Abolition K Draft

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Terminology

Life without the possibility of Parole = LWOP

Death In Prison = DIP

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The aff is a superficial tweak to the criminal justice system that preserves its legitimacy and coopts the movement toward structural change.

Karakatsanis 19 – founder and Executive Director of Civil Rights Corps; former civil rights lawyer and public defender with the Special Litigation Division of the Public Defender Service for the District of Columbia; a federal public defender in Alabama, representing impoverished people accused of federal crimes; and co-founder of the non-profit organization Equal Justice Under Law, Alec, 3/28. "The Punishment Bureaucracy: How to Think About "Criminal Justice Reform"." https://www.yalelawjournal.org/forum/the-punishment-bureaucracy

The **emerging "criminal justice reform" consensus is superficial and deceptive**. It is superficial because **most proposed "reforms" would still leave the U**nited **S**tates **as the greatest incarcerator in the world**. **It is deceptive because those who want largely to preserve the current punishment bureaucracy—by making just enough tweaks to protect its perceived legitimacy**—must **obfuscate the difference between changes that will transform the system and tweaks that will curb only its most grotesque flourishes**. Nearly every prominent national politician and the vast majority of state and local officials talking and tweeting about "criminal justice reform" are, with varying levels of awareness and sophistication, furthering this deception. These "**reform"-advancing punishment bureaucrats are co-opting a movement toward profound change by convincing the public that the "law enforcement" system as we know it can operate in an objective, effective, and fair way based on "the rule of law**." These punishment bureaucrats are dangerous because, in order to preserve the human caging apparatus that they control, they must disguise at the deepest level its core functions. As a result, **they focus public conversation on the margins of the problem without confronting the structural issues at its heart**. **Theirs is the language that drinks blood**. In this Essay, I examine "criminal justice reform" by focusing on the concepts of "law enforcement" and the "rule of law." Both are invoked as central features of the American criminal system. For many prominent people advocating "reform," the punishment bureaucracy as we know it is the inevitable result of "law enforcement" responding to people "breaking the law." To them, the human caging bureaucracy is consistent with, and even required by, the "rule of law." This **world view—that the punishment bureaucracy is an attempt to promote social well-being and human flourishing under a dispassionate system of laws—shapes** their **ideas about how to "fix" the system. But few ideas have caused more harm in our criminal system than the belief that America is governed by a neutral "rule of law**." **The content of our criminal laws**—discussed in Part V—and how those laws are carried out—addressed in Part VI—**are choices that reflect power**. **The common understanding of the "rule of law" an**d the widely accepted us**e of the term "law enforcement" to describe the process by which those in power accomplish unprecedented human caging are both delusions critical to justifying the punishment bureaucracy**. This is why it is important to understand how they distort the truth. I apply these arguments in Part VII, explaining why the current "**criminal justice reform" discourse is** so **dangerous**. I focus on several prominent national punishment bureaucrats and a new local wave of supposedly "progressive prosecutors." Finally, in Part VIII, I discuss the new generation of directly impacted **people, organizers, lawyers, faith leaders, and academics** on the libertarian left and right **who understand the punishment bureaucracy as a tool of power in service of white supremacy and profit**. I explain why this growing movement **must reject the "criminal justice reform" discourse** of punishment bureaucrats **and speak clearly about why the legal system looks the way that it does. I urge those interested in changing the punishment bureaucracy to ground every discussion that they have and every proposed reform that they evaluate in a set of guiding principles rooted in this movement's vision**. I sketch some of those principles for their consideration below.

Maintaining the prison system makes racialized violence inevitable -- reforms fail because it's embedded in the very logic of carcerality

McLeod 15 (Allegra M. McLeod -- Georgetown University Law Center, "Prison Abolition & Grounded Justice", https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2502&context=facpub, UCLA Law Review, Pgs. 1185-1199)

Alongside imprisonment's general structural brutality, **abolition merits** further **consideration as an ethical framework because of the racial subordination inherent in both historical and contemporary practices of incarceration and punitive policing**. Michelle Alexander's The New Jim Crow popularized a critique of incarceration as a means of racialized social control in the United States, but Alexander's account was preceded and accompanied by earlier historical, psychological, literary, and sociological studies focused on how **maintaining social order through**

incarceration emerged as a way to preserve the **power relationships inherent in slavery and Jim Crow**; these **studies** further **demonstrate** how **punitive policing and imprisonment continue to be haunted at their** very **core by a dehumanizing inheritance of racialized violence**.128 These various accounts elucidate how in the immediate aftermath of the Civil War the ascription of criminal status—leading to the classification and separation of citizens and the curtailment of their rights of citizenship—served as an instance of the process Reva Siegel has called "preservation through transformation," defined as the evolution of a mode of status-enforcing state action in response to contestation of the status' earlier manifestations (in this case, chattel slavery and later de jure racial segregation).129 Because this history of slavery and Jim Crow's afterlife in criminal punishment practices is already addressed elsewhere, here I will only briefly examine the racially subordinating structure of punitive policing and imprisonment insofar asit isrelevant to an abolitionist framework and ethic.130 The significance of this material from an abolitionist standpoint is that it further underscores the constitutive role of **degradation in core U.S. incarceration and punitive policing structures,** as they **fail to treat targeted persons as fully human and** thus **deserving of equal dignity and regard**. **Understanding** practices of **punitive policing and imprisonment as a legal and political technology developed**, in large part, both **through and for degradation and racial subordination** calls for greater scrutiny of these techniques. In particular, **critical analysis must attend to whether** the purported **ambitions of these techniques are** meaningfully achieved and **separable so as to disconnect the present** applications of punitive policing and incarceration from their brutal **racialized pasts**. In this Subpart, I argue that the **racial legacies of incarceration and punitive policing infect** these **practices to their core by shaping the tolerated range of violence in criminal law enforcement contexts, as well as by coloring** basic perceptions of and **ideas about criminality and threat. The racialized dimensions of punitive policing and incarceration are not**, of course, **merely historical**; **they are vividly present** in, among other places, the continued killings of African American men by white police officers.131 As recently as the 1990s, some Los Angeles police officers referred to cases involving young African American men as "N.H.I." cases, standing for "no humans involved."132 In 2003, after a Las Vegas police officer shot and killed a black man named Orlando Barlow, who was on his knees, unarmed, and attempting to surrender, an investigative series by the Las Vegas Review-Journal revealed that the officers in the unit celebrated the shooting by ordering t-shirts portraying the officer's gun "and the initials B.D.R.T. (Baby's Daddy Removal Team)—a racially charged term and reference to Barlow, who was watching his girlfriend's children before he was shot."133 The acronym B.D.R.T. continues to circulate in police culture, as do the associated racially subordinating associations directed at African American men. For example, online stores that sell police-themed clothing continue to market B.D.R.T. t-shirts, and, in 2011, officers with the Panama City, Florida, Police Department adopted the acronym for their kickball police league team.134 Whereas Alexander argues the legacy and persistence of these dynamics require a social movement to markedly reduce incarceration and disproportionate minority confinement, my analysis entails in addition (or instead) that **the structural character of these racial legacies requires** a movement committed to the thoroughgoing replacement (and **elimination**) **of** these **imprisonment** and punitive policing practices with other social regulatory frameworks, **along with a critique and rejection of** many of **criminal law administration's ideological entailments**.135 The racialized constitution of imprisonment and punitive policing began in the South even before the Civil War, though in the pre–Civil War period the relatively small population of Southern prison inmates were primarily white, as most African Americans were held in slavery.136 Although the legal institution of slavery was abolished with the end of the Civil War, the work necessary to incorporate former slaves as political, economic, and social equals was neglected, and in many instances actively resisted.137 In particular, criminal law enforcement functioned as the primary mechanism for the continued subordination of African Americans for profit.138 During Reconstruction, Southern legislatures sought to maintain control of freed slaves by passing criminal laws directed exclusively at African Americans.139 These laws treated petty crimes as serious offenses and criminalized certain previously permissible activities, but only for the "free negro."140 Specific criminalized offenses included "mischief," "insulting gestures," "cruel treatment to animals," "cohabitating with whites," "keeping firearms," and the "vending of spirituous or intoxicating liquors."141 These "Black Codes" were adopted by legislatures in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas.142 These laws quickly expanded Southern inmate populations and transformed them from predominantly white to predominately African American.143 Convict leasing was exempted from the Thirteenth Amendment's prohibition on slavery, which outlawed involuntary servitude except in the case of those "duly convicted."144 Criminal law enforcement was then used to return African Americans to the same plantations on which they had labored as slaves, as well as to condemn thousands to convict leasing operations, chain gangs, and prison plantations.145 Even before the Civil War, penitentiaries in the North contained a disproportionate number of African Americans, many of them former slaves.146 New York legislated the emancipation of slaves and the founding of the state's first prison on the same date in 1796.147 In Alexis de Tocqueville's and Gustave de Beaumont's classic 1883 account, On the Penitentiary System in the United States and Its Application in France, the two wrote: "[I]n those [Northern] states in which there exists one Negro to thirty whites, the prisons contain one Negro to four white persons."148 There are many similarities in form between slavery and the early Northern penitentiaries. Both subordinated their subjects to the will of others, and Southern slaves and inmates alike followed a daily routine dictated by white superiors.149 Both forced theirsubjects to rely on whitesfor the fulfillment of their basic needs for food, water, and shelter. Both isolated them in a surveilled environment. The two institutions also frequently forced their subjects to work for longer hours and less compensation than free laborers.150 Although the basic structure of Northern prisons that purported to rehabilitate through a routine of solitude and discipline may seem at first blush quite removed from the dehumanizing and violent dynamics that characterized the Southern convict experience, one dehumanizing feature remained markedly constant: Even in rehabilitative contexts in the North, the penitentiary aimed to strip and degrade the inmate of his former self so as to reconstitute his being according to the institution's preferred terms. And as commentators, such as Charles Dickens, noted at the time, the "slow and daily tampering with the mysteries of the brain" entailed by this form of incarceration could be "immeasurably worse than any torture of the body."151 In the Reconstruction era South, whether sentences were short or long, convicted persons, especially African Americans, were routinely conscripted into vicious conditions of forced labor.152 For example, although the sentence for the crime of intermarriage in Mississippi was confinement in the state penitentiary for life, convictions were often punishable by a fine not in excess of fifty dollars.153 If a person was unable to pay, that person could be hired out to any white man willing to pay the fine.154 Preference was given to the convict's former master, who was permitted to withhold the amount used to pay the fine from the convict's wages.155 This common practice resulted in situations where freedmen would spend years, even entire lifetimes, working off their debt for a small criminal fine.156 By contrast to this sort of peonage and criminal surety operation, the convict lease operated through a bidding system wherein companies would offer a set amount of money per day per convict, and the highest bidder would win custody of the group of convicts and be entitled to their labor.157 Leased convicts worked on farms, constructed levees, plowed fields, cleared swampland, and built train tracks across the South.158 They moved from work site to work site, usually in a rolling iron cage, which also served as their living quarters during jobs.159 Convict lessors justified their use of convict labor because they claimed free labor was prohibitively costly; but as bidding

expanded, the daily price of a convict's labor increased and free labor began to compete.160 Eventually, it was this trend toward parity in the cost of free and convict labor, more than any outrage at the brutal exploitation of the convict lease, which led to the abolition of the lease and its replacement by the chain gang.161 Chain gangs, unlike the convict lease, worked on maintaining public roads and performed other hard labor in the public rather than private sector.162 State prisons also directly used African Americans for their labor, working prisoners in the fields for profit and holding them at night in wagons that were guarded by white men with rifles and dogs.163 Some prisons were actually constructed on former plantations, and consisted of vast tracts of land used for farming; white prisoners were appointed to serve as guards or trusties, assistants to the regular prison administrators.164 The state prison plantations could even generate considerable profit. For instance, in 1917, Parchman Prison farm in Mississippi contributed approximately one million dollars to the state treasury through the sale of cotton and cotton seed, almost half of Mississippi's entire budget for public education that year.165 By 1917, African Americans still represented some ninety percent of the prison population in Mississippi.166 The most dehumanizing abuses in these various settings were directed exclusively at African Americans.167 Southern states enacted statutes to prohibit the confinement of white and African American prisoners in shared quarters. In 1903, Arkansas, for example, passed a law declaring it"unlawful for any white prisoner to be handcuffed or otherwise chained or tied to a negro prisoner."168 It is thus that the practices of U.S. criminal law administration were forged through the racial dehumanization of African American people.169 Whereas the connections between slavery and the Northern penitentiary were further removed, the penal state in the South preserved and expanded the African American captive labor force and maintained racial hierarchy through actual incarceration or threat of criminal sanctions, as well as through the conditions of confinement. As recently as 1970, in Holt v. Sarver, 170 a District Court in Arkansas upheld the brutal exploitation of working convicts (almost all of whom were African American), concluding that the "[Thirteenth] Amendment's exemption manifested a Congressional intent not to reach such policies and practices."171 The awful mistreatment directed at convicted persons under the convict lease, chain gang, and prison plantations of the South was in these ways inextricably tied to the afterlife of slavery and the failures of abolition as a positive program of the formW.E.B. Du Bois envisioned. In the Northern and the Western United States, prisons were used for solitary work and sought to reform inmates with a strictly controlled routine of labor and bible study. Prisoners were still usually segregated by race; African Americans were often relegated to substandard locations.172 Leasing was applied almost exclusively to African Americans convicted of crimes, because the Leasing Acts set aside prison sentences for persons serving ten or more years, and white convicts generally received more significant sentences because the courts rarely punished whites for less serious crimes.173 Very few whites convicted for petty criminal offenses were sent to prison, and when such sentencing occurred, whites routinely received quick pardons from the governor.174 Beyond criminal punishment, criminal law administration was also entwined with practices of racial subordination through lynching. Even in the North, lynch mobs would gather by the thousands outside the jailhouse or courthouse and wait until African Americans were released from pretrial detention.175 In some cases, criminal law enforcement officials themselves actively participated in the lynch mobs.176 Further instances of the direct entwinement of criminal law administration and overt racial violence abound throughout the twentieth century. Notable examples include the Scottsboro Boys Cases of the 1930s.177 The Scottsboro Cases involved the hurried convictions of nine young African American men, all sentenced to death by white jurors.178 The limited procedural protections afforded to these young men—the mob-dominated atmosphere surrounding their convictions, the denial of the right to counsel until the eve of trial rendering any assistance necessarily ineffective, and the intentional exclusion of blacks from the grand and petit juries that first indicted and later convicted the young men179—and their challenges to the U.S. Supreme Court arguably mark the birth of constitutional criminal procedure.180 This entwinement of racialized violence and the criminal process runs from the 1930s through the end of the twentieth century. It is prominently illustrated by, among other similar episodes, the brutal torture perpetrated against countless African American men over two decades, from the 1970s to 1990s, by white Chicago police officer John Burge and his deputies, who used suffocation, racial insults, burning, and electric shocks to coerce confessions, ultimately leading then-Illinois Governor George Ryan to commute all death sentencesi n the state.181 These uses of criminal law administration as a central means of resisting the abolition of slavery, Reconstruction, and desegregation, continue to inform criminal processes and institutions to this day by enabling forms of brutality and disregard that would be unimaginable had they originated in other, more democratic, egalitarian, and racially integrated contexts. As W.E.B. Du Bois predicted, this legacy of managing abolition and reconstruction in large part by invoking criminal law in racially subordinating ways, contrasted sharply with a different abolitionist framework, one that would have incorporated freed-persons into a reconstituted democracy: "If the Reconstruction of the Southern states, from slavery to free labor, and from aristocracy to industrial democracy, had been conceived as a major national program of America, whose accomplishment at any price was well worth the effort, we should be living today in a different world."182 Our historical inheritance and this legacy illuminates the connection between the abolitionist path not taken in the aftermath of slavery and what ought to be an abolitionist ethos in reference to practices of prison-backed criminal regulation today. Instead, as the American economy underwent a shift from industrial to corporate capitalism in the 1970s, resulting in the erosion of manufacturing jobs occupied by poor and working class people in the inner cities, especially African Americans, a distinct underclass emerged, with few options for survival other than low wage work, welfare dependence, or criminal activity.183 This transformation in the U.S. economy contributed substantially to the emergence of a population that would be permanently unemployed or underemployed.184 In turn, federal, state, and local governments invested greater resources in coercive mechanisms of social control,185 prioritizing criminal law enforcement over other social projects, such as urban revitalization and expanded social welfare and education spending.186 In 1972, just before the National Advisory Commission on Criminal Justice Standards and Goals published the 1973 report noted at the beginning of this Article, there were 196,000 inmates in all state and federal prisons in the United States—a population housed in conditions that the Commission believed justified a ten year moratorium on prison construction.187 By 1997, however, the prison population had surged to 1,159,000188 and in 2002 there were a record 2,166,260 people housed in U.S. prisons and jails.189 This rapidly increasing population was characterized, as we now well know, by glaring racial asymmetries: **As of** 19**89, one in four African American men were in criminal custody** of some sort.190 In certain municipalities, the imprisonment rates for African Americans were even more striking. In 1991 **in** Washington **D.C., 42.5 percent of young African American men were in** correctional **custody** on any given day.191 **In Baltimore** during 1990, **56 percent** of the city's African American males between ages eighteen and thirty-five **were** either **in criminal justice custody** or wanted on warrants.192 By 2004, more than 12 percent of African American men nationally between the ages of twenty-five to twenty-nine were incarcerated in prison or jail.193 Although rates of incarceration and disproportionate minority confinement have declined very modestly in recent years because of fiscal crises at both the state and federal level, as well as a global decrease in crime, African American men remain subject to criminal confinement and arrest at ratest hat far exceed their representation in the population.194 Prisoners are generally no longer subjected to chain gangs or hard physical labor for profit, although these practices persisted in certain jurisdictions through the end of the twentieth century.195 Currently, another form of **incarceration** and punitive policing has emerged, one that **effectuates** the **mass containment and** exercises mass **racial discipline, leading to the elimination of** large numbers of **poor and** especially poor **African American people from** the realm of **civil society. A felony conviction**, disproportionately meted out to African Americans, Latinos, and indigent whites, **results in** a **permanent loss of voting rights** in most states, **employment bars** in numerous professions, **and a lifetime ban on** federal **student aid**, among other damaging consequences.196 These consequences further exacerbate the physically segregative effects of incarceration post-release, **inhibiting opportunities for** meaningful **integration available to persons and communities most affected by incarceration**.197 **These consequences of conviction constitute** a **basic denial of equal citizenship, and**, as such, conviction recreates the **civil death** associated with enslavement. Further, **the criminal process** still

operates on a for-profit model importantly distinct, but not entirely removed from, earlier systems of confinement for profit that were the direct outgrowth ofslavery.198 Prisoners' labor does not itself directly provide a significant source of profit to a lessor or single business as it once did. Instead, large-scale incarceration—**marked by prisoners' suffering, dehumanization, and violence**—generates a market for the construction of facilities to house approximately two million prisoners and jail inmates; the technology and mechanisms to maintain almost seven million persons under criminal supervision; and the employment of thousands of prison guards, prison staff, probation and parole officers, and other penal professionals.199 The large sums of money poured into prisons and criminal surveillance have drawn major firms and a variety of Wall Street financiers to prison construction.200 Underwriting prison construction through private finance and the sale of tax-exempt bonds has served as a lucrative undertaking in itself.201 Though only used to manage a small portion of detention facilities, private corrections corporations, such as Corrections Corporation of America and Wackenhutt, submit bids to governments to manage different detention systems, especially immigration detention, and guarantee to provide these services at a lower cost than the state is able to deliver.202 Additionally, vendors of everything from stand alone cells, hand and foot cuffs, razor wire, and shank proof vests make considerable profits from prisons.203 A single contract to provide prisoners in the state of Texas with a soy-based meat substitute, awarded to VitaPro Foods, went for $34 million per year.204 The profits for phone service inside prison walls make food contracts seem insignificant.205 Meanwhile, **prisoners continue to serve as a captive labor force, working for** approximately **one dollar per hour**, and often less.206 Numerous firms use prisoners as a component of their workforce in the United States, as do government entities that use prison labor to manufacture products that are then sold to other government agencies.207 Although prisoners are no longer forced to work by or for the state (as they were in the South well into the twentieth century), the perverse profit motive that spurred the convict lease system with all its horror might be understood in historical context as preserved yet transformed in these various other guises. **Criminal fines and fees generate substantial additional revenue for the criminal process** itself and for certain municipalities and other jurisdictions.208 And the grossly disproportionate number of African Americans imprisoned, arrested, criminally fined, and stopped by police further accentuates the associations between earlier forms of racialized penal subordination for profit and the contemporary racial dynamics of criminal law administration.209 **The deep, structura**l, and both **conscious and unconscious entanglement of racial degradation and criminal law enforcement presents a strong case for aspiring to abandon criminal regulatory frameworks** in favor of other social regulatory projects, rather than aiming for more modest criminal law reform. Multiple studies have confirmed the implicit, often immediate, and at times unconscious associations made between African Americans, criminality, and threat.210 These associations, borne of this history, continue to be reproduced by these structures and by the development of punitive policing and incarceration practices that treat certain people as not fully human. To provide but a few examples, psychologists Jennifer Eberhardt, Philip Atiba Goff, and their collaborators studied how individuals in various scenarios determine who "looks like a criminal."211 Perhaps not surprisingly, controlling for other factors, the study's subjects chose people who looked African American, particularly those who looked more "stereotypically" African American and those coded as having more "Afrocentric" features.212 In a similar study, psychologists Brian Lowery and Sandra Graham studied subjects' responses to juvenile arrestees. When the study's subjects were primed to understand the youth as African American, the juveniles were judged to be more blameworthy and deserving of harsher and more punitive treatment.213 Consciously expressed egalitarian racial beliefs did not significantly moderate the effects of implicit biasin these contexts.214 **Conscious and unconscious biases** on the part of police officers often **have lethal outcomes. Shooter and weapons biases**, for instance, **are well-documented**. In researching how subjects behave in simulated video game shooting settings, multiple studies have found that the likelihood of shooting a suspect who is armed or possesses a device other than a gun significantly increases when the suspect is African American and decreases when the suspect is white.215 This is true both for white and African American shooters.216 Similarly, psychologist Philip Atiba Goff and his colleagues, in a study examining archival material from actual death penalty cases in Pennsylvania, found that defendants depicted as implicitly "apelike" were more likely to be executed than those who were not; African Americans were more likely to be depicted as implicitly "apelike" than whites.217 Judges, jurors, and prosecutors in related studies likewise reflect considerable racial bias in their determinations at numerous criticalstages of the criminal process.218 The landscape of **contemporary criminal law enforcement is** thus, in significant and fundamental respects, part of **the afterlife of slavery and Jim Crow**, and this legacy is deeply implicated in criminal law's persistent practices of racialized degradation. **Perceptions of criminality, threat, and the prevalence of violence, informed by** these **racialized** material **histories** and dehumanizing associations, **operate at all levels of criminal law administration**, often without the relevant actors' awareness. This suggests something of how difficult it would be to remove racialized violence from prison-backed policing and imprisonment while retaining these practices as a primary mechanism of maintaining social order. The **racialized degradation** associated with criminal regulatory practices, then, **compels an abolitionist ethical orientation** on distinct and additional grounds apart from the general dehumanizing structural dynamics addressed in the preceding Subpart, particularly insofar as there are other available means of accomplishing crime-reductive objectives. If we are indeed committed to democratic and egalitarian values, the need to scrutinize closely the other purported purposes of the criminal process presses with increasing urgency. So, too does the question of whether there are alternative regulatory frameworks and approaches that might achieve similar ends with less racially encumbered and violent consequences.

The alternative is to endorse an abolitionist ethic oriented toward substitutive approaches to address social problems. The alternative must be prioritized to make broader imaginative horizons available—even if it fails, radical transformation is the best starting point.

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Allegra M., "Prison Abolition and Grounded Justice." 62 UCLA L. Rev. 1156-1239 (2015). https://scholarship.law.georgetown.edu/facpub/1490

Abolition promises to reorient both criminal law and politics in important and distinct respects. There are five primary ways in which **an abolitionist ethic is distinguishable from a more moderate reformist orientation**. First, a**n abolitionist ethic identifies more completely the dehumanization, violence, and racial degra- dation of**

incarceration and punitive policing in the basic structure and dynamics of penal practices in the United **S**tates. Rat**her than understanding these features as more superficial flaws that might be repaired while holding constant the role of criminal law administration relative to other social regulatory projects, a critical abolitionist ethic centers on how caging or confining human beings in a hierar- chically structured, depersonalizing environment developed through historical practices of overt racial subordination tends inherently toward violence and deg- radation**. In this, **an abolitionist ethic more accurately identifies the wrong en- tailed in holding people in cages or policing them with the threat of imprisonment, as well as more fully recognizes the transformative work that would be required to meaningfully alter these dynamics and practices**. Second, **an abolitionist ethic**, **in virtue of its structural critique** of penal practices, **is oriented toward displacing criminal law as a primary regulatory framework and replacing it with other social regulatory forms, rather than** only or primarily **moderating criminal punishment or limiting its scope or focus**. **Displacing criminal regulation and replacing it with other regulatory forms en- tails a primary orientation toward proliferating substitutive approaches to address social problems, root causes, and interpersonal harm through institutions, forms of empowerment, and regulatory approaches separate and apart from the criminal law**. **By contrast, a** more moderate **reformist framework typically aims at reduc- ing the costs and impositions of incarceration by granting people convicted of less serious offenses options for supervised, monitored release** (typically backed by the threat of imprisonment for noncompliance with the more lenient terms).254 **Abolition's critical project opens the space**, in other words, **for a positive project of proliferating social and regulatory alternatives to take the place of criminal law enforcement**, and in this regard, **abolition, as opposed to** more **moderate reform, enacts its profound skepticism of the legitimacy of prison-backed criminal regu- latory interventions through its ongoing transformative efforts**. Third, abolition in its radical call for change appropriately captures the in- tensity that ought to be directed to transforming the regulation of myriad social problems through punitive policing and incarceration. More modest **reform, in tolerating with relative comfort imprisonment and punitive policing, does not register the need for change with as much urgency.** The following figure projects the time that would be required to return incarceration levels in the United States to where they were in 1980, assuming a rate ofdecline in incarceration equivalent to that which occurred in 2012. The product of a perfect storm for prison re- formists-fiscal crises in numerous states, relatively low rates of reported crime, and a growing political commitment in both more conservative and liberal states to reduce the harshness and cost of criminal sentencing approaches-2012 marked a considerable decline in rates of imprisonment.255 A reformist trajectory would likely under the best of circumstances yield de- creases in incarceration roughly consistent with this course. Whereas expanding diversionary noncarceral criminal supervisory mechanisms may be expected to ac- celerate rates and avenues of decarceration, **reform would in time**, of course, **face challenges during periods when**, for one reason or another, **public opinion tended in a more punitive direction** than it did in 2012. **Even under** these most **optimal conditions**, however, **with consistent, marked incarceration-reductive reforms** such as those in 2012, **it would take** almost **one hundred years to return to 1980 levels of imprisonment**. Yet, already, in 2013, this downward trend reversed course as incarceration increased slightly at the state and federal levels. 256 Although a significant achievement, the commitment by the bi-partisan #Cut50 prison reform coalition to reduce incarceration levels by half in the Unit- ed States over ten years, would still leave the United States an outlier in the ex-panse and harshness of its criminal processes.257 This bi-partisan coalition primarily is able to achieve consensus on reducing incarceration primarily for nonviolent, nonserious, nonfelony convictions.258 And even if bi-partisan reform efforts were able actually to reduce the number of nonviolent offenders in prison and jail by half, the United States would still have by far the highest incarceration rate in the OECD.259 But **abolition makes a bolder critical demand**, **which requires more thor-oughgoing transformation**, **recognizing the importance of a substitutive regula- tory logic, rather than a shift from imprisonment to prison-backed noncarceral alternatives**. And **even if abolition fails in its call for more marked change in criminal law enforcement, it renders moderate reform a more palatable op- tion, potentially advancing a more moderate reformist program by articulat-ing a critical and radically transformative project in the same legal and policy space**. Fourth, a**n abolitionist ethic in its critical dimensions and moral resonance—by exposing the dehumanization and illegitimate brutality of the core prison-backed projects of the criminal process—stands to produce greater discomfort and shame in carrying out criminal punishment**. Even in those instances where imposing punishment remains perhaps necessary, as the lesser of two evils, when someone has committed and continues to pose a great threat of violence to oth-ers, **an abolitionist ethic does not allow us to remain complacent in the rationali-zation of criminal law enforcement's violence and neglect**. In this, an abolitionist ethic does not necessarily deny that in some instances there may be people so vio-lent that they cannot be permitted to live among others. (These individuals are referred to in abolitionist writings as "the dangerous few" in order to underscore how very rare they are relative to the vast population of the incarcerated (and how much rarer they might be if we chose to live in ways less productive of such vio- lence)).260 But **the associated discomfort and shame with which an abolitionist critique critique imbues such punishment promises to reshape the experience of punish- ing** even these dangerous few **by rendering criminal politics and jurisprudence more conflicted and ambivalent**, **and thereby**

improved, both at the highest level of abstraction and in the most concrete doctrinal and statutory details. **This con- flict, shame, discomfort, and ambivalence**, in significant measure **produced by an abolitionist critique of the ideology that rationalizes prison-backed punishment, simultaneously promises to make available broader imaginative horizons within which we are able to govern ourselves**.

---LINKS---

L – Punishment

The aff's rhetoric imagines the CJS as a vehicle to "punish" perpetrators of a crime – this fuels the carceral machine

Calathes '17 [(William, professor in the Criminal Justice department at Bronx Community College) "Racial capitalism and punishment philosophy and practices: what really stands in the way of prison abolition," Contemporary Justice Review, 20:4, 442-455, 2017, DOI: 10.1080/10282580.2017.1383774, pp. 442-443, vik]

There are many complex and interrelated forces that impede prison abolition. This paper discusses some of these forces by examining historical and contemporary examples of the punishment practices of **racial capitalism**. These forces **impede prison abolition because in such a society, punishments serve 'necessary' functions to facilitate capital accumulation for white elites and protect white privilege for all white people. A dominant political order establishes punishment practices as social control weapons that neatly fit into the inherently exploitative paradigm of racial capitalism. Punishment is an effective tool of domination**. **Its victims face a terror and suffer the normalization of 'premature death' that is a defining feature of both slave and late modern-colonial regimes** (see, e.g. Gilmore, 2007, p. 244; Mbembe, 2003, p. 39). Traditional criminologists do not subscribe to this analysis, but rather rely on politically popular retribution, deterrence, and incapacitation theories of punishment that sustain a race and class-stratified society. **Retribution**, or the 'just deserts' model, for example, **is popular today because it suggests that in order to restore justice, offenders need to be punished. This order maintenance ideology**, like any ideology, '**must be created and verified in social life**' (Fields, 1990, p. 112). Once so created, however, one group's ideology becomes verified and prevails over others, often as a result of real political power, especially given wealth inequities. Historically **adjustable racialized punishment practices**, therefore, **remain dominant precisely because they protect the interests of white people in maintaining a racial capitalist society that systematically exploits and oppresses black people.** Critical criminologists have long maintained that **crime and punishment are socially constructed** (Quinney, 1970). **They hold that those who own and control the means of production largely hold power and that the state**, the agencies of social control, and the criminal law reflect and serve elite interests (Chambliss & Seidman, 1971). Legislatures pass laws representing elite interests that are then enforced by the police and supported by right-wing sections of society that help to socially construct definitions of crime and punishments (Turk, 1969). For the most part, critical criminology, however, has yet to employ a racial capitalist framework to conceptually address the role of punishment in society.

L – Reform Generic

The CJS is irredeemable and intrinsically anti-black -- only abolition can challenge racialized criminalization

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The United **S**tates **stands out from all nations on Earth for its reliance on caging human beings**.52 In the last forty years, the U.S. incarcerated population exploded from about 500,000 to more than two million.53 The U.S. federal and state **governments lock up more people and at higher rates than do any other governments in the world**, and **they do so today more than they did at any other period in U.S. history**.54 **Most people sentenced to prison** in the United States today **are** from politically marginalized groups — **poor, black, and brown**.55 **Not only are black people five times as likely to be incarcerated as white people**,56 **but** also **the** lifetime **probability of incarceration for black boys** born in 2001 **is** estimated to be **thirty-two percent compared to six percent for white boys.**57 The female incarceration rate has grown twice as quickly as the male incarceration rate over the past few decades, and **black women are twice as likely as white women to be behind bars**.58 **This** astounding amount of human confinement **should not be seen as an unfortunate consequence of crime prevention** policies **or** as **an isolated blemish on America's otherwise fair system of criminal justice**.59 Rather, **prisons are part of a larger system of carceral punishment that legitimizes state violence against the nation's most disempowered people to maintain a racial capitalist order**60 **for the benefit of a wealthy white elite.**61 The prison industrial complex emerged in the second half of the twentieth century from the merger of social welfare programs and crime control policies.62 As Professor Elizabeth Hinton documents in From the War on Poverty to the War on Crime, **Dem**ocrat**s and Rep**ublican**s** in the 1960s and 1970s **paired federal assistance to urban neighborhoods of color with surveillance, militarized policing, harsh sentencing laws, and prison expansion, based on shared assumptions of innate black criminality.**63 Thus, "[t]he roots of **mass incarceration had been firmly established by a bipartisan consensus** of national policymakers in the two decades prior to Reagan's War on Drugs in the 1980s."64 The astronomical expansion of prisons in the last forty years occurred during a process of government restructuring that transferred services from the welfare state to the private realm of market, family, and individual. The United States set the global trend in cutting social programs while promoting free-market conditions conducive to capital accumulation, resulting in one of the slowest growth rates of spending on basic social needs.65 Beginning with "Reaganomics" — the Reagan Administration's economic policy based on tax cuts, business deregulation, and reductions in federal spending — and extending to the Clinton Administration's restructuring of welfare, the United States underwent a period of intensified privatization.66 Government policymakers coupled this neoliberal dismantling of the social safety net with intensified carceral intervention in poor communities of color.67 The consolidation of corporate power in recent decades depended not only on increased market-based privatization but also on increased punitive control of marginalized people who are excluded from the market economy because of racism.68 In sum, beginning in the 1960s, **U.S. policymakers** have **supported elites by intensifying carceral measures** in order **to address** the **social problems and quell** the **unrest generated by racial capitalism**.69 As Professor Dan Berger explains: "[**C**]**arceral expansion is** a form of political as well as economic **repression aimed at managing worklessness among the Black and Brown** (and increasingly white) **working class for whom global capitalism has limited need**."70 Thus, the relationship between racial capitalism and carceral punishment extends far beyond extracting profits from prison labor and private prisons, which does not characterize most of the prison industrial complex's operation.71 Rather, **prisons are the state's response to social crises produced by racial capitalism, such as unemployment and** unhealthy **segregated housing, and to** the **rebellions waged by marginalized people** who suffer most from these conditions.72 **The** physical **expansion of prisons is facilitated by criminalizing subordinated people so that caging them seems ordinary and natural**. Indeed, Critical Resistance co-founder Provost Julia Chinyere Oparah identifies as a key "logic of incarceration"73 the "racialization of crime" **so that crime is associated with dangerous and violent "black, indigenous, immigrant, or other minority populations**."74 Longstanding **stereotypes of black criminality are marshalled to turn everyday black life into criminal activities.**75 For example, **order-maintenance policing relies on** an association between the **identification of lawless people and racist notions of criminality to legitimize routin**e police **harassment and arrest** of black people.76 Likewise, during the "crack epidemic" of the Reagan era, **the** longstanding **devaluation of black motherhood was crucial to converting the "public health problem of drug use** during pregnancy **into a crime, addressed by** [**arresting and imprisoning**] **black women** rather than providing them with needed health care."77 Not only does the prison industrial complex serve as the state's solution to economic and social problems, but carceral approaches to these problems are also ever more common beyond prisons. I described this carceral expansion in a recent issue of this law review: All institutions in the United States increasingly address social inequality by punishing the communities that are most marginalized by it. Systems that ostensibly exist to serve people's needs — health care, education, and public housing, as well as public assistance and child welfare — have become behavior modification programs that regulate the people who rely on them, and these systems resort to a variety of punitive measures to enforce compliance.78 Public welfare programs are increasingly entangled with criminal law enforcement.79 People who receive Medicaid or

Temporary Assistance to Needy Families are subjected to intense surveillance by government agents as a condition of obtaining aid — and if they refuse aid, they are further subjected to child protective services investigations.80 Homelessness, public school misbehavior, and health problems are all criminalized by calling police officers as the first responders to deal with problems that arise in these contexts.81 The prison, foster care, and welfare systems operate together to form a cohesive punitive apparatus that punishes black mothers in particular.82 At the same time, repressive fetal protection laws and abortion restrictions coalesce to criminalize pregnancy itself;83 immigration law makes entering the United States without documentation a crime;84 and militarized border security results in deportation, family separation, and detention in prisons and squalid concentration camps.85 As carceral logics take over ever-expanding aspects of our society, so does the cruelty that government agents visit on people who are the most vulnerable to state surveillance and confinement. Torture has been accepted as a technique of racialized carceral control.86 The nation's public schools, prisons, detention centers, and hospitals serving poor people of color are marked not only by stark inequalities but also by dehumanizing bodily neglect and abuse committed by police officers and guards.87 Further, as Rodríguez explains, "incarceration as a logic and method of dominance is not reducible to the particular institutional form of jails, prisons, detention centers, and other such brick-and-mortar incarcerating facilities."88 Although prison abolitionists work to end prisons, their ultimate aspiration is to end carceral society — a society that is governed by a logic of incarceration. B. Abolition Praxis: Past, Present, Future Prison abolition theory has past, present, and future aspects, each of which animates activism simultaneously.89 **Prison abolitionists** look back to history to **trace the roots of today's carceral state to the racial order established by slavery and** look forward to **imagine a society without carceral punishment**.90 Both are critical motivations for abolishing the prison industrial complex. The case for abolition that is grounded in history and politics provides a compelling framework for understanding the need to eradicate the entire carceral punishment system as well as for identifying strategies to accomplish that goal. Indeed, **we can see the extreme cruelty and degradation that characterize today's penitentiaries, police forces, and executions as the inevitable result of a racially subordinating system**.91 1. Slavery Origins. — Many **prison abolitionists** have **found the roots of today's criminal punishment system in the institution of chattel slavery**.92 Even before I thought of myself as a prison abolitionist, my analysis of current criminal justice issues consistently led me to a discussion of slavery. Whether interrogating racism in the prosecution of black women for pregnancy-related crimes,93 **the disproportionately high placement of black children in foster care**,94 **the high rates of incarceration in black neighborhoods**,95 **police torture of black suspects**,96 **or gang-loitering policing**,97 I found it essential to understand **these practice**s as **originat**ing **in the enslavement of black people.** That analysis helped me to see how **these** practices **emanated from a carceral system that continues to perpetuate black people's subjugated status and, ultimately, to conclude the carceral system cannot be fixed — it must be abolished.**98 **The pillars of the U.S. criminal** punishment **system** – **police, prisons, and capital punishment** – all **have roots in racialized chattel slavery**.99 **After Emancipation, criminal control functioned as a means of legally restricting the freedoms of black people** and preserving whites' dominant status.100 Through these institutions, **law enforcement continued to implement the logic of slavery** – **which regarded black people as inherently enslaveable with no claim to legal rights**101 — to keep them in their place in the racial capitalist hierarchy.102 (a) Police. — **The first police forces in the United States were slave patrols**.103 Beginning in the early 1700s, **southern white me**n formed armed groups that entered slaveholding properties and **roamed public roads to ensure that enslaved people did not escape or rebel** against their enslavers.104 Slave patrols monitored enslaved people to prevent them from engaging in forbidden activities such as "harboring weapons or fugitives, conducting meetings, or learning to read or write."105 They also used the threat of violence to intimidate enslaved workers into obedience to enslavers.106 Enslaved people who were caught planning resistance, running away, or defying the slave codes enacted to restrict them were subjected to violent punishments such as beatings, whippings, mutilation, and forced sale away from their families.107 **Modern police forces are descendants of armed urban patrols** like the Charleston City Guard and Watch, which was established as early as 1783 to constantly monitor and inspect both enslaved and free black residents to "minimize Negro fraternizing and, more especially, **to prevent the growth of an organized colored community**."108 Enslaved people who worked on plantations and farms were under the "immediate control and discipline of their respective owners," who were often aided by hired overseers.109 The overseers' job was to enforce enslaved workers' total subjugation to enslavers by violently reprimanding perceived disobedience and failures to meet productivity quotas.110 **The violence overseers inflicted on enslaved workers reflected a fundamental aspect of carceral punishment that survives today**: the purpose of **punishing black people** was **to reinforce their subjugation to white domination**. **Hence**, enslaved people were punished for committing offenses defined as insubordination to enslavers, but were also **punished regardless of** their **culpability for an offense**. The celebrated abolitionist Frederick Douglass, who escaped slavery in Maryland in 1838, 111 emphasizes this point in his portrayal of the overseers he encountered while in captivity. His description of Austin Gore, an overseer who served Colonel Edward Lloyd on a plantation where Douglass spent two years of his childhood, is especially illuminating.112 Gore was an ideal overseer because he "was one of those who could torture the slightest look, word, or gesture, on the part of the slave, into impudence, and would treat it accordingly."113 Douglass elaborates: There must be no answering back to him; no explanation was allowed a slave, showing himself to have been wrongfully accused. Mr. Gore acted fully up to the maxim laid down by slaveholders, — "It is better that a dozen slaves suffer under the lash, than that the overseer should be convicted, in the presence of the slaves, of having been at fault." No matter how innocent a slave might be — it availed him nothing, when accused by Mr. Gore of any misdemeanor. To be accused was to be convicted, and to be convicted was to be punished; the one always following the other with immutable certainty.114 An enslaved man named Demby learned the price of refusing to submit to Gore's rule.115 When Demby plunged into a creek to escape being beaten, Gore shot him dead with a musket.116 Although slave law occasionally permitted the application of criminal homicide to convict slaveholders who killed their slaves, it exonerated those who killed slaves who resisted the slaveholders' lawful authority.117 A "hostile attitude" or resistance to corporal punishment on the part of enslaved people like Demby provided legal justification for killing them.118 The status of enslaved Africans as the property of their white enslavers meant that, from the enslavers' perspective, black people were a perpetual threat to white people's property — a threat seen as so great it necessitated employing armed forces to maintain order among the enslaved.119 In the aftermath of Emancipation, when slaveholders' human property was no longer protected by slave law, "a new set of innovations and regulation[s] had to emerge, again under the rubric of policing."120 Like overseers and slave patrols, Jim Crow police and private citizens who abetted them used terror primarily to enforce racial subjugation, not to apprehend people culpable for crimes.121 Take, for example, coercive interrogation techniques, now known as "the third degree," that have become a staple of modern policing.122 The first stage of lynching, typically carried out with the

