressive Idea of Democratic Administration*, 167 U. PA. L. REV. 1823, 1847–48 (2019).

55. HINTON, *supra* note 23, at 336–40.

56. *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938).

57. *E.g.*, BARKOW, *supra* note 16, at 15–16.

have long demanded the simultaneous democratization of domestic policing and the national security state.

### B. *Progressive Social Movements and the Long Fight for Justice*

Schrader ultimately argues that “to dismantle the carceral state, the national security state will also have to be dismantled” (p. 24). It may be impossible to imagine the total deconstruction of either one<sup>58</sup>—though utopian polemics like Schrader’s do have their political value, too. Adapting Schrader’s claim, we might say that any major reforms in the criminal justice system will have to proceed hand in hand with the reformation of the national security state. The national security state and the carceral state spring from the same history and ideology of order, exclusion, and control. They will therefore have to be democratized together.

Progressive activists have understood that necessity for more than a century. From at least the late 1800s, in the face of shifting forms of domestic policing and military adventurism abroad, a combination of antiracist and antiwar activists have seen domestic racism and imperialist foreign policy as two sides of the same coin. A long civil rights movement and a long antiwar movement have consistently worked together to contest Jim Crow, mass incarceration, and the evolving phases of American imperialism, from early twentieth-century overseas empire to Cold War military hegemony to the contemporary neo-imperialism of global military bases and drone strikes.<sup>59</sup> In a larger project, I am tracing the dynamic collaborations between antiwar and civil rights protesters across the twentieth century and mapping their impact on both war powers and civil rights. Here, I want to briefly sketch out some of that history in order to tease out the lessons that it holds for movements fighting to expand democracy today.

In the wake of the Spanish-American War, for example, after the annexations of Hawai‘i, Puerto Rico, and the Philippines, W.E.B. Du Bois asked, rhetorically, “[W]here in the world,” given “the recent course of the United States toward weaker and darker peoples in the West Indies, Hawaii, and the Philippines . . . may we go and be safe from lying and brute force?”<sup>60</sup> War and colonialism, Du Bois implied, were intertwined with domestic Jim

58. Cf. Fredric Jameson, *Future City*, *NEW LEFT REV.*, May–June 2003, at 65, 76 (“Someone once said that it is easier to imagine the end of the world than to imagine the end of capitalism.”).

59. On the long civil rights movement, see NIKHIL PAL SINGH, *BLACK IS A COUNTRY: RACE AND THE UNFINISHED STRUGGLE FOR DEMOCRACY* 5–9 (2004). The framework of a long antiwar movement stems from my own research. On the various epochs of American empire, see, for example, STEPHEN KINZER, *THE TRUE FLAG* (2017); JOSHUA B. FREEMAN, *AMERICAN EMPIRE* (2012); CHALMERS JOHNSON, *THE SORROWS OF EMPIRE* 1–13 (2004); and IAN G.R. SHAW, *PREDATOR EMPIRE* 4–5 (2016).

60. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 26 (Oxford Univ. Press 2007) (1903). Justice Sotomayor’s *Strieff* dissent, of course, cites *The Souls of Black Folk*. *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting). On the annexations, see ERMAN, *supra* note 34, at 1.

Crow. Subsequently, in a 1913 editorial in *The Crisis* titled simply “Peace,” Du Bois argued that legal attempts to ban war by liberal antiwar organizations like the New York Peace Society simply missed the point.<sup>61</sup> The root cause of war, he claimed, was access to labor and resource control, so the peace movement could only become “a great democratic philanthropy” if it contested colonial domination and capitalist exploitation.<sup>62</sup> It had to focus on “machine guns, natives and rubber.”<sup>63</sup> Du Bois’s prescient worries about “machine guns,” of course, took center stage just a year later, when World War I erupted in the summer of 1914, and he again made the point that colonialism drives warfare in a 1915 *Atlantic* article called “The African Roots of War.”<sup>64</sup> Just as Du Bois believed that the fight against Jim Crow required a global Pan-Africanist movement against racism,<sup>65</sup> he thought that ending war required more than the legalism of a liberal internationalist movement to ban armed conflict.<sup>66</sup> It required decolonization and industrial democracy.<sup>67</sup>

In 1951, at the height of the McCarthy era and half a century after his own first critiques of American militarism, Du Bois himself was placed on trial in federal court for circulating a petition against nuclear war.<sup>68</sup> Faced with mounting legal bills and negative press—Secretary of State Dean Acheson even attacked Du Bois on the front page of the *New York Times*—Du Bois traveled across the United States, assembling a coalition of antiwar, la-

