“Who” or “What” Is the Rule of Law?

What is the relation between democracy and the rule of law? The standard account focuses on the rule of law as enhancing liberty by constraining official action. But, this is a faint echo of the deep, historical connection between the two. The ancient Greeks used the same word—isonomia—to describe both. The rule of law, democracy, and equality, are nested concepts—each resting on the latter, more encompassing idea. Democracy entails the rule of law; but both implicate the yet more comprehensive ideal of equality.

Democracy is the system in which people have an equal say in determining the rules that govern social life. The rule of law is the mechanism of its implementation. But it is also crucial as a social practice that constitutes citizens as equals. It is constitutive of democracy in shaping citizens capable of self-governance. And, it is synonymous with democracy in addressing how to ensure that government by the people operates for the people.

These two different understandings of the rule of law conceive the problem of police violence in dramatically different ways. The standard view sees it a problem of individual accountability to be fixed by better legal incentives. The democratic view understands the problem as reflecting a breakdown in the process of self-governance itself. The solution lies in the empowerment of African American citizens and their inclusion as full and equal members of the democratic community. The crisis of police violence is a crisis of the unequal distribution of political power.