participation or sanction of the police, was often “extract[ing] a confession by whipping or burning the accused.”123 Prior to Miranda v. Arizona, 124 which barred the admissibility of presumptively coerced confessions, southern police routinely used torture to force blacks to confess to crimes.125 For example, in Brown v. Mississippi, 126 three black tenant farmers were convicted for murdering a white planter; the sole evidence before the jury consisted of their confessions.127 Those confessions were obtained through police torture, including the repeated hanging and whipping of one of the defendants until he confessed to a dictated statement.128 The other two defendants’ confessions were similarly coerced and tailored.129 When overturning the convictions, the Supreme Court observed that “the signs of the rope on [one defendant’s] neck were plainly visible during the so-called trial.”130 Even after the civil rights movement, “[p]olice torture of suspects continues to be a tolerated means of confirming the presumed criminality of blacks.”131 For example, from the 1970s to the 1990s, white police officers in Chicago engaged in systematic torture of black residents.132 Under the command of Lieutenant Jon Burge, police coerced dozens of confessions from suspects by beating them, burning them with radiators and cigarettes, putting guns in their mouths, placing plastic bags over their heads, and delivering electric shocks to their ears, noses, fingers, and genitals.133 Burge’s reign of torture was known and condoned by police officers, the State’s Attorney’s office, judges, and doctors at Cook County Hospital.134 Racialized terror that bridged slave patrols, lynchings, and police whippings remained a feature of policing in the post– Civil Rights Era criminal punishment system.135 **Police also serve as an arm of the racial capitalist state by controlling black and other marginalized communities** through everyday physical intimidation and b**y funneling those they arrest into jails, prisons, and detention centers**.136 **Numerous studie**s conducted throughout the nation **demonstrate** that **police engage in rampant racial profiling**.137 **The increasing militarization of police forces accentuates their role as an occupying force in communities of color and on Indian reservations**.138 Police harassment and violence against residents in poor, nonwhite neighborhoods is routine.139 **Police “brutality” is a misnomer because it suggests police violence is exceptional.** Mariame Kaba, the founding director of Project NIA,140 explains she “retired the term ‘police brutality’” because “[i]t is meaningless, as **violence is inherent to policing**.”141 Similarly, Professor Micol Seigel calls policing “violence work.”142 **Police normally treat** residents in **communities of color in an aggressive fashion – shouting commands, handcuffing even children, throwing people to the ground, and tasing, beating, and kicking them**.143 **For young men of color**, the risk of **being killed by the police** is shockingly high and police use of force **is among the leading causes of death.**144 **Black women, women of color, and queer women are especially vulnerable to gendered forms of sexual violence at the hands of police**.145 **These** violent tactics **are not in response to violent crime**. Indeed, **police** officers actually **spend a small fraction of time stopping violent offenders**.146 **Most** of the time, **officers are engaged in patrolling ordinary people** who are simply going about their everyday activities, **generating high-volume arrests for petty infractions.147** Like the Black Codes and the slave codes before them, order maintenance policies give police wide discretion to control black people’s presence on public streets.148 **Law enforcement continues to enforce the logic of slave patrols**, to **view black people as a threat to the security of propertied whites, and** to **contain the possibility of black rebellion**.149 To Professor Fred Moten, police officers killed Michael Brown and Eric Garner because these black men represented “insurgent black life,” which “constituted a threat to the order that [police] represent[] and . . . [are] sworn to protect.”150 There are numerous examples of state officials dispatching police to silence black protest, including the assassination of Black Panther Party leader Fred Hampton by the Chicago Police Department and the military-style assault on protesters in Ferguson, Missouri, after the killing of Michael Brown.151 The recent spate of “BBQ Beckys” -- white residents who call 911 on black men, women, and children engaged in harmless public activities like barbequing in a park or selling bottled water on a sidewalk152 -- spotlights the role of police to keep black people in their place for the benefit of white citizens.153 Abolitionists also include state surveillance -- another descendant of the slave patrols154 -- as a major component of carceral punishment.155 Today’s computerized predictive policing is a high-tech version of vague loitering and vagrancy laws, which historically gave “license to police officers to arrest people purely on the basis of race-based suspicion’ [by] categorically identifying black people as lawless apart from their criminal conduct.”156 I previously described the situation in this law review as follows: Law enforcement agencies nationwide collect and store vast amounts of data about past crimes, analyze these data using mathematical algorithms to predict future criminal activity, and incorporate these forecasts in their strategies for policing individuals, groups, and neighborhoods. Judges use big-data predictive analytics to inform their decisions about pretrial detention, bail, sentencing, and parole. Automated risk assessments help to determine whether or not defendants go to prison, the type of facility to which they are assigned, how long they are incarcerated, and the conditions of their release.157 Some proponents of artificial intelligence claim these technologies help people make more objective decisions that are not tainted by human biases.158 However, predictive algorithms have been revealed to “disproportionately identify African Americans as likely to commit crimes in the future.”159 This is because “[c]rime data collection reflects discriminatory policing. . . . [P]olice routinely bias data collection against black residents by patrolling their neighborhoods with far greater intensity than white neighborhoods.”160 Risk assessment models that import institutionally biased data become a “self-fulfilling feedback loop’ where the prediction ensures future detection.161 The rise of computerized risk assessments in the carceral punishment system reinforces the detachment of punishment from culpability and furthers the criminalization of whole communities. Computerized predictions identify people for government agencies to regulate from the moment of birth, without any regard to their actual responsibility for causing social harm: police gang databases have included toddlers.162 Thus, the state uses artificial intelligence and predictive technologies to reproduce existing inequities while creating new modes of carceral control and foreclosing imagination of a more democratic future.163 (b) Prisons. — During the slavery era, prison populations were composed almost exclusively of white people.164 When slavery was abolished, the demographics of prisons shifted dramatically.165 Southern law enforcement began to charge formerly enslaved African Americans with crimes and incarcerate them in growing numbers.166 Imprisonment and the convict leasing system maintained black people’s status as a disenfranchised and involuntary labor force for whites.167 In its 1871 decision Ruffin v. Commonwealth, 168 the Virginia Supreme Court of Appeals affirmed the similar status of slave and prisoner when it ruled that an incarcerated convict was “for the time being the slave of the State. He is civiliter mortuus; and his estate, if he has any, is administered like that of a dead man.”169 Likewise, black people convicted of petty offenses were “sold as punishment for crime” at public auctions as if they were still enslaved.170 A key assertion of prison abolition theory is that criminalization of black people following Emancipation served to maintain the racial capitalist system that had been built on slavery.171 In an interview published in 2005, Professor Angela Y. Davis explained her ideas on the link between slavery and prison abolition: Now I am trying to think about the ways that the prison reproduces forms of racism based on the traces of slavery that can still be discovered within the contemporary criminal justice system. There is, I believe, a clear relationship between the rise of the prison-industrial-complex in the era of global capitalism and the persistence of structures in the punishment system that originated with slavery.172 In other words, the criminalization and imprisonment of black people following the Civil War are a critical link in the historical chain that ties the prison industrial complex to slavery. Criminal punishment was a chief way the southern states nullified the Reconstruction Amendments, reinstated the white power regime, and made free blacks vulnerable to labor exploitation and disenfranchisement. Following the formal abolition of slavery, southern states targeted black men, women, and children for imprisonment by passing criminal laws known as Black Codes, modeled after the slave codes, which prohibited their freedom of movement, contract, and family life.173 Between 1865 and 1866, legislatures “enacted harsh vagrancy laws, apprenticeship laws, criminal penalties for breach of contract, and extreme punishments for blacks, all in an effort to control black labor.”174 Black people who were out of work or simply present in public without adequate reason were routinely arrested for vagrancy, giving white officials license to jail them.175 Blacks were also arrested and given long sentences for petty offenses that whites engaged in without consequence. Writing in 1893, journalist and activist Ida B. Wells gave the example of twelve black men who were imprisoned in South Carolina “on no other finding but a misdemeanor commonly atoned for by a fine of a few dollars, and which thousands of the state’s inhabitants [white] are constantly committing with impunity -- the carrying of concealed weapons.”176 As the Court’s Timbs v. Indiana177 decision last Term discussed, Black Codes also employed economic sanctions to consign blacks to a form of debt slavery that coerced them into onerous involuntary labor.178 In the decades after Reconstruction, fines kept many formerly enslaved people in forced servitude to white landowners.179 Activist Mary Church Terrell warned in 1907 that the peonage system kept black people perpetually enslaved. “[T]here are scores, hundreds perhaps, of colored men in the South to-day who are vainly trying to repay fines and sentences imposed upon them five, six, or even ten years ago,” she wrote.180 By compelling emancipated blacks to work for whites in payment of debts on threat of incarceration, the law substituted the unconstitutional system of chattel slavery with a legal system of peonage.181 Also adjoined to these forms of legally enforced servitude was the practice of systematically forcing black prisoners to toil on chain gangs and leasing black convicts as labor to planters and companies. By making free black people criminals, white authorities could compel them to work against their will in a system that not only constituted “slavery by another name,”182 but also was so violent that it was “worse than slavery.”183 Between 1865 and 1880, every former Confederate state except Virginia established a system of leasing large numbers of black prisoners to railroads, coal mines, and other industries that were rebuilding infrastructures devastated by the Civil War.184 Private lessees had complete custody and control of prisoners and were motivated to maximize their profits by extracting as much labor as possible with little incentive to preserve prisoners’ welfare or lives.185 The result was rampant punishment, torture, and killing of prisoners with complete impunity.186 State exploitation of prison labor reinforced a gendered and sexualized form of white domination of black women.187 Black women were not protected by Victorian norms of femininity, which shielded most white women from the degradation of carceral violence and forced labor.188 To the contrary, black women were far more likely than white women to be arrested for violating racialized gender standards by engaging in behavior deemed unfeminine by public authorities.189 The wildly disparate treatment of white women and black women arrested for similar crimes is mind-boggling: for example, “[b]etween 1908 and 1938, only four white women were ever sentenced to the chain gang in Georgia, compared with almost two thousand Black women.”190 Recent investigations by Professors Sarah Haley and Talitha LeFlouria provide critical documentation of the previously unacknowledged extent of black women’s involvement in convict leasing, chain gangs, and forced domestic labor, dramatically expanding our understanding of antiblack violence and carceral control during the Jim Crow era.191 Haley frames the common practice of chain-gang overseers whipping black female convict laborers as “sexualized gender- and racespecific rituals of violence mark[ing] the convict camp as a pornographic site” and producing a spectacle of gendered racial terror.192 Newspapers also routinely vilified black women accused of crimes.193 Black women resisted in multiple ways, including as organized club women, blues lyricists, and incarcerated petitioners and saboteurs.194 Violence against enslaved and incarcerated black women was essential to preserving the racial capitalist state.195 This state, in turn, constructed an ideology of black female depravity and deviance,196 which undergirds black women’s higher rates of incarceration to this day.197 I have emphasized how during the slavery and Jim Crow eras, state agents meted out punishment to black people without regard to their guilt or innocence. Criminalizing black people entailed both defining crimes so as to make black people’s harmless, everyday activities legally punishable and punishing black people regardless of their culpability for crimes. Thus, for more than a century, vague vagrancy and antiloitering ordinances have given police officers license to arrest black people for standing in public streets -- with no attention to whether or not their presence caused any harm to anyone.198 The purpose of carceral punishment was to maintain a racial capitalist order rather than to redress social harms -- not to give black people what they deserved, but to keep them in their place. Today, the state still aims to control populations rather than judge individual guilt or innocence, to “manage socialinequalities” rather than remedy them.199 A large body of social scienceliterature explains criminal punishment as a form of social control of marginalized people.200 Professor Issa Kohler-Hausmann, for example, argues that New York City criminal courts that handle misdemeanors “have largely abandoned the adjudicative model of criminal law administration -- concerned with deciding guilt and punishment in specific cases” -- and instead follow a “managerial model -- concerned with managing people through engagement with the criminal justice system over time.”201 By marking people for involvement in “misdemeanorland,” forcing them to engage in burdensome procedural hassles, and requiring them to engage in disciplinary activities,202 this gargantuan branch of the criminal punishment system exerts social control over the city’s black communities, with no real regard for residents’ culpability for crime. The explosion in imprisonment of African Americans at the end of the twentieth century represents the continuation of trends that originated even before the century’s start. In describing the rise of convict leasing, W.E.B. Du Bois notes a fundamental feature of post-slavery carceral punishment: the disconnect between the rise of prisons and crime rates. “The whole criminal system came to be used as a method of keeping Negroes at work and intimidating them,” Du Bois writes in Black Reconstruction. 203 “Consequently there began to be a demand of jails and penitentiaries beyond the natural demand due to the rise in crime. “204 In a complement to Du Bois’s observations about the economic motivations for incarcerating black people, Professor Alex Lichtenstein argues that social and political forces also produce higher incarceration rates: Stable incarceration rates appear in periods of white racial hegemony and a stable racial order, such as that secured by slavery in the first half of the 19th century or Jim Crow during the first half of the 20th. Correspondingly, sudden rises in incarceration, especially of minorities, tend to appear one generation after this racial hegemony has been cracked, as in the first and second Reconstructions of emancipation and civil rights.205 Thus, the skyrocketing prison population in the second half of the twentieth century cannot be explained solely as a response to increases in crime.206 Prison expansion instead reflects a response to the needs of rising neoliberal racial capitalism that addresses growing socioeconomic inequality with punitive measures.207 The disconnect between social harm and carceral punishment is evident not only in state regulation of marginalized people but also in the immunity granted to state agents who commit social harms.208 For reasons both legal and political, police,209 prosecutors,210 and corporate executives211 generally avoid criminal liability even for inflicting serious harm. As I have explored previously, “[c]urrent legal doctrine condones police violence and makes individual acts of abuse -- even homicides -- appear isolated, aberrational, and acceptable rather than part of a systematic pattern of official violence.”212 Prosecutors who have used unconstitutional methods for obtaining wrongful convictions have not been criminally prosecuted themselves.213 Few corporate executives have been charged with crimes for actions that caused billions of dollars in losses during the financial crisis of 2008. 214 Moreover, government officials responsible for devastating environmental harms, such as lead-poisoned water in Flint, Michigan, typically escape criminal prosecution.215 In sum, criminal law treats prisons as essential to prevent or redress crimes committed by economically and racially marginalized people but unnecessary to address even greater social harms inflicted by the wealthy and powerful. The criminal punishment system extends its subordinating impact beyond prison walls by imposing collateral penalties that deny critical rights and resources to formerly incarcerated people.216 Felon disenfranchisement laws, for example, restrict incarcerated people’s ability to vote during their sentences and after they are released,217 and significantly dilute black political power.218 The stigma of conviction, imposition of fines and fees, and exclusion from public benefits inflict a nearly insurmountable burden on people caught in the carceral web.219 The association between slavery and prison makes these deprivations seem natural -- despite the injustice of punishing people beyond the sentence they served and in a way that bears no relation to the crimes they committed. Just as it seemed unremarkable that enslaved people could not vote because they were not citizens, so today many people think: “Of course prisoners aren’t supposed to vote. They aren’t really citizens any more.”220 Thus, the inherent denial of citizenship rights to enslaved people is mirrored in the unquestioned denial of those rights to incarcerated people. (c) Death Penalty. — Capital punishment, like police and prisons, has its roots in slavery and the preservation of white supremacy.221 State executions have persisted in the United States because they function similarly to the extreme punishments inflicted on enslaved people and the state-sanctioned lynchings that replaced these punishments after Emancipation.222 As Davis points out, “the institution of slavery served as a receptacle for those forms of punishment considered to be too uncivilized to be inflicted on white citizens within a democratic society.”223 Historically, race-based criminal codes imposed the death penalty on enslaved individuals for many more offenses than they did for whites.224 Blacks were “commonly hanged” for “rape, slave revolt, attempted murder, burglary, and insurrection.”225 Moreover, condemned slaves were subjected to extra cruelty through what Professor Stuart Banner calls “super-capital punishment” -- burning them alive at the stake.226 Executions were also made especially degrading by displaying slaves’ severed heads on poles in front of the courthouse, or allowing their corpses to decompose in public view.227 After Emancipation, white southerners began ritualistically kidnapping and killing black people to publicly reinforce white supremacy.228 In 1893, Ida B. Wells observed that “the Convict Lease System and Lynch Law are twin infamies which flourish hand in hand in many of the United States.”229 Public torture proclaimed white dominion overblack people, repudiated blacks’ citizenship status,230 and “literally reinstat[ed] black bodies as the property of whites that could be chopped to pieces for their entertainment.”231 Many lynchings were of black men accused of breaching racialized sexual boundaries by raping or disrespecting white women.232 However, the majority of terroristic murders between 1890 and 1920 were intended to facilitate white theft of black people’s property.233 As Frederick Douglass observed in 1893, displaying insolence was sufficient excuse for lethal victimization: The crime of insolence for which the Negro was formerly killed and for which his killing was justified, is as easily pleaded in excuse now, as it was in the old time and what is worse, it is sufficient to make the charge of insolence to provoke the knife or bullet. This done, it is only necessary to say in the newspapers, that this dead Negro was impudent and about to raise an insurrection and kill all the white people, or that a white woman was insulted by a Negro, to lull the conscience of the north into indifference and reconcile its people to such murder. No proof of guilt is required. It is enough to accuse, to condemn and punish the accused with death. 234 Here, Douglass links his childhood observations of overseers’ punishment of enslaved blacks to the lynchings of emancipated blacks occurring after the Civil War. The same logic of slavery that called for punishment of black insubordination to enforce white supremacy, regardless of culpability for a crime, was revived in lynching and persists in the modern prison industrial complex. The hundreds of “public torture lynchings” that were a feature of southern society until almost 1940235 call into question the dominant narrative that as civilizations have evolved, punishments have become more humane.236 Instead, southern whites sent a message through medieval forms of punishment: [A]rchaic forms of execution involving torture, burning, and mutilation . . . show[ed] that “regular justice” was “too dignified” for black offenders. The public torture of blacks accused of offending the racial order demonstrated whites’ unlimited power and blacks’ utter worthlessness. This nation’s rights, liberties, and justice were meant for white people only; blacks meant nothing before the law.237 Lynchings were the terrorist counterpart to state-supported debt peonage, convict leasing, disenfranchisement, and segregation laws that kept blacks subject to white domination.238 Lynching black people was not an exception to the law; it was part of the administration of justice and the larger system of legally sanctioned racial control.239 In the mid-twentieth century, the practice of lynching black people was replaced by the practice of subjecting them to the death penalty.240 These legally sanctioned hangings, which deliberately resembled lynchings of the past,241 purported to punish black men for raping white women.242 New methods of execution were also implemented: in the 1950s in Mississippi, crowds of white onlookers gathered at southern courthouses to witness the electrocutions of black men in portable electric chairs that traveled from town to town.243 After one such killing in Mississippi in 1951, the crowd on the lawn outside the courthouse “burst into cheers, then crushed forward in an effort to glimpse the corpse as it was removed from the building.”244 There was a smooth transition from lynching to state execution because “[a] culture that carried out so much public unofficial capital punishment could hardly grow squeamish about the official variety.”245 Capital punishment continues to function as it did in the slavery and Jim Crow eras to reinforce the subordinated status of black people.246 Today, states primarily use lethal injection in an attempt to make capital punishment “more palatable,”247 on the logic that this method bears less resemblance to lynching than electrocution or hanging.248 The fact that lethal injection carries its own risks of inflicting pain249 has not undermined its constitutional status: last Term, in Bucklew v. Precythe, 250 a divided Court was unmoved by evidence that Missouri’s lethal injection protocol would inflict cruel and unusual punishment on a prisoner, reasoning that “the Eighth Amendment does not guarantee . . . a painless death.”251 Although Bucklew was white, the Court’s decision upheld lethal state violence that is disproportionately imposed on black men accused of killing white people.252 Like the torture rituals of lynching, the death penalty survives in modern America as an uncivilized form of punishment because it continues to represent white domination over black people. 2. **Not a Malfunction**. — A first step to demonstrating the **political illegitimacy of today’s carceral punishment system is finding its origins in** the institution of **slavery**. A second step is understanding that **prisons, police, and the death penalty function to subordinate black people and maintain a racial capitalist regime**. **Efforts to fix the criminal punishment system to make**

it fairer or more inclusive are inadequate or even harmful because the system's repressive outcomes don't result from any systemic malfunction.253 Rather, **the prison industrial complex works** effectively **to contain and control black communities as a result of its structural design**. Therefore, **reforms that correct problems perceived as aberrational flaws in the system only help to legitimize and strengthen its operation**. Indeed, **reforming prisons results in more prisons**.254 3. A Society Without Prisons. — **An essential component of prison abolitionist theory is** the principle that eliminating current carceral practices must occur alongside creating a radically different society that has no need for them.255 Prison abolitionists frequently define their work as consisting of two simultaneous activities, one destructive and the other creative. "It's **the complete and utter dismantling of prisons, policing, and surveillance** as they currently exist within our culture," Kaba explains.256 "And it's also the building up of new ways of . . . relating with each other."257 This duality is essential to abolition both because prisons will only cease to exist when social, economic, and political conditions eliminate the need for them and because installing radical democracy is crucial to preventing another white backlash and reincarnation of slavery-like institutions in response to the abolition of current ones.258 Moreover, the success of nonpunitive approaches developed by abolitionists for addressing human needs and social problems can be a compelling reason to abandon current dehumanizing and ineffective practices.259 Above all, it is their vision of a world without prisons that gives abolitionists their lodestar. **Abolitionists are working toward a society where prisons are inconceivable** — a world where its inhabitants "would laugh off the outrageous idea of putting people into cages, **thinking such actions as morally perverse and fatally counterproductive**."260 Because the current carceral system is rooted in the logic of slavery, abolitionists must look to a radically different logic of human relations to guide their activism.261 That guiding philosophy cannot be invented theoretically, but must emerge from the practice of collectively building communities that have no need for prisons. Citing Du Bois's critique of the post-Emancipation period in Black Reconstruction, Davis attributes the rise of prisons to the failure to institute a revolutionary "abolition democracy" that incorporated freed African Americans into the social order.262 Slavery could not be truly and comprehensively abolished without economic redistribution, equal educational access, and voting rights. In Davis's words, "DuBois . . . argues that a host of democratic institutions are needed to fully achieve abolition — thus abolition democracy."263 **Understanding that prisons are not primarily designed to protect people from crime, but rather to address human needs and social problems with punitive measures, opens the possibility that we can eradicate prisons by addressing these needs and problems in radically different ways**.264

L – Death Penalty

Justifying death penalty abolition with appeals to the amount of money saved is *not* abolition– it merely reroutes resources to the PIC while continuing state violence

Dilts '15 [(Andrew, Professor of Political Theory at Loyola Maramount) "Death Penalty "Abolition" in Neoliberal Times: The SAFE California Act and the Nexus of Savings and Security," from Guenther, Lisa, and Scott Zeman. *Death and Other Penalties : Philosophy in a Time of Mass Incarceration*, edited by Geoffrey Adelsberg, Fordham University Press, 2015, vik]

[Note: Prop 34 refers to a CA state propositions to abolish the death penalty]

The first section of this chapter details Prop. 34, reading the text of the SAFE California Act as an instance of a "neoliberal bargain," trading in the death penalty for LWOP in order to secure greater security through savings. The following section focuses on the key condition of possibility of this bargain—the commensurability of "death" for "life"—and shows how this condition functions through a productive contradiction or aporia between these two terms, ultimately displacing the lives of those being "exchanged." The next section shows how **the language of neoliberalism informs both criminological and popular conceptions of permanently incarcerable persons as nevertheless monstrous and incorrigible offenders who are also fully responsible subjects, allowing for neoliberalism to coexist with "earlier" modes of power.** Finally, the last section returns to the question of what we mean by abolition itself, its potential limits, and the necessary task of constant self-refl ection and transformation we face as a result. **The Neoliberal Bargain of Security through Savings The "abolition" of California's death penalty** statute proposed in the SAFE California Act had four key legislative components. First, it would have **eliminated the punishment of "death" as a sentencing option and would have replaced any "death" sentence in the state's criminal code with the sentence of "imprisonment in the state prison for life without the possibility of parole**." Second, any prisoner found guilty of fi rst-degree murder and sentenced to imprisonment (of any duration) would be required to "work within a high-security prison as many hours of faithful labor in each day and every day during his or her term of imprisonment" with wages subject to deduction for victim restoration funds. Third, it would have established a $100 million fund for law enforcement, specifi cally for the investigation of homicide and sex offense cases. Lastly, it would have automatically converted all standing death penalty sentences to a sentence of LWOP, effectively prohibiting all pending executions in the state while also suspending all litigation by current death row inmates. As with most ballot measures, the text of the provision included preliminary statements of "findings and declarations" and "purpose and intent," spelling out the justifi cations for the proposed legal changes. **These sections lay out the rhetorical argument for the legislative changes, tightly linking together the discourses of public safety and fi scal austerity. More than half of these statements make claims about both the direct fi scal costs of the death penalty and the indirect costs imposed by trade-offs being made in terms of law enforcement.** Directly, the provision claims that in **"replacing the death penalty with life in prison without the possibility of parole, California taxpayers would save well over $100 million every year," and "$1 billion in five years without releasing a single prisoner."** The majority of these savings would be realized by the wholesale elimination of the appeals process available to death row inmates and additionally through savings in prison housing (e.g., the proponents note that former death row inmates would no longer receive "private" cells).16 In addition to these direct costs, **there are indirect opportunity "costs" of the death penalty in the form of unsolved rapes and murders. "Murders and rapists," the fi rst fi nding declares, "need to be stopped, brought to jus tice, and punished. . . . Our limited law enforcement resources should be used to solve more crimes, to get more criminals off our streets, and to protect our families." The second fi nding echoes this claim: "Police, sheriffs, and district attorneys now lack the funding they need** to quickly process evidence in rape and murder cases . . **. Law enforcement should have the resources needed for full enforcement of the law**. By solving more rape and murder cases and bringing more criminals to justice, we keep our families and communities safer." Throughout the relatively short text of the bill**, its authors insist that these "killers and rapists" go free because the death penalty saps resources away from investigating those crimes. By saving money through repealing the "costly" and "ineffective" death penalty, the state will "free up law enforcement resources to keep our families safe." If there is a moral argument in the bill, it is made in classically utilitarian terms of cost-benefi t analysis: the positive good of public safety (under conditions of limited resources and fi scal austerity) requires the abolition of the death penalty.** Absent such limited fi scal conditions, the bill offers only two other reasons to end the death penalty: (1) to reduce the "risk" of executing an innocent person and (2) to offer relief to families that must endure "the more than 25-year-long process of review in death penalty cases." Yet even these claims are framed in actuarial language of risk and economistic concerns about ineffi ciency, respectively. Moreover, these remaining two justifi cations are arguably in tension, given that one way to reduce the "risk" of a wrongful execution is through an extensive review and appeals process in capital cases. The rhetoric of the public campaign in support of Prop. 34 was broader but still echoed this central argument. Television, print, and web advertising relied heavily on personal narratives to convey the message of increased public safety through fi scal savings. Television and radio ads in particular featured the family members of unsolved murder victims and law enforcement offi cials (including former wardens, district attorneys, judges, and police offi cers, all attesting to the fi scal costs of the death penalty litigation at the expense of other investigations). The campaign's widest-reaching advertisements highlighted the case of Franky Carrillo, who was wrongly convicted of murder at age sixteen and served twenty years before fi nally being exonerated and released.17 In one advertisement, Carrillo looks into the camera and states: "Even today people make mistakes. In my case, it was false eyewitness testimony. A 'yes' on Prop. 34 means we will never execute an innocent person. Life without parole is justice that works for everyone. We can't afford to take chances; the costs are just too high."18 In just a few sentences, the Carrillo ad deftly frames questions of fallible judgment, corrupt police practices, and justice as questions of costs and risk. While the advertisement may not have proved effective at the ballot box, the Los Angeles Times directly pointed to the Carrillo ad in their endorsement of the ballot measure, writing, "[T]here is no knowing whether all 725 [death row inmates] . . . are guilty. That's why the appeals process is so long, burdensome and expensive, and it's why voters should end the risk that California will execute an innocent person."19 Other papers followed more closely to the script of safety through savings, such as the San Jose Mercury News' endorsement of Prop. 34, in which the editorial board wrote, "Never

mind moral arguments; the death penalty simply doesn't work. Since it was reinstated in 1978, California has spent $4 billion on just thirteen executions. We are no safer."20 This language very nearly echoed the words of one web ad released by the supporters, in which a former warden of San Quentin prison (where death row is housed) is heard speaking over a series of visuals of police lights, city streets, chain-link fencing, and a long, slow pan across a pile of $100 bills. Jeanne Woodford states, Working in criminal justice and understanding what really works, knowing that what makes us safer is solving crimes, . . . knowing that we have so many unsolved homicides and rapes in the State of California, and that local communities are having to take police off the streets, and rape kits still sit on shelves and aren't tested because some communities don't have the money to do that, knowing that when you use your criminal justice dollars in a much more strategic way, that's what makes us safer, that's really why I'm here and passionate about replacing the death penalty, because we can use our dollars and cents in a much more strategic way that improves criminal justice.21 Through the consistent linking of savings with security, the campaign for **Prop. 34 masterfully brought together a host of public policy concerns (unsolved rapes and murders, wrongful executions, fi scal austerity, etc.) into a single narrative, picking up on what has become the dominant neoliberal analysis of crime and punishment, which has effectively shifted the elite discourse (if not actual policy) toward "smart on crime" frameworks that rely on statistical analysis and economistic reasoning about policy**.22 **The "neoliberal bargain" of Prop. 34 promises both "security" and "savings" in the face of fi scal austerity, itself a broader manifestation of the meeting of the "penal" and "fi scal" crises in California.23 This instance of the "bargain" works through a series of trade-offs**. **The California voter is asked to give up punishing criminals with the death penalty in exchange for the punishment of life imprisonment without the possibility of parole. The "costs" of the repeal will more than pay for themselves in fi nancial terms, and the voters themselves will be "paid" with both material and symbolic benefi ts: increased spending on law enforcement, catching more "killers and rapists," forcing previously "idle" inmates to work, to share cells, punitively degrading their conditions and forcing them to be fully "responsible" laborers, and, fi nally, the promise that "no innocent person" will be killed by the state. There are moral claims present, but they become subsumed under the logic of exchange, transforming the "abolition" of capital punishment into a straightforward series of exchanges**. The puzzle, however, is how exactly this vision of "abolition" became possible. Or rather, **how could this series of exchanges be rightly called "abolitionist" at all when the replacement penalty, LWOP, promises and assures that inmates will die in jail?**

The focus on a meaningful distinction between death and LWOP is a neoliberal rhetorical trick. Prison sentences *are* death, and abolition only seeks to take away appellate rights from inmates, making it *less* likely people will be proven innocent, which turns case.

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" 'For life' or 'for death,' the two expressions are the same" **The heart of the "neoliberal bargain" is really a trading of "life" for "death," such that a life sentence without parole can be both substitutable for a death sentence and also qualitatively not a death sentence. This trade**, in turn, **depends on the fabrication and reification of a specific conception of the sentenced criminal as fundamentally incorrigible, monstrous, and yet also deeply responsible for their actions.** More narrowly, the legal condition of possibility for such a trade has been well established in the widespread adoption of LWOP sentences throughout the United States, beginning in the early 1970s and dramatically expanding since the 1990s.24 As such, the otherwise thorny question of proposing a replacement for the death penalty is relatively simple.25 The greater difficulty appears to be the question of popular support, as, even despite a general decline, the death penalty continues to have overall high levels of popular support in the United States and in California.26 For anti–death penalty activists in California, building high popular support for "abolition" is a political necessity because the existing death penalty statute was passed through a ballot initiative, and as such, that statute can only be altered in the same manner.27 This has been a diffi cult task given that support for capital punishment in the state has remained strong since the 1970s, with a steady two-thirds majority of voters supporting it. In November 2011, however, for the fi rst time, a plurality of voters polled stated a preference for LWOP over the death penalty.28 This opening in public opinion goes partway to explaining the strategy employed by the proponents of Prop. 34, in that they would need to capitalize not only on this shift in public opinion but also build a relatively broad coalition to do so. **That is, death penalty abolition appears to become more possible if it is reframed rhetorically and substantively as death penalty replacement.** Of course, the same poll that identifi ed this political opening also demonstrated that many voters did not prefer LWOP to "death," refusing their substitutability. **This position echoes the nearly cliché principle enshrined in U.S. jurisprudence and political activism that death is "different" and "unique" as a form of punishment**. This principle is so powerful and so taken for granted that it grounded both the Court's 1972 moratorium on the death penalty and its reinstatement four years later**. For pro– and anti– death penalty activists, it likewise grounds both abolitionist and retentionist positions: because "death" is a fi nal and absolute punishment**, abolitionists can claim it is outside the domain of civil society and "barbaric." And likewise, because it is fi nal, absolute, and represents the high-water mark of punishment, it serves as an ultimate punishment, and thus, as retentionists claim, it demonstrates the sanctity of human life in a way no other punishment can. At the same time, however, **what distinguishes life sentences without parole or executive clemency is that they,** as Jessica Henry succinctly notes**, "can only be fulfi lled by the death of the offender**."29 **As such, "life" sentences should rightly be called "death-in-prison" (DIP) sentences**.30 As Henry

argues, **LWOP in particular, and all "death-in-prison" sentences more generally, easily meet the Court's description in Furman of capital punishment as the "ultimate" punishment, distinct in its kind rather than its severity: it is an irrevocable punishment, rejecting the possibility of rehabilitation, and is an "absolute renunciation of all that is embodied in our concept of humanity."**[31] Or, as put by the proponents of Prop. 34, **LWOP** provides a "justice that works for everyone." It can do so, only insofar as it **is an "ultimate" punishment, taking the possibility of rehabilitation as a justifi cation off the table, marking the offender as a permanent prisoner,** fundamentally irredeemable.[32] But perhaps most bluntly, **LWOP is still effectively a kind of death sentence**. As put by Jeanne Woodford, the former death row warden at San Quentin quoted earlier, "We are spending millions and billions of dollars on a handful of inmates, when we could give them a sentence of life without the possibility of parole, which would ensure that they would die in prison."[33] At the same time, **for LWOP to count as "abolition," it must also be suffi ciently a different kind of punishment than death.** Tellingly, perhaps, **the case made for the SAFE California Act almost entirely avoided the question of its reality as a "death-in-prison" sentence and instead relies on an unarticulated yet seemingly "obvious" distinction between life and death, and between a "natural" death and an "execution**." This is in part because **the** majority of both popular and legal **debate over capital punishment has focused** specifi cally **on the execution itself, and its manner, to almost fetishistic levels**.[34] Legal debates in particular have focused almost entirely on getting execution "right" in constitutional terms. While both the method and meaning of "execution" have dramatically shifted over the course of U.S. history, **there remains a presumption that an execution is qualitatively distinct from a "natural" death, even when that death occurs in prison, or when death can be linked to the pernicious racial history of capital punishment, to its persistent racially disproportionate application, or to the striking historical similarities between state executions and extrajudicial lynchings in the United State**s.[35] **Yet because the public attention to the death penalty, its jurisprudence, and its activist attention have focused primarily on the moment, method, and meaning of execution, the adoption of LWOP and other DIP sentences effectively defl ects attention away from the moment of death, even though death is necessarily a part of the sentence**.[36] Being able to avoid a specifi c moment or technique of "execution," such sentences become capable of appeasing the moral concerns of many abolitionists and, at the very least, offer incremental satisfaction, even for those who are deeply troubled by LWOP sentences as well.[37] A side effect of this aporia between "life" and "death" has been that the same qualities that allow for the exchange of death in prison for death by execution also have allowed for their similarities to be selectively ignored. **Because "death is different," the Court requires strict review of offender qualifi cations, strict procedural guidelines, extended appeals processes, and additional standards of heightened scrutiny. The same procedural and substantive protections are simply not applied to DIP sentences at this time. This dramatic reduction of appellate rights was not at all lost on the supporters of Prop. 34 but rather was central to their "cost-savings" argument: the high cost of the death penalty stems primarily from the cost of litigating the appeals of inmates.** Nor has this act been lost on death row inmates themselves. **As explained by California death row inmate Correll Thomas: The authors of [Prop. 34] know that . . . the courthouse doors will be slammed forever. They are attempting to force us condemned men and women to accept another death penalty without any habeas corpus review of our sentences.** And the few condemned men and women who currently have representation today, unless they have the funds to retain counsel for representation, would automatically be sentenced to life without the possibility of parole and lose their representation.[38] Yet underlying these diffi culties is a deeper connection between the death penalty and all prison sentences: the seemingly overdetermined notion that death is different. This is not to say that death is not, in fact, a fi - nal or ultimate punishment but to resist the distinction from the other side and account for how the prison system itself functions through the specter of death. In 1972, at the same time that the Supreme Court of the United States was considering its temporary moratorium on the death penalty, France was embroiled in debate over its own death penalty, prompted in part by the high-profi le executions of two inmates at Clairvaux Prison in France. Writing in Le Nouvelle Observateur, Foucault responded to these executions with a scathing indictment not simply of the executions but of the entire French prison system. **"The whole penal system,"** he wrote, "**is essentially pointed toward and governed by death. A verdict of conviction does not lead, as people think, to a sentence of prison or death; if it prescribes prison, this is always with a possible added bonus: death**."[39] Foucault's involvement at the time with the Group d'information sur les prisons (GIP) had lead him, along with other intellectuals and activists, to question not only the practice of punishment in France but moreover the logics by which punishment through prisons operated. In a precursor to his genealogy of the prison in Discipline and Punish, Foucault argued in the pages of the French press that the question of the death penalty and its particular application necessarily implied that the prison be questioned as well. **" 'For life,' or 'for death**,' " Foucault writes, "**the two expressions mean the same thing. When a person is sure that he will never get out, what is there left to do? What else but to risk death to save one's life, to risk one's very life at the possible cost of death.**"[40] For Foucault, **separating the question of the death penalty from the question of the prison**—given the work that the GIP had been doing during the previous two years and a rash of inmate suicides that had occurred throughout 1972—**was to ignore the material conditions of confi nement that refused so neat a separation, a "choice," as it were, between "life" and "death."** The public interest in the death penalty sparked by the Clairvaux case in France came at the expense of attending to the brutality and the constant presence of death within the prison walls. "**Prison is not the alternative to death,"** Foucault writes, "**it carries death along with it. The same red thread runs through the whole length of that penal institution which is supposed to apply the law but which, in reality, suspends it**."[41]

L – IBT

Implicit Bias Training merely funnels money to police departments without confronting the structural dimensions of racism– this entrenches police violence in Black communities and turns case

Rosen '20 [(Charlotte Rosen is a doctoral candidate in History at Northwestern University researching the history of prisons and prisoner resistance in late-twentieth century Pennsylvania.) "Abolition or Bust: Liberal Police Reform as an Engine of Carceral Violence," Abusable Past, 06-25-2020, https://www.radicalhistoryreview.org/abusablepast/abolition-or-bust-liberal-police-reform-as-an-engine-of-carceral-violence/, vik]

Abolitionists resist efforts to merely reform police because, we argue, **police are inherently and structurally white supremacist institutions. With origins in slave patrols and in** municipal **police forces deployed to suppress worker strikes, the causes of racist police brutality are** not individual officers who hold particular racial biases, but rather **with an institution whose very intent and structure is to protect capital accumulation** through the differential grouping, control of, and violence against racially and economically marginalized populations. As Alex Vitale puts it in The End of Policing, **the purpose of police is for "managing and even producing inequality by suppressing social movements** and tightly managing…those on the losing end of economic and political arrangements" (32). **Even well-intended reforms**, abolitionists contend, **ultimately funnel more money and resources to police departments without altering the racist and violent structure of policing**. "**Reforms,**" then, ultimately **end up expanding police power**, thereby **enhancing rather than dismantling racist police violence**. Abolitionists note that **many police departments have gone through decades of "reform," and yet police are still murdering Black people with impunity** and largely facing little to no consequences. Indeed, they point out that many cities notorious for anti-Black police brutality have already enacted all or most of the #8cantwait reforms, suggesting the serious limitations of a reformist framework for ending racist police violence. But abolitionist activists and scholars can go beyond merely saying that police reform doesn't work. Historians of the modern carceral state have shown that reform, and **specifically the brand of "liberal law and order" promoted by liberal policymakers** in the second half of the 20th century, **is chiefly responsible for continued police brutality and the contemporary crisis of racialized mass incarceration.** In other words, **we should reject calls for police reform not simply because they sap energy from radical visions, do not go far enough, and do not work. We should reject reform because liberal reform efforts** – notably undertaken by Democratic administrations often celebrated for their ostensible commitment progressive values – **have historically intensified carceral violence** against Black people. Understanding the historical harm of liberal law and order and the police reforms it wrought requires breaking down two key, and seemingly internally contradictory assumptions that have anchored liberal law and order politics. First, while less overt and sensational than conservatives' dog whistle and thinly-veiled racist law and order politics, **proponents of liberal law and order helped sustain racial violence by ironically seeking to remove racial bias from law enforcement.** As Naomi Murakawa puts it in The First Civil Right: How Liberals Built Prison America, **liberal law and order sought to "modernize and deracialize carceral machinery," which in turn helped submerge the structural racism** inherent to the police's discretionary power to criminalize and punish (10). Second, **liberal law and order encompassed an anti-Black belief in the inherent criminality of Black people, which** in turn **justified punitive interventions into their communities as necessary and logical rather than white supremacist and carceral**. This toxic ideological hybrid meant that throughout the post-WWII period, **liberal police reforms ostensibly seeking to** reduce police violence and **improve relations between police and racially marginalized communities failed to meaningfully confront the racial violence inherent to policing and instead helped expand and normalize police presence Black urban communities**. In other words, liberal police reform ensured the continuation and intensification of racist police violence, and arguably caused our contemporary crisis of racialized mass incarceration.