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61. Editorial, *Peace*, *CRISIS*, May 1913, at 26 (criticizing “the American peace movement” for focusing on “arbitration treaties and international law”). The editorial is unsigned, but it is surely by Du Bois. He was the Editor of *The Crisis* at the time—the masthead for the May 1913 issue amusingly says that it is “Conducted by W. E. Burghardt Du Bois”—and the writing style and anti-imperialist point of view are both distinctly Du Bois. *Id.* at 3. Liberal peace organizations did indeed emphasize legal mechanisms in the period. CHARLES DEBENEDETTI, *THE PEACE REFORM IN AMERICAN HISTORY* 67, 88–90 (1980).

62. Editorial, *supra* note 61, at 26.

63. *Id.*

64. W.E. Burghardt DuBois, *The African Roots of War*, *ALT. MONTHLY*, May 1915, at 707, 707–14.

65. VON ESCHEN, *supra* note 33, at 9–10.

66. See OONA A. HATHAWAY & SCOTT J. SHAPIRO, *THE INTERNATIONALISTS* (2017).

67. W.E.B. DU BOIS, *COLOR AND DEMOCRACY* (1945), *reprinted in* *THE WORLD AND AFRICA AND COLOR AND DEMOCRACY* 233, 246–250, 300 (Oxford Univ. Press 2007). Other progressives in the early twentieth century similarly thought substantive economic and political power was superior to legalistic approaches to rights. *E.g.*, RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 10–15 (2007); LAURA WEINRIB, *THE TAMING OF FREE SPEECH* 9–13 (2016); Jeremy K. Kessler, *The Struggle for Administrative Legitimacy*, 129 *HARV. L. REV.* 718, 725–26 (2016) (reviewing DANIEL R. ERNST, *TOCQUEVILLE’S NIGHTMARE* (2014)).

68. W.E.B. DU BOIS, *IN BATTLE FOR PEACE* 23, 48 (Oxford Univ. Press 2007) (1952); *Indict DuBois*, *CHI. DEF.*, Feb. 17, 1951, at 1; *U.S. Indicts Dr. DuBois*, *BALT. AFRO-AM.*, Feb. 17, 1951, at 1; *United States v. Peace Info. Ctr.*, 97 F. Supp. 255 (D.D.C. 1951) (describing basis for indictment). On McCarthyism, see FREEMAN, *supra* note 59, at 96–101.

bor, and religious activists to raise money for his defense.<sup>69</sup> He was ultimately acquitted from the bench, as District Judge Matthew McGuire gave a rousing defense of free speech.<sup>70</sup> Reflecting back on his trial, Du Bois explained his approach to movement building, emphasizing the need to generate publicity and to work on any particular issue, from racial justice to war to labor rights, with whoever is willing to form an alliance on that cause.<sup>71</sup> Movement politics, for Du Bois, was about cross-issue analysis and cross-movement collaboration. During his trial in 1951, that collaborative approach literally allowed him to afford his defense.

Later Black activists followed a similar path, tacking between different social movements and weaving them synthetically together. Bayard Rustin, for instance, participated vigorously in the labor movement, the antiwar movement, and the civil rights movement, helping to plan both the 1941 March on Washington, which forced President Roosevelt to desegregate the defense industry, and the 1963 March on Washington, where Martin Luther King, Jr. delivered his “I Have a Dream” speech.<sup>72</sup> Rustin built his organizing expertise across these varied campaigns, and he helped these different political movements share resources—under his leadership, for example, the antiwar Fellowship of Reconciliation sponsored the 1947 Journey of Reconciliation to desegregate interstate busing, a key precursor to the 1960s Freedom Rides.<sup>73</sup> Martin Luther King, Jr., in turn, gave antinuclear and antiwar speeches throughout the 1950s and 1960s, taking the time to address peace organizations like the War Resisters League even during the peak phase of the civil rights movement.<sup>74</sup> His 1967 “Beyond Vietnam” speech famously condemned “the giant triplets of racism, extreme materialism, and militarism.”<sup>75</sup> Similarly, as Schrader points out, the Black Panthers in the 1960s and 1970s criticized the same interplay of domestic policing and counterinsurgency in Vietnam that Schrader’s book now narrates, while James Baldwin provocatively described Harlem as “occupied territory” (pp. 3, 78).

69. Walter H. Waggoner, *Acheson Derides Soviet 'Peace' Bids*, N.Y. TIMES, July 13, 1950, at 1; DU BOIS, *supra* note 68, at 60–74; *Cities Rally to Aid DuBois*, BALT. AFRO-AM., Sept. 15, 1951, at 14; *1000 Hear DuBois' Milwaukee Speech*, BALT. AFRO-AM., Sept. 22, 1951, at 22.

70. Venice T. Spraggs, *Dr. DuBois Freed, Says He's Happy*, CHI. DEF., Dec. 1, 1951, at 1 (“[I]t is an old aphorism recently more or less channelled [sic] by the Supreme Court in the Dennis case to the effect that, ‘I may hate the very things you say, but I respect your right to say it.’” (citing *Dennis v. United States*, 341 U.S. 494 (1951))).

71. DU BOIS, *supra* note 68, at 63, 111–12.

72. JERVIS ANDERSON, *BAYARD RUSTIN: TROUBLES I’VE SEEN; A BIOGRAPHY* 59–61, 111–15, 239–49, 261 (1997).

73. *Id.* at 111–17; “*The First Freedom Ride: Bayard Rustin on His Work with CORE*,” HIST. MATTERS, <http://historymatters.gmu.edu/d/6909> [<https://perma.cc/X88R-VAC2>] (transcript of interview with Bayard Rustin, September 12, 1985).

74. VINCENT J. INTONDI, *AFRICAN AMERICANS AGAINST THE BOMB* 63–67 (2015).

75. Martin Luther King, Jr., *Beyond Vietnam* (Apr. 4, 1967), <https://kinginstitute.stanford.edu/king-papers/documents/beyond-vietnam> [<https://perma.cc/ZFP3-AYW7>].

In the 1980s, feminist women of color wove together an even more complex and capacious critique of racism and war. Audre Lorde, for example, connected racism, sexism, homophobia, the rollback of the welfare state, and the stealth invasion of Grenada, arguing that “[t]here is no such thing as a single-issue struggle because we do not live single-issue lives.”<sup>76</sup> Such multifaceted, “intersectional” analyses of oppression have become a guiding light for Black Lives Matter protests today,<sup>77</sup> even as the Movement for Black Lives’ Platform “demand[s] an end to the war against Black people,” here at home and far away.<sup>78</sup> Likewise, Du Bois’s and Baldwin’s shared critiques of domestic racism and war show that the intellectual history embodied in Justice Sotomayor’s *Strieff* dissent has long connected what she calls the “carceral state” with the excesses of the national security state, excesses that Justice Sotomayor criticized as a modern-day *Korematsu* in her dissent in *Trump v. Hawaii*.<sup>79</sup> Justice Sotomayor’s jurisprudence carries a deep tradition of social justice into the present.

What this all-too-brief history of social-movement activism suggests is that political protesters often draw their organizational strength and their ability to publicize injustice from cross-movement collaboration and from complex accounts of the interlocking forms of violence and subordination that plague American life. Social movements have managed to change a range of specific legal doctrines, from equal protection law to the war-powers reforms of the 1970s,<sup>80</sup> but activists themselves don’t typically think in such rigid doctrinal boxes. Injustice cuts across formal legal categories, and it has to be protested the same way.<sup>81</sup> Following this lead, we should seek to democratize both foreign policy and domestic policing together.

Such democratization should occur along three dimensions. First, we should increase voting access and the government transparency that makes voting worthwhile. Domestically, that means restoring felon voting rights and establishing robust protections against voter suppression; in the national security sphere, it means greater declassification, a reform that’s been supported by everyone from the progressive left to the Department of Defense.<sup>82</sup>

76. AUDRE LORDE, Learning from the 60s (Feb. 1982), in *SISTER OUTSIDER* 134, 137–40 (2007).

77. L.A. KAUFFMAN, *DIRECT ACTION* 182–83 (2017).

78. *Platform*, *supra* note 13.

79. See *Trump v. Hawaii*, 138 S. Ct. 2392, 2447–48 (2018) (Sotomayor, J., dissenting).

80. JACK M. BALKIN, *LIVING ORIGINALISM* 10–11 (2011); 3 BRUCE ACKERMAN, *WE THE PEOPLE: THE CIVIL RIGHTS REVOLUTION* 5–7 (2014); TOM WELLS, *THE WAR WITHIN* 553, 579–80 (1994).