Liberal understandings of racism as a malleable, individual complex contribute to police violence– we must reject this in favor of an analysis of structural racism

Rosen '20 [(Charlotte Rosen is a doctoral candidate in History at Northwestern University researching the history of prisons and prisoner resistance in late-twentieth century Pennsylvania.) "Abolition or Bust: Liberal Police Reform as an Engine of Carceral Violence," Abusable Past, 06-25-2020, https://www.radicalhistoryreview.org/abusablepast/abolition-or-bust-liberal-police-reform-as-an-engine-of-carceral-violence/, vik]

How is this possible? Part of the reason has to do with how postwar liberals understood racism. As numerous scholars such as Naomi Murakawa, Jodi Melamed, and Elizabeth Hinton have shown, postwar race **liberals understood racism as an**

“individual whim” and “psychological in nature,” a problem of faulty and illogical morals and biases rather than of structural formations of power embedded into the United States political economy and modes of governance. With such an understanding, **liberal reformers understood racism in law enforcement narrowly as a problem of “bad apples” – or the individual officers with overt racial biases – rather than confronting how the very function and operation of policing historically operated to uphold racial hierarchies, suppress dissent, and protect capital.** As Murakwa notes, law and order **liberals understood “racist violence” as “arbitrary violence”**—an “irrational belief, erratic and baseless” – meaning that fixing the problem of racism in law enforcement required simply modernizing and professionalizing law enforcement in ways that ostensibly insulated against racist behavior. **If racism was merely an “administrative deficiency” of criminal legal systems and not something central to the operation of those systems, the thinking went, then professionalization and procedural reforms could bring about a truly “neutral” system of criminal legal administration, and racist police brutality could be cured.** While invested in constructing a “fair” criminal legal system free of racial bias – however misguided and harmful such a project actually was – proponents of liberal law and order also believed in their own variant of white supremacist thinking that similarly tainted liberal police reform. Influenced by figures such as President Lyndon Johnson’s then Assistant Secretary of Labor Daniel Patrick Moynihan, whose 1965The Negro Family: A Case for National Actionserved as the intellectual spine of liberals’ view of crime and poverty in Black neighborhoods, postwar liberals believed that years of white racism against Black people had led to the “breakdown” and “cultural deprivation” of Black families. The effects of decades of racial discrimination — the “racist virus,” as Moynihan put it — led to a “tangle of pathology” in Black urban families that caused these communities to be stuck in a “cycle of poverty and disadvantage.” To “prove” his point, Moynihan cited high rates of poverty, unemployment of Black men, single-parent and female “dominated” households, illiteracy, and crime in Black urban neighborhoods. The implication was that years of white racism had inculcated so-called cultural pathologies that made Black criminality inevitable. **Because “knowledge” of Black criminality was understood as a scientific and neutral fact, rather than a narrow and racialized political construction, liberals understood heightened policing in Black urban neighborhoods not as a form of racism and ongoing white supremacist terror, but as a legitimate and necessary response to urban crime.** In the process, they conveniently invisibilized ongoing structural racism and police terrorism against Black communities. Through such a framework, they could declare their proud support for civil rights while also believing it necessary to expand the policing and penal control of Black urban neighborhoods. When Black people rose up against racist police brutality and oppression in a series of urban rebellions throughout the 1960s, liberal policymakers hardened this “consensus” around the so-called criminal behavior of “rioters” and intensified rather than confronted the harmful role of law enforcement in these neighborhoods. As Elizabeth Hinton writes in From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America, “racism embedded within federal policy and the social science research that rationalized it encouraged officials to embrace patrol, surveillance, and confinement as a means of exerting social control in neighborhoods of segregated poverty.” **These twin features of liberal law and order – the belief in the criminal legal system’s objectivity and fairness on the one hand, and a racist belief in a “statistical and sociological ‘truth’ of black criminality” – have ensured liberal police reforms have not only failed to make police less violent against Black people. As historians have shown, these reforms have actually worsened police violence and paved the way for our contemporary crisis of mass imprisonment.**

Not all reforms are created equal– IBT’s ‘reformist reform’ expands police power while excusing structural racism

Rosen ‘20 [(Charlotte Rosen is a doctoral candidate in History at Northwestern University researching the history of prisons and prisoner resistance in late-twentieth century Pennsylvania.) “Abolition or Bust: Liberal Police Reform as an Engine of Carceral Violence,” Abusable Past, 06-25-2020, https://www.radicalhistoryreview.org/abusablepast/abolition-or-bust-liberal-police-reform-as-an-engine-of-carceral-violence/, vik]

Johnson’s War on Crime is a case and point. When incidents of racist police violence triggered Black-led uprisings against racist law enforcement and racial inequality more broadly, Johnson’s administration rushed to try to manage the crisis, which in many ways revealed the limitations of the Johnson’s passage of flagship civil rights bills and the shortcomings of his War on Poverty. Instead of grappling with the causes of urban unrest – such as years of racist policing, state-sanctioned racial segregation, and growing deindustrialization in urban cities that left the Black urban poor with little employment or education opportunities – Hinton and Murakawa both show that Johnson’s liberal law and order approach to police reform focused only on removing overt racial bias while also equipping local law enforcement to more punitively intervene into Black urban neighborhoods. In both of the administration’s law enforcement assistance bills, the Law Enforcement Assistance Act of 1965 and the more robust Safe Streets Act of 1968, **the Johnson administration significantly modernized and expanded the nation’s carceral machinery by allocating millions towards policing training**, salaries, research, and equipment. **Although** ostensibly **meant to achieve “racial fairness” by increasing training and resources for “police-community relations,”** Naomi Murakawa shows that **liberal police professionalization’s focus on reducing “prejudice” among officers “steered attention away from the structural racism permeating state machinery.”** At the same time, as Elizabeth Hinton exhaustively demonstrates, liberal reformers racist belief in the “inevitable” criminality of Black urban youth led them to call for more and better resourced law enforcement in Black urban communities, not only on the streets through “community policing” but also in anti-poverty programs, where they quickly eclipsed the presence of social workers. On the

surface, this fusion of law enforcement and equal opportunity programs ostensibly meant to promote "public safety." Yet these punitive community programs – such as "mini" police stations "in storefronts and housing projects" or Youth Service Bureaus targeted towards an already criminalized category of "hard-core" and "potentially delinquent youth" – did little to alter patterns of racist policing and merely brought an already stigmatized Black urban poor into more "frequent contact with the punitive arm of the state, increasing the likelihood of their eventual incarceration. At the local level, histories of police reform similarly portray liberal law and order's particular role in intensifying racialized harm against Black and Brown communities. Simon Balto's work on **the Chicago Police Department**, Max Felker-Kantor's work on **the Los Angeles Police Department, and** Marisol LeBrón's work on **the Puerto Rico Police Department all demonstrate the shortcomings of liberal police reforms narrowly focused on "procedural fairness" and "building trust" while also actively working to heighten criminalization of Black and Brown communities with hyper-militarized, counterinsurgency tactics.** In Los Angeles, for example, the liberal mayoral administration of Tom Bradley, which spanned from 1973 to 1993, sought to reform the notoriously racist and brutal LAPD through a "commitment to procedural fairness" and a "focus only on physical harm." As Felker-Kantor notes, however, these same liberal lawmakers "often resisted extending the harm principle to people of color," believing "that certain populations – especially so-called violent African American and Latino/a youth, drug traffickers in neighborhoods of color, and 'alien criminals' – posed a threat to social order and security and thus required discretionary supervision." **Bradley's Mayor's Office of Criminal Justice Planning (MOCJP) sought embodied his "framework of procedural fairness and equity" by seeking to increase community participation in the criminal justice system while also simultaneously ramping up punishment of "law-breaking" among primarily Black and Latinx youth.** The result, Felker-Kantor shows, was the city's expansion of a racist, carceral, and two-tiered juvenile justice system that led to the increased incarceration of Black and Brown youth, despite the MOCJP's seemingly progressive citizen involvement and preventative components. **Without a meaningful reckoning with the structural white supremacy inherent to law enforcement nor the racialized conceptions of "law-breakers" embedded in liberal approach to criminal justice, liberal police reform kept aflame rather than put out the fire of racist policing.** In doing so, these reforms repeatedly paved the way for the late-twentieth century explosion of the United States prison nation, which currently imprisons 2.3 million people nationwide, a disproportionate number of whom are Black, Latinx and Indigenous according to the Prison Policy Initiative. **History shows us that liberal police reform is not only ineffective, but has done more harm than good. By promoting a false narrative of the criminal legal system's neutrality and fairness** and by entrenching racist, psuedo-scientific, and criminalizing assumptions about Black people, **liberal police reforms have historically emboldened law enforcement and multiplied racist police terror.** As **the movement for** police **abolition continues to grow**, resisting the erasure of the historically generative, rather than passive harm of police reform is necessary. **This history substantiates abolitionist calls for activists to discern between "reformist" and "non-reformist reforms," the latter of which actually remove resources and funding from law enforcement, reduce the size of police forces, and enhance community control over police budgets. Reformist reforms, such as calls for more professionalized training, equipment like body cameras, or improving police-community relations, threaten to repeat this long history of deadly police reform that only normalizes an expands police power.** To paraphrase Angela Davis' words at a recent Dream Defenders panel on abolition in our lifetime, "the temporality that capitalism urges is a perpetual present." Honestly appraising this longer, and more grave history of **liberal police reform, not only increases the urgency for abolition now, but also enhances our ability to disrupt calls for reforms that only masquerade as justice, but really just promise continued carceral violence.**

L – Ban Facial Recognition

Banning facial recognition swaps out a racist algorithm for a racist police officer, all while producing the same feeling of living under surveillance– the state's "temporary governmentality" acts as a liberal cloak to insidious policies.

Keyes 19 [(Os Keyes is a PhD student at the University of Washington and an inaugural Ada Lovelace Fellow who studies gender, data, technology, and control.) "The Bones We Leave Behind — Real Life," Real Life, 10-7-2019, https://reallifemag.com/the-bones-we-leave-behind/, vik]

It's not enough to make facial recognition illegal when its infrastructural legacy remains It can seem as if the tide has begun to turn against facial recognition technology. Controversies — from racist and transphobic implementations appearing in policing to the concerns of privacy advocates about the billions of images these systems gather — have drawn attention to the risks the technology poses and its potential to strengthen an already overwhelming carceral state while perpetuating so-called surveillance capitalism. Citing concerns around civil liberties and racial discrimination, the cities of Oakland, San Francisco, and Somerville, Massachusetts, have all recently banned the technology's use by law enforcement. The state of California is considering a bill to curtail facial recognition use in body cameras. And activists from Chicago to Massachusetts have mobilized to prevent the expansion of facial recognition systems in, for example, public housing. **It's almost as though the techno-dystopia of ubiquitous state and corporate surveillance could be stopped — or at least delayed until the next train.** Focusing on "facial recognition" treats the technology as if it were a discrete concept that could be fought in isolation All this organizing and protesting is good and vital work; the groups doing it need support, plaudits, and solidarity. Facial recognition is a dangerous technology, and prohibiting it — and in the interim, resisting its normalization — is vital. But **focusing on "facial recognition" — a specific technology, and its specific institutional uses — carries risks. It treats the technology as if it were a discrete concept that could be fought in isolation, as if it could simply be subtracted to "fix" a particular concern.** But **facial recognition**, like every other technology**, is dependent on a wide range of infrastructures — the existing technologies, practices, and flows that make it possible. Pushing back against facial recognition technology without considering its supporting infrastructure may leave us in the position of having avoided future horrors, but only future horrors.** Some of the preconditions for facial recognition technology are cultural and historically rooted. As I've previously pointed to, the work of Simone Browne, C. Riley Snorton, Toby Beauchamp, and many others shows how unsurprising it is that much of this technology — originating as it does in a society built on xenophobia, settler colonialism, and antiblackness — has been developed for biased and oppressive surveillance. The expansion of surveillance over the past few decades — as well as the pushback sparked when it begins to affect the white and wealthy — cannot be understood without reference to the long history of surveilling the (racialized, gendered) other. U.S. passports originated in anti-Chinese sentiment; state-oriented classification (undergirded by scientists and technologists) often structured itself around anti-indigenous and/or anti-Black efforts to separate out the other. Most recently, the war on drugs, the border panics of the 1990s, and the anxious paranoia of the Cold War have all legitimized the expansion of surveillance by raising fears of a dangerous other who seeks to do "us" (that is, normative U.S. citizens) harm and is either so dangerous as to need new technologies, so subtle as to be undetectable without them, or both. It is that history which works to justify the current development of technologies of exclusion and control — facial recognition, fingerprinting, and other forms of tracking and biometrics. These technologies — frequently tested at borders, prisons, and other sites "out of sight" — are then naturalized to monitor and control the "normal" as well as the "deviant." But beyond the sociocultural conditions that make it ideologically possible, a **facial recognition system requires a whole series of other technological systems to make it work.** Historically, facial-recognition technology worked like this: a single static image of a human face would have points and lines mapped on it by an algorithm. Those points and lines, and the relationship between them, would then be sent to a vast database of existing data from other images, with associated names, dates, and similar records. A second algorithm would compare this extracted structure to existing ones and alert the operator if one or more matching photographs were found. To make this possible, we needed cultural conventions and norms (presenting identity cards when asked; the acceptability of CCTV cameras) but also technical infrastructure — those algorithms, that database, the hardware they run on, and the cables connecting them to an operator and their equipment. Unfortunately (or fortunately) this approach to facial recognition did not work very well. As late as this 2010 report on the impact of lighting on its accuracy, the best–performing algorithm in "uncontrolled" settings (i.e. any environment less consistent than a passport-photo booth) had a 15 percent false-positive rate. The reason you have to make the same face on the same background in every passport photo isn't just because the State Department wants to make you suffer (although, for clarity, it absolutely does); it's because facial-recognition algorithms for the longest time were utterly incapable of handling even minor differences in head angle or lighting between a "source" photo and "target" photos. There is no standalone facial-recognition algorithm The technology has since improved, but not because of a series of incremental algorithmic tweaks. Rather**, the massive increase in high-resolution cameras, including video cameras, over the past decade has led to an overhaul in how facial-recognition technology works. Rather than being limited to a single hazy frame of a person, facial-recognition systems can now draw on composite images from a series of video stills taken in sequence, smoothing out some of the worst issues with lighting and angle and so making the traditional approach to facial-recognition usable. As long as you had high-quality video rather than pixelated single-frame CCTV shots, you could correct for most of the problems that appear in uncontrolled capture.** But then researchers took this one step further: Realizing that they had these such high-quality image sequences available from these new (higher resolution, video-based) cameras, they decided to write algorithms that would not simply cut out the face from a particular image and assess it through points and lines, but reconstruct the face as a 3D model that could be adjusted as necessary, making it "fit" the angle and conditions of any image it might be compared with. This approach led to a massive increase in the accuracy of facial recognition. Rather than the accuracy rate of 85 percent in "uncontrolled capture" that once prevailed, researchers in 2018 testing against 10 data sets (including the standard one produced by the U.S. government) found accuracy rates of, at worst, 98 percent. **This level of accuracy in current facial recognition technology allows authorities to dream of an idealized, ubiquitous system of tracking and monitoring — one that meshes together pre-existing**

CCTV systems and new "smart" city technology (witness San Diego's default integration of cameras into their new streetlights) to trace individuals from place to place and produce archives that can be monitored and analyzed after the fact. But to buy into this dream — to sign up for facial recognition technology — a city often also has to sign up for a network of HD video cameras, streaming data into central repositories where it can be stored ad infinitum and combed through to find those who are at any time identified as "suspicious." A contract for the algorithms comes with a contract for the hardware they run on (or, in the case of Amazon's Ring, free hardware pour encourager les autres). **There is no standalone facial-recognition algorithm; it depends on certain other hardware, other software, certain infrastructure. And that infrastructure, once put into place, always contains the potential for facial recognition, whether facial recognition is banned or not, and can frequently be repurposed for other surveillance purposes in its absence. The layers of infrastructure involved make facial recognition technology hard to constrain. San Francisco's ordinance**, for example, **bans facial recognition outright but is much more lenient when it comes to the camera networks and databases feeding the algorithms. If a city introduces facial-recognition technology and you spend a year campaigning against it and win, that's great — but the city still has myriad video cameras logging public spaces and storing them for god knows how long, and it still has people monitoring that footage too. This process may be much less efficient than facial recognition, but it's still the case that we've succeeded in just swapping out analytics technology for a bored police officer**, and **such creatures aren't widely known for their deep commitment to anti-racism. And this isn't hypothetical: 24/7 monitoring of live, integrated video feeds is exactly what Atlanta does. Leaving the skeleton of the surveillance infrastructure intact means that it can be resurrected Beyond that, leaving the skeleton of the surveillance infrastructure intact means quite simply that it can be resurrected.** Anyone who watches horror films knows that monsters have a nasty tendency to be remarkably resilient. The same is true of surveillance infrastructure. **Facial recognition is prohibited in Somerville now.** In one election's time, if a nativist wind blows the wrong way, that might no longer be the case. And **if the city was using the technology prior to banning it and has left the infrastructure in place, switched on and recording, it will be able to surveil people not only in the future but in the past to boot. It becomes trivial, when the technology is re-authorized, to analyze past footage and extract data about those who appear in it. This enacts what Bonnie Sheehey has called "temporal governmentality," where one must, even in the absence of algorithmic surveillance, operate as if it were occurring because it might in the future be able to retroactively undertake the same biased practices. And when facial recognition is as cheap and easy as a single software update, it's not going to take long to turn it back on.**

L – Defund Police

Defending the police is distinct from abolition and is based on market logic

Ray '20 [(Rashawn, David M. Rubenstein Fellow - Governance Studies) "What does 'defund the police' mean and does it have merit?," Brookings, 6-19-2020, https://www.brookings.edu/blog/fixgov/2020/06/19/what-does-defund-the-police-mean-and-does-it-have-merit/, vik] *Note: the author supports defunding police

"Defund the police" means reallocating or redirecting funding away from the police department to other government agencies funded by the local municipality. That's it. It's that simple. **Defund does not mean abolish policing.** And, even some who say abolish, do not necessarily mean to do away with law enforcement altogether. Rather, they want to see the rotten trees of policing chopped down and fresh roots replanted anew. Camden, New Jersey, is a good example. Nearly a decade ago, Camden disbanded (abolished) its police force and dissolved the local police union. This approach seems to be what Minneapolis will do in some form, though the nuances are important. **Different from abolishing and starting anew, defunding police highlights fiscal responsibility, advocates for a market-driven approach to taxpayer money**, and has some potential benefits that will reduce police violence and crime. Below, I outline some of the main arguments for defunding the police.

Capitalist solutions can't solve the problem – they merely reinvest

Maffea '20 [(Carmin, revolutionary socialist from New York.) "The Fight to Abolish the Police Is the Fight to Abolish Capitalism," Left Voice, 6-10-2020, https://www.leftvoice.org/the-fight-to-abolish-the-police-is-the-fight-to-abolish-capitalism, vik]

After the gruesome murder of George Floyd by the Minneapolis police over a counterfeit $20 bill, the United States erupted in an unprecedented nationwide revolt. This uprising has seen harsh clashes between protesters and police and put many new proposals on the table about what to do with the police as an institution. **There are demands circulating that the police be defunded, removed from certain spaces such as schools, or completely abolished.** This last demand is clearly the most far-reaching, but the question is how to actually end the police as an institution — a question that has been asked more and more especially since the City Council of Minneapolis has endorsed dismantling the city's PD. **The calls for the defunding of the police seek to address the fact that police budgets are obscenely bloated while other government programs such as education scramble for resources. In many cases, police departments, jails, and prisons can take up to 60 percent of a city's annual budget. However, we must ask: why are police budgets so big? Is it because cities have bad priorities and invest in police instead of social services?** The gigantic police budgets are not accidental: they are central to the American capitalist system founded on slavery. They are essential to maintaining a society where Jeff Bezos is about to be a trillionaire while Amazon workers, many of them people of color, live in poverty. The police are an intrinsic component of the capitalist system; they are one of the repressive forces that maintains this order and the stark inequalities that it inevitably gives rise to. Therefore, **if we are serious about abolishing the police to save the lives of Black, Brown, and working-class people, we need to be clear that our fight is against the capitalist system and the state that enforces its rule. There can be no abolition of police under capitalism**. A History Lesson The police as an institution has always been intrinsically racist and sexist. In the American North, before formal full-time police forces were established, there were night watches. These night watches hired volunteers for a day to surveil communities for sex work and gambling. The night watchmen were severely disliked by the public and scorned for cracking down on working people's leisure activities and vulnerable women's means of survival. The first formalized police department in the North originated in Boston in 1838. As a port city, Boston was a major place of commerce, and it developed the full-time police force to protect the shipments of the affluent bourgeoisie. To cut down on the cost of hiring people to safeguard their property, these wealthy owners convinced the public that a police force was necessary for the common good. In the South, before the police were formalized into departments, there were slave patrols. Their sole purpose was to repress Black people. They did this by chasing, apprehending, and re-enslaving Black people who had escaped, by terrorizing enslaved people in order to prevent revolts, and by brutalizing them through extrajudicial punishment for breaking plantation rules. It is thus entirely unsurprising that many members or admirers of the KKK today are police officers. In fact, there has historically been an important overlap between the KKK and the police, and the two organizations have worked hand in hand in strengthening white supremacy. After the Civil War, these slave patrols became Southern police departments. They enforced the Black Codes through imprisonment or fines for unemployment, houselessness, and interracial marriage. They put freedmen and women into impossible debt or hard labor camps akin to slavery. Similarly today, Black people are disproportionately arrested, face unaffordable bails, and are super exploited as prison labor. Capitalism Needs Cops **Police exist because capitalism needs them.** Just as Southern slave owners used slave patrols to maintain their "private property," the Northern bourgeoisie needed the police to repress strikers and send them back to work, to quash any challenge to the capitalist order, and to defend the private property of the means of production. As industrialization increased capitalist profit, police also became necessary to repress the immigrant and native-born working class. In the twentieth century, there came a series of social upheavals in which workers organized to win greater rights on the job, more control of the workplace, and proper compensation for their work. In response, nearly every city developed a PD, and the bourgeoisie began to sic their repressive dogs on the working class. Unionizing attempts were often quashed by police. Ideas spread about the "troublemaker" who would likely incite a workplace strike. For example, during the 1934 waterfront strike in San Francisco, police fired their shotguns into crowds of supporters and strikers and entered the union hall to further their attack. The police killed two people and were not arrested. Similar brutal actions occurred throughout the 20th century all over the country. **The current role of police is no different. Around the world, the police terrorize working-class neighborhoods in the same way.** Never was the inception or the practice of policing rooted in protecting people's safety. Because the police were always intended to preserve capitalist private property, the solution to police terror is not better oversight or greater accountability. Rather, **the solution is the abolition of the racist system in which wealthy white men, many of whom inherited their property directly from the slave**

trade, aim to keep people in conditions of starvation, precarious shelter, fatigue, and alienation. And the harsher the oppression, the more brutal the violence used to keep the working class "in their place." Body Cams and New Training After the first wave of the Black Lives Matter movement and even today, there have been calls for body cameras to be worn by police and better training for officers. The argument for these reforms is that they would provide greater transparency and accountability for officers. The problem is that measures like this have already been instituted in many states around the country but have done little or nothing to curb police brutality. For example, Eric Garner was choked to death in 2014 in broad daylight, in front of a crowd, while being recorded using an illegal NYPD chokehold. Tamir Rice was killed in a public park that had cameras. Philando Castile had his murder captured by police dash cameras and a recording by his girlfriend. Derek Chauvin looked and smiled at the people who recorded him killing George Floyd. The (in)justice system in this country is such that even recorded murders of Black people don't mean that killer cops will be locked up. Furthermore, police often turn off their body cameras when committing heinous acts of violence. Just recently, a Kentucky barbecue shop owner was shot and killed by an officer who had their body camera shut off. The number of people shot and killed by police has remained nearly consistent since 2015 even after a greater use of cameras. We don't need more images of Black people being brutalized and killed by police. We need this repressive racist apparatus to disappear. The Trouble with Community Policing **One of these reformist ideas that is often proposed by the mainstream media and bourgeois intellectuals is community policing. The notion is that when cops are stationed in a particular neighborhood, preferably where they themselves live, and only police that area, the officers will have stronger relationships with the community. According to this argument, such a move would decrease incidents of crime, brutality, and lethal interactions. This rosy picture doesn't acknowledge the function of police as an institution in charge of enforcing the rule of law. The Community Oriented Policing Services program**, or COPS, established by the 1994 crime bill **invested billions into enhancing the practice of community policing** for the very purpose of fostering relationships between police and people. The program, however, was an absolute nightmare for working-class Black people. **Not only did it do almost nothing to reduce "crime," but it also contributed to mass incarceration**, throwing countless Black youth in prison and leaving them in circumstances of job disenfranchisement and housing precarity. The fact is, as long as nothing is done to address the underlying structural conditions that communities of color face — housing segregation, economic insecurity, unemployment, and scarcity of resources — policing can lead only to criminalization and brutality, regardless of whether it's community based or not. Furthermore, community policing doesn't change the fact that police budgets drain funds for much-needed resources away from communities. During the height of the Covid-19 pandemic, cities scrambled to get essential supplies like ventilators. When the ventilator manufacturers raised their prices, New York City still had $5.6 billion allocated to the NYPD and $8 billion for building new jails. The cops received a massive budget for their riot gear, tear gas, and military-grade weapons, which were then used to repress the protesters. Nurses, meanwhile, were forced to reuse masks and wear garbage bags instead of proper PPE. Community policing doesn't mean the cops no longer serve the racist capitalist system. A cop who knows a community, the families of that community, and the culture of that community will still brutalize that community because that is their job and their function. Defund the Police? Another discussion that is circulating today is the idea of defunding the police as a solution to police terror. It is true that police budgets have increased over the last few decades, especially after the 1994 crime bill was passed, while healthcare and education have been defunded; however, the current efforts to reverse this trend would only make a miniscule difference. In New York, Mayor De Blasio has vowed to cut the budget of the NYPD and reallocate those funds to youth services. In LA, Mayor Eric Garcetti has said he will cut the LAPD's $1.8 billion budget by $150 million to reallocate to marginalized communities. These promises are no more than minor concessions that will not change anything. **What will change something is the total defunding of the police to a budget of zero and ultimately its permanent abolition.** It is worth noting that anti-police organizations such as the Black Panther Party emerged in the 1960s when police budgets were far smaller. These organizations correctly identified the police as a repressive force within working-class Black communities. As one of the founding members of the Black Panther Party, Huey P Newton, put it, "The police in our neighborhoods occupy our community just as a foreign troop occupies a territory and the police are not there to promote our welfare, they are there to contain us. To brutalize us and murder us because they have their orders to do so." The swelling size of police budgets and further militarization of the police were a response to increasing social tensions. In fact, the first SWAT units were developed at the time of the Watts riots and the rise of the Black Panther Party. **Partially defunding the police is no solution. If we use the momentum of today's protests to merely decrease police budgets today, how can we stop city, state, and federal governments from increasing these same budgets tomorrow? More importantly, what will partial defunding do to end the systemic violence against Black and working-class people? Our goal shouldn't be to lessen the number of Black people killed and brutalized by police. Our goal is not a little less oppression. Our goal needs to be to protect Black lives and to eradicate all forces that threaten them. Aspiring to anything less as an ultimate goal only reserves a spot in the future for more grief and anger over the next Black person killed by state violence.** Abolish the Police, End Capitalism **Police cannot be reformed to be on the side of the working class and oppressed. Therefore, the only viable solution to police terror is complete abolition. But, for there to be abolition of police, there must also be an abolition of prisons, the military, the state, and capitalism, because these forces are all intertwined.** Since police exist to protect private property and repress the working class, there needs to be a revolutionary force composed of the working class that opposes capitalism and its violent guard dogs. In the current struggle, though spontaneous and scattered, there is a massive worldwide revolt against police that is forcing major concessions from the state. With this unprecedented solidarity, there is a potential to organize this force into one that directly opposes the police, other state agents, and capitalism itself. There needs to be an independent political working-class party that fights for socialism. Only such a party can organize a society in which resources are distributed by need and not profit and in which the prisons, the police, and the military can be done away with permanently. **Repression is an integral component in maintaining a system of exploitation. Therefore, police will always exist within a capitalist system. If we are to destroy the forces of repression that kill children, lock people in cells, spread misery, and stifle efforts to improve the material conditions for society as a whole, our fight needs to be directed toward the system that relies on and maintains that repression.**

L – Legal Solutions

Jurisprudential focus sustains the ideological capture that steers law's production toward violence. The abolitionst ethic demands new perspectives on the meaning invested in criminal justice processes.

McLeod 15 – Associate Professor, Georgetown University Law Center

Allegra M., "Prison Abolition and Grounded Justice." 62 UCLA L. Rev. 1156-1239 (2015). https://scholarship.law.georgetown.edu/facpub/1490

At the level of judicial decision making and legislatively enacted criminal law, related forms of **ideological capture confine the courts' and legislatures' ca- pacities to address gross injustice** in the criminal process. Here too, then, **an abo- litionist ethic promises an escape, or at least a substantial challenge to, acquiescence in these legal commitments**—especially to the primacy of finality of a criminal conviction, what I will call the "fetish of finality."

If we understand law in the powerful and evocative terms proposed by Robert **Cover as part of a normative universe or "nomos," we** then appropriately **recognize that "law and narrative are inseparably related**." Law, Cover explains, is "constituted by a system of tension between reality and vision," between law as it is and our aspirations as to what it might become.265 As **Cover** writes: "[L]aw is not merely a system of rules to be observed, but a world in which we live."266

He **reveals how the normative and interpretive "commitments**—of officials and of others— . . . **determine what law means and what law shall be**."267 **As judges carry out their interpretive work, they must attempt to resolve these competing normative claims; judges themselves are variously aligned and torn between war-ring narratives and values as they steer law's potential for violence or peace**.268

An abolitionist ethic resists the circumscription of the nomos of criminal jurisprudence, inviting (even **demanding) new perspectives within and against those which judges, legislators, and citizens might make law**. More precisely, **an abolitionist ethic contributes an unapologetic insistence on the brutal and morally illegitimate violence of criminal punishment**—whether imprisonment or incar-ceration followed by state-inflicted death—**to the nomos of constitutional crimi-nal jurisprudence**. **This ethic throws down a gauntlet to the general jurisprudential comfort with the inevitability and moral unassailability of criminal conviction's finality and lessens**, perhaps, **the dread of grinding the wheels of jus-tice to a halt**.269 In other words, **an abolitionist ethic decenters the primacy of finality and the smooth operation of the criminal process such that it becomes less comfortable to rest at ease with the unimpeded operations of criminal punishment institutions,** especially the imposition of imprisonment or a sen- tence of death.

In Herrera v. Collins,270 for example, the U.S. Supreme Court held that claims of actual innocence based on newly discovered evidence do not state an in- dependent ground for federal habeas relief absent identification of an independ- ent constitutional violation, even in a case where a defendant is sentenced to die and may be innocent.271 Although Justice Blackmun cautions in dissent that the "execution of a person who can show that he is innocent comes perilously close to simple murder,"272 Justice Rehnquist, writing for the majority, nonetheless con- cludes that the important principle of finality trumps, given "the very disruptive effect that entertaining claims of actual innocence would have on the need for fi- nality . . . ."273 This fetish of finality is grounded in a narrative and background norms—a nomos—that complacently treats the conventional criminal process followed by conviction and prison-based punishment (or killing by the state) as basically moral and just. The majority opinion relates these ideas thus:

In any system of criminal justice, "innocence" or "guilt" must be de- termined in some sort of judicial proceeding. . . . A person when first charged with a crime is entitled to a presumption of innocence, and may insist that his guilt be established beyond a reasonable doubt. Other constitutional provisions have the effect of ensuring against the risk of convicting an innocent . . . . Once a defendant has been af- forded a fair trial and convicted of the offense, the presumption of in- nocence disappears . . . . The existence merely of newly discovered evidence relevant to the guilt of a state prisoner is not a ground for re-lief on federal habeas corpus.274

This **narrative telling naturalizes conviction as the point at which moral (or at least constitutional) concern ends, unless there has been a new and independ- ent ground of constitutional error identified at trial**. This is true, on the Court's account, even for a person who would be killed despite his possible innocence.

An abolitionist ethic, by starkly calling into question the marker of convic- tion as one that properly puts an end to moral (and constitutional) concern and instead exposes the dehumanization at the core of that legal marking practice, holds the potential to impose greater shame and discomfort, or at least ambiva- lence and conflict, at this point of decision. **A prison abolitionist ethic holds this promise of unsettlement** more powerfully than a death penalty abolitionist demand because **prison abolition calls into question the legitimacy of the final- ity of conviction as an end of moral concern in a more thoroughgoing and structural form**.

---IMPACTS---

! – Prisons

Prisons are fundamentally structured to subject inmates to degrading treatment and violence

McLeod 15 (Allegra M. McLeod -- Georgetown University Law Center, "Prison Abolition & Grounded Justice", https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2502&context=facpub, UCLA Law Review, Pgs. 1173-1184)

Prisons are places of intense brutality, violence, and dehumanization.70 In his seminal study of the New Jersey State Prison, The Society of Captives, sociologist Gresham M. Sykes carefully exposed how **the fundamental structure of the modern U.S. prison degrades** the **inmate's basic humanity and sense of selfworth**.71 **Caged or confined** and stripped of his freedom, **the prisoner is forced to submit** to an existence **without the ability to exercise the basic capacities that define personhood** in a liberal society.72 The inmate's movement is tightly **controlled**, sometimes **by chains and shackles**, and always by orders **backed with the threat of force**;73 his body is subject to **invasive cavity searches on command**;74 he is **denied nearly all personal possessions**; his **routines of eating, sleeping, and bodily maintenance are minutely managed**; **he may** communicate and **interact with others only on limited terms strictly dictated by** his **jailers**; and he is **reduced to an identifying number, deprived of** all that constitutes his **individuality**.75 Sykes's account of "the pains of imprisonment"76 attends not only to the **dehumanizing effects of this basic structure of imprisonment**—which **remains** relatively **unchanged** from the New Jersey penitentiary of 1958 to the U.S. jails and prisons that abound today77—but also to its violent effects on the personhood of the prisoner: [H]owever painful these frustrations or deprivations may be in the immediate terms of thwarted goals, discomfort, boredom, and loneliness, **they carry a more profound hurt as a set of threats or attacks which are directed against the very foundations of the prisoner's being**. The individual's picture of himself as a person of value . . . begins to waver and grow dim.78

In addition to routines of minute bodily control, thousands of **persons are increasingly subject to long-term** and **near-complete isolation** in prison. The Bureau of Justice Statistics has estimated that 80,000 persons are caged in solitary confinement in the United States, many enduring isolation for years.79

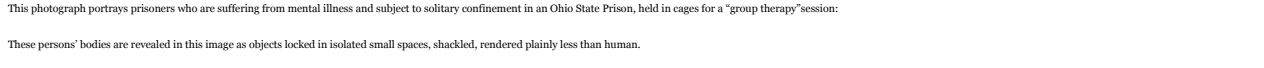
Solitary confinement routinely **entails being locked** for twenty-three to twenty-four hours per day **in a** small **cell, between forty-eight and eighty square feet, without natural light** or control of the electric light, **and no view outside** the cell.80 Persons so confined may be able to spend one hour per day in a "concrete exercise pen," which, although partially open to the outdoors, is typically still configured as a cage.81

Raymond Luc Levasseur, who was held in solitary confinement at the Federal Correctional Complex at Florence, Colorado, a prison devoted to solitary confinement (also called administrative segregation (ADX)), wrote of the first year of his isolation: **Picture a cage where top, bottom, sides and back are concrete walls. The front is** sliced by **steel bars**. . . . The term "boxcar" is derived from this configuration: a small, enclosed box that [does not] move. . . . **The purpose** of a boxcar cell **is to gouge the prisoner's senses by suppressing human sound, putting blinders about our eyes and forbidding touch**. . . . It seems endless. Each morning I look at the same gray door and hear the same rumbles followed by long silences. It is endless. . . . **I see forced feedings, cell extractions** . . . . **Airborne bags of shit and gobs of spit become the response of the caged**. The minds of some prisoners are collapsing in on them. . . . **One prisoner subjected to four-point restraints** (chains, actually) as shock therapy **had been chewing on his own flesh**. Every seam and crack is sealed so that not a solitary weed will penetrate this desolation . . . . When they're done with us, we become someone else's problem.82

Following thirteen years of solitary confinement, Levasseur was released from prison in 2004.83 The images that follow are not primarily intended to render more vivid this exploration of incarceration and punitive policing, but instead are incorporated to illustrate an important part of this Article's argument: We must look at what these practices actually entail, especially because so often **the ideology of criminal regulation renders** much of t**he criminal process and its violent consequences opaque** or even invisible **to us. By removing the violent results of these regulatory approaches from the center of our attention, and** often removing them entirely from our **view**, **this** same **ideology persuades us of the necessity and relative harmlessness of incarceration and punitive policing**. An abolitionist ethic, however, requires us to confront what penal regulation actually involves rather than assuming that

creating a certain spatial distance—by putting particular persons in cages, or controlling individuals and communities through prison-backed police surveillance—satisfactorily addresses the social and political problems of violence, mental illness, poverty or joblessness, among others, that those persons and communities have come to represent.

This photograph portrays prisoners who are suffering from mental illness and subject to solitary confinement in an Ohio State Prison, held in cages for a "group therapy"session:



These persons' bodies are revealed in this image as objects locked in isolated small spaces, shackled, rendered plainly less than human.

Cages are also used for booking mentally ill inmates in California prisons, as reflected in the record addressed in the U.S. Supreme Court's opinion in Brown v. Plata:

This is a suicide watch cell, also used for isolation, in a state prison in California, drawn from a related court record:

In these cells, feces may be smeared on the walls as those detained mentally decompensate, the odor of rot and acute despair palpable.87

As incarcerated populations have increased, solitary confinement has emerged as a primary mechanism for internal jail and prison discipline, such that the actual number of individuals confined to a small cell for twenty-three hours per day remains unknown and may be significantly in excess of 80,000.88 Some people are sentenced to "Super-Max" facilities that only contain solitary cells; other people are placed in solitary confinement as punishment for violating prison rules or for their own protection.

Stays in solitary confinement are often lengthy, even for relatively minor disciplinary rule violations, and may be indefinite. For example, one young prisoner caught with seventeen packs of Newport cigarettes was sentenced to fifteen days solitary confinement for each pack of cigarettes, totaling more than eight months of solitary confinement.89 Another prisoner in New Jersey spent eighteen years in solitary confinement. Although his solitary confinement status was subject to review every ninety days, this prisoner explained that he eventually stopped participating in the reviews as he felt they were "a sham, with no real investigation," and lost hope that he would ever be able to leave.90

Solitary confinement has become a widely tolerated and "regular part of the rhythm of prison life,"91 yet this basic structure of **prison discipline in the U**nited **S**tates **entails profound violence and dehumanization**; indeed, **solitary confinement produces effects similar to physical torture**. Psychiatrist Stuart Grassian first introduced to the psychiatric and medical community in the early 1980s that **prisoners living in isolation suffered a constellation of symptoms including overwhelming anxiety, confusion, hallucinations, and sudden violent and self destructive outbursts**.92 This pattern of debilitating symptoms, sufficiently consistent among persons subject to solitary confinement (otherwise known as the Special Housing Unit (SHU)), gave rise to the designation of SHU Syndrome.93

Partly on this basis, the United Nations Special Rapporteur on Torture has found that certain **U.S. practices of solitary confinement violate the U.N. Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment.**94 **Numerous psychiatric studies** likewise **corroborate that solitary confinement produces effects tantamount to torture**.95 Bonnie Kerness, Associate Director of the American Friends Service Committee's Prison Watch, testified before the Commission on Safety and Abuse in America's Prisons that while visiting prisoners in solitary confinement, she spoke repeatedly "with **people** who **begin to cut themselves, just so they can feel something**."96 Soldiers who are captured in war and subjected to solitary confinement and severe physical abuse also report the suffering of isolation to be as awful as, and even worse than, physical torture.97

But despite its more apparent horrors, solitary confinement is simply an extension of the logic and basic structure of prison-backed punishment—punitive isolation and surveillance—to the disciplinary regime of the prison itself. Solitary confinement's justification and presumed efficacy flows from the assumed legitimacy of prison confinement in the first instance. **Prison or jail confinement isolates the detained individual from the social world** he inhabited previously, **stripping that person of** his **capacity to move of his own volition, to interact with others, and to exercise control over** the details of his own l**ife**. **Once that** initial form of confinement and deprivation of basic control over one's own life **is understood to be legitimate, solitary confinement merely applies the same approach to discipline within prison walls**. But the basic physical isolation and confinement is already countenanced by the initial incarceration.

In addition to the dehumanization entailed by the regular and pervasive role of solitary confinement in U.S. jails, prisons, and other detention centers, **the environment of prison** itself **is productive of further violence as prisoners seek to dominate and control each other to improve** their relative **social position through assault, sexual abuse, and rape**. This feature of rampant violence, presaged by Sykes's account, arises from the basic structure of prison society, from the fact that **the threat of physical force imposed by prison guards cannot adequately ensure order in an environment in which persons are confined against their will, held captive, and feared** by their custodians.98 **Consequently, order is produced through** an implicitly **sanctioned regime of struggle and control between prisoners**.99

Rape, in particular, **is rampant in U.S. jails and prisons**.100 According to a conservative estimate by the U.S. Department of Justice, **13 percent of prison inmates have been sexually assaulted** in prison, with many suffering repeated sexual assaults.101 While noting that "the prevalence of sexual abuse in America's inmate confinement facilities is a problem of substantial magnitude," the Department of Justice acknowledged that "in all likelihood the **institution-reported data significantly undercounts the number of actual sexual abuse victims in prison, due to** the phenomenon of **underreporting**."102 Although the Department had previously recorded 935 instances of confirmed sexual abuse for 2008, further analysis produced a figure of 216,000 victims that year (victims, not incidents).103 **These** figures **suggest an endemic problem of sexual violence in U.S. prisons and jails produced by the structure of carceral confinement and the dynamics that inhere in prison settings.**

In one notable case that makes vivid these underlying dynamics, Roderick Johnson sued seven Texas prison officials for failing to protect him from victimization by prison gang members who raped him hundreds of times and sold him between rival gangs for sex over the course of eighteen months.104 Johnson, a gay man who had struggled with drug addiction, was incarcerated for probation violations following a burglary conviction.105 Rape was so prevalent in the facility where Johnson was incarcerated that it had a relatively fixed price: A former prisoner witness explained to the judge and jury at the trial that a purchased rape in that prison cost between $3 and $7.106 When Johnson sought protection from prison officials, he was told he would have to "fight or fuck."107

Seeking to avoid liability at trial, one of the prison official defendants, Jimmy Bowman, explained that prison officials were not responsible for failing to protect Johnson because "an inmate has to defend himself."108 Richard E. Wathen, the assistant warden, conceded that "[p]rison . . . is a violent place," but he testified that prison officials ought not to be held accountable under the Eighth Amendment for repeated gang rapes of prisoners if there was little officials could have done to prevent the abuse: "I believe that we did the right thing then, and I would make the same decision today. . . . There has to be some extreme threat before we put an offender in safekeeping."109

In any event, safekeeping in many detention settings only amounts to solitary confinement. And though prisoners are less likely to be subject to rape if they are held in relative isolation for their own protection, they are likely to suffer other substantial psychological harm, as previously noted.110 Ultimately, Johnson lost his civil case as the jury found for the prison officials.111 After his trial, Johnson relapsed in his addiction recovery, reoffended by attempting to steal money (presumably to buy drugs), and returned to serve out a further nineteen-year prison sentence.112

These **horrific experiences of incarceration are not simply outlier forms of dehumanization and violence, but are produced by the structure of U.S.**

imprisonment—**by the basic manner in which caging or confining human beings strips individuals of their personhood and humanity, and sets in motion** dynamics of **domination and subordination.** In research widely known as the Stanford Prison Experiment, psychologists Philip Zimbardo and Craig Haney further elucidated these structural dynamics.113 Notwithstanding subsequent criticism, their experiment revealed how **the basic structure of the prison in the U**nited **S**tates **tends toward dehumanization and violence**.114 At the outset of their now famous (or infamous) experiment, Zimbardo and Haney placed a group of typical college students into a simulated prison environment on Stanford University's campus.115 Zimbardo and Haney randomly designated certain of the students as mock-prisoners and others as mock-guards.116 What happened in the course of the six days that followed shocked the researchers, professional colleagues, and the general public.117 Zimbardo and Haney found that their"'institution' rapidly developed sufficient power to bind and twist human behavior . . . ."118 Mock-guards engaged with prisoners in a manner that was "negative, hostile, affrontive, and dehumanizing," despite the fact that the "guards and prisoners were essentially free to engage in any form of interaction."119 "[V]erbal interactions were pervaded by threats, insults and deindividuating references . . . . The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather the result of an intrinsically pathological situation which could distort and rechannel the behavior of essentially normal individuals."120

The Stanford Prison Study has been criticized for methodological, ethical, and other shortcomings, but, despite its limitations, it attests to the dehumanizing dynamics that routinely surface in carceral settings.121 According to some critics, for instance, the Stanford Prison Study reflects the participants' obedience and conformity to stereotypic behavior associated with prisoners and guards, rather than an effect produced exclusively and directly by the institutional environment of prisons.122 But even if the study's critics are correct, it remains true that these same features of conformity and behavioral expectations obtain in actual prison environments. Therefore, whether the Stanford Prison Study measures institutional effects or the tendency of people in such institutional settings to conform to widely understood behavioral expectations associated with such settings, it is still the case that these settings will tend to reproduce powerful dynamics of dominance, subordination, dehumanization, and violence.

Of separate though equal concern, **the violence and dehumanization of incarceration not only shapes those who are incarcerated, but produces destructive consequences for entire communities**.123 **People leaving prison are marked** by the experience of incarceration **in ways that makes the world** outside prison **more violent and insecure; it becomes harder to find employment and to engage in** collective **social life because of** the **stigma** of criminal conviction.124 Further, **incarcerating individuals has harmful effects on their families**. The **children, parents, and neighbors** of prisoners **suffer** while their mothers, fathers, children, and community members are confined.125 **Coming of age with a parent incarcerated** generally **has a substantial and negative impact on the life chances of young people**.126

It is insufficient to simply seek to reform the most egregious instances of violence and abuse that occur in prison **while retaining** a **commitment to prison backed criminal law enforcement as a primary social regulatory framework**. Of course, less violence in these places would undoubtedly render prisons more habitable, but the degradation associated with incarceration in the United States is at the heart of the structure of imprisonment elucidated decades ago by Sykes: Imprisonment in its basic structure entails caging or imposed physical constriction, minute control of prisoners' bodies and most intimate experiences, profound depersonalization, and institutional dynamics that tend strongly toward violence. These **dehumanizing aspects of incarceration are unlikely to be meaningfully eliminated in the U.S., following decades of failed efforts** to that end, **while retaining** a commitment to the practice of **imprisonment**. This is especially so in the United States for reasons related to the specific historical and racially subordinating legacies of American incarceration and punitive policing. Two hundred and forty years of slavery and ninety years of legalized segregation, enforced in large measure through criminal law administration, render U.S. carceral and punitive policing practices less amenable to the reforms undertaken, for example, in Scandinavian countries, which have more substantially humanized their prisons.127

Maintaining the prison system inevitabilizes racialized violence -- reforms fail because it's embedded in the very logic of carcerality

McLeod 15 (Allegra M. McLeod -- Georgetown University Law Center, "Prison Abolition & Grounded Justice", https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2502&context=facpub, UCLA Law Review, Pgs. 1185-1199)

Alongside imprisonment's general structural brutality, **abolition merits** further **consideration as an ethical framework because of the racial subordination inherent in both historical and contemporary practices of incarceration and punitive policing**. Michelle Alexander's The New Jim Crow popularized a critique of incarceration as a means of racialized social control in the United States, but Alexander's account was preceded and accompanied by earlier historical, psychological, literary, and sociological studies focused on how **maintaining social order through incarceration emerged as a way to preserve** the **power relationships inherent in slavery and Jim Crow**; these **studies** further **demonstrate** how **punitive policing and imprisonment continue to be haunted at their** very **core by a dehumanizing inheritance of racialized violence**.128 These various accounts elucidate how in the immediate aftermath of the Civil War the ascription of criminal status—leading to the classification and separation of citizens and the curtailment of their rights of citizenship—served as an instance of the process Reva Siegel has called "preservation through transformation," defined as the evolution of a mode of status-enforcing state action in response to contestation of the status' earlier manifestations (in this case, chattel slavery and later de jure racial segregation).129 Because this history of slavery and Jim Crow's afterlife in criminal punishment practices is already

addressed elsewhere, here I will only briefly examine the racially subordinating structure of punitive policing and imprisonment insofar asit isrelevant to an abolitionist framework and ethic.130

The significance of this material from an abolitionist standpoint is that it further underscores the constitutive role of **degradation in core U.S. incarceration and punitive policing structures,** as they **fail to treat targeted persons as fully human and** thus **deserving of equal dignity and regard**. **Understanding** practices of **punitive policing and imprisonment as a legal and political technology developed**, in large part, both **through and for degradation and racial subordination** calls for greater scrutiny of these techniques. In particular, **critical analysis must attend to whether** the purported **ambitions of these techniques are** meaningfully achieved and **separable so as to disconnect the present** applications of punitive policing and incarceration from their brutal **racialized pasts**. In this Subpart, I argue that the **racial legacies of incarceration and punitive policing infect** these **practices to their core by shaping the tolerated range of violence in criminal law enforcement contexts, as well as by coloring** basic perceptions of and **ideas about criminality and threat.**

The racialized dimensions of punitive policing and incarceration are not, of course, **merely historical**; **they are vividly present** in, among other places, the continued killings of African American men by white police officers.131 As recently as the 1990s, some Los Angeles police officers referred to cases involving young African American men as "N.H.I." cases, standing for "no humans involved."132 In 2003, after a Las Vegas police officer shot and killed a black man named Orlando Barlow, who was on his knees, unarmed, and attempting to surrender, an investigative series by the Las Vegas Review-Journal revealed that the officers in the unit celebrated the shooting by ordering t-shirts portraying the officer's gun "and the initials B.D.R.T. (Baby's Daddy Removal Team)—a racially charged term and reference to Barlow, who was watching his girlfriend's children before he was shot."133 The acronym B.D.R.T. continues to circulate in police culture, as do the associated racially subordinating associations directed at African American men. For example, online stores that sell police-themed clothing continue to market B.D.R.T. t-shirts, and, in 2011, officers with the Panama City, Florida, Police Department adopted the acronym for their kickball police league team.134 Whereas Alexander argues the legacy and persistence of these dynamics require a social movement to markedly reduce incarceration and disproportionate minority confinement, my analysis entails in addition (or instead) that **the structural character of these racial legacies requires** a movement committed to the thoroughgoing replacement (and **elimination**) **of** these **imprisonment** and punitive policing practices with other social regulatory frameworks, **along with a critique and rejection of** many of **criminal law administration's ideological entailments**.135

The racialized constitution of imprisonment and punitive policing began in the South even before the Civil War, though in the pre–Civil War period the relatively small population of Southern prison inmates were primarily white, as most African Americans were held in slavery.136 Although the legal institution of slavery was abolished with the end of the Civil War, the work necessary to incorporate former slaves as political, economic, and social equals was neglected, and in many instances actively resisted.137 In particular, criminal law enforcement functioned as the primary mechanism for the continued subordination of African Americans for profit.138 During Reconstruction, Southern legislatures sought to maintain control of freed slaves by passing criminal laws directed exclusively at African Americans.139 These laws treated petty crimes as serious offenses and criminalized certain previously permissible activities, but only for the "free negro."140 Specific criminalized offenses included "mischief," "insulting gestures," "cruel treatment to animals," "cohabitating with whites," "keeping firearms," and the "vending of spirituous or intoxicating liquors."141

These "Black Codes" were adopted by legislatures in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas.142 These laws quickly expanded Southern inmate populations and transformed them from predominantly white to predominately African American.143 Convict leasing was exempted from the Thirteenth Amendment's prohibition on slavery, which outlawed involuntary servitude except in the case of those "duly convicted."144 Criminal law enforcement was then used to return African Americans to the same plantations on which they had labored as slaves, as well as to condemn thousands to convict leasing operations, chain gangs, and prison plantations.145

Even before the Civil War, penitentiaries in the North contained a disproportionate number of African Americans, many of them former slaves.146 New York legislated the emancipation of slaves and the founding of the state's first prison on the same date in 1796.147 In Alexis de Tocqueville's and Gustave de Beaumont's classic 1883 account, On the Penitentiary System in the United States and Its Application in France, the two wrote: "[I]n those [Northern] states in which there exists one Negro to thirty whites, the prisons contain one Negro to four white persons."148

There are many similarities in form between slavery and the early Northern penitentiaries. Both subordinated their subjects to the will of others, and Southern slaves and inmates alike followed a daily routine dictated by white superiors.149 Both forced theirsubjects to rely on whitesfor the fulfillment of their basic needs for food, water, and shelter. Both isolated them in a surveilled environment. The two institutions also frequently forced their subjects to work for longer hours and less compensation than free laborers.150 Although the basic structure of Northern prisons that purported to rehabilitate through a routine of solitude and discipline may seem at first blush quite removed from the dehumanizing and violent dynamics that characterized the Southern convict experience, one dehumanizing feature remained markedly constant: Even in rehabilitative contexts in the North, the penitentiary aimed to strip and degrade the inmate of his former self so as to reconstitute his being according to the institution's preferred terms. And as commentators, such as Charles Dickens, noted at the time, the "slow and daily tampering with the mysteries of the brain" entailed by this form of incarceration could be "immeasurably worse than any torture of the body."151

In the Reconstruction era South, whether sentences were short or long, convicted persons, especially African Americans, were routinely conscripted into vicious conditions of forced labor.152 For example, although the sentence for the crime of intermarriage in Mississippi was confinement in the state penitentiary for life, convictions were often punishable by a fine not in excess of fifty dollars.153 If a person was unable to pay, that person could be hired out to any white man willing to pay the fine.154 Preference was given to the convict's former master, who was permitted to withhold the amount used to pay the fine from the convict's wages.155 This common practice resulted in situations where freedmen would spend years, even entire lifetimes, working off their debt for a small criminal fine.156

By contrast to this sort of peonage and criminal surety operation, the convict lease operated through a bidding system wherein companies would offer a set amount of money per day per convict, and the highest bidder would win custody of the group of convicts and be entitled to their labor.157 Leased convicts worked on farms, constructed levees, plowed fields, cleared swampland, and built train tracks across the South.158 They moved from work site to work site, usually in a rolling iron cage, which also served as their living quarters during jobs.159 Convict lessors justified their use of convict labor because they claimed free labor was prohibitively costly; but as bidding expanded, the daily price of a convict's labor increased and free labor began to compete.160 Eventually, it was this trend toward parity in the cost of free and convict labor, more than any outrage at the brutal exploitation of the convict lease, which led to the abolition of the lease and its replacement by the chain gang.161 Chain gangs, unlike the convict lease, worked on maintaining public roads and performed other hard labor in the public rather than private sector.162

State prisons also directly used African Americans for their labor, working prisoners in the fields for profit and holding them at night in wagons that were guarded by white men with rifles and dogs.163 Some prisons were actually constructed on former plantations, and consisted of vast tracts of land used for farming; white prisoners were appointed to serve as guards or trusties, assistants to the regular prison administrators.164 The state prison plantations could even generate considerable profit. For instance, in 1917, Parchman Prison farm in Mississippi contributed approximately one million dollars to the state treasury through the sale of cotton and cotton seed, almost half of Mississippi's entire budget for public education that year.165 By 1917, African Americans still represented some ninety percent of the prison population in Mississippi.166 The most dehumanizing abuses in these various settings were directed exclusively at African Americans.167 Southern states enacted statutes to prohibit the confinement of white and African American prisoners in shared quarters. In 1903, Arkansas, for example, passed a law declaring it"unlawful for any white prisoner to be handcuffed or otherwise chained or tied to a negro prisoner."168 It is thus that the practices of U.S. criminal law administration were forged through the racial dehumanization of African American people.169

Whereas the connections between slavery and the Northern penitentiary were further removed, the penal state in the South preserved and expanded the African American captive labor force and maintained racial hierarchy through actual incarceration or threat of criminal sanctions, as well as through the conditions of confinement. As recently as 1970, in Holt v. Sarver, 170 a District Court in Arkansas upheld the brutal exploitation of working convicts (almost all of whom were African American), concluding that the "[Thirteenth] Amendment's exemption manifested a Congressional intent not to reach such policies and practices."171 The awful mistreatment directed at convicted persons under the convict lease, chain gang, and prison plantations of the South was in these ways inextricably tied to the afterlife of slavery and the failures of abolition as a positive program of the formW.E.B. Du Bois envisioned.

In the Northern and the Western United States, prisons were used for solitary work and sought to reform inmates with a strictly controlled routine of labor and bible study. Prisoners were still usually segregated by race; African Americans were often relegated to substandard locations.172 Leasing was applied almost exclusively to African Americans convicted of crimes, because the Leasing Acts set aside prison sentences for persons serving ten or more years, and white convicts generally received more significant sentences because the courts rarely punished whites for less serious crimes.173 Very few whites convicted for petty criminal offenses were sent to prison, and when such sentencing occurred, whites routinely received quick pardons from the governor.174

Beyond criminal punishment, criminal law administration was also entwined with practices of racial subordination through lynching. Even in the North, lynch mobs would gather by the thousands outside the jailhouse or courthouse and wait until African Americans were released from pretrial detention.175 In some cases, criminal law enforcement officials themselves actively participated in the lynch mobs.176

Further instances of the direct entwinement of criminal law administration and overt racial violence abound throughout the twentieth century. Notable examples include the Scottsboro Boys Cases of the 1930s.177 The Scottsboro Cases involved the hurried convictions of nine young African American men, all sentenced to death by white jurors.178 The limited procedural protections afforded to these young men—the mob-dominated atmosphere surrounding their convictions, the denial of the right to counsel until the eve of trial rendering any assistance necessarily ineffective, and the intentional exclusion of blacks from the grand and petit juries that first indicted and later convicted the young men179—and their challenges to the U.S. Supreme Court arguably mark the birth of constitutional criminal procedure.180

This entwinement of racialized violence and the criminal process runs from the 1930s through the end of the twentieth century. It is prominently illustrated by, among other similar episodes, the brutal torture perpetrated against countless African American men over two decades, from the 1970s to 1990s, by white Chicago police officer John Burge and his deputies, who used suffocation, racial insults, burning, and electric shocks to coerce confessions, ultimately leading then-Illinois Governor George Ryan to commute all death sentencesi n the state.181

These uses of criminal law administration as a central means of resisting the abolition of slavery, Reconstruction, and desegregation, continue to inform criminal processes and institutions to this day by enabling forms of brutality and disregard that would be unimaginable had they originated in other, more democratic, egalitarian, and racially integrated contexts. As W.E.B. Du Bois predicted, this legacy of managing abolition and reconstruction in large part by invoking criminal law in racially subordinating ways, contrasted sharply with a different abolitionist framework, one that would have incorporated freed-persons into a reconstituted democracy: "If the Reconstruction of the Southern states, from slavery to free labor, and from aristocracy to industrial democracy, had been conceived as a major national program of America, whose accomplishment at any price was well worth the effort, we should be living today in a different world."182 Our historical inheritance and this legacy illuminates the connection between the abolitionist path not taken in the aftermath of slavery and what ought to be an abolitionist ethos in reference to practices of prison-backed criminal regulation today.

Instead, as the American economy underwent a shift from industrial to corporate capitalism in the 1970s, resulting in the erosion of manufacturing jobs occupied by poor and working class people in the inner cities, especially African Americans, a distinct underclass emerged, with few options for survival other than low wage work, welfare dependence, or criminal activity.183 This transformation in the U.S. economy contributed substantially to the emergence of a population that would be permanently unemployed or underemployed.184 In turn, federal, state, and local governments invested greater resources in coercive mechanisms of social control,185 prioritizing criminal law enforcement over other social projects, such as urban revitalization and expanded social welfare and education spending.186

In 1972, just before the National Advisory Commission on Criminal Justice Standards and Goals published the 1973 report noted at the beginning of this Article, there were 196,000 inmates in all state and federal prisons in the United States—a population housed in conditions that the Commission believed justified a ten year moratorium on prison construction.187 By 1997, however, the prison population had surged to 1,159,000188 and in 2002 there were a record 2,166,260 people housed in U.S. prisons and jails.189

This rapidly increasing population was characterized, as we now well know, by glaring racial asymmetries: **As of** 19**89, one in four African American men were in criminal custody** of some sort.190 In certain municipalities, the imprisonment rates for African Americans were even more striking. In 1991 **in** Washington **D.C., 42.5 percent of young African American men were in** correctional **custody** on any given day.191 **In Baltimore** during 1990, **56 percent** of the city's African American males between ages eighteen and thirty-five **were** either **in criminal justice custody** or wanted on warrants.192 By 2004, more than 12 percent of African American men nationally between the ages of twenty-five to twenty-nine were incarcerated in prison or jail.193 Although rates of incarceration and disproportionate minority confinement have declined very modestly in recent years because of fiscal crises at both the state and federal level, as well as a global decrease in crime, African American men remain subject to criminal confinement and arrest at ratest hat far exceed their representation in the population.194

Prisoners are generally no longer subjected to chain gangs or hard physical labor for profit, although these practices persisted in certain jurisdictions through the end of the twentieth century.195 Currently, another form of **incarceration** and punitive policing has emerged, one that **effectuates** the **mass containment and** exercises mass **racial discipline, leading to the elimination of** large numbers of **poor and** especially poor **African American people from** the realm of **civil society. A felony conviction**, disproportionately meted out to African Americans, Latinos, and indigent whites, **results in** a **permanent loss of voting rights** in most states, **employment bars** in numerous professions, **and a lifetime ban on** federal **student aid**, among other damaging consequences.196 These consequences further exacerbate the physically segregative effects of incarceration post-release, **inhibiting opportunities for** meaningful **integration available to persons and communities most affected by incarceration**.197 **These consequences of conviction constitute** a **basic denial of equal citizenship, and**, as such, conviction recreates the **civil death** associated with enslavement.

Further, **the criminal process** still **operates on a for-profit model** importantly distinct, but not entirely removed from, earlier systems of confinement for profit that were the direct outgrowth ofslavery.198 Prisoners' labor does not itself directly provide a significant source of profit to a lessor or single business as it once did. Instead, large-scale incarceration—**marked by prisoners' suffering, dehumanization, and violence**—generates a market for the construction of facilities to house approximately two million prisoners and jail inmates; the technology and mechanisms to maintain almost seven million persons under criminal supervision; and the employment of thousands of prison guards, prison staff, probation and parole officers, and other penal professionals.199 The large sums of money poured into prisons and criminal surveillance have drawn major firms and a variety of Wall Street financiers to prison construction.200 Underwriting prison construction through private finance and the sale of tax-exempt bonds has served as a lucrative undertaking in itself.201 Though only used to manage a small portion of detention facilities, private corrections corporations, such as Corrections Corporation of America and Wackenhutt, submit bids to governments to manage different detention systems, especially immigration detention, and guarantee to provide these services at a lower cost than the state is able to deliver.202 Additionally, vendors of everything from stand alone cells, hand and foot cuffs, razor wire, and shank proof vests make considerable profits from prisons.203 A single contract to provide prisoners in the state of Texas with a soy-based meat substitute, awarded to VitaPro Foods, went for $34 million per year.204 The profits for phone service inside prison walls make food contracts seem insignificant.205

Meanwhile, **prisoners continue to serve as a captive labor force, working for** approximately **one dollar per hour**, and often less.206 Numerous firms use prisoners as a component of their workforce in the United States, as do government entities that use prison labor to manufacture products that are then sold to other government agencies.207 Although prisoners are no longer forced to work by or for the state (as they were in the South well into the twentieth century), the perverse profit motive that spurred the convict lease system with all its horror might be understood in historical context as preserved yet transformed in these various other guises.

Criminal fines and fees generate substantial additional revenue for the criminal process itself and for certain municipalities and other jurisdictions.208 And the grossly disproportionate number of African Americans imprisoned, arrested, criminally fined, and stopped by police further accentuates the associations between earlier forms of racialized penal subordination for profit and the contemporary racial dynamics of criminal law administration.209

The deep, structural, and both **conscious and unconscious entanglement of racial degradation and criminal law enforcement presents a strong case for aspiring to abandon criminal regulatory frameworks** in favor of other social regulatory projects, rather than aiming for more modest criminal law reform. Multiple studies have confirmed the implicit, often immediate, and at times unconscious associations made between African Americans, criminality, and threat.210 These associations, borne of this history, continue to be reproduced by these structures and by the development of punitive policing and incarceration practices that treat certain people as not fully human. To provide but a few examples, psychologists Jennifer Eberhardt, Philip Atiba Goff, and their collaborators studied how individuals in various scenarios determine who "looks like a criminal."211 Perhaps not surprisingly, controlling for other factors, the study's subjects chose people who looked African American, particularly those who looked more "stereotypically" African American and those coded as having more "Afrocentric" features.212 In a similar study, psychologists Brian Lowery and Sandra Graham studied subjects' responses to juvenile arrestees. When the study's subjects were primed to understand the youth as African American, the juveniles were judged to be more blameworthy and deserving of harsher and more punitive treatment.213 Consciously expressed egalitarian racial beliefs did not significantly moderate the effects of implicit biasin these contexts.214

Conscious and unconscious biases on the part of police officers often **have lethal outcomes. Shooter and weapons biases**, for instance, **are well-documented**. In researching how subjects behave in simulated video game

shooting settings, multiple studies have found that the likelihood of shooting a suspect who is armed or possesses a device other than a gun significantly increases when the suspect is African American and decreases when the suspect is white.215 This is true both for white and African American shooters.216 Similarly, psychologist Philip Atiba Goff and his colleagues, in a study examining archival material from actual death penalty cases in Pennsylvania, found that defendants depicted as implicitly "apelike" were more likely to be executed than those who were not; African Americans were more likely to be depicted as implicitly "apelike" than whites.217 Judges, jurors, and prosecutors in related studies likewise reflect considerable racial bias in their determinations at numerous criticalstages of the criminal process.218

The landscape of **contemporary criminal law enforcement is** thus, in significant and fundamental respects, part of **the afterlife of slavery and Jim Crow**, and this legacy is deeply implicated in criminal law's persistent practices of racialized degradation. **Perceptions of criminality, threat, and the prevalence of violence, informed by** these **racialized** material **histories** and dehumanizing associations, **operate at all levels of criminal law administration**, often without the relevant actors' awareness. This suggests something of how difficult it would be to remove racialized violence from prison-backed policing and imprisonment while retaining these practices as a primary mechanism of maintaining social order. The **racialized degradation** associated with criminal regulatory practices, then, **compels an abolitionist ethical orientation** on distinct and additional grounds apart from the general dehumanizing structural dynamics addressed in the preceding Subpart, particularly insofar as there are other available means of accomplishing crime-reductive objectives.

If we are indeed committed to democratic and egalitarian values, the need to scrutinize closely the other purported purposes of the criminal process presses with increasing urgency. So, too does the question of whether there are alternative regulatory frameworks and approaches that might achieve similar ends with less racially encumbered and violent consequences.

! – Permanent Violence

Carceral logic is co-constitutive with permanent, yet unpredictable racialized violence.

Singh 17 [Nikhil Pal **SINGH** Professor of Social and Cultural Analysis and History. Faculty Director NYU Prison Eduction Program **'17** *Race and America's Long War* p. 22-34]

World War II exhibited the full range of contradictory conjunctions of race and war for African Americans. Antiblack riots and strikes rocked the home front even as a heightened emphasis on cultural pluralism and modest efforts at domestic racial reform sought to highlight the difference between democracy and fascism. By the 1960s, the sense of the intimate proximity of violent racial abjection, of race making at home and war making overseas, had become integral to black critical discourse. Radical activists such as Jack O'Dell argued that the contempt bred by America's familiarity with ongoing, sanctioned violations of black life and limb was the link that connected "Selma and Saigon." Martin Luther King Jr. observed that the promises of Johnson's Great Society had been shot down on the battlefields of Vietnam, expressing his regret that "my own country is the greatest purveyor of violence in the world today."49 Twenty years on, when George H. W. Bush was kicking the "Vietnam Syndrome" in Iraq, the rapper Ice Cube tied it to the violence of the drug war, memorably describing the first Gulf War as a giant "drive-by shooting." The acquittal of the New York City police officers who killed an unarmed black man, Sean Bell, in a hail of gunfire in 2007 prompted the family's minister to remark, "Here it's just like Iraq, we don't have any protection." 50 These commentaries illustrate how black collective life in the United States has been viewed from within as indistinct from a situation of war. They illuminate in a more concrete and compelling manner Michel Fou - cault's inversion of Clausewitz's famous maxim, "War is the continuation of politics by other means," suggesting how (racial) politics remains indelibly imprinted with the logic of war: 22 While it is true that political power puts an end to war and establishes or attempts to establish the reign of peace in civil society, it certainly does not do so in order to suspend the effects of power or to neutralize the disequilibrium revealed by the last battle of war. According to this hypothesis, **the role of political power is perpetually to use a sort of silent war to reinscribe that relationship of force, and to reinscribe it in institutions, economic inequalities, language, and even the bodies of individuals** .... **What is at work** beneath political power **is** essentially and **above all a warlike relation**. 51 Foucault associates the development of the_ modern concept of race with wars of conquest. The violence of war constitutes a traumatic line of division in a population that comes to share a single sphere of political representation. We might say that **race becomes the name for manifestations of divided collective experience that are**, as he puts it, "**anchored in** a certain relationship of **force** that was **established** in and **through war** at a given moment that can be historically specified." 52 But what if the actual history of race war is even more proximate and considerably less silent than we think? Before it became a figure for science, law, and biopolitical regulation, racial difference was conceptualized as a domain of recurrent and continuous warfare. **American thinking about space and power has returned again and again to the elimination or sequestration of "savages" as the grounds of a story whose reiterated violence fortifies the national body** and thus, we are told, should be neither grieved nor redressed but instead renewed. It has long been possible to acknowledge the fundamental injustice of the Indian wars while asserting their necessity and inevitability. "Who is there to mourn for Logan?" Thomas Jefferson asked in Notes on the State of Virginia (1787), referencing the Indian chief, the last of his slaughtered kin, whose natural freedom Jefferson claimed to admire. "Not one," was his answer. Andrew Jackson viewed Indian removal as the progress of civilization: "What good man would prefer a country covered with forests and ranged by a few thousand savages to our extensive Republic, studded with cities, towns, and prosperous farms embellished with all the improvements which art can devise or industry execute, occupied by more than 12,000,000 happy people, and filled with all the blessings of liberty, civilization and religion?" 53 Theodore Roosevelt .mocked the anti-imperialists of his day who opposed U.S. counterinsurgency wars in the Philippines and Cuba as sentimentalists who would give Arizona back to the Apaches. More than half a century later, General Maxwell Taylor made the dismantling of the Vietnamese countryside legible to the U.S. Senate by observing, "It is hard to plant the corn outside the stockade when the Indians are still around. We have to get the Indians farther away in many of the provinces to make good progress."54 Metaphors of "Indian country" routinely emerge in the rhetoric of U.S. militarism overseas, from the Philippines at the start of the twentieth century to the Pacific battlefields of World War II to Vietnam in the cold war and Afghanistan and Iraq to pay. 55 Even the most famous U.S. scholarly reconsideration of the theory of the just war, written in part in response to the injustice of the Vietnam War, preserved this reasoning. Justifying Israel's preemptive first strike in the 1967 war that led to the occupation of the West Bank, the Golan Heights, and the Gaza Strip, Michael Walzer suggests the "analogy" of "an unstable society like the Wild West of American fiction," in which "a state under threat is like an individual hunted by an enemy who has announced his intention of killing or injuring him. Surely such a person may surprise his hunter if he is able to do so." In the context of the current wars, Gaddis echoes Roosevelt's dismissal of those who might be squeamish about the violence required to subdue a continent: "Would you want to give it all back?" Another prominent Iraq War supporter, Paul Berman, makes the more categorical and telling assertion that "if you reject the Indian Wars, you reject America." This is something considerably more than the common injunction against litigating injustice long past. In every case, **even when** tragedy **or excess is admitted**, **the Indian Wars are redeployed as an ideal for regulating and directing**

attitudes toward U.S. state violence in the present. Part of what this shows, to paraphrase the important theorist of settler colonialism Patrick Wolfe, is that in **the United States, (and other settler colonies), invasion, occupation, and territorial dispossession constitute not a singular event but a structure of reasoning, feeling, even imagination** (pace Walzer's fictive Wild West), one that demands fealty and that orients attitudes toward the present and future.56 If recursive yet generally disavowed violence marks the national mythos concerning Indians, the nation's other others have often been invited into the orbit of settler freedom. During the twentieth century, particularly after World War II, **the abolition of slavery and the overcoming of Jim Crow were used to legitimate U.S. world power in the eyes of nonwhite peoples and to link it to their own aspirations**. Similarly, diverse histories of immigration have been used to lay claim to an idea of the United States as the "universal nation" and a "nation of nations." **Less savory continuities, deriving from a long internal history of antiblack insurrectionary fear-from the patrolling of racial borderlands to the criminalization of black life and its subjection to paramilitary policing** (**the precursor to the militarized policing and hyperincarceration of our own time)**-**are** largely **downplayed**. Likewise, t**he formative histories of "enemy aliens," internment, surveillance, and deportation that have routinely come to the fore, especially in times of war, are largely disregarded as constitutive elements of the U.S. national security landscape** that consistently worries and confuses whether the greatest "foreign" threats come from the inside or from the outside. An intranational problematic of race and alien status in this way has informed domestic political contention over U.S. foreign relations and has also given shape to a comparative racial and imperial politics along widening arcs of U.S. global involvement. Today it is rarely acknowledged that histories of enslavement, frontier violence, and coerced migration continue to trouble the United States in the present. One prominent study recognizes the long influence of federal Indian policy in shaping U.S. views on governing "third world" places, polities, and peoples, and slavery and its abolition in shaping an emancipatory narrative of U.S. world power, but it presents these histories only as background to the main story. 57 The history of territorial expansion that required more than a century of wars with hundreds of indigenous polities, scattered over So percent of the continent in 1776, is forgotten or else quietly inscribed as a lasting achievement of U.S. nationhood. The centering of the Indian Wars in the U.S. historical experience marked the elevation of the violent prerogatives of the executive through undeclared wars or police actions in a manner that sought to directly oppose popular local will to legal protections and treaty obligations that offered support for indigenous title to land. The influence of these "wars," including support for local sovereign initiatives, states' rights, and sanctioned homicide, echoes through Frederick Jackson Turner's account of the glorious history of U.S. democratic self-fashioning: the advancing of the line of American civilization in its ceaseless confrontation with savagery (a narrative in which he tellingly describes slavery as "but an incident.") As John Grenier writes, "The 205 years between the first Indian war in Virginia in 1609 and the end of the Creek War in 1814 were the seedbed from which the rest of U.S. military history grew." The military tradition conferred by the Indian wars included practices of "extirpative war" that observed no distinction between combatants and civilians, combined with the adoption of forms of exemplary, extravagant violence said to have been learned from the savages themselves, such as scalping. Settler frameworks, in turn, consciously blurred the lines between war and policing, investing ordinary citizens with an expansive police power. 58 Savage war and race war have been closely related as antitheses of a consensual order based on the peaceful disquisitions of contract and property. Claims about the Indians' fundamental injustice or "wickedness" drew their greatest force from the notion that Indians placed no limit on violence and observed no established forms of reciprocity in war. Indians were similarly regarded as incapable of establishing ordered civil relations, despite considerable historical evidence about the precontact ritual limitation of warfare and the establishment of robust and far-reaching indigenous net- works of kinship and trade. This view is concretely expressed in the U.S. Declaration of Independence, with its representation of "merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions."59 Wars of extirpation against Indian tribes were represented as just, defensive, and retributive in the face of Indian atrocities, regardless of political disputes over territory that might have been the proximate cause. Adding to the difficulty, insofar as warfare was defined as the prerogative of sovereign states (that is, "the law of nations"), settlers engaged in violent conflicts with native peoples used the term war inconsistently and often eschewed it altogether, rendering indigenous counterviolence illegitimate or illegible from the outset. If U.S. settler freedom was defined in opposition to Indians, it came to linger in complex ways on blacks and blackness. Blackness cultivated and reproduced under the slave regime remained a permanent threat. The African presence-central to capital accumulation through agricultural development and trade-presented an unwanted and ongoing reminder of hierarchy, heterogeneity, and imperial subjection. By contrast, natives, in spite of their resistance and survival, were slated for historical obscurity. The two populations represented different but interrelated threats: if Indians in the state of nature were "jurally minimalist creatures who were to a greater or lesser extent at war with one another," slaves were by nature criminals harboring murderous wishes and intentions that needed to be held perma - nently in check.60 As I argue in chapter 1, both populations featured in the development of a racialized narrative of security, one that invested every white person with the sovereign right to kill and blurred the lines between military and police action, as citizen militias and slave patrols were functionally equivalent in many parts of the nation. 61 What arguably makes. the United States distinctive among modern imperial states is a sustained ambiguity and conflict over the boundaries of political membership and the delineation of territorial borders. Throughout its history the United States has been both an "imperial nation" and an "empire state," in which commitments to democratic self-government and coercive subjection within a domestic realm are intertwined with antiimperial affirmations of sovereign protection and independence, and military conquest of foreign peoples and territories.62 **Imperatives of expansion and emancipation are politically and discursively yoked together**, but **with contradictory**

implications for the heterogeneous populations that are party to these encounters. **Intertwined in a complex skein of legalism and myth, material accumulation and moral disavowal, a national narrative of everexpanding freedom has oscillated against commonsense and institutional commitments to permanent yet unpredictable violence that is viewed both as freedom's instrument and as its guarantor**. Continuously weighing calculations of prosperity against the necessary attrition of life elsewhere, the people of the United States have arguably never been at peace. In this respect, as the historian Richard Hofstadter sharply puts it, "Americans certainly have reason to inquire whether, when compared with other advanced industrial nations, they are not a people of exceptional violence."63 Violent contestations of physical frontiers and internal borders gave shape to a conception of foreign relations insular in its knowledge and understanding. of peoples elsewhere and at the same time boundless in its sense of an entitlement to involve itself with those peoples and their lands, markets, and resources-what might be termed an effort to domesticate or annex the foreign, unknown world. The mirror and analogue of **this process has been the development of a civic and political culture that is characterized by a similarly paradoxical combination of high levels of quotidian violence and long-term expansion of infrastructures and bases of centralized authority**-what might be termed **the normalization of civil insecurity** as a feature of national belonging. Most consequential, struggles over the boundaries of national belonging- particularly the legacies and ongoing practices of antiblack domination, anti-indigenous frontier warfare, and anti-alien immigration restriction- have never been removed from questions of the state's foreign policy: that is, military intervention and debates over the proper frontiers of U.S. state action, especially coercive and violent state action, wars both declared and undeclared. Engagement with imperial forms of rule, most fundamentally government without consent of the governed-by way of police and military action-has characterized U.S. involvement at the local, regional, continental, hemispheric, and global scales. **Putting questions of race and violence at the center of the story of American empire does not displace motives of capitalist profit, the expansion of circuits of wealth accumulation, or class division.** Rather, as I argue in chapter 2 by way of a reading of Marx's Capital, Volume I, **it suggests tightly woven connections between racism, war, and liberalism in the development of capitalist power and material accumulation**. If the American road to capitalism circumvented the encrustations of a landed aristocracy and the densities of urban class stratification, and accommodation, it also marked a dramatic compression of the time and space between money, violence, and materially consequential decision under terms that Marx described as "primitive accumulation," that is, an ability both to purchase and seize land and to purchase and command labor. The relatively low protection costs and the dispersed, decentralized aspects of the settlement project meant that the direct application of force and violence in the service of property ownership and productive investment has played a far more direct role in American historical development than is generally acknowledged. What the historian Sven Beckert terms "war capitalism" was central to the development of modern imperialism, overseas colonization, and slavery around the world as well. But **what distinguishes the American form of empire is the intensive development of infrastructures of violence-made up of segregated and carceral spaces, suburban idylls and racialized ghettos, militarized green zones and internment camps-to manage a population sharply divided along multiple racial lines**. This development has achieved wide public sanction and evolved alongside a form of governance that privileges the pursuit of private wealth and property. To quote Hofstadter, "the primary precedent and primary rationale for violence has come from the established order itself. "64 As its own mode of valuation and risk assessment, racial judgment developed along with processes of capital formation and accumulation. **We cannot understand the commingling of expansively consensual visions of U.S. nationhood as self-government and private contract, and the coercive subjections of U.S. racism and empire, without understanding the nexus of race and capital formation that has been integral to its history**. One of George W. Bush's favored locutions was that fighting terrorists "over there" was a kind of preventive medicine, a way to forestall having to fight them "at home." In this framing of global military engagement, the American nation, or people, remained at a reassuring distance from the United States' extensive and violent global project, its strategic planning, its network of military bases and multiple theaters of military operation. As I suggest in chapter 3, **it is tempting to view the moral and ideational separation of the U.S. domestic and overseas realms-with American civilians enjoined to shop and conduct business as usual as its military specialists struck at enemies faraway** and unseen-as a strange, contemporary mutation of an American way of war, a peculiar prophylaxis whose signal figures are the stealth operatives and remote warriors, the drone operators working in unmarked trailers, and the special-ops commandos whose names we will never know. But perhaps **the active disconnect between the foreign and the domestic is where we must look if we are to understand the evolution of empire in the U.S. global age-not the refusal**

of the temptations of empire but the equally persistent claim never to have been one.

!– Everywhere War

Carceral assemblages naturalize state violence, producing both the "Everywhere War" and the "Everywhere Police."

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In "Critique of Violence", Walter **Benjamin** famously **referred to police as a "formless, nowhere tangible, all-pervasive, ghostly presence in the life of civilized states**" (1978:287). For Benjamin, **police is the exemplary illustration of the "spectral mixture" of the violence that at once makes and preserves legal order**. His point is not that this ghostliness renders police to be "nowhere", rather his point is that police is everywhere—tangible/intangible, formless/formed, spectral/solid. I open with this by way of suggesting that **it is important we think through the ways that the animus of police** haunts, or anticipates and actively **bolsters, the dronification of state violence** (Shaw and Akhter 2014) **that has proven so central to late modern capitalism's late modern wars**. Over the last decade, the "drone wars" have been subject to much debate and commentary, and what I want to do here is think through the ways that this apparently "new" mode of organized violence might provocatively be unpacked as a mobilization of police power. This is a question about the ways that **Everywhere War,** to use Derek Gregory's (2011) phrase, **is inseparable from** what we might call **Everywhere Police.**

In his discussion of colonial air power as police power, Mark Neocleous (2014) suggests that drones are first and foremost technologies of police. By police he is not simply referring to "the police" (i.e. uniformed agents) but to police power as broad state policy concerned with the fabrication of capitalist social relations through the eradication of threats to accumulation and private property. For Neocleous drones extend and merge the biopolitical and the necropolitical mandates of "traditional" air power to the extent drones project power by occupying the skies, surveying populations, and violently intervening on earthly subjects. Neocleous' "air power as police power" is not simply a turn of phrase; air power was in fact historically referred to as "air police", and this needs to be taken seriously in any analysis of aerial violence. The point being that what is often taken as a purely military form of power—missile strikes, bombing and aerial surveillance—can also be understood as forms of police power. This is not to suggest some binary between war and police, rather it is to suggest the exact opposite by **starting from a position that understands war and police as "always already together**" (Neocleous 2014) since **the** grounded **realities of state power betray any** easy, simplistic **binaries**. As **Fanon** (2004:3–4) **reminds us**, **from the vantage of the life and death realities of colonized populations war and police are always coupled as a "language of pure force", with the "colonized world" best "represented by the [military] barracks and the police stations**", **the "policeman and the soldier**", "rifle butts and napalm"—and **it is in this war/police assemblage that** "unmanned" **violence should be situated**.

Working within a similarly broad conception of **police power**, albeit more directly **contextualized in histories of anti-Black violence,** Nikhil Singh (2014:1098) also suggests drone **warfare is nothing less than police extending its "sway to the ends of the earth**", effectively continuing the legacy of racist police violence visited upon "Amadou Diallo to Renisha McBride to Michael Brown". Similarly, Robin Kelley (2013) and Vijay Prashad (2013), albeit only in passing, have also suggested that drone violence "over there" has its corollary in the legal terror endemic to "the police" under racial capitalism. While framing the killing of Travyon Martin within the "history of routine violence", Kelley (2013) writes that "[w]hat are signature strikes if not routine, justified killings of young men who might be al-Qaeda members or may one day commit acts of terrorism? It is little more than a form of high-tech racial profiling". **This is to insist that spatial acts of blood-letting against "foreign enemies" cannot so easily be separated from the legal terror waged against poor people "at home**". **This requires**, as Jenna Loyd (2014:9) has shown, a **rejection of the "strict separation between the domestic and foreign spheres of government action" normalized by nationalist ideologies.**

Thinking drone war with police violence helps to challenge the apparent "exceptionality" of the drone by usefully locating the drone within one of the most pervasive, insidious, yet mundane rationalities and mandates of emergency power: police. Hence the "spectacular" drone is firmly situated within already existing "ordinary" architectures of security, policing, war, and surveillance, such as patrols, helicopters, CCTV, stakeouts, checkpoints, raids, and forms of violence, as well as the political economies of racial differentiation. The nascent drone, as police technology, extends these pre-existing practices of violence while threatening to expand, amplify, and intensify their operative logics of legibility, profiling, prevention and preemption. But of course, **policing** itself, especially **in the North American context**, **emerges out of the historical geographies of settler colonialism and plantation power** (Kelley 2000), **as well as** many imperial and **colonial** projects of **violence directed against foreign others** (see McCoy 2009 for instance). **Thinking drone violence in relation to police**, then, also **helps to de-fetishize** the seeming "newness" of drone violence **by locating this terror not only within the police mandate, but within longer transnational histories of racial capitalism, including spatial acts of violence associated with settler colonialism and slavery that exceeded common understandings of formal uniformed policing like slave patrols and lynch mobs and all sorts of techniques for**

surveilling Blackness such as lantern laws, for instance (see Browne 2015). The point though is **not to conflate unique and complex histories and geographies but to confront the "persistence and convergence of patterns and systems**" of violence in order **to grasp how "the centrality of violence to all aspects of US life helps explain the continuum from policing and prisons to war**" (Gilmore 2009:73). As Ruth Gilmore writes, "Killing somebody has always been on the American agenda, and avoiding being caught in American crosshairs an ontological priority" (2009:78).

---ALTERNATIVE---

Alternative Solves – General

Abolitionism addresses the historical roots of the criminal justice system, enabling new conceptualizations of social life.

Rodrfguez 19 – Professor of Ethnic Studies and Chair of the Academic Senate, University of California, Riverside

Dylan, Abolition as Praxis of Human Being: A Foreword, 132 Harv. L. Rev. 1575. HeinOnline.

It is within this irreconcilable reformist contradiction that **an aboli-tionist historical mandate provides a useful and necessary departure from the liberal assumption that either the carceral state or carceral power is an inevitable and permanent feature of the social formation. This historical mandate animates abolition as a creative, imaginative, and speculative collective labor**: **while liberal-to-progressive reformism attempts to protect and sustain the institutional and cultural-political coherence of an existing system by adjusting and/or refurbishing it, abo- litionism addresses the historical roots of that system in relations of op- pressive, continuous, and asymmetrical violence and raises the radical question of whether those relations must be uprooted and transformed (rather than reformed or "fixed") for the sake of particular peoples' ex- istence and survival as such**.7

Consider abolition as both a long accumulation and future planning of acts, performed by and in the name of peoples and communities re- lentlessly laboring for their own physiological and cultural integrity as such. **Embrace the obligation that accompanies the term abolition** - a complex, dynamic, and deeply historical shorthand, if you will - **in the work of constantly remaking sociality, politics, ecology, place, and (hu- man) being against** the duress that some call **dehumanization**, others name **colonialism,** and still others identify as **slavery and incarceration**. Abolition, then, is constituted by so many acts long overlapping, dis- persed across geographies and historical moments, that reveal the un- derside of the New World and its descendant forms - the police, jail, prison, criminal court, detention center, reservation, plantation, and "border."

No longer limited by canonized narratives of late nineteenth-century (and disproportionately white) **abolitionists seeking redemption of the American project against its own constitutional racial-colonial-chattel carcerality**, or even by recent articulations of early twenty-first-century abolition across a spectrum of progressive-to-radical rejoinders to gen- dered racist state violence, **another conceptualization** of the term **be- comes possible**. Now and long before, **abolition is and was a practice, an analytical method, a present-tense visioning, an infrastructure in the making, a creative project, a performance, a counterwar, an ideological struggle, a pedagogy and curriculum, an alleged impossibility that is furtively present, pulsing, produced in the persistent insurgencies of hu- man being that undermine the totalizing logics of empire, chattel, occu- pation, heteropatriarchy, racial-colonial genocide, and Civilization as a juridical-narrative epoch**.