81. Legal scholarship tends to focus on specific movements and their legal campaigns. See, e.g., MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS* (2004). But see GOLUBOFF, *supra* note 67; WEINRIB, *supra* note 67. My point is that legal scholars should also zoom out to analyze the larger cross-movement ecology that drives legal change.

82. See, e.g., BARKOW, *supra* note 16, at 116; Lisa Marshall Manheim & Elizabeth G. Porter, *The Elephant in the Room: Intentional Voter Suppression*, 2018 SUP. CT. REV. 213; ROSA

Second, we should reemphasize the rule of law to constrain the use of force. Domestically, that means eliminating the qualified immunity barrier under *Bivens* and section 1983; in the national security sphere, it means more adversarial testing in the FISA surveillance process and greater judicial review of military uses of force, as other nations' courts have been willing to pursue.<sup>83</sup> Finally, we still need to build a constitutional democracy of "equal concern and respect" for all.<sup>84</sup> That, in turn, will require substantive changes in our culture and politics to create a more inclusive America. It will require changing hearts and minds. And that's a project not so much for courts, nor for technocratic law reform, but for a *movement*.

### CONCLUSION

Democracy and justice are, by nature, open-ended projects. But to move forward, we first have to look back, to understand how our problems arose and how earlier activists tried to bend the arc of the universe toward justice.<sup>85</sup> Schrader's new history of the carceral state is therefore an important resource for reformers today. But what Schrader doesn't have the space to explore in depth, and what I hope I've begun to sketch out at the end of this Notice, is the history that we now need to study most: the history of how activists fought against the interwoven excesses of American policing, national security, and adjacent systems of racial oppression in the past. Those activists' work illuminates how to resist the myriad forms of excessive force employed today.

In 2016, the Pulitzer Prize-winning poet Tracy K. Smith published an ekphrastic poem about Jonathan Bachman's photograph of Ieshia Evans. "Even the men in black armor, the ones / Jangling handcuffs and keys," Smith wrote, could still be reached by the "language" of "love."<sup>86</sup> "Love: naked almost in the everlasting street, / Skirt lifted by a different kind of breeze."<sup>87</sup> The impulse of protest politics is that democracy takes place in the

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BROOKS, HOW EVERYTHING BECAME WAR AND THE MILITARY BECAME EVERYTHING 124–28 (2016).

83. See Katherine Mims Crocker, *Qualified Immunity and Constitutional Structure*, 117 MICH. L. REV. 1405, 1406–07, 1410–11 (2019); Stephen I. Vladeck, *The FISA Court and Article III*, 72 WASH. & LEE L. REV. 1161, 1176–80 (2015). Compare *bin Ali Jaber v. United States*, 861 F.3d 241, 249–50 (D.C. Cir. 2017) (holding that military action is nonjusticiable), with H CJ 769/02 Pub. Comm. Against Torture in *Isr. v. Gov't of Isr.*, 62(1) PD 507, 578–582 (2006) (*Isr.*), translated in [2006] 2 *Isr. L. Rep.* 459, 507–14 (holding that military action is justiciable).

84. RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* 180 (rev. ed. 1978).

85. The reference, of course, is to Martin Luther King, Jr., *Our God Is Marching On!* (Mar. 25, 1965), <https://kinginstitute.stanford.edu/our-god-marching> [<https://perma.cc/84HY-4M9K>].

86. *Unrest in Baton Rouge*, *supra* note 1.

87. *Id.* I suspect Smith's invocation of "love" is meant to evoke Baldwin: "[I]f the word *integration* means anything, this is what it means: that we, with love, shall force our brothers to see themselves as they are, to cease fleeing from reality and begin to change it." JAMES BALDWIN, *THE FIRE NEXT TIME* 9–10 (Vintage Books 1993) (1963). Justice Sotomayor, of

streets, in the public forum where solidarity—another word for love—is forged and displayed.<sup>88</sup> To echo Smith’s line, in America, the quest for democracy and racial justice is still unfolding, “in the everlasting street.”

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course, cites *The Fire Next Time* in her *Strieff* dissent. *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).

88. See JAMES MILLER, *DEMOCRACY IS IN THE STREETS* (Harvard Univ. Press 1994) (1987); cf. Takim Williams, *#InContext: Cornel West*, HUM. TRAFFICKING INST. (Feb. 22, 2017) (quoting Cornel West as saying that “[j]ustice is what love looks like in public”), <https://www.traffickinginstitute.org/incontext-cornel-west/> [<https://perma.cc/8VQH-UZZR>].