Alternative – Abolitionist Ethic

An abolitionist ethic unmasks the hidden violence of the prion regime and renders us able to imagine other frameworks for collective social life

McLeod 15 – Associate Professor, Georgetown University Law Center

Allegra M., "Prison Abolition and Grounded Justice." 62 UCLA L. Rev. 1156-1239 (2015). https://scholarship.law.georgetown.edu/facpub/1490

Jonathan Simon, in Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear, **exposes how polit- ical and social thought in the United States have come to focus on crime control to the exclusion of other frames of reference for governance**. 261 Simon explains that "**[w]hen we govern through crime, we make crime and the forms of knowledge historically associated with it—criminal law, popular crime narrative, and criminology—available outside their limited original . . . domains as powerful tools with which to . . . frame all forms of social action as a problem for govern- ance**."262 An important part of this ideological capture is, as Angela Davis reveals, the "simultaneous presence and absence" of incarceration and criminal law en-forcement. 263

Crime governance thrives when we are able to imagine we have addressed interpersonal violence, theft, and other problems by depositing certain people in prison. But when we are forced to confront what prisons do, we are compelled to consider the ideological work prison performs. We come to recog- nize prison, then, **as more than "an abstract site into which undesirables are de- posited, relieving us of the responsibility of thinking about the real issues afflicting those communities from which prisoners are drawn in such dispropor- tionate numbers**."264 **An abolitionist ethic, by unmasking the hidden violence in- herent in this ideological capture and by encouraging conflict about its perpetuation rather than unknowing acquiescence, promises to loosen the cap- ture's hold and renders us—citizens and legislators alike—better able to imagine other frameworks for governance and collective social life. This is a product both of abolition's fundamental moral condemnation of prison-backed criminal law enforcement's legitimacy as a means of managing complex social problems, and of the awareness an abolitionist ethic facilitates about the choice—rather than the necessity—of addressing complex social problems through incarceration and pu- nitive policing**.

Alternative – Abolitionist Pedagogy

Invisibility constrains our imagination and blinds us to the imperative for undoing the naturalization of prisons via abolitionist pedagogy. Building critiques and movements against state violence requires a confrontation with the hegemonic frames embedded within their silence

Loyd 11 - Faculty Fellow in the Humanities @ Syracuse University [Dr. Jenna M. Loyd, (PhD in Geography from UC Berkeley. Has held postdoctoral positions with the Island Detention project in the Department of Geography @ Syracuse University, the Center for Place, Culture and Politics @ CUNY Graduate Center, and in the Humanities Center @ Syracuse University) "American Exceptionalism, Abolition and the Possibilities for Nonkilling Futures," Nonkilling Geography, Edited by: James Tyner and Joshua Inwood (2011)

The relative **invisibility** of domestic state violence vis-à-vis war **constrains the imagination and imperative** for building just, free, and peaceful futures, internationally and domestically. Domestic practices of state violence (namely policing and imprisonment) are frequently treated as inherently more legitimate than war-making because these practices are founded in popular sovereignty. Yet, these institutions reproduce racial, gender, class, and sexual relations of hierarchy and domination that contribute to family separation, community fragmentation, labor exploitation and premature death. Building a **nonkilling future**, thus, means challenging the state's organization for violence that are practiced domestically in the form of defense (military-industrial complex) and in the form of prisons and policing as the "answer" to social and economic problems ranging from poverty, to boisterous youth, to human migration, and drug use (Braz, 2008; Gilmore and Gilmore, 2008).

It takes sustained ideological work to contain "war" as the only form of state violence and to contain the good sense that war's harms cannot be confined to weapons, neatly demarcated battlefields, and declarations of wars' conclusions. Building critiques of and movements against state violence means **confronting hegemonic frames** that understand state violence as exceptional, rather than as normal practices structuring both international relations and domestic governance. It means asking why denunciations of the "war at home" sound hyperbolic to some Americans. It means asking in what ways domestic practices of state violence are practiced elsewhere and international practices are imported. Such cross-boundary traffic in practices (and personnel) of policing, imprisonment and war-making are important for showing that the lines between foreign and domestic, war and peace, civilian and military are constantly blurred. This in turn highlights the tremendous ideological work that goes into maintaining these boundaries, and the material consequences such geographical imaginations have on people's lives and the places in which they live. This is not to say that the war at home and war abroad are the same or necessarily have the same intensity. Rather it is to trace the frame of exceptionalism that structures the relations between these places in ways that facilitate violence in both places.

As we have seen, the invisibility and naturalization of state violence in the form of the prison is one of the most overlooked sites of American exceptionalism, critiques of US state violence, and of antiwar efforts. For precisely this reason, attentions should be placed on challenging the prison regime as one aspect of building nonkilling futures. For this historical moment, Dylan Rodríguez argues that undoing the naturalization of such commonplace violence, centers squarely on an **abolitionist pedagogy** that works "against the assumptive necessity, integrity, and taken-for-grantedness of prisons, policing, and the normalized state violence they reproduce" (2010: 9). Dismantling prisons is about dismantling relations of white supremacy, heteropatriarchy and economic exploitation that undermine the possibilities for freedom and human flourishing. Prison abolition has an **expansive antiviolence imperative** that necessarily demands an end to connected practices of war, colonial dispossession, and imperial rule.

Abolitionist imaginations **challenge violent suppression** of human freedom and offer **important visions for forging links** among different sectors of anti-violence organizing. We might look for example to the nineteenth century international slavery abolition movement or more recently to the nonaligned movement of (formerly) colonized nations, which regarded ending the Cold War as a condition for political autonomy and fulfilling human needs (Prashad 2007). Likewise, for civil rights organizers in the US South, the abolition of Cold War annihilation was predicated on domestic peace, which could only be won through freedom, that is overthrowing the legal and extralegal relations of white supremacy (Loyd, 2011).

Creating the possibilities for nonviolent resolution of social conflict is a recognized aim of antiwar or peace organizing. Prison abolition too is premised on dismantling the prison as a solution for social conflict and for creating the possibilities for freedom and human flourishing. As Andrew Burridge, Matt Mitchelson, and I (2009-2010) write: "Building economies and community institutions that foster creativity, care, self-determination and mutual responsibility are among the abolitionist visions for a just society. That is, abolition is a vision for the future that can guide current action for making communities that create real safety and

meet people's needs." Abolition links dreams of peace and freedom. Abolitionism critically analyzes how dominant categorizations of governance and sovereignty are premised on (categorical) unfreedom. Making these links in practice means recognizing how the **prison underpins violent domination on a world scale**. Abolition is thereby offers **imperative theoretical vision and practical means** for building nonkilling futures. Pg. 119-121

Alternative – Abolition Democracy

Abolition democracy requires cutting through the legal, jurisdictional, and political barriers that foreclose critique.

Angela **DAVIS** Distinguished Prf. Emerita Humanities @ UC Santa Cruz **'5** *Abolition Democracy: Beyond Empire, Prisons, and Torture* p. 90-97

The convoluted legalistic vocabulary produced by the war on terror would make great material for comedy if it did not have such brutal consequences. These new categories have been deployed as if they have a long history in law and com- mon usage-as if they are self—evident-and their strategic effects of circumventing the Geneva Conventions and a host of human rights instruments have once again relied on the notion that the US. stands above the UN. the World Court, and everything else. I wonder whether this subterfuge doesn't point to a more general problem, that of the new political discourse generated by the Bush administration. The Bush vocabulary, which pretends to express complicated ideas in the most simple and unsophisticated terms, is both seductive and Frightening. it is seductive because it appears to require no effort to understand; it is dangerous because it erases every- thing that really matters. Just as the meaning of "enemy combatant" is assumed to be self evident, so are the meanings of the terms "freedom" and "democracy."

This leveling of political discourse to the extent that it is not supposed to require any effort to understand——that it appear self evident, incontrovertible, and logical—enables aggression and injury. This is true of the simplistic. often crude vocabulary that Bush tends to use, it is true of his repetition of the words freedom and democracy in ways that empty them of serious content, and it is true of his representation of terrorists as "evil doers." But it is also true of such **legalistic notions as "enemy combatant" and "extraordinary rendition**."

As mentioned earlier, the term "extraordinary rendition" describes the process of ttransporting prisoners to other countries for the purpose of having them interrogated. What the term hides is the fact that the countries to which these prisoners ate "rendered" are known to employ torture. /_\s Jane Mayer points out in her recent article in The New Yorker, this is a very widespread practice." This practice allows the U8. government to engage in torture, albeit indirectly. Again, I would argue that the production of **this kind of political discourse** that **obfuscates**, erases. **and cuts off discussion under the guise of transparent legal jargon** helps to Fan moral panic about terrorism. **These terms are designed to render discourse and discussion useless**. So, on the one hand. if we analyze the Bushisms, as they have been called, they invoke laughter and comedy, thus preventing us from taking them seriously. On the other hand, there is **the legalistic jargon that has the semblance of having been produced within established and incontrovertible frameworks of law. so they are taken too seriously**. I cannot remember a time in my life when political discourse was so convoluted**. We should be deeply concerned about the extent to which this tends to foreclose popular critical engagement with the policies and practices of global war**.

The British Court has referred to what is going on at Guantanamo and Abu Ghraib as a "legal black hole." What are the consequences of this legal black hole for human rights activists across the world?

Perhaps the lesson in all of this is that we need to find ways of contesting the absolute authority of law. We might phrase the following question: how do we use the law as a vehicle of progressive change, while simultaneously emphasizing the importance of acknowledging the limits of the law—the limits of national law as well as international law. For example, we naturally assume that justice and equality are necessarily produced through the law. But the law cannot on its own create justice and equality. Here in the U.S.. thirty years after the passage of what was considered unprecedented civil rights legislation, we are still plagued with many of the same problems of inequality relating to economics, race. and gender. In many instances, they are even more entrenched in the social order. There are ways in which law can successfully be taken up strategically and thus can enable popular movements and campaigns. The focus of the civil rights movement was precisely on effecting change in the prevailing laws. But at the same time, the law produced the limits of those possible changes, as we can see in the way that affirmative action legislation has, in states like California, enabled its own demise.

The grand achievement of civil rights was to purge the law of its references to specific kinds of bodies, thus enabling racial equality before the law. But at the same time this process enabled racial inequality in the sense that the law was deprived of its capacity to acknowledge people as being racializcd. as coming from racialized communities. Because the person that stands before the law is an abstract, rights-bearing subject, the law is unable to apprehend the unjust social realities in which many people live. To give a more concrete example, one that relates to the formation of the prison- industrial-complex, I would say that precisely because **the law is unable to take into consideration those social conditions that render certain communities much more susceptible to imprisonment than others**, **the mechanism of formal due process justifies the racist and class character of prison populations**. **The law does not care whether this individual had access** to good education or not, or whether he/she lives under impoverished conditions because companies in his or her communities have shut down and moved to a third world country, or whether previously available welfare payments have vanished. **The law does not care about the conditions that lead some communities along a trajectory that makes**

prison inevitable. Even though each individual has the right to due process, what is called the blindness of justice enables underlying racism and class bias to resolve the question of who gets to go to prison and who does not.

While I have' been referring quite specifically to the US. context. I would also suggest that there are ways in which human rights activists should be attentive to the questions as well. Human rights instruments can be strategic tools in the struggle For global justice. But we cannot ignore larger processes, such as the movement of global capital, which assaults entire populations. Campaigns to defend the rights of immigrants in post-colonial urban centers in Europe and the U8. must insist on the human rights of African, Latin American, Asian. and Arab immigrants. At the same time it is important to speak out against the impact of global capitalism as a central—-though not the sole——-motivation causing people to move across borders. This is a major challenge for human rights activists today. And. in fact, organizations like Amnesty International that have previously focused their work at the level of individual human rights claims, have now expanded their work to defend populations and communities as well as individuals. This requires the dual strategy of taking up the law and recognizing its limitations in order to address that which the law cannot apprehend.

Earlier on you began talking about the prison-industrial complex and the vision for an "abolition democracy"? Can you elaborate?

First. **the prison-industrial-complex is a result of the failure to enact abolition democracy**. "**Abolition democracy**" is a term used by DuBois in his work Black Reconstruction, his germinal study of the period immediately following slavery. George Lipsitz uses it today within contemporary contexts. I will try to explain briefly its applicability to three forms of abolitionism: **the abolition of slavery, the abolition of the death penalty, and the abolition of the prison**. **DuBois argued that the abolition of slavery was accomplished only in the negative sense. In order to achieve the comprehensive abolition of slavery**———**after the institution was rendered illegal and black people were released from their chains**~—**new institutions should have been created to incorporate black people into the social order**. The idea that every former slave was supposed to receive **forty acres and a mule** is sometimes mocked as an unsophisticated rumor that circulated among slaves. Actually, this notion originated in a military order that conferred abandoned Confederate lands to freed black people in some parts of the South. But the continued demand for land and the animals needed to work it **reflected an understanding among former slaves that slavery could not be truly abolished until people were provided with the economic means for their subsistence**. They also needed access to educational institutions and needed to claim voting and other political rights, a process that had begun. but remained incomplete. during the short period of radical reconstruction that ended in 1877. DuBois thus argues that **a host of democratic institutions are needed to fully achieve abolition--**thus abolition democracy.

What. then. would it mean to abolish the death penalty? The problem is that most people assume that the only alter- native to death is 21 life sentence without the possibility of parole. However, if we think about capital punishment as an inheritance of slavery, its abolition would also involve the creation of those institutions about which DuBois wtote—insti- tutions that still remain to be built one hundred forty years after the end of slavery. If we link the abolition of capital pun- ishment to the abolition of prisons, then we have to be will- ing to let go of the alternative of life without possibility of parole as the primary alternative. **In thinking specifically about the abolition of prisons using the approach of abolition democracy, we would propose the creation of an array of social institutions that would begin to solve the social prob- lems that set people on the track to prison**. **thereby helping to render the prison obsolete**. There is a direct connection with slavery: when slavery was abolished, black people were set free, but they lacked access to the material resources that would enable them to fashion new. free lives**. Prisons have thrived over the last century precisely because of the absence of those resources and the persistence of some of the deep structures of slavery. They cannot, therefore, be eliminated unless new institutions and resources are made available to those communities that provide, in large part. the human beings that make up the prison population**.

Alternative – Police Abolition

Police abolition must be the starting point --- imagining a world without police enables us to shift the narrative and reconceptualize the institution

Ciccariello-Maher 20 – visiting scholar at the College of William and Mary and the author of "A World Without Police," which will be published next year by Verso Books

George, 1/2. "Police departments are broken. Is it time to abolish them all together? | Pro/Con." https://www.inquirer.com/opinion/commentary/police-abolish-criminal-justice-reform-20200102.html

America is the most policed and incarcerated country in the world. **When policing is a way of life, it's hard to even imagine alternatives**. When you're holding a hammer, everything looks like a nail — so goes the saying. To suggest abolishing the police is therefore to invite immediate knee-jerk skepticism: after all, we need the police, right?

We don't know what a world without police would look like, but we do know that the police don't truly "serve and protect" most people. Not people of color, who are routinely brutalized and disproportionately killed. Not those suffering mental health crises, who are an astonishing **16 times more likely to die in encounters with police**. And **not women**, either: an estimated **40% of police are domestic abusers** — an unseen epidemic. **With rape conviction rates below 1% and hundreds of thousands of untested rape kits piling up nationwide, it's possible that police actually inflict more violence on women than they prevent**.

Once we do the math, we see that the police only "protect and serve" a small minority of the population, but this is nothing new. **Police were created to serve the interests of the white and the wealthy, and they continue to do so today**. And that's not all: unaccountable **police institutions are a petri dish for brutality, violence, and corruption**, as recent high-profile cases in Philadelphia make clear.

The past decade has seen high-profile police killings met with mass protests, demanding radical reform of police practices. But reform won't cut it. Civilian oversight committees are toothless, so-called "community policing" only weakens already ailing communities, and the widespread call for body cameras overlooks research showing that cameras do more to convict suspects than hinder the police wearing them, who often simply cover them up, turn them off, or delete the footage. The police cannot be reformed — they must be abolished.

But I am under no illusion that this will happen overnight, which is why many organizers nationwide have embraced the three D's: disempower, disarm, and disband. This means attacking the root of police power on the way to abolition. It means watching, recording, and disrupting the police. It means pushing back against police privacy laws like HB 27 and supporting calls for Mayor Jim Kenney to make contract negotiations with the Fraternal Order of Police public and to reform disciplinary arbitration.

Abolishing the police will be a long and uphill battle, but in recent decades, advocates of prison abolition have succeeded in shifting the national narrative. **There is now broad agreement that the war on drugs was a catastrophe and mass incarceration is a crisis in need of solutions**. **Prison abolitionists created a space for the election of radical district attorneys** like Larry Krasner and Chesa Boudin in San Francisco. **Advocates of police abolition need to do the same**.

We know that alternatives to the police exist: when we rely on family, friends, and neighbors instead of calling the cops. And there are entire neighborhoods here and across the world that have pushed out the police entirely. This means reinvesting in communities, building local grassroots power, and strengthening other forms of conflict resolution so that policing gradually becomes obsolete. But **above all, it means** shaking off our blinders, looking at things differently**, and beginning to imagine a world without police**.

---FRAMEWORK---

2NC – AT: Extinction Outweighs

Even if they win extinction outweighs – studies prove pretending to solve extinction in simulations like debate trains you against utilitarianism broadly – only the alt solves the ethics necessary to make debaters and you willing to solve extinction – it's an independent da to their model

Kahane et al **15** [Guy Kahane, Oxford Uehiro Centre for Practical Ethics, University of Oxford. Also Jim A.C. Everett, Brian D. Earp, Miguel Farias, and Julian Savulescu. 'Utilitarian' judgments in sacrificial moral dilemmas do not reflect impartial concern for the greater good. January 2015. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4259516/]

A great deal of recent research has focused on hypothetical moral dilemmas in which one person needs to be sacrificed in order to save the lives of a greater number. It is widely assumed that these **far-fetched sacrificial scenarios** can shed new light on the fundamental opposition between utilitarian and non-utilitarian approaches to ethics (Greene. 2008: Greene et aL 2004: Singer. 2005V

However, such **sacrificial dilemmas** are merely **one context** in which utilitarian considerations happen to conflict with opposing moral views (Kahane & Shackel. 2010V To the extent that 'utilitarian' judgments in sacrificial dilemmas express concern for the greater good—that is, the utilitarian aim of impartially maximizing aggregate welfare—then we would expect such judgments to be associated with judgments and attitudes that clearly express such concern in other moral contexts.

The set of **studies** presented here **directly tested** this prediction by investigating the **relationship** between so-called **'utilitarian' judgments** in classical sacrificial **dilemmas** and a **genuine impartial concern** for the **greater good**. Across **four experiments** employing a **wide range** of **measures** and **investigations of attitudes**, **behavior** and moral judgments, we repeatedly found that this prediction was **not borne out**: a tendency to endorse the violent sacrifice of one person in order to save a greater number was not (or even **negatively) associated** with paradigmatic markers of utilitarian concern for the greater good. These included identification with humanity as a whole; donation to charities that help people in need in other countries; judgments about our moral obligations to help children in need in developing countries, and to prevent animal suffering and harm to future generations; and an impartial approach to morality that does not privilege the interests of oneself, one's family, or one's country over the greater good. This lack of association remained even when the utilitarian justification for such views was made explicit and unequivocal. By contrast, many (though not all) of these markers of concern for the greater good were inter-correlated.

In fact, responses designated as 'utilitarian' in the current literature were strongly associated with traits, attitudes and moral judgments (primary **psychopathy**, rational **egoism**, and a **lenient attitude** toward clear **moral transgressions**) that are **diametrically opposed** to the **impartial concern** for the **greater good** that is at the heart of utilitarian ethics. While prior studies have already associated 'utilitarian' judgment with antisocial traits (Bartels & Pizarro. 2011: Glenn et al.. 2010: Koenigs et al.. 2012: Wiech et al.. 2013V here we show that such judgments are also tied to explicit amoral and self-centered judgments. Moreover, while these further associations were largely driven by antisocial tendencies, some (such as the more lenient attitude toward clear moral transgressions) were present even when we controlled for these antisocial traits.

We wish to emphasize, however, that our main result—the lack of association between 'utilitarian' judgment in sacrificial dilemmas and markers of concern for the greater good in other contexts— remained even when we controlled for the antisocial component of 'utilitarian judgment. Thus, even if some individuals arrive at more utilitarian' conclusions in sacrificial dilemmas, not because of indifference to harming others but by deliberative effort (Conwav & Gawronski. 2013: Gleichaerrcht & Young. 2013: Wiech et al.. 2013) such a supposedly utilitarian' tendency is still not associated with paradigmatic utilitarian judgments in other moral contexts.

Several limitations of the present study need to be highlighted. First, one of our key results is a lack of correlation between 'utilitarian' judgments in sacrificial dilemmas and markers of impartial concern for the greater good, and it might be objected that this null result could be due to lack of statistical power. However, consistently with prior studies (Kahane et al.. 2012). the present study failed to find such an association across four experiments employing a wide range of measures, with large sample sizes, while repeatedly finding associations between 'utilitarian'judgment and antisocial and self-centered traits, judgments and attitudes. Thus, while we cannot rule out the possibility that such an association could emerge in future studies using an even larger number of subjects or different measures, we submit that, in light of the present results, a robust association between 'utilitarian' judgment and genuine concern for the greater good seems extremely unlikely.

A second potential limitation is that the present study does not directly investigate the proximal causal antecedents of 'utilitarian' judgment in sacrificial dilemmas, and the results reported here are correlational. It might thus be objected that while our results suggest that individuals with 'utilitarian' tendencies in sacrificial dilemmas do not exhibit similar tendencies in other moral contexts,

these findings cannot rule out that utilitarian' judgments within the context of sacrificial dilemmas are nevertheless driven by the utilitarian aim of impartially maximizing the greater good. In response, let us highlight first that the common reference in the literature to a utilitarian bias or to the processes underlying utilitarian decision-making suggests a generality that is incompatible with our results. At most, such claims could relate to biases or processes underlying such judgment in a very specific (and unusual) context. Second, while some of our results relate to markers of impartial concern for the greater good in moral contexts that are different from that of sacrificial dilemmas, others investigate such markers within this context. As we reported in Study 2, a tendency to 'utilitarian' judgment may in fact be strongly tied to considerations of self-interest (see also Moore et al.. 2008V Several prior studies similarly found that rates of 'utilitarian' judgment are strongly influenced by whether they involve sacrificing (or saving) foreigners vs. compatriots (Swann. Gomez. Dovidio. Hart. & Jetten. 2010). strangers vs. family members (Petrinovich. O'Neill. & Jorgensen. 1993V and black people vs. white people (Uhlmann. Pizarro. Tannenbaum. & Ditto. 2009^—let alone animals vs. humans (Petrinovich. O'Neill. & Jorgensen. 1993V There is thus considerable evidence that judgments standardly designated as utilitarian' do not in fact aim to impartially maximize the greater good. Finally, as we shall outline below, there is an alternative, simpler account of what drives supposedly 'utilitarian' judgment, an account that avoids implausibly attributing to ordinary folk radical moral aims drawn from philosophy.

6.1. What really drives so-called 'utilitarian' judgment

Utilitarianism is the view that the right act is the one that maximizes aggregate well-being, considered from a maximally impartial perspective that gives equal weight to the interests of all persons, or even all sentient beings (Singer. 1979V This radical and demanding view is the positive core of utilitarianism. Our **results suggest** that so-called **utilitarian' judgments** in **sacrificial dilemmas** are **not driven by** this **utilitarian aim** of impartially **maximizing aggregate welfare**. This is not entirely surprising. It is more plausible that when individuals endorse sacrificing one person to save five others, they are following, not this demanding utilitarian ideal, but rather the more **modest**, **unremarkable**, and **ordinary thought** that **it is**, ceteris paribus, **morally better** to **save a greater number** (Kahane. 2012. 2014V That everyday view involves **no demanding commitment** to always **maximize** aggregate **well-being** (e.g. by being willing to sacrifice 1 to save 2, or 50 to save 51) nor—more importantly for our purposes—that we must do so in a **maximally impartial manner**, taking into equal account even the interests of distant strangers.

Utilitarianism also has a negative or critical component. Put simply, this component is just the claim that impartially maximizing aggregate well-being is the whole of morality. What follows from this is that utilitarians must reject any 'deontological' moral constraints on the pursuit of their positive aim. They must, for example, reject moral norms forbidding us from directly harming others in certain ways or from lying or breaking promises, even if such acts would lead to a better outcome. Utilitarians must also reject inalienable rights and considerations of distributive justice, as well as principles of desert and retribution, or of purity and hierarchy. And so on.

A utilitarian must reject all deontological constraints on the pursuit of the greater good. But, again, it is obviously a mistake to assume that if someone rejects **some deontological norms**, let alone a single deontological constraint relating to personal **harm** in a **specific**, **unusual context**, then they must also **reject all such norms**, or even many of them. For example, someone can **reject** a **specific deontological constraint** on directly **harming others** while still holding **extreme deontological views** about **other moral questions** (such as that lying is absolutely forbidden), or radical libertarian views about property rights. Consider an analogy: an atheist would typically rejects all religious rules, but of course the fact that someone rejects a religious rule against, say, eating pork hardly amounts to any interesting step in the direction of atheism, let alone count as an atheist judgment.' Needless to say, someone making such a judgment may in fact be a Christian fundamentalist...

Recent **research** on sacrificial dilemmas has **overlooked these points**. It has **mistakenly treated** the **rejection** (or discounting) of a **single intuitive deontological constraint** relating to harm in a **specific, unusual context**, as a **significant step** in a **utilitarian direction**, and it has **mistakenly assumed** that when **subjects** instead **endorse** an **act** that will **save a larger number of lives** in this **special context**, then this **endorsement must express** an **impartial utilitarian concern** for the **greater good**. Yet such supposedly 'utilitarian' judgments reflect only a very narrow aspect of the negative side of utilitarianism. At the same time, they may reflect little or nothing of utilitarianism's core positive side: the moral aim of impartially maximizing aggregate well-being. One robust result of the present study is that there appears to be no interesting relationship between so-called 'utilitarian' judgment and this positive core of a utilitarian approach to ethics.

The **consistent association** between **'utilitarian' judgment** and **antisocial tendencies** is a **striking illustration** of the **above points**. In particular recent research has overlooked the fact that the negative dimension of utilitarianism is also shared by views that are otherwise radically opposed to it. For example, egoists also approach practical questions in a calculating, no-nonsense manner, and are quick to dismiss many common moral intuitions and sentiments. Needless to say, however, egoists utterly reject the positive core of a utilitarian outlook, holding instead that we should care about

(and maximize) only what is in our own self-interest - One ironic implication of the results of our study is that some recent research on 'utilitarian' decision-making may actually have been studying the psychology of egoism!

The convergence between egoist views, associated with antisocial traits such as psychopathy, and supposedly 'utilitarian' conclusions will seem puzzling only if the theoretical distinctions we draw above are overlooked. It is in fact **not surprising** that when individuals with **antisocial tendencies** and **egoist leanings** are **presented** with **sacrificial dilemmas** in which they are forced to choose between two moral options—one based on a **deontological intuition against causing harm** that they don't share, and one involving **harming someone** to **save more lives**—they would **choose the latter**. There is **nothing to attract them** to the **first option**, while the **second at least follows** the **same logic they employ** in their own **self-centered decision-making**. Yet, as we found in Study 2, the moral judgments of such individuals—judgments that the current literature classifies as utilitarian'—are in fact often **highly responsive** to **whether the sacrifice** in question **is in one's own self-interest**.

2NC – FW – Organizing

The nexus question of the debate is choosing a mode of organizing – ideological refinement is the only purpose of debate because we cannot effectuate immediate change, and small political details can be set aside in favor of generating broad appeal

McCrea 17 [Niamh McCrea is a lecturer in the Department of Humanities, Institute of Technology, Carlow, Ireland, and is a board member of the Community Development Journal. Rosie R. Meade is a lecturer in the School of Applied Social Studies, University College Cork, Ireland, and she is a board member and editor at the Community Development Journal. Mae Shaw was until recently senior lecturer in Community Education at the University of Edinburgh. She is a longstanding member of the editorial board of the Community Development Journal, and Concept, the free online journal. Solidarity, organizing and tactics of resistance in the 21st century: social movements and community development praxis in dialogue. Community Development Journal, Volume 52, Issue 3, 1 July 2017. https://academic.oup.com/cdj/article/52/3/385/3958784]

Taking protest tactics seriously

Protest tactics should be taken seriously because they direct our attention to **what people can do**, what they are prepared to do and what they think matters. These are **not secondary considerations**, but are central to addressing the classic dynamic between means and ends. The concept of 'repertoire of contention', developed by Tilly (1986, p. 4) to account for the range of possible means through which movements make 'claims of different kinds on different individuals and groups' hints at the existence of patterns in the deployment of tactics by social movements and at how they are informed by particular logics (Della Porta and Diani, 1999). By extension, community development must negotiate logics associated both with **strategic engagement** in **invited spaces of policy**, and those spaces which are created or demanded in **pursuit** of **alternative political expression**. This may reconfigure the 'repertoire of contention' available to practitioners in significant ways. Different activist cultures and movement traditions may also need to be negotiated. For example, while recourse to demonstrations, blockades or the carnivalesque are regularly, or even ritually, deployed by social movements, they may be considered suspiciously novel, inappropriate or even counterproductive within mainstream community development practice. At the same time, the opportunity to **subvert social norms** and to mock the powerful can, if introduced skillfully and sensitively, create a **laboratory of possibility** for those who have become **jaded and disillusioned** by the **limitations** of **bureaucratic community engagement strategies**.

Tactics are **crucial** to a group or movement's **effective communication** with itself and its membership, and to its **communication with the wider publics** that it seeks to influence. **Navigating** these **divergent responsibilities** may beget some **sacrifices**: **political nuance** may be **ironed out** in the **interests of broader appeal**; reflexivity and self-criticism may be side-lined in the name of rapid responsiveness; internal diversity and conflict may be trivialized to ensure coherence; and the character of the membership may be respectabilized in pursuit of credibility. Such dilemmas resonate with the competing imperatives and experiences of many community development organizations where there may be perceived trade-offs between the integrity of processes and the delivery of outcomes, or between the adoption of more consensual and more oppositional styles of engagement (Ife, 2013). Like social movements, community development must concern itself with both long and short-term objectives; with process and outcome; with purpose and practice. Drawing on the kind of democratic organizing principles and methods associated with contemporary social movements may, in addition, act to **confront ritualistic organizational practices** of community development, infusing collective engagement with renewed spirit and motivation. In turn, the strategic work of reconnecting horizontal democratic processes with vertical structures of power may be strengthened by increased confidence and commitment (Shaw and Crowther, 2014).

2NC – AT: Policy Key

Their advantage understands mass incarceration to be a failure of a crime policy—this assumes the purpose of mass incarceration was to stop crime and obscures that it was always only a means racial control Alexander 10, Associate Professor of Law

[2010, Michelle Alexander, is an associate professor of law at Ohio State University, a civil rights advocate and a writer. "New Jim Crow : Mass Incarceration in the Age of Colorblindness" ProQuest ebrary, pp. 221-224]

So **how should we go about building this movement to end mass incarceration**? What should be the core philosophy, the guiding principles? Another book could be written on this subject, but a few key principles stand out that can be briefly explored here. These principles are rooted in an understanding that **any movement to end mass incarceration must deal with mass incarceration as a racial caste system**, not as a system of crime control. This is not to say crime is unimportant; it is very important. We need an effective system of crime prevention and control in our communities, but that is not what the current system is. This system is better designed to create crime, and a perpetual class of people labeled criminals, rather than to eliminate crime or reduce the number of criminals. It is not uncommon, however, to hear people claim that the mere fact that we have the lowest crime rates, at the same time that we have the highest incarceration rates, is all the proof needed that this system works well to control crime. But if you believe this system effectively controls crime, consider this: standard estimates of the amount of crime reduction that can be attributable to mass incarceration range from 3 to 25 percent. 27 Some scholars believe we have long since passed a tipping point where the declining marginal return on imprisonment has dipped below zero. Imprisonment, they say, now creates far more crime than it prevents, by ripping apart fragile social networks, destroying families, and creating a permanent class of unemployables. 28 Although it is common to think of poverty and joblessness as leading to crime and imprisonment, this research suggests that **the War on Drugs is a major cause of poverty, chronic unemployment, broken families, and crime today**. But even assuming 25 percent is the right figure, it still means that the overwhelming majority of incarceration— 75 percent— has had absolutely no impact on crime, despite costing nearly $200 billion annually. **As a crime reduction strategy, mass incarceration is an abysmal failure. It is largely ineffective and extraordinarily expensive. Saying mass incarceration is an abysmal failure makes sens**e, though, **only if one assumes that the criminal justice system is designed to prevent and control crime.** But **if mass incarceration is understood as a system of social control— specifically, racial control— then the system is a fantastic success**. 29 In less than two decades, **the prison population quadrupled, and large majorities of poor people of color in urban areas throughout the United States were placed under the control of the criminal justice system or saddled with criminal records for life**. Almost overnight, huge segments of ghetto communities were permanently relegated to a second-class status, disenfranchised, and subjected to perpetual surveillance and monitoring by law enforcement agencies. **One could argue this result is a tragic, unforeseeable mistake, and that the goal was always crime control, not the creation of a racial undercaste.** But judging by the political rhetoric and the legal rules employed in the War on Drugs, **this result is no freak accident**. In order to make this point, **we need to talk about race openly and honestly**. **We must stop debating crime policy as though it were purely about crime. People must come to understand the racial history and origins of mass incarceration — the many ways our conscious and unconscious biases have distorted our judgments over the years about what is fair, appropriate, and constructive when responding to drug use and drug crime**. **We must come to see**, too, **how our economic insecurities and racial resentments have been exploited for political gain, and how this manipulation has caused suffering for people of all colors**. Finally, **we must admit, out loud, that it was because of race that we didn't care much what happened to "those people" and imagined the worst possible things about them.** The fact that our lack of care and concern may have been, at times, unintentional or unconscious does not mitigate our crime— if we refuse, when given the chance, to make amends.

---2NC xt---

AT: Alternative is Utopian

This argument demonstrates our "K prior" arguments. A vision of social rather than criminal justice can be achieved if we prioritize alternatives situated beyond the prison system.

Baldry 15 – Professor of Criminology, School of Social Sciences and Deputy Dean, Faculty of Arts and Social Sciences, University of New South Wales

Eileen, with Bree Carlton and Chris Cunneen, "Abolitionism and the Paradox of Penal Reform in Australia: Indigenous Women, Colonial Patriarchy, and Co-option." Social Justice, Vol. 41, No. 3 (137) (2015), pp. 168-189. JSTOR.

Abolition is often misunderstood and disregarded as Utopian and impossible to achieve. **Herzing** (2005, 2-3) **envisions a world without prisons as one in which people have unfettered access to resources like housing and have the means to take care of their bodies and minds, to participate in the economy, and to conflict without physical violence**: "Society could be more of a collaborative or collective process.... I don't think there is a panacea for this kind of thing. All of these structural inequalities throughout our society have their roots in things that are very deep and very entrenched, so I don't think that it's as easy as just getting rid of the prison system." **Abolition goes beyond eradicating the criminal justice system and prisons—it is a vision for social change, which works toward the realization of social rather than criminal justice**.

That abolitionist writing and scholarly perspectives are informed by and aligned to activist campaigns and the lived struggles of criminalized communities and imprisoned peoples is critical to the abolitionist project. Stanley and Smith (2011, ix) are astute in observing that abolition "writing must always be produced within the context of action. Similarly, action devoid of analysis often makes for shaky ground upon which to build." In this article we have sought to illuminate the meanings of abolitionism as a vision and blueprint for social change within the unique historical, social, political, and institutional context of Australia. In this context, **radical reform agendas prioritize alternatives situated beyond the prison and the criminal justice system that necessarily involve organizing against interlocking structural and systemic forms of injustice, discrimination, inequality, and oppression**. Specifically, abolitionism in Australia must be understood with reference to ongoing colonial and neocolonial oppression and punishment. In this sense, we see colonialism (and neocolonialism) as a sociopolitical system that in effect comprises a prison. This colonial carceral landscape provides a unique context for understanding the historical and contemporary administration of punishment within the Australian criminal justice system. We have therefore argued that the Australian abolitionist project is first and foremost aligned with Indigenous struggles for freedom, self-determination, and social justice within diverse and localized contexts.

The challenge faced by abolitionists is to build frames of analysis and strategies that facilitate genuine long-term system change. Such change will prevent imprisonment and its expansion. It will provide adequate education, health care, resources, and community-based support for people who have experienced imprisonment or who experience a heightened risk of coming into contact with the criminal justice system, allowing them to remain in the community. In seeking to explicate the meaning of abolitionism and the paradoxes presented to abolitionists by reform agendas in Australia, we have anchored our analysis in Indigenous women's experience. We have highlighted the paradoxes and challenges posed by reform agendas through an examination of the abolitionist-led antidiscrimination campaigns in Queensland and NSW, their co-option within Victoria's Better Pathways reform program, and the failure of governments following RCIADIC to bring social justice and human rights to bear in response to Indigenous women in prison. These cases illuminate the paradoxes and failures of system responses to community campaigns about race and gender discrimination.

The key to abolition is to recognize and interrogate the many prisons that are not necessarily visible to the eye. In this sense, Melissa Lucashenko (2002) refers to the "many prisons" inhabited by Indigenous women. She characterizes these prisons as governed by entrenched racism and cultural, social, and economic inequalities: "the prison of misunderstanding; the prison of misogyny; and the prison of disempowerment." **This requires us to first unlock the prisons within our own minds, a process often referred to as decolonizing** (Smith 1999), **so that we can recognize and interrogate the social and political structures that reproduce conditions for discrimination, criminalization, and mass imprisonment**. \

Every major social transformation in history was condemned as utopian before its realization. Your ballot is an essay in refusal.

Ben-Moshe 11 – Postdoctoral research associate at the department of Disability and Human Development, University of Illinois-Chicago

Liat, Genealogies of Resistance to Incarceration: Abolition Politics within Deinstitutionalization and Anti-Prison Activism in the U.S." Sociology – Dissertations, Paper 70. https://surface.syr.edu/cgi/viewcontent.cgi?article=1070&context=soc_etd

It is my hope, as an activist/scholar that this work brings to light the ghost of the incarceration yet to come but also **highlights abolition as praxis to resist it**. As Gordon (2004) explicated, the aim of the **politically engaged intellectual** is to nourish cultures of resistance and to aid in the fulfillment of the human potential of all. In addition, and in response to critique that claimed that his work in Discipline and Punish is not practical but only theoretical in nature, Foucault explained that his role as an intellectual (or scholar/activist) is **not to prescribe solutions**, but to **open up conversations**. He remarked that "it is true that certain people, such as those who work in the institutional setting of the prison… are not likely to find instructions in my book that tell them „what is to be done". But my project is precisely to bring it about that they "no longer know what to do", so that the acts, gestures, discourses that up until then had seemed to go without saying become problematic, difficult, dangerous" and that "it seems to be that "what is to be done" ought not to be determined form above by reformers, be they prophetic or legislative, but by a long work of comings and goings, of exchanges, reflections, trials and different analyses" (Foucault 1994: 256).

Critique, according to Foucault, is sometimes the goal and sometimes the means to a goal, often one which is not yet conceived but is used in a process of trial and error. Foucault asserts that critique "should be an instrument for those who fight, those who resist and refuse what is. Its use should be in processes of conflict and confrontation, **essays in refusal**. It doesn't have to lay down the law for the law. It isn't a stage in programming. It is a challenge directed to what is" (Foucault 1994: 236). I contend that this challenge towards "what is" is the work of abolition today, and for the future of a non-carceral society.

Even for those of us who find deinstitutionalization, anti-psychiatry and prison abolition movements to be "too radical" or problematic for whatever reason, I believe activists and scholars could benefit greatly from connecting them to each other and paying attention to the path of abolition of oppressive institutions. People or ideas, which are perceived as radical are often characterized as dangerous, and sometimes "crazy," and these are exactly the populations we still hold behind bars and locked doors. But in terms of abolition, people who called for the abolition of slavery were also called dangerous and some lost their lives in the struggle, but you would be hard pressed to find people who advocate for slavery today. One can hope that this will be the case in relation to prisons and institutions in the imminent future. As Sebastian Scheerer (1987:7) comments: "the great victories of abolitionism are slowly passing into oblivion, and with them goes the experience that there has **never been a major social transformation** in the history of mankind that **had not been looked upon as unrealistic, idiotic or utopian** by the large majority of experts even a few years before the unthinkable became reality." This research attempts to ensure that abolition of the carceral in the form of deinstitutionalization, prison abolition and anti-psychiatry do not pass into oblivion and are not only preserved but built upon in a shared horizon combating "the incarceration yet to come." Pg. 366-368

AT: Alternative is Vague

Abolition demands that you let go of certainty and futurity – the vagueness is acceptable and *good*.

Ben-Moshe 18 – Assistant Professor of Criminology, Law and Justice at the University of Illinois at Chicago

Liat, "Dis–epistemologies of Abolition." Critical Criminology (2018) 26:341–355 https://link.springer.com/content/pdf/10.1007/s10612-018-9403-1.pdf

My second claim in this paper is that **abolition is a radical epistemology, which is about both knowing and unknowing. The second meaning in which abolition operates is as giv- ing way to other ways of knowing. I term this dis-epistemology, letting go of attachment to certain ways of knowing. This does not mean letting go of only hegemonic knowledge, although that is certainly part of the abolitionist critique. What I mean by dis-epistemology is letting go of the idea that anyone can have a definitive pathway for how to rid ourselves of carceral logics. It is this attachment to the idea of knowing and needing to know that is part of knowledge and affective economies that maintain carceral logics**. I suggest that **abolition is dis-epistemology** in three ways: **it is about letting go of attachments to forms of knowledge that rely on certainty** (what are the definitive consequences of doing or not doing); **prescription and professional expertise (tell us what should be done); and specific demands for futurity** (clairvoyance- what will happen).

A key characteristic of abolition dis-epistemology is rejecting absolutism, foreclosing certainty (what must be done, what will lead to the best results, what can we do now that will lead to a non cerceral future). In his groundbreaking work on "The Politics of Aboli- tion", Thomas Mathiesen conceptualizes abolition as an alternative in the making: "**The alternative lies in the unfinished, in the sketch, in what is not yet fully existing"** (Mathiesen 1974: 1). Abolition therefore, by definition, cannot wait for a future constellation when appropriate alternatives are already in place. This is inherently impossible because alterna- tives cannot come from living in the existing order, but from a process of change that will come as a result of a transition from it.

The characterization of abolition as rejection of certainty is also connected to feminist philosopher Ami Harbin's (2016) conceptualization of 'disorientation', which she defines as "temporarily extended, major life experiences that make it difficult for individuals to know what to do" (2016: 2). In other words, it means experiencing serious (prolonged and major) disruption so that one does not know what to do. The hope generated by Harbin's analysis, is that these experiences of disorientation, although often unpleasant and jarring can also be productive.

Beth Richie (2012) eloquently details this phenomenon in her aptly named chapter about the anti intimate partner violence movement in the U.S "How we won the mainstream but lost the movement." The title of the chapter is as telling as its analysis—Going mainstream is counter abolitionary, and that is one of the points that Richie (2012) artfully makes. But I want to pause at the use of the term "movement" here. One interpretation is the loss of the social movement, the grassroots coalition that sought to stop violence against women. But there is another interpretation which seems to me as relevant here. It is not just the coali- tion that was lost, but movement itself, the act of moving. **Abolition is always in flux, an ongoing struggle and therefore when we stop moving the social movement and the move- ment towards abolition literally dies. The goal of abolition is therefore not finality but pro- cess itself, trial and error, and in understanding disorientation as generative**.

Prescriptive Solutions

Deputies will lead the way toward concrete changes in the face of crisis. Be smart, they say. Believe in change. This is what we have been waiting for. Stop criticis- ing and offer solutions. Set up roadblocks and offer workshops. Check ID's and give advice… But we're not smart. We plan. (Harney and Moten 2013: 82)

Abolition efforts are often described as not being prescriptive and not offering specific solutions and therefore as being not useful. Some opponents (be it progressives who believe in reform or those wanting to maintain the status quo) posit this stance as "if you can't offer a specific solution, then you are part of the problem." But as an epistemology and ethical stance, abolition politics invites us to abandon our attachment to knowing and especially to knowing all(s).

AT: Abolition Fails – Impractical

They're wrong --- movement organizations are practicing abolition every day

Akbar 18 – Assistant Professor, Moritz College of Law, The Ohio State University

Amna A., 7/25. "Toward a Radical Imagination of Law." Public Law and Legal Theory Working Paper Series No. 426. http://ssrn.com/abstract=3061917

Typically associated with prison abolition, the contemporary call for abolition includes police.273 **This reinvigorated abolitionist call rec- ognizes that policing and mass incarceration co-constitute each other. Mass incarceration's footprint will not get smaller without shrinkage of policing. Abolition makes a number of demands: the end of mass incarceration by shifting the methods through which law and norms are enforced away from policing and other violence-backed threats, redirecting money from policing, jails, and prisons into social pro- grams for directly impacted communities, and creating community accountability mechanisms for harm**.274 **Movement organizations like Critical Resistance, Black & Pink, We Charge Genocide, Project NIA, and the Audre Lorde project are "practicing abolition every day . . . by creating local projects and initiatives that offer alternative ideas and structures for mediating conflicts and addressing harms without relying on police or prisons**."275

The Vision is in line with the abolitionist politics resurgent in left spaces, which call for the end of prisons and policing as interrelated phenomena.276 **It shifts the police reform frame from adherence to law and accountability to lesser reliance on criminal law enforcement: fewer police, prosecutions, prosecutors, jails, and prisons. This creates an imperative to push for reforms that shrink the footprint of police, prisons, and jails**.

AT: Abolition Fails – Public Support

Public support for abolitionism is growing --- decades of abolitionist successes demonstrate its viability

Specifically answers Lancaster

Berger et al. 17 – associate professor of comparative ethnic studies at the University of Washington at Bothell and the author of Captive Nation: Black Prison Organizing in the Civil Rights Era

Dan, with Mariame Kaba and David Stein, 8/24. "What Abolitionists Do." https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration

If anything, **prospects for developing mass consciousness about prison abolition are growing**. In 1998, when the prison industrial complex — the linked relations of surveillance, policing, and imprisonment — showed little sign of abating, a collective of organizers and scholars called for a one-time conference to discuss the problem of prisons. Expecting a few hundred people, they were surprised to find several thousand attend a conference framed around abolishing the prison industrial complex. Since then, Critical Resistance has become a national chapter-based organization connected to a number of grassroots campaigns. Two years later, thousands gathered at Incite! Women of Color Against Violence's convening in Santa Cruz to build on some of what had been discussed in 1998 and to insert the dimension of racialized gender violence into the conversation.

The efforts of Critical Resistance, Incite!, and many others have born fruit. At the 2010 US Social Forum in Detroit, a number of the country's most committed activists engaging issues of imprisonment came together to discuss "prison justice." In the statement that resulted from their day-long meeting and strategy session, they declared that "because we share a vision of justice and solidarity against confinement, control, and all forms of political repression, the prison industrial complex must be abolished." That convening accelerated the rise of the Formerly Incarcerated and Convicted People's Movement and helped spark several abolitionist-inspired endeavors, including Decarcerate PA.

Abolition has been at the heart of Occupy Wall Street, Black Lives Matter, and other recent popular upsurges. The Movement for Black Lives has conducted mass political education through its direct actions against police violence and explicitly abolitionist platforms demanding to "fund Black futures" instead of carceral realities. In 2015, the National Lawyers Guild passed a resolution supporting prison abolition. In Chicago, abolitionists fought for and won the first ever reparations package for survivors of racialized law enforcement violence in the US. The 25,000-member Democratic Socialists of America's recent endorsement of abolishing imprisonment and policing provides yet another example of the growth of these efforts.

Abolitionists have led popular campaigns to free the New Jersey 4, Marissa Alexander, CeCe McDonald, Chelsea Manning, Bresha Meadows, and many others. These and other campaigns to release individual prisoners have fought to better their conditions while doing vital public education about the cruelties of state violence and its connections to patriarchal male violence.

There are many other examples, even from mainstream sources. In 2014, the New York Times penned an editorial with the headline "End Mass Incarceration Now," which echoed the goals of the New York campaign to release elderly imprisoned people and also called for a significant reduction in sentencing more generally. Yale Law professor Tracy Meares, a member of President Obama's Task Force on Twenty-First Century Policing, recently cited the work of one of us (Kaba), affirming that "policing as we know it must be abolished before it can be transformed."

This would have seemed difficult to fathom even just five years ago. Rather than dismiss abolitionism as hopeless, an assessment of the current period would suggest that abolitionism is enjoying an increase in public support — and one not seen since the 1970s.

Though nobody should be sneered at for how they entered into critical analyses of imprisonment and policing — whether it was the pedagogy of an officer's nightstick or a professor's syllabus — such a situation did not occur because of objective conditions or because of the important scholarship of Michel Foucault and others. These **victories are a result of abolitionist organizing**.

Abolitionists have labored day after day, talking to legislative aides about how to reduce prison spending through decarceration and how to put that money back into social welfare and educational spending, or why the local jail should not be "refurbished" to provide more bed space (thereby growing the carceral system). Abolitionists organize with (other) formerly

incarcerated people and their families, launching campaigns to ban the box on applications for jobs, education, housing, or other necessary supports for people with felony convictions.

Arguments about public support misunderstand how social transformation occurs --- every revolutionary movement in history disproves their claims

Specifically answers Lancaster

Berger et al. 17 – associate professor of comparative ethnic studies at the University of Washington at Bothell and the author of Captive Nation: Black Prison Organizing in the Civil Rights Era

Dan, with Mariame Kaba and David Stein, 8/24. "What Abolitionists Do." https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration

Critics often dismiss prison abolition without a clear understanding of what it even is. **Some on the Left,** most recently Roger Lancaster in Jacobin, **describe the goal of abolishing prisons as a fever-dream demand to destroy all prisons tomorrow**. But Lancaster's **disregard for abolition** appears based on a reading of a highly idiosyncratic and unrepresentative group of abolitionist thinkers and **evinces little knowledge of decades of abolitionist organizing and its powerful impacts**.

To us, people with a combined several decades of experience in the prison abolition movement, **abolition is both a lodestar and a practical necessity**. Central to abolitionist work are the many fights for non-reformist reforms — those measures that reduce the power of an oppressive system while illuminating the system's inability to solve the crises it creates.

The late Rose Braz, a longtime staffer and member of Critical Resistance emphasized this point in a 2008 interview. "A prerequisite to seeking any social change is the naming of it," she said. "In other words, even though the goal we seek may be far away, unless we name it and fight for it today, it will never come." **This is the starting point of abolition, connecting a radical critique of prisons and other forms of state violence with a broader transformative vision**.

These strategies and tactics harmonize with, inspire, and are inspired by many other left traditions. Socialists do not fight for trade unions in order to institutionalize capitalist social relations or build an aristocracy of labor. They do so in order to create durable structures that undermine the power of employers to exploit workers. And they do so with a radical humanist tradition in mind as well — to make actual people's lives better, to overcome sexual harassment, to reduce workplace injuries, to build solidarity among workers, and, ideally, "to create the new world in the shell of the old."

Such an analysis is also reflected in abolitionist organizing. As Braz emphasized in another 2008 interview, "prisons and horrible conditions go hand in hand. Prisons . . . are about punishment, warehousing and control. The prison industrial complex (PIC) systematically undermines the very values and things we need to be healthy."

Rather than juxtapose the fight for better conditions against the demand for eradicating institutions of state violence, abolitionists navigate this divide. For the better part of fifty years, abolitionists have led and participated in campaigns that have fought to reduce state violence and maximize people's collective wellbeing.

Abolitionists have worked to end solitary confinement and the death penalty, stop the construction of new prisons, eradicate cash bail, organized to free people from prison, opposed the expansion of punishment through hate crime laws and surveillance, pushed for universal health care, and developed alternative modes of conflict resolution that do not rely on the criminal punishment system.

Abolitionists refuse to abide the paradigm where "prisons [serve] as catchall solutions to social problems," as Ruth Wilson Gilmore has put it. As a result, abolitionists have been among the most consistent advocates for creating conditions that improve people's health, safety, and security.

None of that was evident in Lancaster's article, however. He engages neither the breadth of theorizing of abolition (works by Ruth Wilson Gilmore, Beth Richie, Erica Meiners, Dean Spade, Liat Ben Moshe, Eric Stanley, among many others) nor, more importantly, the work of abolitionist organizations (BYP 100, Critical Resistance, Incite!, Survived and Punished, among many others). Lancaster describes abolitionists as divorced from reality. Yet even a cursory review of actually existing abolitionism reveals how wrong this view is.

His **suggestion that abolition is not an advisable goal since it "shows little sign of winning over the wider public" misunderstands how social change occurs. Such an argument could easily have been mobilized (and was mobilized) to undermine the abolitionist movement in 1835; the women's suffrage movement in 1912; the fights for industrial unionism in 1929; the civil rights movement in 1953; and the presidential prospects for Bernie Sanders** in 2014, to name but a few examples.

History provides too many instances where our hubristic expectations of what is possible in a given temporal horizon are chastened. Most **abolitionists**, in our experience, would **subscribe to Nelson Mandela's adage that "it only seems impossible until it is done**."

2NC – AT: We Help Some People

The move to protect a few "truly innocent" people from the horror of prisons solidifies everyone else as absolutely guilty and deserving of state violence -- that reinforces the PIC and turns case

Gilmore 15 (Ruth Wilson Gilmore -- Director of the Center for Place, Culture, and Politics & Professor of Earth and Environmental Sciences @ the Graduate Center CUNY & cofounder of many social justice organizations (California Prison Moratorium Project/Critical Resistance/Central California Environmental Justice Network), "The Worrying State of the Anti-Prison Movement", http://www.socialjusticejournal.org/the-worrying-state-of-the-anti-prison-movement/, 23 February 2015)

(3) **A tendency to pretend that systematic criminalization will** rust and **crumble if some of those caught** in its iron grip **are extricated under the aegis of relative innocence.**

One of the most troubling moves by the new "new realists" is **to insist on foregrounding the relatively innocent**: **the third-striker in for stealing pizza or** people in prison on **drug possession** convictions. The danger of this approach should be clear: **by campaigning for the relatively innocent, advocates reinforce the assumption that others are** relatively or **absolutely guilty and do not deserve** political or policy **intervention**. For example, most campaigns to decrease sentences for nonviolent convictions simultaneously decrease pressure to revise—indeed often explicitly promise never to change—sentences for serious, violent, or sexual felonies. **Such** advocacy **adds to the legitimation of mass incarceration and ignores how police and district attorneys produce serious** or violent **felony charges, indictments, and convictions. It helps to obscure** the fact **that categories such as "serious" or "violent" felonies are not natural or self-evident, and** more important, that **their use is part of a racial apparatus for determining "dangerousness."**

For example, **campaigners** for California's Proposition 47 placed a widely touted "bipartisan" op-ed in the Los Angeles Times, coauthored by Newt Gingrich and B. Wayne Hughes Jr., in which the authors **argued that** "California has been overusing incarceration. **Prisons are for people we are afraid of**, but we have been filling them with many folks we are just mad at."

Note **the use of the word "afraid.**" The new "new realists," with their top-down reforms, **are trying to determine who constitutes "we"**; worse, **they** also **reinforce a criminal justice system, ideology, and image bank** that justified Darren Wilson's grand jury testimony—just as it justified Bernard Goetz's actions three decades ago. **#BlackLivesMatter is** an absolute statement, **watered down to #sometimes** by the opportunistic relativism of the new "new realists."

K Prior – Discourse

We must begin by interrogating and questioning the institutional practices, ontological processes, and language of criminal justice—efforts that begin within dominant discourses will never achieve success.

Baldry 15 – Professor of Criminology, School of Social Sciences and Deputy Dean, Faculty of Arts and Social Sciences, University of New South Wales

Eileen, with Bree Carlton and Chris Cunneen, "Abolitionism and the Paradox of Penal Reform in Australia: Indigenous Women, Colonial Patriarchy, and Co-option." Social Justice, Vol. 41, No. 3 (137) (2015), pp. 168-189. JSTOR.

Ruggiero (2011,100) argues that **penal abolition is not merely a decarceration program, but also an approach, a perspective, and a blueprint for action**. In the United States (Critical Resistance 2000, 2009; Davis 1998, 2003), the United Kingdom (Scraton 2007; Sim 2009), and Europe (Hulsman 1991; Mathiesen 1974, 2000; Ruggiero 2011), there has been considerable engagement with abolitionist theory and practice. However, **abolition is still misunderstood by some as advocating the immediate and wholesale closure of prisons and release of prisoners. Aligning with the struggles and voices of imprisoned people** (Critical Resistance 2000, 2010), **abolitionist visions extend beyond the foundational knowledge systems underpinning prisons and criminal justice**. **Abolitionists are ultimately concerned with attaining social change and freedom from the inequalities and oppressions that drive mass incarceration**. European abolitionists like Hulsman (1991, 32) argue that **in order to make progress in creating alternatives to imprisonment, it is critical to first "abandon the cultural and social organization of criminal justice." This requires the interrogation and questioning of the institutional practices, the ontological processes, and the language that underpin criminal justice theory and policy** (Hulsman 1991; Mathiesen 1974; Scraton 2009). **Davis** (2003) **states that this begins with** deconstructing the taken-for-granted nexus between crime punishment and, as argued by Scraton (2009), and with **the process of identifying and demystifying social, political, and economic constructions of "crime" and "criminality**" (Mathiesen 1974,1993; Scraton 2007,2009). **Challenging dominant discourses and knowledge systems is integral to the purpose of critical criminology. As long as criminology as a discipline continues to promulgate and incorporate the language and concepts derived from the criminal justice process, it will never achieve success in interrogating the "definitional activities of the system**" (Hulsman, cited in Scraton 2009).

---AFF ANSWERS---

---AT: LINKS---

2AC – AT: IBT

Neurological, racial bias is flexible---coalitional habit forming in the brain is more determinant of bias than race – IBT can be successful and have incremental success

Cikara and Van Bavel 15. (Mina Cikara is an Assistant Professor of Psychology and Director of the Intergroup Neuroscience Lab at Harvard University. Her research examines the conditions under which groups and individuals are denied social value, agency, and empathy. Jay Van Bavel is an Assistant Professor of Psychology and Director of the Social Perception and Evaluation Laboratory at New York University. The Flexibility of Racial Bias: Research suggests that racism is not hard wired, offering hope on one of America's enduring problems. June 2, 2015. https://www.scientificamerican.com/article/the-flexibility-of-racial-bias/)

The city of Baltimore was rocked by protests and riots over the death of Freddie Gray, a 25-year-old African American man who died in police custody. Tragically, Gray's death was only one of a recent in a series of racially-charged, often violent, incidents. On April 4th, Walter Scott was fatally shot by a police officer after fleeing from a routine traffic stop. On March 8th, Sigma Alpha Epsilon fraternity members were caught on camera gleefully chanting, "There Will Never Be A N***** In SAE." On March 1st, a homeless Black man was shot in broad daylight by a Los Angeles police officer. And these are not isolated incidents, of course. Institutional and systemic racism reinforce discrimination in countless situations, including hiring, sentencing, housing, and even mortgage lending. **It would be easy** to see in all this powerful evidence that racism is a permanent fixture in America's social fabric and even, perhaps, an **inevitable aspect of human nature**. Indeed, the mere act of labeling others according to their age, gender, or race is a reflexive habit of the human mind. Social categories, like race, impact our thinking quickly, often outside of our awareness. Extensive research has found that these implicit racial biases—negative thoughts and feelings about people from other races—are automatic, pervasive, and difficult to suppress. Neuroscientists have also explored racial prejudice by exposing people to images of faces while scanning their brains in fMRI machines. Early studies found that when people viewed faces of another race, the amount of activity in the amygdala—a small brain structure associated with experiencing emotions, including fear—was associated with individual differences on implicit measures of racial bias. This work has led many to conclude that racial biases might be part of a primitive—and possibly hard-wired—neural fear response to racial out-groups. There is little question that categories such as race, gender, and age play a major role in shaping the biases and stereotypes that people bring to bear in their judgments of others. **However**, research has shown that how people categorize **themselves** may be just as fundamental to understanding prejudice as how they categorize others. When people categorize themselves as part of a group, their self-concept shifts from the individual ("I") to the collective level ("us"). People form groups rapidly and favor members of their own group even when groups are formed on arbitrary grounds, such as the simple flip of a coin. These findings highlight the remarkable ease with which humans form coalitions. **Recent research confirms** that **coalition**-based **preferences trump race**-based **preferences**. For example, both Democrats and Republicans favor the resumes of those affiliated with their political **party** much **more than** they favor those who share their **race**. These coalition-based preferences remain powerful even in the absence of the animosity present in electoral politics. Our research has shown that the simple act of placing people on a **mixed-race team** can **diminish** their **automatic racial bias.** In a series of experiments, White participants who were randomly placed on a mixed-race team—the Tigers or Lions—showed little evidence of implicit racial bias. Merely belonging to a mixed-race team trigged positive automatic associations with all of the members of their own group, irrespective of race. Being a part of one of these seemingly trivial mixed-race groups produced similar effects on brain activity—the amy**gdala responded** to **team** membership **rather than race**. Taken together, these studies indicate that momentary changes in group membership can override the influence of race on the way we see, think about, and feel toward people who are different from ourselves. Although these coalition-based distinctions might be the most basic building block of bias, they say little about the other factors that cause group conflict. Why do some groups get ignored while others get attacked? Whenever we encounter a new person or group we are motivated to answer two questions as quickly as possible: "is this person a friend or foe?" and "are they capable of enacting their intentions toward me?" In other words, once we have determined that someone is a member of an out-group, we need to determine what kind? The nature of the relations between groups—are we cooperative, competitive, or neither?—and their relative status—do you have access to resources?—largely determine the course of intergroup interactions. Groups that are seen as competitive with one's interests, and capable of enacting their nasty intentions, are much more likely to be targets of hostility than more benevolent (e.g., elderly) or powerless (e.g., homeless) groups. This is one reason why sports rivalries have such psychological potency. For instance, fans of the Boston Red Sox are more likely to feel pleasure, and exhibit reward-related neural responses, at the misfortunes of the archrival New York Yankees than other baseball teams (and vice versa)—especially in the midst of a tight playoff race. (How much fans take pleasure in the misfortunes of their rivals is also linked to how likely they would be to harm fans from the other team.) Just as a particular person's group membership can be flexible, so too are the relations between groups. Groups that have previously had cordial relations may become rivals (and vice versa). Indeed, **psychological and biological responses** to out-group members **can change**, depending on whether or not that out-group is perceived as threatening. For example, people exhibit greater pleasure—they smile—in response to the misfortunes of stereotypically competitive groups (e.g., investment bankers); however, this malicious pleasure is reduced when you provide participants with counter-stereotypic information (e.g., "investment bankers are working with small companies to help them weather the economic downturn). Competition between "us" and "them" can even distort our judgments of distance, making threatening out-groups seem much closer than they really are. These distorted perceptions can serve to amplify intergroup discrimination: the more different and distant "they" are, the easier it is to disrespect and harm them. Thus, not all out-groups are treated the same: some elicit indifference whereas others become targets of antipathy. Stereotypically threatening groups are especially likely to be targeted with violence, but those **stereotypes can be tempered** with **other info**rmation. If perceptions of intergroup relations can be changed, individuals may overcome

hostility toward perceived foes and become more responsive to one another's grievances. The **flexible nature** of both group membership and intergroup relations offers reason to be cautiously **optimistic** about the potential for greater cooperation among groups in conflict (be they black versus white or citizens versus police). **One strategy is to bring multiple groups together around a common goal**. For example, during the fiercely contested 2008 Democratic presidential primary process, Hillary Clinton and Barack Obama supporters gave more money to strangers who supported the same primary candidate (compared to the rival candidate). Two months later, after the Democratic National Convention, the supporters of both candidates coalesced around the party nominee—Barack Obama—and this bias disappeared. In fact, merely creating a sense of **cohesion** between two competitive groups can increase empathy for the suffering of our rivals. These sorts of strategies can help reduce aggression toward hostile out-groups, which is **critical for creating more opportunities for constructive dialogue addressing greater social injustices.** Of course, instilling a sense of common identity and cooperation is extremely difficult in entrenched intergroup conflicts, but when it happens, the benefits are obvious. Consider how the community leaders in New York City and Ferguson responded differently to protests against police brutality—in NYC political leaders expressed grief and concern over police brutality and moved quickly to make policy changes in policing, whereas the leaders and police in Ferguson responded with high-tech military vehicles and riot gear. In the first case, multiple groups came together with a common goal—to increase the safety of everyone in the community; in the latter case, the actions of the police likely reinforced the "us" and "them" distinctions. Tragically, these types of conflicts continue to roil the country. Understanding the psychology and neuroscience of social identity and intergroup relations cannot undo the effects of systemic racism and discriminatory practices; however, it can offer insights into the psychological processes responsible for escalating the tension between, for example, civilians and police officers. Even in cases where it isn't possible to create a common identity among groups in conflict, it may be possible to blur the boundaries between groups. In one recent experiment, we sorted participants into groups—red versus blue team—competing for a cash prize. Half of the participants were randomly assigned to see a picture of a segregated social network of all the players, in which red dots clustered together, blue dots clustered together, and the two clusters were separated by white space. The other half of the participants saw an integrated social network in which the red and blue dots were mixed together in one large cluster. Participants who thought the two teams were interconnected with one another reported greater empathy for the out-group players compared to those who had seen the segregated network. Thus, reminding people that individuals could be connected to one another despite being from different groups may be another way to build trust and understanding among them. A mere month before Freddie Gray died in police custody, President Obama addressed the nation on the 50th anniversary of Bloody Sunday in Selma: "We do a disservice to the cause of justice by intimating that bias and discrimination are immutable, or that racial division is inherent to America. To deny…progress – our progress – would be to rob us of our own agency; our responsibility to do what we can to make America better." The president was saying that we, as a society, have a responsibility to reduce prejudice and discrimination. These recent **findings from psychology and neuroscience indicate that we, as individuals, possess this capacity**. Of course this capacity is not sufficient to usher in racial equality or peace. Even when the level of prejudice against particular out-groups decreases, it does not imply that the level of institutional discrimination against these or other groups will necessarily improve. Ultimately, only **collective action** and **institutional evolution** can address systemic racism. The science is clear on one thing, though: **individual bias and discrimination are changeable**. Race-based prejudice and discrimination, in particular, are **created and reinforced by** many **social factors,** but they are **not inevitable consequences of** our **biology**. Perhaps understanding how coalitional thinking impacts intergroup relations will make it easier for us to affect real social change going forward.

2AC – AT: Link – Death Penalty

1] Perm solves the links– (1) by dismantling the CJS we ensure that the money "saved" through abolition never furthers the carceral machine, (2) no prisons means no LWOP

2] Abolishing the death penalty is an undeniable good thing from an abolitionist standpoint

Davis '11 [(Angela Y., Famous abolitionist, UCLA Professor) *Abolition Democracy: Beyond Empire, Prisons, and Torture*, Chapter: Abolition Democracy, Seven Stories Press, Jan 4, 2011, pp. 96-99 (vik)

What, then, **would it mean to abolish the death penalty? The problem is that most people assume that the only alter- native to death is a life sentence without the possibility of parole. However, if we think about capital punishment as inheritance of slavery, its abolition would also involve the cre- ation of those institutions** about which DuBois wrote insti- tutions that still remain to be built one hundred forty years after the end of slavery. **If we link the abolition of capital pun- ishment to the abolition of prisons, then we have to be will- ing to let go of the alternative of life without possibility of parole as the primary alternative. In thinking specifically about the abolition of prisons using the approach of abolition democracy, we would propose the creation of an array of social institutions that would begin to solve the social prob- lems that set people on the track to prison, thereby helping to render the prison obsolete. There is a direct connection with slavery:** when slavery was abolished, black people were set free, but they lacked access to the material resources that would enable them to fashion new, free lives. Prisons have thrived over the last century precisely because of the absence of those resources and the persistence of some of the deep structures of slavery. They cannot, therefore, be eliminated unless new institutions and resources are made available to those communities that provide, in large part, the human beings that make up the prison population. If I understand your argument correctly, you are saying that **the death penalty is part of the "wages of whiteness" that must be paid so as to maintain a racialized democracy, the democracy resulting from an unfulfilled abolition?** It depends on what you mean by wages of whiteness." If we rely on Roediger's analyses, **we define the "wages of white ness as the privileges of those who benetit from the persis- tence of racism.** Though this may seem counterintuitive, I would argue that **the death penalty is something akin to a "return of the repressed" racism of slavery**, now let loose on whomever happens to be caught in its grasp, whether theyre racialized as black, Latino, Native American, or white. **The most compelling explanation of the endurance of capital punishment in the U.S.-the only advanced industrialized nation that executes its citizens routinely-can be discovered in its embeddedness in slavery and in the way the racism of slavery caused it to be differentially inflicted on black peo- ple. In the aftermath of slavery, the death penalty was incor- porated into the legal system with its overt racism gradually concealed.** In this era of "equal opportunity" it now also tar gets more than just the black or Latino communities. **In this sense, one might argue that when white people are executed, it is more a sign of the revenge of racism, rather than the wages of whiteness.'** Let me see if I can back up and say just a few words about racism in the contemporary era, racism in the post-civil rights era, the mutations and alterations of racism, racism at a time when members of under-represented racialized groups have now been offered powerful leadership positions. How would an accessible analysis of racism address the fact that a black women, previously National Security Advisor, is now Secre- tary of State, and that a Latino is Attorney General? Of course this new racial integration is represented as the face of the perfect multicultural nation. This apparent dilemma can be accounted for by recognizing that racism is something that is far deeper than that which can be resolved through processes of diversification and multiculturalism. There are persisting structures of racism, economic and political structures that do not openly display their discriminatory strategies, but nonetheless serve to keep communities of color in a state of inferiority and oppression. **Therefore I think about the death penalty as incorporat- ing the historical inheritances of racism within the frame work of a legal system that has been evacuated of overt racism, while continuing to provide a haven for the inheri- tances of racism. This is how it can explained that capital punishment is still very much alive in a country that presents itself as the paragon for democracy in the world.** There are more than 3,500 U.S citizens currently on death row in the United States at a time when all European countries have abolished capital punishment, when the European Union makes abolition of the death penalty a precondition for mem- bership. **Capital punishment is a receptacle for the legacies of racism**, but now, under the rule of legal equality, it can apply its power to anyone, regardless of their racial back- ground.

2AC – AT: Link – Facial Recognition

Banning facial recognition is in line with an abolitionist ethic

Jefferson '20 [(Brian Jefferson is associate professor of geography and geographic information science at the University of Illinois Urbana–Champaign.) *Digitize and Punish: Racial Criminalization in the Digital Age*, Conclusion: Viral Abolition, University of Minnesota Press, 2020, ISBN 978-1-4529-6344-0 (ebook), https://manifold.umn.edu/read/digitize-and-punish/section/e48574b2-802c-4b6b-83b1-2008a0428983 (vik)]

The struggle against the spread of policing and punishing machines is entangled with the struggle to abolish the prison. Just as the prison abolitionists discovered the historical precedents and diverse institutions that underpinned mass imprisonment, the time has come to unveil the carceral state's sociotechnical basis**. The abolitionist view makes the ways in which criminalized subjects and computers interact across community spaces, detention centers, jails, living quarters, prisons, hospitals, and workplaces recognizable as a distinct power apparatus**. Abolitionism also makes it clear that this apparatus is a reflection of the wider society. **Indeed, opposition to digitized criminalization requires creating the conditions where more body cameras, more CCTVs, more data storage facilities, more electronic bracelets, more environmental sensors, and more software applications are no longer commonsense solutions to social problems.** Opposition also requires decommodifying the criminal justice system's institutional landscape. The state is a mere consumer of these technologies; let us not lose sight of the producers. So long as criminal justice technology is produced for profit, newer technologies are bound to make their way to the market. **The abolition of the digital branch of criminal justice requires political solutions**, not technical ones. The pitfalls of technical solutions to criminal justice racism were laid bare in the state's response to the Ferguson uprising. The Obama administration's reaction to Ferguson was a more technophiliac version of Lyndon Johnson's response to the urban uprisings a half century prior. Both technocratic approaches only deepened the administrative state's presence in marginalized black and latinx communities—and both provided economic stimulus to technology corporations. In the case of Ferguson, the president's office responded by authorizing the national Task Force on 21st Century Policing to explore technical solutions to the escalation of revolts against racialized police violence.[2] Its recommendations hit all the familiar points of liberal-technocratic policing discourse. In the end, the Department of Justice and the National Institute of Justice were to develop national standards for police audio, biometric, and visual IT infrastructures and work with local police departments and communities to design and implement them. The task force also emphasized developing body-worn cameras for the dual purposes of police transparency and community surveillance, less-than-lethal technologies such as conductive energy devices, and a closed public safety broadband network. The report served as a foundation for the Police Data Initiative, a national program involving police working in tandem with data scientists, design experts, researchers, and tech corporations. Alternative approaches to abolishing digitized forms of criminalization have already begun to manifest, and they have been most successful by exploiting the viral form. These confrontations have revolved around invading the criminal justice system's data infrastructure and turning its embarrassment of documents into a liability. Grassroots actors have found success in producing and circulating knowledge, images, and videos through the same media that extend the carceral state. This book would not have been possible without the wealth of resources compiled and distributed by these unsung activists. Both aspects, constant invasion of the administrative state's data infrastructure and new social forms of data production, have prepared grounds for ways of thinking about escaping the long and cold embrace of digitized criminalization. Against this type of political maneuvering, writes Baudrillard, which is "viral in structure—as though every machinery of domination secreted its own counterapparatus, the agent of its own disappearance—against this form of almost automatic reversion of its own power, the system can do nothing."[3] In the case of New York, the city's police database and surveillance infrastructure emerged as sites of confrontation by civilian libertarians and grassroots organizations. In the early days of NYPD restructuring in the 1990s, a coalition of nearly forty civil liberties and grassroots organizations formed Communities united for Police Reform (CuPR). The group's goals revolved around finding ways to increase media coverage of police brutality; reform the Civilian Complaint Review Board; end the controversial stop, question, and frisk tactic; and establish independent prosecutors for cases related to police misconduct. CuPR's steering committee first came together at a Coalition for Community Safety summit in Puerto Rico in 2008. The summit involved a series of workshops to revitalize police accountability activism in New York City. It was the first time such a diverse set of New York–based police activists had come together since September 11, 2001, which was seized upon by city officials and the police union to stigmatize anyone who criticized racial police violence. The group formally launched CuPR in autumn 2010. Its legal team focused on bolstering public oversight of the police through, among other things, access to the NYPD's unreleased data. This tactic was inspired by group member Center for Constitutional Right's 1999 landmark class action suit Daniels, et al. v. the City of New York, filed after NYPD officers Sean Carroll, Richard Murphy, Edward McMellon, and Kenneth Boss viciously murdered Guinean immigrant Amadou Diallo. One of the settlements required that the NYPD allow audits of stop-and-frisk data. The center followed Daniels with a 2003 federal class action suit, Floyd, et al. v. the City of New York, which was filed upon finding massive racial disparities in the data. In a twist, the racial patterns in the data worked against the legitimacy of the state. In fact, the governor endorsed a bill that would relieve officers from having to record a race in instances that did not lead to arrests. Floyd blocked this and won a provision requiring the NYPD's quarterly dissemination of stop-and-frisk data with racial tabulations. The New York Civil Liberties Union (NYCLU), also a CuPR member, made efforts to make the NYPD's hidden data publicly accessible as well. NYCLU drew on an influential 2006 report by the American Civil Liberties Union on pedestrian and motor stops in southern California. The Ayres Report, as it was called, chronicled disproportionate stops and arrests of blacks and latinx persons in Los Angeles. It prompted national discussion about the importance of recording and releasing the racial and ethnic backgrounds of civilians stopped.[4] A year later in New York City, NYCLU sued the NYPD in the New York State Supreme Court to disclose its database with stop-and-frisk statistical data. NYCLU has since released quarterly stop-and-frisk reports and analyses, with breakdowns on stops by precinct, reason for stop, stops resulting in frisks, stops involving use of force, gun recoveries, and innocent stops—all with reference to race, ethnicity, and age. The contradictions between the racial state and the liberal state condensed in these data. It was as if the NYPD's own data turned against it. In contrast to civil libertarian organizations, CuPR's grassroots contingent saw countersurveillance in the streets as the most important tool for mitigating racialized police harassment. As such, producing and circulating its own data was of primary importance. Its tactics were productive as compared to those of the civil libertarians, as they gave rise to new networks, knowledges, and practices. Multiple grassroots groups collaborated to form a protean network of "copwatches" that deposited footage of police–civilian encounters in a central location. The grassroots copwatches were inspired by the Malcolm X Grassroots Movement (MXG) People's Self-Defense campaign. Organized with the Medgar Evers Center for Law and Social Justice, National Conference of Black Lawyers, the campaign modeled itself after the Black Panther Party for Self-Defense's emphasis on armed patrols. The campaign launched alongside three copwatch countersurveillance teams that monitored NYPD interactions with residents throughout central Brooklyn. MXG regarded copwatches as informal means of identifying and preventing police misconduct while at the same time radicalizing participants. Copwatches continued to grow through the early part of the 2000s, which led MXG to team with the Justice Committee to form the People's Justice Coalition. The coalition trained and organized neighborhood watch teams in a citywide network. It maintained a cache of video equipment and hand-held radios, which it loaned on fixed schedules, and publicized when members got arrested or issued a summons through LISTSERVs. Moreover, it transferred all footage of police transgression online on the network's website, on YouTube, and through blast emails. To join People's Justice, teams needed to agree to guidelines including, among other things, sharing data and footage, making sure to highlight the experiences of trans and immigrant communities in all transmissions, and documenting incidents of police abuse regardless of the victim's social identifiers. The countersurveillance apparatus continued to spread alongside burgeoning protests against the NYPD's rising use of the stop-and-frisk tactic. The populations who were targeted by the police were made crystal clear in the NYPD's own databases. The data had a magnetic effect across the city's diverse landscape of antiracist, antihomophobic, immigrants rights, and homeless rights activists. Headlines described this: A diverse group of people came out to the rally including demonstrators from immigrant, Muslim, homeless and LGBT communities. While stop-and-frisk has been labeled a problem affecting Black and Latinos in the city, other groups said they too have been victims of the practice.[5] Demonstrators mostly adhered to the organizers' call to march in silence, hushing talkers along the route. Members of labor unions and the N.A.A.C.P. appeared to predominate, but there were also student groups, Occupy Wall Street, Common Cause, the Universal Zulu Nation and the Answer Coalition. A group of Quakers carried a banner criticizing the stop-and-frisk practice. . . . As of Friday, 299 organizations had endorsed the march, including unions, religious groups and Japanese, Chinese, Korean, Arab, and Jewish groups. The turnout reflected the growing alliance between civil rights groups and gay and lesbian activists, who in past years have often kept each other at arm's length.[6] Gay men of color, along with women and transgender people of color, are among the black and Latina/os disproportionately subjected to more than 685,000 stops and frisks by the NYPD last year. . . . Along with other members of communities of color, LGBTQ youth of color seek the freedom that has been denied to hundreds of thousands of people of color through around the clock police patrols, police violence, racial, gender, homophobic profiling and stop and frisk.[7] Whether it's the abusive use of stop-and-frisk, quotas or systemic abuses of power, our city needs the reforms and accountability provided by the Community Safety Act. New Yorkers shouldn't be policed different based on the color of their skin, their sexual orientation or any other characteristics that have nothing to do with criminal behavior. The City Council is moving in the right direction to address these protracted issues and our communities support efforts to improve the NYPD.[8] This transformation of social difference into social equivalence was placed at the center of the CuPR's flagship legislative proposal, the Community Safety Act. Its first provision mandated that age, sex, gender identity/expression, housing status, immigration status, occupation, and sexual orientation be considered "protected categories" in court. It was deliberately intended to transform public discourse surrounding police discrimination by broadening who is included when talking about victims of police abuse. It was also intended to affect how discrimination is assessed in courts. CuPR emphasized that heightening the visibility and voices of peripheral social groups is their overall strategy for NYPD reform. CuPR organizations published interviews with impacted citizens in forty-one media outlets, including BET.com, Caribbean Life, Chelsea Now, Colorlines, DNAinfo.com, Ebony magazine, Epoch Times, Foxnews.com, Gay City News, Local10.com, the New York Times, Hudson Valley Press, the Huffington Post, the Village Voice, the Nation, New Amsterdam News, Norwood News, Reuters, and WNYC News Blog. The act also mandated that criteria for determining police bias be changed from establishing intent to proving differential harm to a particular community. In 2012, the NYPD deactivated its stop, question, and frisk apparatus. After one year of abandoning it as a policy, the NYPD reported that stops decreased by nearly 95 percent. The Community Safety Act was signed into law shortly thereafter. In the end, these strategies, whether litigative or grassroots, revolved around capturing, producing, and circulating information about how the criminal justice system operates. They turned the medium by which mass criminalization is expanding into a site of social struggle. Information-based struggles against racial criminalization have also crystallized in Chicago. In these cases, the goals of activists included not only capturing, producing, and circulating data relevant to the criminal justice apparatus but also destroying data. In terms of generating data, an independent association of journalists called the Invisible Institute offers an informative case. In 2015, it launched its Citizens Data Project, which publicized a massive database of Chicago Police Department (CPD) disciplinary information. The institute stressed that its origins were rooted in principles of guerilla journalism, most notably the ideal of a horizontally run organization free from corporate capital. One of the institute's more formative cases involved Diane Bond, onetime resident of public housing on South State Street. Bond was repeatedly sexually and verbally abused by the CPD's notorious "Skullcap Crew," an anti-gang tactical unit that was stationed in public housing in the South Side. Members of the crew, including Christ Savickas, Joe Seinitz, Andrew Schoeff, Robert Stegmiller, and Edwin Utreras, received 128 known allegations, 60 citizen-filed complaints, and 20 federal lawsuits in 15 years of operation.[9] In 2007, the institute partnered with civil rights attorneys at the Edwin F. Mandel Legal Aid Clinic at the University of Chicago's Law School. One of the legal team's requests to the court involved lifting protective orders on CPD databases with information on disciplinary histories of officers and "complaint registers" with information on internal investigations of complaints. While the access to the data was originally overruled in 2009, the opinion left the door open for obtaining the data through the bureaucratic channels established by the Freedom of Information Act. This led to a seven-year campaign by the Invisible Institute, Loevy and Loevy, the People's Law Office, and the Mandel Clinic, which came to a head in the Kalven v. Chicago decision in the Illinois Court of Appeals in 2014. The Fraternal Order of Police quickly appealed on the grounds that its contracts stipulated disciplinary information would be destroyed after five years. While waiting on the appellate, the Invisible Institute launched a limited preview of the data on a website titled the Citizens Police Data Project in 2015. This was near the same time that then officer Jason Van Dyke murdered Laquan McDonald, which triggered five months of antiracist struggle on Michigan Avenue and in City Hall, which ultimately established conditions for making the rest of the CPD's disciplinary data public. The result was the largest public police misconduct database in the country. It gave birth to a universe of data that exposed the racist brutalism endemic to policing in Chicago's Black Belt communities. From 2007 to 2016, only 1.5 percent of excessive force complaints, 75 percent of which were filed by black Chicagoans, were sustained by CPD investigators. The database also revealed that 20 percent of CPD officers employed for at least a year received ten or more complaints between 2000 and 2016. Of about 112,000 complaints filed during this time, only 2 percent were sustained, and 1 percent led to meaningful action on the part of the police. Moreover, the data showed that the 6 percent of officers accused of physical domestic abuse were twice as likely to have received use-of-force complaints. In 2018, this universe expanded with Citizens Police Data Project 2.0. The updated version quadrupled the size of the original databases and included the disciplinary histories of officers going back to the 1960s and information on nearly a quarter million allegations. Citizens Police Data Project 2.0 allows users to rank officers, à la CompStat, according to the number of complaints they have received, among other statistical values. Political mobilization around administrative data is not only about producing new data but sometimes also about destroying data. Pressures from the Black Youth Project 100 Chicago, Blocks Together, Brighton Park Neighborhood Council, Chicagoans for an End to the Gang Database, Mijente, the Office of Inspector General (OIG), and Organized Communities against Deportations eventually compelled the CPD to abolish its gang database network. Moreover, the Coalition to Expand Sanctuary formed in opposition to the CPD's gang database network as it was discovered that the U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services used the database to track, capture, and, in many instances, deport immigrants mostly from Mexico and South America. A report by the OIG illustrated the arbitrary yet instrumental nature of the database for managing poor black and latinx men and immigrants. For one, it demonstrated the capriciousness endemic to how the CPD identified individual subjects and areas as gang related in its databases. Individuals were classified as gang related according to various, unverifiable criteria. Being arrested in the company of a registered gang member, identifying oneself as a gang member, and having tattoos recognized by gang specialists in the police department were all grounds for being classified as a gang member. Just under 60 percent of people in the network were registered by police for residing in or frequenting a gang's area; affecting their "style of dress, use of hand signs, symbols"; or maintaining an ongoing relationship with a known gang member.[10] Over 11 percent of people registered in the network as gang members were not even associated with a specific gang. What is more, the CPD did not notify individuals that they were registered as gang members and had no process for appealing the gang member designation. For geographic areas, the gang-related classification can be a function of the density of individuals classified as gang related or local graffiti, spatial statistical analysis, or the discretion of elected officials, community members, or gang units. The Inspector General's report calculated that some 95 percent of the 134,242 cataloged throughout the gang database network were categorized as African American, black, or Hispanic. The data in the CPD's database were astonishingly inaccurate. The OIG found that CPD officers had entered "BLACK," "BUM," "CRIMINAL," "DORK," "LOOSER" [sic], "SCUM BAG," and "TURD" as occupations on gang member profiles. Nevertheless, the consequences of being included in the gang catalog could be severe. Such was the case with Wilmer Catalan-Ramirez, an undocumented immigrant who was falsely identified as a gang member. Catalan-Ramirez was severely injured during an ICE raid and locked in an ICE-approved detention center for a little under a year. He was only released after protracted efforts by Organized Communities against Deportation, the Roderick and Solange MacArthur Justice Center, and the National Immigration Project of the National Lawyers Guild. In 2018, Chicagoans for an End to the Gang Database filed a class action complaint against the City of Chicago, the police superintendent, and CPD officers. Its core complaints were that the gang databases were arbitrary, discriminatory, over inclusive, and error-ridden. The coalition also argued that individuals categorized as gang members were denied due process protections, and were subjected to harassment, false arrests, and false imprisonment. The coalition calculated that 128,000 people were included in the database, 95 percent of whom were classified as black or Hispanic. Early in 2019, the coalition passed an ordinance prohibiting the Cook County Sheriff's Office from adding new information into the Regional Gang Intelligence Database and from sharing information from the database and outlining steps to destroy it. The struggle against digitized criminalization points to the need to politicize our understanding of data production. These struggles establish the basis for a truly political digital theory. The many coalitions formed in opposition to this development have shown quite clearly how racial governance has adapted to the era of big data. Their labors also illustrate the need to pursue decarceration and decriminalization through viral tactics, among others. So far, effective resistance has been a matter of turning the digital infrastructure of the racial state against itself, turning its tendency to

document everything into a vulnerability, scrutinizing its datasets, producing data on the practices it seeks to hide, destroying the databases that abet its necropolitical functions, circulating abolitionist content with an eye toward intergroup coalition building, and replicating the process ad nauseam. **If opposition to digitized modes of criminalization is to gain momentum, it cannot be only defensive; it must also be abolitionist.** This is to say that it must question the very society that incentivizes the production of technologies for racialized social management. It must consider who the beneficiaries are, be they in the government, the university, or the IT sector. **This is to say that the conflict must come face-to-face with the wider political economy of criminal justice technoscience that has quietly expanded for half a century. This type of critique, which is the hallmark of critical theory, will be needed to produce alternative ways of addressing the social problems specific to the cities chronicled herein.** For we have seen how massive amounts of revenue and collective energies have gone into producing IT to manage everything from drug violence to homelessness, unemployment, and truancy. It is worth asking how we might capture these resources and use them for life-affirming solutions to the problems engendered by our distinct social system. It is also worth asking how the public might seize the means of digital communication and use them toward abolitionist ends. Such discourse is desperately needed. The infrastructure that supports digitized criminalization has been laid for the most part outside public debate or even awareness. This book is at least three decades late, and there is no doubt that many of the technologies it chronicles have already been replaced by newer ones. **Nevertheless, a growing number of people are mobilizing in opposition to the digitization of the War on Crime. It can hide in secrecy no longer. The state officials, technology corporations, and university professors who have helped build this computer-aged edifice are already on the defensive. In 2014, the Oakland Privacy Working Group and other organizations blocked the extension of the Port of Oakland's real-time crime center. The Stop LAPD Spying Coalition successfully pressured the Los Angeles Police Department to abolish its predictive policing program five years later. In spring 2019, San Francisco became the first city to ban facial recognition surveillance technology. And market bubbles haunt the criminal justice technology industry just like any other. These factors serve as a reminder that no matter how daunting it appears, mass criminalization in the digital age is not all-powerful. In fact, the expanding number of challenges to criminal justice technology might be a sign that it has run up against a threshold and will be tolerated no longer. Maybe it will be scaled back to avert deepening the crisis. We will see.**

2AC – AT: Link – Courts

Abolitionist disdain for Courts as a praxis for radical change is misplaced -- the Constitution can be readily applied to abolition praxis and incremental gains are incredibly important so only the PERM solves

Roberts 19 (Dorothy E. Roberts -- George A. Weiss University Professor of Law and Sociology + University of Pennsylvania; Raymond Pace and Sadie Tanner Mossell Alexander Professor of Civil Rights + University of Pennsylvania Law School; Professor of Africana Studies and Professor of Sociology + University of Pennsylvania School of Arts & Sciences, "The Supreme Court 2018 Term", "Foreword: Abolition Constitutionalism", Number I, Volum 133, November 2019)

One reason some **prison abolitionists eschew any reliance on the** Reconstruction C**onstitution to** make claims or **envision change is that they see the text** itself **as accommodating slavery.** Many **abolitionists explicitly condemn the Thirteenth Amendment's Punishment Clause for allowing the reenslavement of black people by incarcerating them** for committing crimes.654 "One of the big reforms that sold us out was the Thirteenth Amendment" is a **common accusation** among prison abolitionists.655 **The Reconstruction Constitution "just modified" slavery; it did not abolish it**.656

According to this view, the Thirteenth Amendment was part and parcel of the white supremacist backlash against Emancipation. Its very text contained the seeds of reinstating the formerly enslaved to servitude from the moment Congress enacted it. Congress gave the impression of radically incorporating black people into citizenship when in fact it was preparing a way to legally deny them their rights. "The Thirteenth Amendment ensnares as it emancipates," Professor Joy James writes.657 "In fact, it functions as an enslaving anti-enslavement narrative."658 The symbolic power of the Reconstruction Constitution as an abolitionist text that installed freedom thus adds to the Constitution's ability to sustain a false narrative of the United States as a bastion of freedom and equality.659 Embracing such a document would therefore only contribute to its anti-abolitionist performance. Thus, although many prison abolitionists describe their work as continuing the struggle antebellum freedom fighters and abolitionists began, they frame it in opposition to the Reconstruction Constitution.660

A second reason some **prison abolitionists** reject the Constitution is that they **view the entire U.S. legal system as subordinating black people and preserving the racial capitalist order**.661 This position relies not so much on the Amendments' precise language as on the political role the Constitution, as a central part of the state's legal apparatus, plays in upholding the carceral regime. According to these theorists, states use the law to perpetuate their own institutions, and constitutional change within formal legal processes occurs only to maintain the look of legitimacy.662 If abolition work can only be completely effective "without involving the state,"663 there may be no role for the Constitution to play. Indeed, the very project of abolition constitutionalism could be antiabolitionist.

James combines both these points by explaining how the Reconstruction Amendments helped to place the state in opposition to the abolition of white supremacy.664 She contrasts the abolition democracy advanced by black radicals with the "advocacy democracy" promoted by a "U.S. conservative-centrist-progressive" political system that "works for reforms with an anti-black racism that structured democracy's evolution."665 James connects the founding of the nation to the Reconstruction Amendments, understanding both as part of a continuum of anti-abolitionist developments: "an anti-abolitionist revolutionary war that blocked the expansion of the 1772 Somerset ruling (emancipating a black slave brought to Britain from colonial America); an anti-abolitionist 13th [A]mendment that codifies slavery to prison; an anti-abolitionist 14th [A]mendment that transfers black political personhood (and social standing) to corporations."666

Moreover, the courts, which have been the traditional venue for making constitutional claims, are the very state agents that have eviscerated efforts to install a more radical Constitution and have been hostile to an abolitionist approach.667 **Radicals of color have criticized the presumption in constitutional theory that "minorities are best protected with national oversight, rights-based frameworks, and judicial solicitude**."668 For this reason, **many abolitionists** have **repudiated U.S. constitutional rights** altogether **and** instead **contest** U.S. **carceral policies without reference to rights or as violations of** international **human rights**.669 Even claims that rested in part on the U.S. Constitution have primarily relied on international human rights law, such as the petition brought to the United Nations by the Civil Rights Congress in 1951 that charged the U.S. government with racism and genocide.670

This Foreword takes seriously the question whether engaging with **the Constitution**, which **from its installation has served settlercolonialism, slavery, and racial capitalism**, can be useful to an abolitionist movement. As discussed in Part II, the dominant reading of both the original Constitution and Reconstruction Amendments has been antiabolitionist.671 **There are good reasons**, however, **for prison abolitionists to engage abolition constitutionalism**. First, it is significant that **the original Constitution that incorporated slavery was rewritten to abolish it** in response to a hard-fought freedom struggle. Many antislavery activists, like Frederick Douglass, professed an alternative reading of the Constitution — an abolition constitutionalism.672 We can see the Reconstruction Amendments as a compromised embodiment of the unfinished revolution for which abolitionists today continue to fight. Like antebellum abolitionist theorizing, **prison abolitionism can craft an approach to engaging with the Constitution that furthers radical change.**

Second, prison abolitionists acknowledge that **building a prisonless society is a long-term project involving incremental achievements**. As Critical Resistance puts it, **abolition "means developing practical strategies for taking small steps that move us toward making our**

dreams real and that lead us all to believe that things really could be different."673 Some of those steps will entail engaging with the state.674 In demanding state action that promotes prison abolition, **abolition activists can use constitutional provisions instrumentally to assert and sometimes win their claims.**

Finally, prison abolitionists need not let the Constitution compromise their principles or aspirations. While taking inspiration from antislavery abolitionists, we can approach the Constitution differently. For example, although the Radical Republicans opposed chattel slavery and convict leasing, they did not abolish imprisonment as a punishment for crimes. Today's prison abolitionists are dealing with a different beast — the prison industrial complex and other modern carceral logics, supported by advanced forms of racial capitalism. There are also new theories that explain and contest modern modes of carceral punishment, including black radical philosophy, critical race theory, black feminist theory, and intersectionality.675 Davis frames prison abolition as a continuation of the antislavery movement, but she notes an important distinction between the two: "[T]he abolition of slavery was accomplished only in the negative sense," she writes.676 "In order to achieve the comprehensive abolition of slavery — after the institution was rendered illegal and black people were released from their chains — new institutions should have been created to incorporate black people into the social order."677 Prison abolitionists can affirm the aim of antebellum abolitionists to radically dismantle the institution of slavery and also demonstrate, with the benefit of historical hindsight and sustained abolitionist theorizing, that this objective requires abolishing prisons altogether by replacing them with new institutions that incorporate black people fully into a free society.

The goals of freedom and equal citizenship have been "the heart of black Americans' fidelity to the Constitution."678 In a previous analysis of black people's approach to the Constitution, I distinguished between a presumption of inherent loyalty to the Constitution and the instrumental use of the Constitution to achieve a more important objective.679 I argued that black people have historically expressed fidelity to the Constitution because it offers "practical advantages" to their struggle for equal citizenship.680 Under this instrumental approach, equal citizenship does not arise from the Constitution; it precedes it. The Constitution is not the standard of justice we should faithfully uphold; equal citizenship is. We know what democracy means not by immersing ourselves in the Constitution's language but by imagining what it would mean for black people to be treated like free and equal human beings.

The purpose of constitutional fidelity **is to insist that constitutional interpretations abide by** this higher standard of **justice**. "In short, **fidelity is a means, not an end**, and it is a means to an end **that is more fundamental than the Constitution**."681 **Abolition constitutionalism**, unlike other constitutional fidelities, **aims not at shoring up** the **prevailing constitutional reading but at abolishing it and remaking a polity that is radically different.**

Prison abolitionists can follow this tradition **by instrumentally using the Constitution to build a society based on principles of freedom, equal humanity, and democracy** — a society **that has no need for prisons**. In this section, I explore how prison abolitionists might instrumentally use the Constitution to make persuasive arguments for change and to achieve **nonreformist abolitionist reforms** that would eradicate or **shrink discrete components of the carceral punishment system, mitigate the suffering caused by carceral conditions, and create the conditions needed for a society without prisons.** I also consider the possibility that, in the process, prison abolitionists might imagine a new constitutionalism based on the society they are working to create. In other words, **a new abolition constitutionalism would not serve to sustain and improve the U.S. state and its carceral systems**. Rather, **it would serve to guide and govern a society in the making where prisons are obsolete.**

1. Holding Courts and Legislatures to an Abolitionist Reading. — Black Panther Party activist and author **George Jackson**, a leading figure in the prison abolition movement,682 **called** for "the gracious, sensitive, brainy types . . . **to hold the legal pigs to the strictest interpretation of the Constitution possible**."683 Surely Jackson wasn't upholding the U.S. Constitution as a beacon for a radical movement or expressing faith in judges to apply it for the sake of black freedom. Indeed, he was forced into the courtroom he then used **as a platform to put American justice on tria**l.684 But Jackson didn't throw out the Constitution either. Rather, **Jackson was deploying it strategically as a legal, ideological, and rhetorical tactic to expose the hypocrisy of** his imprisonment and t**he prison system's reenslavement of black people**.685 Jackson's demand for the "strictest interpretation of the Constitution possible"686 might be seen **as holding courts to the abolitionist reading of the Constitution envisioned by the antislavery activists** who inspired the Reconstruction Amendments.687

Beginning in the 1960s, prisoners have asserted legal claims based on the Constitution to challenge their incarceration and the conditions of their confinement.688 The 1964 case Cooper v. Pate, 689 which held that prisoners could bring constitutional challenges against prison officials in federal court,690 fueled a prisoners' rights movement that relied largely on civil rights lawsuits.691 According to Professor Robert T. Chase, incarcerated people immediately took advantage of the opportunity to bring constitutional claims: "[T]he number of prisoners' rights suits dramatically increased from 218 in 1966 to almost 18,477 in 1984. Between 1970 and 1996 the number of prisoner civil rights lawsuits leaped an astonishing 400 percent."692 Prison activists in the 1960s and 1970s mobilized around the prisons-as-slavery metaphor, but did not see it as reason to reject using constitutional provisions as a means to advance their activism.693

The prisoners' rights movement achieved a major victory in the class action lawsuit Ruiz v. Estelle, 694 filed in 1972, which sought numerous changes in the Texas prison system, including alleviating overcrowding, improving health care, increasing access to attorneys, and ending the practice of having prisoners act as guards, which had created a system of sexual violence within prisons.695 In 1980, two years after the trial began — making it "at that time the largest and longest civil rights case in the history of American jurisprudence"696 — Chief Judge Justice found the Texas prison system unconstitutional.697 However, in the decades since Ruiz, the Texas prison system has continued to cage increasing numbers of people under conditions that have not changed dramatically.698 The history of instrumental litigation of constitutional claims by the prisoners' rights movement demonstrates both the utility of making constitutional law part of abolitionist activism and the inadequacy of relying on legal institutions to create and enforce effective remedies.

Prison abolitionists still frequently make constitutional arguments from behind bars.699 Many prisoners writing in the publications of Critical Resistance, including its journal, The Abolitionist, state their claims in the language of constitutional rights. They have argued, for instance, that the parole system violates the Due Process Clause,700 or that prosecutors' exclusion of black people from juries violates the Sixth Amendment.701 They have encouraged citizens to learn and understand their full rights under the

Constitution,702 and have supported suing prison officials for constitutional violations.703 **For** these **prison activists, asserting** their **constitutional rights constitutes** both **a pragmatic use of legal tools to win release or change carceral conditions and an empowering rhetorical demand for legal recognition**.704 As George Jackson's appeal to "brainy types"705 suggests, **lawyers and legal scholars can play an important role in helping to articulate and present the demands of people subjected to carceral punishment for strict adherence to the Constitution's abolitionist directives** — **even when they anticipate failure**.706

2. Nonreformist Abolitionist Reforms. — Prison abolition is a longterm project that requires strategically working toward the complete elimination of carceral punishment. No abolitionist expects all prison walls to come tumbling down at once. Yet abolitionist philosophy is defined in contradistinction to reform: reforming prisons is diametrically opposed to abolishing them.707 Efforts to improve the fairness of carceral systems and to increase their efficiency or legitimacy only strengthen those systems and divert attention from eradicating them. How can abolitionists take incremental steps toward dismantling prisons without falling into reformist traps? Prison abolitionists resolved this quandary with the concept of "non-reformist reforms — those measures that reduce the power of an oppressive system while illuminating the system's inability to solve the crises it creates."708 By engaging in nonreformist reforms, abolitionists strive to make transformative changes in carceral systems with the objective of demolishing those systems rather than fixing them.709 They recognize that these reforms alone are inadequate; indeed, achieving these piecemeal changes in the prison industrial complex reveals the necessity of its total eradication. To be abolitionist, reforms must shrink rather than strengthen "the state's capacity for violence."710

In addition, nonreformist reforms must facilitate the goal of building a society without prisons. As migrant justice activist Harsha Walia explains, "[a]rguably every reform entrenches the power of the state because it gives the state the power to implement that reform. But from an ethical orientation towards emancipation, I think a guiding question on non-reformist reforms is: Is it increasing the possibility of freedom?"711 A critical test for engaging with the U.S. Constitution is whether there are particular ways an abolition constitutionalism facilitates — rather than constrains — imagining a society where prisons are obsolete.

In using the Constitution to support legal changes that move toward abolition, prison abolitionists can consider a variety of forums. **Courts are not the only venues where abolitionists can make constitutional claims** and forge an abolition constitutionalism.712 Like the judiciary, **Congress and state governments are bound by the Constitution**,713 **and, should those bodies adopt an abolitionist reading of the Constitution, they would have substantial power to enact** the **changes** that interpretation would require.714 Indeed, the Thirteenth Amendment itself empowers Congress to enforce its provisions, anticipating the inadequacy of case-by-case judicial eradication of slavery.715

Abolition constitutionalism could support many of the **nonreformist reforms** in which prison abolitionists and other activists are already engaged, including efforts to **stop prison expansion by opposing prison construction** or shutting down prisons that already exist;716 **end police stop-and-frisk practices**;717 **eliminate the requirement of money bail** to release people charged with crimes;718 **repeal harsh mandatory minimums**, even for violent crimes;719 **give amnesty to individual prisoner**s, including political prisoners and prisoners believed to have killed in self-defense;720 **and decriminalize drug use and possession** and other nonviolent conduct.721 To the extent that such practices perpetuate slavery in violation of the Thirteenth Amendment, Congress, state legislatures, and city assemblies, as well as courts, are empowered by the Federal Constitution722 and state constitutions723 to enact these nonreformist reforms.

Prison abolitionists have also organized to hold police and other law enforcement agents accountable for violence and rights violations. One of their major victories is the Reparations Ordinance, passed by the Chicago City Council on May 6, 2015. 724 The ordinance was a longdelayed response to the Chicago Police Department's systematic infliction of torture and other forms of violence against African American suspects under the command of Jon Burge.725 After decades of agitation, the activists won a package of measures, including monetary compensation for the living survivors, tuition-free education at the City Colleges for survivors and their families, and a public memorial.726 Mariame Kaba calls the Reparations Ordinance "an abolitionist document" because it "did not rely on the court, prison, and punishment system[s] to try to envision a more expansive view of justice."727 The activists deliberately refused to seek criminal prosecution of the officers involved or civil damages against the City of Chicago.728 Instead, they pressured the City Council to redress their claims through a radically democratic process, led by survivors and grassroots organizers and occurring outside formal legal institutions, that included street protest, partnership with international human rights organizations, and media education.729

3. **Treating the Symptoms While Ending the Disease**. — While **complete prison eradication is the** ultimate **goal** of the abolitionist project, **before that aim comes to fruition abolitionists might consider invoking the Constitution instrumentally to mitigate the harms inflicted by carceral punishment**. As law student, activist, and former prisoner Angel Sanchez puts it, **abolitionists must treat prison like a "social cancer: we should fight to eradicate it but never stop treating those affected by it.**"730

The Thirteenth Amendment could facilitate a number of nonreformist reforms. For example, abolitionists might consider taking up the constitutional arguments put forth by numerous scholars who have posited that **the Thirteenth Amendment prohibits exploitative treatment of incarcerated people**.731 **Legal scholars** have also **made strong constitutional arguments against** the **shackling** of i**ncarcerated people during labor and delivery**732 **and against solitary confinement**.733 **Efforts to end** the collateral consequences of incarceration, such as **restrictions on voting rights, exclusion from public housing and other government benefits**, and imposition of monetary sanctions, can also **find support in the Thirteenth Amendment**'s abolition of slavery.734 Professor William Carter lays out a framework for defining modern badges and incidents of slavery that looks to "the connection the group to which the plaintiff belongs or that Congress seeks to protect has to the institution of chattel slavery" and "the connection the complained of injury or proscribed condition has to the institution of chattel slavery."735 Thus, when numerous "racialized policies," including those inflicted as a result of a criminal conviction, create "a permanent caste distinction of . . . magnitude and impermeability . . . [they] amount to a badge or incident of slavery."736 Systematic exclusion of former prisoners from labor and housing markets,737 for example, deprives them of full rights of citizenship, amounting to an incident of slavery.738 Notably, Congress has the authority to pass legislation under the Thirteenth Amendment to end practices that were instituted after the Civil War to reinstall white supremacy, such as monetary sanctions, forced prison labor, and felon disenfranchisement.739

4. Creating the Conditions for a Society Without Prisons. — Finally, prison abolitionists are dedicated to working within carceral society to "build models today that can represent how we want to live in the future" and to start creating a radically different society where prisons are unimaginable.740 We can use constitutional support to demand the building blocks needed for this construction project — for example, legislation that transfers funds currently devoted to carceral systems, such as police, prisons, detention centers, and foster care, to community-based efforts to meet people's needs and resolve social conflicts nonviolently. Alexander Lee, founder and director of the Transgender, Gender Variant & Intersex Justice Project, argues that prison abolitionists will have to form "prickly coalitions" with people outside the movement who are engaged in providing "housing, healthcare, and other essentials [that] are the basis from which a world without prisons will be made possible."741 Such coalitions that help to build a new society can be guided by abolitionist constitutional principles and requirements.742

B. Imagining a Freedom Constitutionalism

Abolitionists always have their eyes set on a future they are in the process of creating. At the very same time they are deconstructing structures inherited from the past, they are constructing new ones to support the future society they envision. Abolitionists are engaged in a collective project of radical speculative imagination — what Rodríguez calls "[i]nsurgent abolitionist futurity."743 If anything, it is the innovative rather than the destructive that marks abolitionist thinking. We should understand abolition not as the "elimination of anything but . . . as the founding of a new society."744 The relationship between prison abolition and the Constitution, then, should be seen less as the condemnation of our existing abolition constitutionalism and more as the genesis of a new one.

A new abolition constitutionalism could seek to **abolish historical forms of oppression beyond slavery, including settler colonialism, patriarchy, heteronormativity, ableism, and capitalism, and** striv**e to dismantle systems beyond police and prisons, including foster care, regulation of pregnancy, and poverty**.745 **It could extend beyond the United States' borders to challenge U.S. deportation policies and U.S. imperialism and to connect to freedom struggles around the world**.746 The purpose of a new abolition constitutionalism would not be to improve the U.S. state but to guide and govern a future society where prisons are unimaginable. Its objective could extend beyond abolishing particular systems to establishing freedom for all — a new freedom constitutionalism.

---FRAMEWORK---

2AC – FW – Top

Clash and technical detail is key to capitalize on vulnerabilities in power---their dyadic rejection of engagement in favor of intellectual abstraction is an intellectual divide and conquer tactic that chills dissent

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In 2016, we must do more than simply acknowledge that we need not choose between Martin and Malcolm. To be effective, we must actively engage in the texts of Baldwin and Fanon; Dellinger and Braden; Lee-Boggs, Butler and Lorde; as well as hooks and Abu-Jamal and West. We must learn from a diasporic history of resistance and rebellion, from Haiti, Trinidad and Jamaica; Ghana, Guinea Bissau and Mozambique; Chile, Costa Rica, and Brazil; India, East Timor, and Vietnam, and – yes – the streets of San Juan and Brixton. **We must interweave,** interconnect **and intersect nuanced arguments, achievements and concerns,** and be willing **to critique and challenge one another as we reimagine society** and explore our universe **for new suns. There is much debate about** what makes for **effective and transformative movement-building – on local, national, or transnational scales. This much at least, from the last half-century of history, seems clear: a merger of ideological and technical thinking will be needed,** along **with full access to and (re)distribution of** all natural, **material,** and human **resources. A revolutionary** nonviolent **praxis will require: *A combination of reform and** more **radical measures,** leading up **to fully transformative** and **lasting change; *A multiplicity of** intersectional strategy and **tactics that expand what we consider** as **nonviolence;** *A disciplined understanding and preparation for the fact that casualties and bloodshed occur in all revolutions, and that militarism on the part of revolutionaries is always a costly error; *****Massive **training for mass organising between social, economic, political and environmental movements, by imaginative,** creative**, resistance-oriented means; *Concrete, grassroots constructive programs, that seek to build** new societies and **alternative institutions, and that invest in Black communities and the communities of other historically oppressed peoples and nations; *Explicit programs to eradicate white supremacy and hetero-normative patriarchy, with the goal of liberation for all people;** This is not to say that the U.S. today, despite the ebullient mood on some campuses, is – to use a favorite phrase of Kwame Ture (aka Stokely Carmichel) – "ready for revolution." It IS to say that **radicals** today, across different struggles and movements, might do well to step carefully around the dividing lines of past decades. We **must find** intersections and **opportunities** that exist **in t**hese **new spaces**, building unity where our elders could not. As the U.S. empire shows growing signs of decline, lashing out and closing ranks at anything beyond the 1% ruling elite, **opportunities for radical change – as well as for vicious backlash and repression – will emerge with growing frequency. Let us not allow our people's movements to be divided, co-opted, or conquered** – especially not along historic fault lines so clearly set up to divide and conquer us. Liberation educator Paulo Freire noted that "violence is the tool of the master," and feminist poet Audre Lorde reminded us that "You cannot dismantle the Master's House with the Master's Tools" So, let us reimagine new ways to build a society where Black people can live freely and dream, and let's find, as Barbara Deming implored, "equilibrium" in our revolutionary process. **Constantly the hegemonic status quo re-equips to co-opt, capture, and destroy our dissent.** Today's movements must not seek to be "brought into the fold." The fold can only hold a few, and we no longer want the morphine of acceptance. Let us speak Truth to Empire, like the people of Ferguson and like U.S. political prisoners have been trying to do. It is time to refuse to fight our grandfather's battles, and refuse to be limited by unnecessary past choices and false dichotomies. **It is time to build power, unite, and win!**

2AC – FW – Fiat

Debate is good even if we can't actualize the 1ac --- it makes us better students and activists.

John **HIRD 17**. Dean of the College of Social and Behavioral Sciences and Professor of Political Science and Public Policy, University of Massachusetts Amherst. "How Effective is Policy Analysis," in D. Weimer & L. S. Friedman (eds.) *Does Policy Analysis Matter? Exploring Its Effectiveness in Theory and Practice*. University of California Press. 44-76.

Classical policy analysis, however absent from actual policy making, remains an important vehicle for teaching policy analysts the connections between their analysis and the policymaking world in which their recommendations would live. **Even if it implies more power than analysts will ever have, classical policy analysis teaches that politics, law, implementation, social structures, organizational behavior, and other factors are critical to policy outcomes and must play key roles in thinking through possible ways to address policy problems**. **Bringing policy ideas to fruition, bridging the worlds of research and policy making, is a critical skill for analysts to develop**. In addition, policy schools are instilling in prospective policy analysts the structure and habits of mind to engage successfully in the policy enterprise. 28 **Teaching disciplined thinking for public service is important**. **Policy analysts not only have a problem-oriented, interdisciplinary approach to policy and the ability to synthesize and bring policy relevance to problems that social scientists are not trained for, but they understand the "rational lunacy of policy-making systems"** (Weiss 2009). In the absence of written classical policy analyses, **policy analysts become their human embodiment**. **Their training will provide a mental picture of how a classical policy analysis should be performed**. They can derive elements of policy analysis from writing position papers, briefing policy makers, and controlling meetings. **They anticipate counterarguments and frame their analyses recognizing alternative options**. In short, **the mental map of a policy analysis allows good policy analysts not only to be effective in their jobs but also to advance into the public debate the appropriate elements of a policy analysis**. **Further, the problem orientation of policy analysis focuses at least some attention on social problems, not just political expediency**. **The role of policy analysts is not merely to translate research for policy makers, but to use creative means to turn available knowledge about the implications of various policy options into actionable policy recommendations appropriate for their clients**. **This is a subtle skill requiring attention to both political realities and the best available research**. Finally, prospective policy analysts are instructed repeatedly about the importance of their relationship to the client(s), yet far less attention is paid to the other part of the policy analyst's relationship: to the community of knowledge producers. **Policy analysts play critical roles as intermediaries between "custodians of the knowable" and policy makers. Their training should include the ability to understand and interpret the academic literature on a topic at a far deeper level than most journalists have the time or, often, the analytic skill set to uncover**. **Identifying and connecting pertinent knowledge and analysis with policy makers should be a core principle of a public policy education.** Policy analysts may offer the central means to provide policy makers with the key elements of classical policy analysis, though not in the way, through written reports, it was originally conceived. Creating a profession for committed, accomplished, and well-trained individuals to participate in the world of public policy may be among the most important contributions of policy analysis education.

2AC – FW – Policy Focus

the affirmatives combination of ethical knowledge production and policy proposal can effectively challenge the status quo – abandoning intervention with governmental bureaucracies ensure ineffectiveness

Keith 08, Anthro chair at Oxford (Michael, Public sociology? Between heroic immersion and critical distance: Personal reflections on academic engagement with political life, csp.sagepub.com/content/28/3/320.full.pdf+html)

In this sense **there is an academic function that might take as axiomatic the bureaucratic imperatives that inform each of the subsections of the bureau** (and each of the silos of local governance) **and consider in turn the knowledges that become useful at particular times**. In social services (or more recently children's services) departments, particular forms of sociology define families, children and elderly as 'at risk', actuarial calculations match resource rationing with local authority budgets to define eligibility criteria for the rationing of welfare state support. In the realm of development control, particular notions of the good city are premised on the notion of functional land use zoning, rooted in a technocratic urbanism. The landlord function of council homes, housing associations and new 'arm's length management organizations' depend on both the calculus of expenditure and rental return and an assortment of normative figurations of the social world. Construction equations and refurbishment costs that match build costs, ecological obligations, density potential and the offset of land costs and private sales that define the political economy of social housing are conflated with more 'moral knowledges' of social mixing that prescribe mixed neighbourhoods as preferable to sink concentrations of new housing estates with 90% of tenants on housing benefit. And in the licensing of drinking, feasting and having a good time the various regulatory regimes of local governance encode normative models of the 24 hour city, new consumer cultures and forms of work time/leisure time flexibility that sit just below the surface of apparently mundane functions. For Weber the bureau is coded to reproduce the status quo, the politician the challenger of it. But if we are to understand the proper role of a 'public sociology' or the engagement of the academy and public life then it is worth thinking through, in a little more detail, the ways in which we understand both the working of the former and the sorts of information that might be useful to the latter. Crudely put **we need both the forms of technocratic knowledge that might make the workings of the bureau transparent both to itself and to its public** (to ensure for example the 'fair' working of the rationing of the scarce resource of social housing in the allocation of new tenancies) **and the forms of ethical knowledge that might challenge the status quo itself** (when for example new priorities emerge in the turbulence of city change and the ethical settlement of social form). To take just one example: in the late 1990s an ageing demographic within the Bangladeshi community in Tower Hamlets prompted a number of activists to demand the provision of a facility that catered for Muslim needs of the newly elderly. Supporting this strongly politically, colleagues and myself went through a painful process by which a partnership with a housing association (putatively 'privatizing' the service), a development deal on a land site in my ward and – most fundamentally – the recognition of particular cultural rights were supported by some parts of the bureaucracy but opposed by others. Most vividly, David Davis, then shadow Home Secretary denounced the proposals vigorously, leading to demands in the tabloid press that the facility be torn down. Importantly, a debate about welfare provision, a deal around the financially plausible and – most significantly here – a debate about when the 'separation' of multicultural difference trumps the solidarities of integrated service delivery are conflated around a single development site. The site became the Sonali Gardens Day Care Centre in Shadwell, won many awards and subsequently the support of even the Conservative Party at the local level. But hindsight is easy and the project might have fallen on many occasions. However, the forms of knowledge in play, including a debate on a new moment in the local identity politics of recognition (of 'Muslim needs'), a new eligibility subject position (both demographically in terms of the Bangladeshi community and categorically in terms of 'the Muslim elderly') and a new form of service provision (combining the community sector with a housing association) all replay a particular choreography. In this dance the old eligibility and priority criteria of a well run welfare system sit at odds with these contested measures of a new ethical settlement. In this particular instance it is not particularly helpful to label the old 'bureaucracy' racist, any more than it was helpful to stigmatize the new form of provision in Sonali Gardens as a form of apartheid as some in the national tabloid press preferred. **Change is prompted by the political trumping of bureaucratic processes but rests on the** implicit and sometimes **explicit knowledges that are sociological and ethical**, routed through the imperatives of contemporary multiculturalism. Personal experience showed that wrongly presented they can result in both a personal denunciation from Davis' office and a potential lawsuit (see for example http://iaindale.blogspot.com/2007/08/daviddavis- demands-labour-apology-over.html). Equally the debate was crying out for an informed (and 'knowledgeable') understanding of the choices that must be made in balancing the politics of redistribution and the politics of recognition in today's multicultural urban settings, and rethinking the balance between state and civil society in looking after the most vulnerable. So **understanding the tension between the bureaucracy and the political imperative consequently illuminates both the value of the former and its limits; the proper sense of the political as a notion of 'ethics in public' and its limits when translated into the public arena** of the tabloid press. **Through this situated tension we might then also begin to understand the sort of knowledge that might be performatively helpful in constituting a public rather than one in which artefacts of academic production sit as ornaments in a 'public sociology'**. On knowledges of the local and the economization of everyday life **When the political can trump the bureaucratic in some circumstances but not in others, this might lead us to think about the performative value of different knowledges**. We might also want to think carefully about the ways in which different knowledges themselves trump each other, how some disciplinary traditions at some times and places become more powerful than others in social policy contexts. And though it is a largely impressionistic suggestion, it appears to be the case that, in the British public realm, the political holy grail of economic competence and the paradigmatic legacies of forms of rational choice and public choice theory lend economic expertise a performative value second to none. Whilst in the USA as much as in contemporary China the sociological might inform the policy maker, the anthropologist inform the corporation, and both might provide knowledges for government; in the UK there appears a sense that economic knowledges are in some ways the makers of a privileged realm of expertise (Balls, 2006; McClean and Jennings, 2006). In some ways we have witnessed the economization of everyday life, or at least an economization of its governance. How do we understand both the growing general power of the discipline of economics and the particular privileging of economic reasoning in the public realm in Britain? There is a literature that considers the relative merits of forms of economic knowledge in the structuring of social policy, and in particular the manner in which governments have taken their lead from the US property rights school to legitimize a privileging of the economic over the legal in many realms of policy formation (Coase, 1960, 1992; Rutherford, 1996; Williamson, 1975, 1985). There is also a set of literatures around 'governmentality' that explains the manner in which the calculable self can be related to the evolutions of structures of governance that take as their object 'the conduct of conduct' and at times there is a sense that such a calculus lends itself to a cognitive notion of rational choice and utility optimizing behaviours that fits well with mainstream economic reasoning (Rose, 1999). These are related but distinct trends and there is no space to examine them in detail here. However, matched with the growing power of the Treasury in setting the parameters of social policy intervention in the period from 1997 onwards, their influence in part explains the national trend for 'evidence based policy' to develop national mobilizations of academic knowledges that explain the central government predilection for policy reviews that are framed by the search for economically optimal policy options. Adair Turner's (2005) review of the funding of pensions, Nicholas Stern's (2006) review on the economics of climate change (in which he described climate change as 'market failure', http://www.guardian.co.uk/environment/2007/ nov/29/climate change.carbonemissions) and Kate Barker's reviews of housing supply (2004) and the planning system (2006) are just a few of the many high profile Treasury rooted examples of inquiries that structure public policy. The relationship between policy outcomes and the review process is contingent but what is shared is a sense that privileges both an economic mode of analysis and economists' expertise and analysis. If it is easy to condemn the discipli nary complicity of the economic, it might also be worth examining the disciplinary efficacy of the sociological if powerful and persuasive calls for the social sciences to engage in a 'public sociology' (Burawoy, 2005) are to be taken seriously. The example of the way in which the British conceptualize the universal need for a home provides an interesting case in point. The upturn in macroeconomic growth of the last fifteen years has been paralleled by an arguably unprecedented rate of sustained house price inflation in the UK. It was in this political context that Kate Barker (2004), formerly a member of the Bank of England monetary policy committee, was asked to review land supply and its impact on the housing market. In an exemplary review, couched in the vocabulary and the grammar of neoclassical economics, the supply constraints are identified and the shortage of homes in the UK is translated into a completely logical set of tabulations and graphics. To be clear, it is not the purpose of this article to provide a critique of Barker, regardless of the validity of her logic and conclusions. **It is rather to ask what sorts of ways of imagining policy options are excluded from the mode of thinking and writing that the work is premised upon**. In part what is clear is the absence of a sympathetic ethnographic sense of how the bureau works, planning decisions are made and are (at times) politicized; an unspoken sense of what it might mean to build communities as well as building units of housing; and a silence about the ways in which cultural forms of race, gender, sexua lity, lifestyle and age preference are continually reconfiguring what it means to dwell as well as to reside in the city. **And this does impact on the ways in which policy imperatives are then translated into the modes, regimes and regulation of programmes** of city change, urban renewal and regeneration. In a sense these dilemmas are most vividly brought together in trying to understand the 'meta-politics' of the growth of the Thames Gateway, to the east of London. Once associated with the badging of a major tract of post-industrial land as an opportunity for 'urban regeneration' with origins more in Sir Peter Hall's geographical imaginary

than in any other academic discipline, the reputation of this scheme was seriously dented in 2007 by a highly critical report of the Public Accounts Committee, linked to a National Audit Office inquiry into the success of the scheme (NAO, 2007; PAC, 2007). Succinctly put, the scale of the Gateway ambition is consequent on not just the analytical logic that informs the appropriate and potential land use functions of a particular 'brownfield' tract of land. In an economic vocabulary, the Thames Gateway becomes a territory whose regeneration has a price (that might be calculated) and whose capacity can be defined teleologically in terms of numbers of putative homes and potential jobs. A calculus that appeals to the ratio between investment inputs and regeneration outputs can thus generate a sense of the value for money of the Gateway; the extent to which public sector expenditure might be justified here rather than in other 'growth areas' that warrant alternative public sector investment sits in an opportunity cost relation to the Gateway itself. In part this is understandable. The sense that public investment should be rational, its opportunity costs transparent and the externalities of investment made visible are all entirely laudable goals. But as a consequence, the territorialization of social policy is not inflected by the disciplines of the built environment that address the lessons learnt in building new communities, the imperatives of governance and the recognition of cultural difference. Sites in the Gateway must justify public investment against criteria principally structured by their ability to contribute to the entirely laudable social goal of building three million new homes to address the housing shortage. And neither do they address the more contentious, complex and controversial elements of social engineering that will determine how many of those homes would be bought for sale outright, private rental or in some of many senses will be made 'affordable' through the deployment of public subsidy in generating new 'social housing'. **So what is the alternative to this? In part the answer is about a more detailed critique of the forms of governance imperatives that become received wisdom. But equally there is a demand for more populist, more visionary, more credentialized forms of public sociology that make problematic both the sorts of social form that emerge through major programmes of regeneration and the ways in which the economic calculus might be understood otherwise in analytically strong models of congregation and the public realm that address the 'externalities' of social polarization, exclusion and intolerance**. Detailed ethnography might teach us to be sceptical about the voices that are heard – both in the corridors of power and in the debates about expanding new settlement that might think backwards about decades of experience in building the city beautiful and more contemporary reflections on the cultural forms that emerge in new towns that determine whether places are socially (as well as ecologically and economically) sustainable. **This demands a more aggressive publicization of forms of sociological intervention that engage critically with structures of power but also offer technocratically a sense of academic expertise and knowledge production that is savvy about the ways in which the levers of local governance and** Wacquant's derided **bureaucracies actually work.**

2AC – FW – Reforms

The 1AC combines radical critique with non-reformist reforms to balance the two in productive tension – this strategy creates medium-term steps towards the larger goal of abolition and reworks public consciousness to facilitate work against mass incarceration

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Chronic overcrowding has led to worsening conditions for prisoners. As a result of the unprecedented growth in sentenced populations, prison authorities have packed three or four prisoners into cells designed for two, and have taken over recreation rooms, gyms, and rooms designed for programming and turned them into cells, housing prisoners on bunk beds or on the floor. These new conditions have created challenges for activists, who have found themselves expending time and resources in pressuring prison authorities to provide every prisoner a bed, or to provide access to basic education programs. As prison populations continue to swell, **anti-prison activists are faced with the limitations of reformist strategies. Gains temporarily won are swiftly undermined**, new "women-centered" prison regimes are replaced with a focus on cost-efficiency and minimal programming and even changes enforced by legal cases like Shumate vs. Wilson are subject to backlash and resistance. 19 **Of even greater concern is the well-documented tendency of prison regimes to co-opt reforms and respond to demands for changes in conditions by further expanding prison budgets. The vulnerability of prison reform efforts to cooption has led Angela Y. Davis to call for "non-reformist reforms," reforms that do not lead to bigger and "better" prisons.** 20 **Despite the limited long-term impact of human rights advocacy and reforms building bridges between prisoners, activists, and family members is an important step toward challenging the racialized dehumanization that undergirds the logic of incarceration** In this way, **human rights advocacy carried out in solidarity with prisoner activists is an important component of a radical anti-prison agenda** Ultimately, however, **anti-prison activists aim** not to create more humane, culturally sensitive, women-centered prisons, but **to dismantle prisons and enable formerly criminalized people to access services and resources outside the penal system** After three decades of prison expansion, more and more people are living with criminal convictions and histories of incarceration. In the U.S., nearly 650,000 people are released from state and federal prisons to the community each year. 21 Organizations of formerly incarcerated people focus on creating opportunities for former prisoners to survive after release, and on eliminating barriers to reentry, including extensive discrimination against former felons. The wide array of "post-incarceration sentences" that felons are subjected to has led activists to declare a "new civil rights movement." 22 As a class, former prisoners can legally be disenfranchised and denied rights available to other citizens. While reentry has garnered official attention, with President Bush proposing a $300 million reentry initiative in his 2004 State of the Union address, anti-prison activists have critiqued this initiative for focusing on faith-based mentoring, job training, and housing without addressing the endemic discrimination against former prisoners or addressing the conditions in the communities which receive former prisoners, including racism, poverty, and gender violence. Organizations of ex-prisoners working to oppose discrimination against former prisoners and felons include All of Us Or None, the Nu Policy Leadership Group, Sister Outsider and the National Network for Women Prisoners in the U.S., and Justice 4 Women in Canada. All of Us Or None is described by members as "a national organizing initiative of prisoners, former prisoners and felons, to combat the many forms of discrimination that we face as the result of felony convictions." 23 Founded by anti-imperialist and former political prisoner Linda Evans, and former prisoner and anti-prison activist Dorsey Nunn, and sponsored by the Northern California–based Legal Services for Prisoners with Children, All of Us Or None works to mobilize former prisoners nationwide and in Toronto, Canada. The organization's name, from a poem by Marxist playwright Bertold Brecht, invokes the need for solidarity across racial, class, and gender lines in creating a unified movement of former prisoners. Black women play a leading role in the organization, alongside other people of color. All of Us Or None focuses its lobbying and campaign work at city, county, and state levels, calling on local authorities to end discrimination based on felony convictions in public housing, benefits, and employment, to opt out of lifetime welfare and food stamp bans for felons, and to "ban the box" requiring disclosure of past convictions on applications for public employment. In addition, the organization calls for guaranteed housing, job training, drug and alcohol treatment, and public assistance for all newly released prisoners. 24 In the context of the war on drugs, many people with felony convictions also struggle with addictions. The recovery movement, which is made up of 12-step programs, treatment programs, community recovery centers, and indigenous healing programs run by and for people in recovery from addiction, offers an alternative response to problem drug use through programs focusing on spirituality, healing, and fellowship. However, the recovery movement's focus on individual transformation and accountability for past acts diverges from many anti-prison activists' focus on the harms done to criminalized communities by interlocking systems of dominance. As a result, anti-prison spaces seldom engage with the recovery movement, or tap the radical potential of its membership. Breaking with this trend, All of Us Or None has initiated a grassroots organizing effort to reach out to people in 12-step programs with felony convictions. This work is part of their wider organizing efforts that aim to mobilize former prisoners as agents of social change. Building on the strengths of identity politics, these organizations suggest that those who have experienced the prison-industrial complex first-hand may be best placed to provide leadership in dismantling it. As former prisoners have taken on a wide range of leadership positions across the movement, there has been a shift away from leadership by white middle-class progressives, and a move to promote the voices of those directly affected by the prison-industrial complex. Politicians who promote punitive "tough-on-crime" policies rely on racialized controlling images of "the criminal" to inspire fear and induce compliance among voters. Once dehumanized and depicted as dangerous and beyond rehabilitation, removing people from communities appears the only logical means of creating safety. **Activists who pursue decarceration challenge stereotypical images of the "criminal" by making visible the human stories of prisoners, with the goal of demonstrating the inadequacy of incarceration as a response to the complex interaction of factors that produce harmful acts Decarceration usually involves targeting a specific prison population that the public sees as low-risk and arguing for an end to the use of imprisonment for this population. Decarcerative strategies often involve the promotion of alternatives to incarceration that are less expensive and more effective than prison and jail** For example, Proposition 36, the Substance Abuse and Crime Prevention Act, which passed in California in 2000 and allowed first- and second-time non-violent drug offenders charged with possession to receive substance abuse treatment instead of prison, channels approximately 35,000 people into treatment annually. 25 **Drug law reform is a key area of decarcerative work Organizations and campaigns that promote drug law reform** include Drop the Rock, a coalition of youth, former prisoners, criminal justice reformers, artists, civil and labor leaders working to repeal New York's Rockefeller Drug Laws. The campaign **combines racial justice, economic, and public safety arguments by demonstrating that the laws have created a pipeline of prisoners of color** from New York City to newly built prisons in rural, mainly white areas represented Republican senators, resulting in a transfer of funding and electoral influence from communities of color to upstate rural communities. 26 Ultimately, the campaign calls for an end to mandatory minimum sentencing and the reinstatement of judges' sentencing discretion, a reduction in sentence lengths for drug-related offenses and the expansion of alternatives, including drug treatment, job training, and education. Former drug war prisoners play a leadership role in decarcerative efforts in the field of drug policy reform. Kemba Smith, an African–American woman who was sentenced to serve 24.5 years as a result of her relationship with an abusive partner who was involved in the drug industry, is one potent voice in opposition to the war on drugs. While she was incarcerated, Smith became an active advocate for herself and other victims of the war on drugs, securing interviews and feature articles in national media. Ultimately, Smith's case came to represent the failure of mandatory minimums, and in 2000, following a nation-wide campaign, she and fellow drug war prisoner Dorothy Gaines were granted clemency by outgoing President Clinton. After her release, Smith founded the Justice for People of Color Project (JPCP), which aims to empower young people of color to participate in drug policy reform and to promote a reallocation of public expenditures from incarceration to education. While women like Kemba Smith and Dorothy Gaines have become the human face of the drug war, prison invisibilizes and renders anonymous hundreds of thousands of drug war prisoners. The organization Families Against Mandatory Minimums (FAMM) challenges this process of erasure and dehumanization through its "Faces of FAMM" project. The project invites people in federal and state prisons serving mandatory minimum sentences to submit their cases to a database and provides online access to their stories and photographs. 27 The "Faces of **FAMM**" project highlights cases where sentencing injustices are particularly visible in order to galvanize public support for sentencing reform. At the same time, it **dismantles popular representations of the war on drugs as a necessary protection against**

dangerous drug dealers and traffickers, demonstrating that most drug war prisoners are serving long sentences for low-level, non-violent drug-related activities or for being intimately connected to someone involved in these activities. Decarcerative work is not limited to drug law reform. Free Battered Women's (FBW) campaign for the release of incarcerated survivors is another example of decarcerative work. The organization supports women and transgender prisoners incarcerated for killing or assaulting an abuser in challenging their convictions by demonstrating that they acted in self-defense. Most recently, FBW secured the release of Flozelle Woodmore, an African–American woman serving a life sentence at CCWF for shooting her violent partner as an 18 year old. Released in August 2007, after five parole board recommendations for her release were rejected by Governors Davis and then Schwarzenegger, Woodmore's determined pursuit of justice made visible and ultimately challenged the racialized politics of gubernatorial parole releases. 28 While the number of women imprisoned for killing or assaulting an abuser is small—FBW submitted 34 petitions for clemency at its inception in 1991, and continues to fight 23 cases—FBW's campaign for the release of all incarcerated survivors challenges the mass incarceration of gender-oppressed prisoners on a far larger scale. FBW argues that experiences of intimate partner violence and abuse contribute to the criminalized activities that lead many women and transgender people into conflict with the law, including those imprisoned on drug or property charges, and calls for the release of all incarcerated survivors. Starting with a population generally viewed with sympathy—survivors of intimate partner violence—FBW generates a radical critique of both state and interpersonal violence, arguing that "the violence and control used by the state against people in prison mirrors the dynamics of battering that many incarcerated survivors have experienced in their intimate relationships and/or as children." 29 **In theorizing the intersections of racialized state violence and gendered interpersonal violence, FBW lays the groundwork for a broader abolitionist agenda that refutes the legitimacy of incarceration as a response to deep-rooted social inequalities based on interlocking systems of oppression By gradually shrinking the prison system,** Black women **activists involved in decarcerative work hope to erode the public's reliance on the idea of imprisonment as a commonsense response to a wide range of social ills.** At the other end of anti-expansionist work are activists who take a more confrontational approach. By starving correctional budgets of funds to continue building more prisons and jails, they hope to force politicians to embrace less expensive and more effective alternatives to incarceration. Prison moratorium organizing aims to stop construction of new prisons and jails. Unlike campaigns against prison privatization, which oppose prison-profiteering by private corporations, and seek to return imprisonment to the public sector, prison moratorium work opposes all new prison construction, public or private. In New York, the Brooklyn-based Prison Moratorium Project (PMP), co-founded by former prisoner Eddie Ellis and led by young women and gender non-conforming people of color, does this work through popular education and mass campaigns against prison expansion. Focusing on youth as a force for social change, New York's PMP uses compilations of progressive hip hop and rap artists to spread a critical analysis of the prison-industrial complex and its impact on people of color. PMP's strategies have been effective; for example, in 2002 the organization, as part of the Justice 4 Youth Coalition, succeeded in lobbying the New York Department of Juvenile Justice to redirect $53 million designated for expansion in Brooklyn and the Bronx. 30 PMP has also worked to make visible the connections between underfunding, policing of schools, and youth incarceration through their campaign "Stop the School-to-Prison Pipeline." By demonstrating how zero tolerance policies and increased policing and use of surveillance technology in schools, combined with underfunded classrooms and overstretched teachers, has led to the criminalization of young people of color and the production of adult prisoners, PMP argues for a reprioritization of public spending from the criminal justice system to schools and alternatives to incarceration. 31 Moratorium work often involves campaigns to prevent the construction of a specific prison or jail. In Toronto, for example, **the Prisoner Justice Action Committee formed the "81 Reasons" campaign, a multiracial collaboration of experienced anti-prison activists, youth and student organizers, in response to proposals to build a youth "superjail"** in Brampton, a suburb of Toronto. 32 **The campaign combined popular education on injustices in the juvenile system**, including the disproportionate incarceration of Black and Aboriginal youth, **with an exercise in popular democracy that invited young people to decide themselves how they would spend the $81 million slated for the jail. Campaigners mobilized public concerns about spending cuts in other areas**, including health care and education, **to create pressure on the provincial government to look into less expensive and less punitive alternatives to incarceration for youth.** While this campaign did not ultimately prevent the construction of the youth jail, the size of the proposed facility was reduced. More importantly, **the campaign built a grassroots multiracial antiprison youth movement and raised public awareness of the social and economic costs of incarceration.** Moratorium campaigns face tough opposition from advocates who believe that building prisons stimulates economic development for struggling rural towns. Prisons are "sold" to rural towns that have suffered economic decline in the face of global competition, closures of local factories, and decline of small farms. In the context of economic stagnation, prisons are touted as providing stable, well-paying, unionized jobs, providing property and sales taxes and boosting real estate markets. The California Prison Moratorium Project has worked to challenge these assertions by documenting the actual economic, environmental, and social impact of prison construction in California's Central Valley prison towns. According to California PMP: We consider prisons to be a form of environmental injustice. They are normally built in economically depressed communities that eagerly anticipate economic prosperity. Like any toxic industry, prisons affect the quality of local schools, roads, water, air, land, and natural habitats. 33 California PMP opposes prison construction at a local level by building multiracial coalitions of local residents, farm workers, labor organizers, anti-prison activists, and former prisoners and their families to reject the visions of prison as a panacea for economic decline. 34 In the Californian context, where most new prisons are built in predominantly Latino/a communities and absorb land and water previously used for agriculture, PMP facilitates communication and solidarity between Latino/a farm worker communities, and urban Black and Latino/a prisoners in promoting alternative forms of economic development that do not rely on mass incarceration. Scholar-activist Ruth Wilson Gilmore's research on the political economy of prisons in California has been critical in providing evidence of the detrimental impact of prisons on local residents and the environment. 35 As an active member of CPMP, Gilmore's work is deeply rooted in anti-prison activism and in turn informs the work of other activists, demonstrating the important relationship between Black women's activist scholarship and the anti-prison movement. 36 **Many anti-prison activists view campaigns for decarceration or moratorium as building blocks toward the ultimate goal of abolition. These practical actions promise short and medium-term successes that are essential markers on the road to long-term transformation.** However, abolitionists believe that like slavery, the prison-industrial complex is a system of racialized state violence that cannot be "fixed." The **contemporary prison abolitionist movement in the U.S. and Canada dates to the 1970s, when political prisoners like Angela Y. Davis and Assata Shakur, in conjunction with other radical activists and scholars in the U.S., Canada, and Europe, began to call for the dismantling of prisons.** 38 The explosion in political prisoners, fuelled by the FBI's Counter Intelligence Program (COINTELPRO) and targeting of Black liberation, American Indian and Puerto Rican independence movements in the U.S. and First Nations resistance in Canada as "threats" to national security, fed into an understanding of the role of the prison in perpetuating state repression against insurgent communities. 39 The new anti-prison politics were also shaped by a decade of prisoner litigation and radical prison uprisings, including the brutally crushed Attica Rebellion. **These "common" prisoners**, predominantly working-class people of color imprisoned for everyday acts of survival, **challenged the state's legitimacy by declaring imprisonment a form of cruel and unusual punishment and confronting the brute force of state power.** 40 By adopting the term "abolition" **activists drew deliberate links between the dismantling of prisons and the abolition of slavery.** Through historical excavations, the "new abolitionists" identified the abolition of prisons as the logical completion of the unfinished liberation marked by the 13th Amendment to the United States Constitution, which regulated, rather than ended, slavery. 41 Organizations that actively promote dialogue about what abolition means and how it can translate into concrete action include Critical Resistance (CR), New York's Prison Moratorium Project, Justice Now, California Coalition for Women Prisoners, Free Battered Women, and the Prison Activist Resource Center in the U.S. and the Prisoner Justice Action Committee (Toronto), the Prisoners' Justice Day Committee (Vancouver) and Joint Action in Canada. CR was founded in 1998 by a group of Bay Area activists including former political prisoner and scholar-activist Angela Y. Davis. Initially, CR focused on popular education and movement building, coordinating large conferences where diverse organizations could generate collective alternatives to the prison-industrial complex. Later work has included campaigns against prison construction in California's Central Valley and solidarity work with imprisoned Katrina survivors. CR describes abolition as: [A] political vision that seeks to eliminate the need for prisons, policing, and surveillance by creating sustainable alternatives to punishment and imprisonment … . **An abolitionist vision means that we must build models today that can represent how we want to live in the future It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead the average person to believe that things really could be different It means living this vision in our daily lives.** 42 In this sense, **prison abolitionists are tasked with a dual burden: first, transforming people's consciousness so that they can believe that a world without prisons is possible, and second, taking practical steps to oppose the prison-industrial complex. Making abolition more than a utopian vision requires practical steps toward this long-term goal CR describes four steps that activists can get involved in: shrinking the system, creating alternatives, shifting public opinion and public**

policy. and building leadership among those directly impacted by the prison-industrial complex. 43 Since its inception in the San Francisco Bay Area, Critical Resistance has become a national organization with chapters in Baltimore, Chicago, Gainesville, Los Angeles, New Orleans, New York, Tampa/St. Petersburg, and Washington, D.C. As such, CR has played a critical role in re-invigorating abolitionist politics in the U.S. This work is rooted in the radical praxis of Black women and transgender activists.

2AC – Cede the Political

Fatalism causes extinction and holding the line on engagement now is uniquely key but only role experimentation and institutional details produce the subjects necessary to hold the line against Trump while avoiding false hope – turns all their futurity and optimism arguments

Connolly 17 (William Connolly, Krieger-Eisenhower Professor of Political Science at Johns Hopkins University, "Rhetoric, Fascism and the Planetary: A Conversation between William Connolly and Nidesh Lawtoo," The Contemporary Condition, July 20, 2017, http://contemporarycondition.blogspot.com/2017/07/rhetoric-fascism-and-planetary.html)

Bill Connolly: I read Snyder's book last winter, maybe in January, as I was thinking about using it in the seminar on Fascism. We didn't end up using it—there is the problem that you have forty books on the list and you end up using only ten—but I was impressed with Snyder's book for several reasons, the most important being its timeliness and its courageousness. He says: We are in trouble; things are going in the wrong direction; don't think this is just a little blip on the horizon that will automatically disappear—and I agree with him on that. I also liked the way the book is organized around twenty recipes of response. The one that you call attention to, "do not obey in advance," that is, resist tacitly going along to get along. I think of that as congruent with the themes of role experimentations mentioned earlier. **Role experiments create room within the things that you regularly do, like work, raising kids, attending church, relating to neighbors, writing, retirement investments, teaching, etc**. **You then take a step here, a step there, outside settled expectations, because there is often room to do things that exceed merely going along to get along**. They make a difference in a cumulative effect, yes. **But the most important effect is the way they help to recode our tacit presumptions and orientations to collective action**. Even small things. In this spirit, **I recently used Facebook to write an open letter to Donald Trump after he withdrew from the Paris Accord. Making such a minor public statement can coalesce with innumerable others doing similar things. People shared it; it received a broader hearing; even some trolls ridiculed it. It would not be easy to take back. The accumulation of such minor actions counters the scary drive to allow Trumpism to become normalized. Charles Blow, the New York Times columnist, also keeps us focused on that issue.** I like several things about Snyder's book, but I think—maybe I am wrong for I might not have read it carefully enough—that **it is kind of limited to what you and I, as individuals and small groups, can do. Today we need to join these small acts to the larger politics of swarming, out of which new cross regional citizen assemblages grow**. **Such assemblages themselves, in the ways they coalesce and operate horizontally, expose fallacies in the fascist leadership principle**. **Protests at town meetings**, for instance, **fit** Snyder's theme, I am sure. But **let's suppose, as could well happen, that the Antarctic glacier starts melting at such a rapid rate we see how its consequences are going to be extremely severe over a short period of time**. (The computer models are usually three to five years behind what actually happens on the ice, ground, and atmosphere). **Constituencies in several regions could now mobilize around this event to organize general strikes, putting pressure on states and corporations from inside and outside at the same time**. So, the main way I would supplement Snyder is to explore the horizontal mobilization of larger assemblages, to speak to the urgency of time during a period when dominant states so far resist doing enough. Further, from my point of view, **electoral politics poses severe problems**; but **there is also a dilemma of electoral politics that must be engaged honestly**. **Electoral victories can be stymied by many forces**. **But you must not use that fact as a reason to desist**. For, as some of us have argued on the blog The Contemporary Condition for several years, **if and when the right wing gains control of all branches of government you run the severe risk of a Fascist takeover**. So, **participate in elections and act on other fronts as well**. Indeed, **in the United States the evangelical/ capitalist resonance machine has acted in its way on multiple fronts simultaneously for decades. The**

Right believes in its version of the politics of swarming. The way to respond to the dilemma of electoral politics is to expand beyond it but not to eliminate it as one site of activity. **For, again, if the right-wing controls the courts, the presidency, both houses of Congress, the intelligence agencies, and a lot of state legislators, they can generate cumulative effects that will be very difficult to reverse. Aspirational Fascists**, for instance, **use such victories to suppress minority voting**. So, multiple modes and registers of politics.. I wouldn't be surprised if Snyder and I agree on that. Aspirational Fascism Nidesh Lawtoo: I think you're right that you two would agree. In Snyder's longer genealogy of fascism and Nazism, Black Earth, of which the little book is in many ways a distillation, he ends with a chapter titled "Our World," which situates fascist politics in the broader context of climate change and collective catastrophes along the lines you also suggested in Facing the Planetary. **The more voices promoting pluralist assemblages contra the nihilism of fascist crowds, the better!** Speaking of little books, then, I hear you are yourself working a on a new short book dealing with some of the issues we have been discussing, which is provisionally titled, Aspirational Fascism. To conclude, could you briefly delineate its general content, scope, and some of the main lessons you hope will be retained. Bill Connolly: This will be a short, quickly executed book, a pamphlet, that could come out within a year. It's divided into three chapters, and it will probably be around 100 pages. The first chapter reviews similarities and differences between Hitler's rhetoric and crowd management and those of Donald Trump. **It also attends to how the pluralizing Left has too often ignored the real grievances of the white working class, helping inadvertently to set it up for a Trump takeover**. The second chapter explores how a set of severe bodily drills and disciplines in pre-Nazi Germany helped to create men particularly attuned to Hitler's rhetoric in the wake of the loss of WWI and the Great Depression. You and I are having this conversation today in Weimar, a sweet, lovely, artistic town. Hitler, I am told, gave over 20 speeches here, in the Central platz, to assembled throngs. So, in the second chapter **I attend to how coarse rhetorical strategies, severe bodily practices, and extreme events work back and forth on each other**. That chapter is indebted to a book by Klaus Theweleit, Male Fantasies (1987, 2 vols.); it helps me to attend to how specific bodily disciplines and drills attune people to particular rhetorical practices and insulate them from others. The themes Theweleit pursues are then carried into the United States of today as we explore how the neglect of real white working class grievances, the military training and job disciplines many in that class face, and the interminable Trump campaign work back and forth upon one another. That is why I never understate the need to attend to our own bodily disciplines, habits, and role practices. The third chapter is designed to show how what I call **multifaceted pluralism is both good in itself and generates the best mode of resistance to Fascist movements**. **Multifaceted means that it supports generous, responsive modes of affective communications and bodily interrelations**; **it** also **means that the new pluralism treats the white working class to be one of the minorities to nourish, even as we also oppose the ugly things a portion of it does**. **That support must first include folding egalitarian projects into those noble drives to pluralization that have been in play; it must also include taking radical action to respond to the Anthropocene before it generates so much ocean acidification, expansive drought, ocean rising, and increasing temperatures that the resulting wars and refugee pressures will provide even more happy hunting grounds for aspirational Fascism. The pluralizing left must come to terms immediately with the need to ameliorate class inequality in job conditions, retirement security, and workplace authority**. **That deserves as much attention as the politics of pluralization itself**. **I pursue a model of egalitarian pluralism**, then, **that challenges both liberal individualism and the image of a smooth communist future**, **seeing both to be insufficient to the twin dangers of Fascism and the Anthropocene today**. There are no smooth ideals to pursue on this rocky

planet. But **there may be ways to enhance our attachment to a planet that exceeds the contending adventures of mastery that dominated the 19th and 20th centuries.** Those are the three parts of the book. I realize, for sure, that the project makes for heavy lifting, that **it will be difficult to convince some pluralists to push an egalitarian agenda and some segments of the working class to take the Anthropocene seriously**. But the two projects are interrelated and imperative, and it is possible that advances on the first front could loosen more people up to accept action on the second. Nidesh Lawtoo: I look forward to this new book. I think that **your work, which speaks not only to academics and students across disciplines but also to the general public, including the working-class constituencies we have been addressing, demonstrates, among many things, the importance of the general strike that you call and "improbable necessity." In the wake of the cumulative scandalous political actions—the last to date being the withdrawal of the US from the Paris Agreement—that do not simply repeat European fascism but entangle new fascist power with nonhuman planetary forces in such catastrophic ways, I'm even tempted to think, or hope, that a vital improbability will, in the near future, turn into an emerging, perhaps even probable possibility**. Be that as it may, I thank you for the richness of your work and for the inspiring vitalism you affirm.

2AC – Law Good

Legal strategies are a vital component in liberation for black women but actualization requires legal engagement---their method detracts

Regina **Austin 89**, Associate Professor of Law, University of Pennsylvania, ARTICLE: SAPPHIRE BOUND!, 1989 Wis. L. Rev. 539

Well, I think **the time has come for us to** get truly hysterical, to **take on the role of "professional Sapphires**" in a forthright way, to declare that we are serious about ourselves, **and** to **capture some of the intellectual power and resources that are necessary to combat the systematic denigration of minority women**. It is time for Sapphire to testify on her own behalf, in writing, complete with footnotes. 13¶ "To testify" means several different things in this context: to present the facts, to attest to their accuracy, and to profess a personal belief or conviction. **The minority feminist legal scholar** must be a witness in each of these senses. She **must document the material legal existences of minority women**. Her work should explore their concrete problems and needs, many of which are invisible even to minority lawyers because of gender and class differences. Moreover, a synthesis of the values, traditions, and codes that bind women of the same minority group to one another and that fuel their collective struggle is crucial to the enterprise. **The intellectual product of the minority feminist scholar should incorporate in a formal fashion the ethical and moral consciousnesses of minority women**, their aspirations, and their quest for liberation. Her partisanship and advocacy of a minority feminist jurisprudence should be frankly acknowledged and energetically defended. Because her scholarship is to be grounded in the material and ideological realities of minority women and in their cultural and political responses, its operative premises must necessarily be dynamic and primarily immanent; as the lives of minority women change, so too should the analysis.¶ Finally, **the experiential is not to be abandoned** by the minority female legal scholar. She must be guided by her life, instincts, sensibility [*543] and politics. 14 **The voice and vision reflected in her work should contain something of the essence of the culture that she has lived and learned**; 15 imagine, if you can, writing a law review article embodying the spontaneity of jazz, the earthiness of the blues, or the vibrancy of salsa. 16¶ I have given some thought to the tenets that a black feminist or "womanish" 17 legal jurisprudence might pursue or embrace. Other approaches are imaginable, and I hope that this essay will encourage or provoke their articulation. "[M]isty humanism" and "simplistic **assertions of a distinguishable . . . cultural and discursive practice" are not adequate**. 18 Begging won't get it either: I am not sappy and do not care whether white men love me. I can think of nothing more debilitating than thinking ourselves dependent upon the good will and civility of those in a position to oppress us. While it is important to build coalitions with whites of both sexes and other people of color, black women will not prosper from them if we entirely muffle our indignation and negotiate as mere supplicants. Oh, no! We have paid our dues, done more than our share of the doing and the dying, and are entitled to prosper with everyone else.¶ We must write with an empowered and empowering voice. The chief sources of our theory should be black women's critiques of a society that is dominated by and structured to favor white men of wealth and power. We should also find inspiration in the modes of resistance black women mount, individually and collectively, on a daily basis in response to discrimination and exploitation. **Our jurisprudence should** [*544] **amplify the criticism and lend clarity and visibility to the positive transformative cultural parries that are overlooked unless close attention is given to the actual struggles of black women**. In addition, our jurisprudence should create enough static to interfere with the transmission of the dominant ideology and jam the messages that reduce our indignation, limit our activism, misdirect our energies, and otherwise make us the (re)producers of our own subordination. By way of an alternative, a black feminist jurisprudence should preach the justness of the direct, participatory, grass-roots opposition black women undertake despite enormous material and structural constraints.¶ A thoroughly critical stance, high standards, and a sharp focus are absolutely essential to our scholarly mission. **Whatever we do must be analytical and rigorously researched and reasoned**, not to convince and please those who have the power to control our professional advancement, but to repay the debt we owe our grandmothers, mothers, and sisters whose invisibility and marginality we aim to ameliorate. **Although critiques of the racism of white feminists** and the sexism of male "race persons" **are useful**, 19 to my way of thinking **they can be an abdication of the responsibility to shape an affirmative agenda that makes the lives of real black women the central focus**. 20 **Our scholarship must be accessible to** an audience of black female law students, **legal scholars, practitioners**, and nonlegal activists. **They are likely to be both sources of politically pragmatic criticism and programmatic grounding**, and informants as to the authentic, spontaneous, imaginative counterhegemonic moves being made by black women fighting racial, sexual, and class oppression on the front lines of their everyday lives. **As scholars, we** in turn **can aid their political mobilization with lucid analyses that offer broad and cogent perspectives of the structural constraints that produce their subordination and the material openings that must be exploited if further freedom is to be achieved**. 21¶ It is imperative that our writing acknowledge and patently reflect that we are not the voices of a monolithic racial/sexual community that does not know class divisions or social and cultural diversity. This recognition should check the basically conservative impulse to rely on generalizations about racism and sexism that are the product of our own [*545] experiences. 22 It should also make us vigilant about lapsing into outrageous themes which suggest that black people are united by biological essences that produce in all of us a refined instinctive sense of justice. 23 Our positions as "scholars" set us apart to some extent from the women about whom we write, and our work would be better if we acknowledged the distance and attempted to bridge it. For a start, we must accept that there is skepticism about both the law and intellectual pursuits 24 in our communities. It accordingly behooves us to eschew the role of self-annointed spokespersons for our race and sex and instead take our lead as teachers and scholars from the ongoing liberation politics of black women.¶ Moreover, we must be responsive to the attacks that are leveled against us as well-paid, relatively assimilated professionals. As we are validly critiqued, so should we critique. We are obliged, therefore, to look at the needs and problems of black women to determine the role black elites (male and female) have played in their creation or perpetuation. 25 Similarly, in seeking jurisprudential reference points in the wisdom of black women at the bottom of the status hierarchy, 26 we must reject the romanticization of their "difference." It is patronizing, tends to support our position as intermediaries, and ignores the role that state-tolerated violence, material deprivation, and the dominant ideology play in minority cultural production. We must not be deterred from maintaining a critical stance from which to assess what black women might do to improve their political and economic positions and to strengthen their ideological defenses. At the same time, however, we must scrupulously avoid the insensitive disparagement of black women that

ignores the positive, hopeful, and life-affirming characteristics of their actual struggles, and thereby overlooks the basis for more overt political activity.¶ **Our contributions will not be divisive to the cause of the liberation of minority peoples and women if our scholarship is based on the concrete, material conditions of black women. Anti-racist** or anti-sexist **scholarship that is** overinclusive and **abstract is dangerous because it** [*546] **misconceives the often knotty structural nature of the conditions that are its subject**. In addition, such scholarship frequently reflects the assumption that oppressed groups are pitted against one another in a competition for scarce attention and resources, with the victory going to the most downtrodden. (I call this phenomenon "the running of the oppression sweepstakes.") For example, the much-touted concept of the "feminization of poverty" would be fine if it did not obscure the reality that poverty varies with race, has a class dimension, and in many minority communities afflicts both sexes. 27 Black women in particular have much to gain from efforts to understand the complexity of the interaction of race, sex (including sexual orientation), and class factors in the creation of social problems. 28¶ The mechanics of undertaking a research project based on the concrete material and legal problems of black women are daunting. The research is hard to do, but I believe it can be done. I have twice embarked on such projects. My first effort concerned industrial insurance, the rip-off life insurance with the small face amounts that my mother and grandmother purchased. 29 I was stymied because of a lack of information going beyond my own experience regarding the motivations that prompt poor black people to spend so much for essentially burial protection. I have more nexus with, respect for, and intellectual curiosity about the cultures of poor black people than to mount a scholarly project on the assumption that the women in my family are typical of the whole. The second project grew out of my interest in the causes of excess death in minority communities or what is the unacknowledged genocide of the poor black, brown, and red peoples of America. 30 I [*547] decided to start with the problem of infant mortality. The infant mortality rate for blacks was 18.2 per 1,000 live births in 1985 as compared with 9.3 per 1,000 live births for whites. 31 I thought that I would begin by examining the extent to which the vilification of the cultural modes and mores of low-income minority females affects the prenatal care they receive. The inquiry would then extend to the role the law might play in curbing the mistreatment or non-treatment of pregnant women of color. I have not entirely abandoned this one.¶ The problems these projects involve are difficult because they do not begin with a case and will not necessarily end with a new rule. **The world with which many legal scholars deal is that found within the four corners of judicial opinions. If the decisions and the rubrics they apply pay no attention to race, sex, and class** (and the insurance and malpractice cases generally do not), **then the material conditions of minority females are nowhere to be found, and the legal aspects of the difficulties these conditions cause are nearly impossible to address** as a matter of scholarly inquiry. **It is thus imperative that we** find a way to portray, almost **construct for a legal audience, the contemporary reality of the disparate groups of minority women about whom we write**. We really cannot do this without undertaking field research or adopting an interdisciplinary approach, relying on the empirical and ethnographic research of others. The latter route is the one that I have taken in this Article and elsewhere. 32¶ Interdisciplinary research provides additional benefits. It gets one out of the law school and among scholars who are supportive and receptive to modes of analysis that are not Eurocentric or patriarchal. I have found that academics from other parts of the university where I [*548] teach supply the intellectual community, stimulation, and encouragement that are essential to doing research. Furthermore, black scholars from other disciplines have provided me with useful strategies for dealing with the hostility my intellectual agenda might evoke. ¶ Looking at legal problems against the context of non-legal perspectives has its dangers. **The legal scholar's obligation to take the law seriously** generally **requires that her writing be legalistic** -- **that she show the inadequacy of the existing rules, and** either **propose clever manipulations of the doctrine that overcome the weaknesses exposed by her critique or draft model legislation**. This approach tends to collapse the inquiries into what black people need and want, and what they are likely to get, into one. The conservatism that is an inherent part of traditional doctrinal legal analysis can be a stifling handicap for the black female researcher. **Speculation concerning proposals that are not rule-bound** and lawyer-controlled (like, for example, strategies by which poor women might increase their power to shape the gynecological services provided by health care facilities ostensibly serving them) 33 seems beyond the pale. That **is utopian politics, not law or legal scholarship**. Of course, **black people get almost nowhere in terms of gaining and enforcing legal entitlements without also exercising their political clout or scaring white people.** (Truly powerless people do not "get" rights on account of their helplessness, and the rights they do "get" are protected only so long as they are backed up by the threat of disruption.) **Thus, the black feminist legal scholar must be able to think political and talk legal if need be**. Her pedagogical mission should extend to educating black women about the political significance of their ordinary lives and struggles. **She must translate their frustrations and aspirations into a language that both reveals their liberatory potential and supports the legal legitimacy of their activism and their demands**. ¶ [*549] The **remedies we contemplate must go beyond intangibles. We must consider employing the law to create and sustain institutions** and organizations **that will belong to black women** long after any movement has become quiescent and any agitation has died. Full utilization of the economic, political, and social resources that black women represent cannot depend on the demand of a society insincerely committed to an ethic of integration and equal opportunity.¶ Implementation of an agenda for black feminist legal scholarship and expanded study of the legal status of minority women in general will require the right sort of environmental conditions, such as receptive or at least tolerant non-minority publishers and a network of established academics engaged in similar pursuits. We minority female scholars must devote a bit of our sass to touting the importance of the perspective of minority women and the significance of their concerns to any list of acceptable law review topics. If anyone asks you to talk or write about anything related to your race or your sex, turn the opportunity into one for exploring the legal concerns of women of color.

1AR – Law Good

Institutional engagement critical to untangle structural domain of power that reproduces black women's exclusion---creates meaningful state reforms and empirics prove its effective---also answers institutional access.

Collins 9 [Patricia Hill Collins. Department of Sociology, University of Maryland, Maryland, USA. "Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment." https://uniteyouthdublin.files.wordpress.com/2015/01/black-feminist-though-by-patricia-hill-collins.pdf]

The structural domain of power encompasses how social institutions are organized to reproduce Black women's subordination over time. One characteristic feature of this domain is its emphasis on large-scale, interlocking social institutions. **An impressive array of U.S. social institutions lies at the heart of the structural domain of power. Historically**, in the United States, the policies and procedures of the U.S. legal system, **labor markets**, **schools**, the **housing** industry, **banking**, **insurance**, **the news media**, **and other social institutions as interdependent entities have worked to disadvantage African-American women**. For example, Black **women's** long-standing exclusion from the best jobs, schools, health care, and housing illustrates the broad array of social policies designed to exclude Black women from full citizenship rights.

These interlocking social institutions have relied on multiple forms of segregation—by race, class, and gender—to produce these unjust results. For African American women, racial segregation has been paramount. Racial segregation rested on the "separate but equal" doctrine established under the 1896 ruling of Plessy v. Ferguson where the Supreme Court upheld the constitutionality of segregation of groups. This ruling paved the way for a rhetoric of color-blindness (Crenshaw 1997). Under the "separate but equal" doctrine, Blacks and Whites as groups could be segregated as long as the law was color-blind in affording each group equal treatment. Despite the supposed formal equality promised by "separate but equal," subsequent treatment certainly was separate, but it was anything but equal. As a result, policies and procedures with housing, education, industry, government, the media, and other major social institutions have worked together to exclude Black women from exercising full citizenship rights. Whether this social exclusion has taken the form of relegating Black women to inner-city neighborhoods poorly served by social services, to poorly funded and racially segregated public schools, or to a narrow cluster of jobs in the labor market, the intent was to exclude.

Within the structural domain of power, **empowerment cannot accrue to individuals and groups without transforming U.S. social institutions that foster this exclusion**. **Because this domain is large-scale**, **systemwide**, **and has operated over a long period of time via interconnected social institutions, segregation of this magnitude cannot be changed overnight**. **Structural forms of injustice that permeate the entire society yield only grudgingly to change**. Since they do so in part when confronted with wide-scale social movements, wars, and revolutions that threaten the social order overall, African-American women's rights have not been gained solely by gradual reformism. A civil war preceded the abolition of slavery when all efforts to negotiate a settlement failed. Southern states routinely ignored the citizenship rights of Blacks, and even when confronted with the 1954 Brown v. Board of Education Supreme Court decision that outlawed racial segregation, many dug in their heels and refused to uphold the law. Massive demonstrations, media exposure, and federal troops all were deployed to implement this fundamental policy change. The reemergence of White supremacist organizations in the 1990s, many of which recirculate troubling racist ideologies of prior eras, speaks to the deep-seated resentment attached to Black women, among others, working toward a more just U.S. society. Events such as these indicate how deeply woven into the very fabric of American society ideas about Black women's subordination appear to be.

In the United States, visible social protest of this magnitude, while often required to bring about change, remains more the exception than the rule. **For U.S. Black women, social change has more often been gradual and reformist**, **punctuated by episodes of systemwide upheaval**. **Trying to change the policies and procedures themselves**, typically through social reforms, **constitutes an important cluster of strategies within the structural domain**. **Because the U.S. context contains a commitment to reformist change by changing the laws, Black women have used the legal system in their struggles for structural transformation.**

African-American women have aimed to challenge the laws that legitimate racial segregation. As Chapter 9's discussion of Black women's activism suggests, African-American women have used various strategies to get laws changed. **Grassroots organizations, forming national advocacy organizations**, **and event-specific social protest such as boycotts and sit-ins have all been used, yet changing the laws and the terms of**

their implementation have formed the focus of change. Even the development of parallel social institutions such as Black churches and schools have aimed to prepare African-Americans for full participation in U.S. society when the laws were changed. **African-American women have experienced considerable success not only in getting laws changed**, **but in stimulating government action to redress past wrongs**. **The Voting Rights Act** of 1964, **the Civil Rights Act** of 1965, **and other important federal, state, and local legislation have outlawed discrimination by race**, **sex**, **national origin**, **age**, **or disability** status. **This changed legal climate granted African-American women some protection from the widespread discrimination** that we faced in the past. **At the same time, class-action lawsuits against discriminatory housing**, **educational**, **and employment policies have resulted in tangible benefits for many Black women.**

While necessary, these legal victories may not be enough. Ironically, the same laws designed to protect African-American women from social exclusion have increasingly become used against Black women. In describing new models for equal treatment under the law, Black feminist legal scholar Kimberle Crenshaw argues that the rhetoric of color-blindness was not unseated by the 1954 Brown v. Board of Education ruling. Instead, the rhetoric of **color-blindness was reformulated to refer to the equal treatment of individuals by not discriminating among them. Under this new rhetoric** of color-blindness, **equality meant treating all individuals the same, regardless of differences they brought with them due to the effects of past discrimination or even discrimination in other venues**. "Having determined, then, that everyone was equal in the sense that everyone had a skin color," observes Crenshaw, "symmetrical treatment was satisfied by a general rule that nobody's skin color should be taken into account in governmental decision-making" (Crenshaw 1997, 284). **Within this logic, the path to equality lies in ignoring race**, **gender**, **and other markers of historical discrimination** that might account for any differences that individuals bring to schools and the workplace.

As a new rule that maintains long-standing hierarchies of race, class, and gender while appearing to provide equal treatment, this rhetoric of color-blindness has had some noteworthy effects. For one, observes Black feminist legal scholar Patricia Williams (1995), it fosters a certain kind of race thinking among Whites: Because the legal system has now formally equalized individual access to housing, schooling, and jobs, any unequal group results, such as those that characterize gaps between Blacks and Whites, must somehow lie within the individuals themselves or their culture.

When joined to its twin of gender neutrality, one claiming that no significant differences distinguish men from women, **the rhetoric of color-blindness works to unseat one important strategy of Black women's resistance within the structural domain**. **Black women who make claims of discrimination and who demand that policies and procedures may not be as fair as they seem can more easily be dismissed** as complainers who want special, unearned favors. Moreover, within a rhetoric of color-blindness that defends the theme of no inherent differences among races, or of gender-neutrality that claims no differences among genders, it becomes difficult to talk of racial and gender differences that stem from discriminatory treatment. **The assumption is that the U.S. matrix of domination now provides equal treatment because where it once overtly discriminated by race and gender**, it now seemingly ignores them. Beliefs such as these thus allow Whites and men to support a host of punitive policies that reinscribe social heirarchies of race and gender. In her discussion of how racism now relies on encoded language Angela Davis identifies how this rhetoric of color-blindness can operate as a form of "camouflaged racism": Because race is ostracized from some of the most impassioned political debates of this period, their racialized character becomes increasingly difficult to identify, especially by those who are unable—or do not want— to decipher the encoded language. This means that hidden racist arguments can be mobilized readily across racial boundaries and political alignments. Political positions once easily defined as conservative, liberal, and sometimes even radical therefore have a tendency to lose their dis tinctiveness in the face of the seductions of this camouflaged racism (Davis 1997, 264). Americans can talk of "street crime" and "welfare mothers," all the while claiming that they are not discussing race at all. **Despite the new challenges raised by the rhetoric of color-blindness and gender neutrality**, **it is important to remember that legal strategies have yielded and most probably will continue to produce victories for African-American women.** Historically, much of **Black women's resistance to the policies and procedures of the structural domain of power occurred outside powerful social institutions.** Currently, however, African-American women are more often included in these same social institutions that long excluded us. Increasing numbers of African-American women have gained access to higher education, now hold good jobs, and might be considered middle-class if not elite. **These women often occupy positions of authority inside schools**, **corporations**, **and government agencies**. **Achieving these results required changing U.S. laws.**

AT: K Prior

Consequences must be evaluated --- insistence on 'principle' as end-in-itself ensures that the alternative fails

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Christopher A., September, Southern California Law Review, 79 S. Cal. L. Rev. 1231, p. 1318

Second, reducing conversation on race matters to an ideological contest allows opponents to **elide inquiry into whether the results of a particular** preference **policy are desirable**. Policy positions masquerading as principled ideological stances create the impression that a racial policy is not simply a choice among available alternatives, but the embodiment of some higher moral principle. Thus, the "principle" becomes an end in itself, without reference to outcomes. Consider the prevailing view of colorblindness in constitutional discourse. Colorblindness has come to be understood as the embodiment of what is morally just, independent of its actual effect upon the lives of racial minorities. This explains Justice Thomas's belief in the "moral and constitutional equivalence" between Jim Crow laws and race preferences, and his tragic assertion that "Government cannot make us equal [but] can only recognize, respect, and protect us as equal before the law." 281 For Thomas, there is no meaningful difference between laws designed to entrench racial subordination and those designed to alleviate conditions of oppression. Critics may point out that colorblindness in practice has the effect of entrenching existing racial disparities in health, wealth, and society. But in framing the debate in purely ideological terms, opponents are able to avoid the contentious issue of outcomes and make viability determinations based exclusively on whether racially progressive measures exude fidelity to the ideological principle of colorblindness. Meaningful policy debate is replaced by ideological exchange, which further exacerbates hostilities and deepens the cycle of resentment.

Pragmatic arguments and targeted reforms are vital to generate broader support – progress is possible

Cole, 11 – Professor at Georgetown University Law Center

David, "Turning the Corner on Mass Incarceration?," 9 Ohio St. J. Crim. L. 27-51. Lexis.

The tragedy of the United States' forty-year incarceration epidemic remains very much with us. No country on earth incarcerates more people, or at a higher rate per capita. And while that strategy has imposed unnecessary costs on us all, the burden has been disproportionately borne by African American and Latino men. But that is old news. The new news is that **after forty years of increasing incarceration and widening racial disparities, the trend lines appear to be shifting. In recent years, the incarceration rate has dropped, as has the total number of persons** incarcerated **in** state **prisons. And racial disparities are also falling. Legislatures** that were **once obsessed with** enacting **mandatory minimums** and increasing the severity of criminal sentences **are now eliminating mandatory minimums, reducing criminal penalties, and directing new resources to alternatives to incarceration and reentry. The politics** of crime, at least for the moment, appears to have changed. It **is less captured by demagoguery and more susceptible to arguments about costs and benefits.** These developments should not be overstated. The changes have as yet been only marginal, offering little challenge to the United States' dubious distinction of being the world leader in incarceration rates. Moreover, the criminal justice system, at every stage, still disproportionately targets minority groups. But **the change in direction is nonetheless good**, and surprising, **news**. The story has been otherwise for two solid generations. **Might we be in the midst of a new story line, a new strategy, a new criminal justice policy?** It is too early to tell, of course. But **it is not too early to recognize the changes, to ask what may have prompted them, and to think about strategies for facilitating further positive change. We ought to** build on what has worked and **push for change that might create further improvements. While what must be done is relatively clear—reduce criminal sentences, reduce reliance on criminal penalties for illicit drugs, increase resources for alternatives to incarceration, and invest in communities that are most vulnerable to crime—it is less clear how we persuade the public that these measures are worth it. Pragmatic arguments** about cost savings **need to be paired with moral appeals** to America's commitment to equality. But most importantly, **we must bridge the empathy gap between the public at large and the incarcerated population**. If Americans were to come to view those behind bars as part of our community, indeed our family, mass incarceration would no longer be tolerated.

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2AC – Perm – Generic

Short-term, material reforms are necessary and can be connected to the long-term aims of abolition

Meiners, 11 – professor of gender and women's studies and education at Northeastern Illinois University

Erica R., "Ending the School-to-Prison Pipeline/Building Abolition Futures." The Urban Review volume 43, Article number: 547 (2011). https://link.springer.com/article/10.1007/s11256-011-0187-9

As is the case with many pressing justice issues—healthcare, housing, food—**resisting on the carceral state requires that organizers and scholars practice the "both/and": social service and social change**. **Services are desperately needed** for young people who are locked up, **and yet equally important are structural and paradigmatic shifts that alter the contexts that produce such high levels of incarceration in the U.S**. I frame this tension between the need to provide services and the need to make structural reforms as a reform/abolition tension. Or, **short-term reforms are needed to address the real conditions and real needs of actual people caught up in the system**, **but this is not enough**. **Many, as Angela Davis writes, are raising the question of abolition** (Are prisons obsolete? 2003).

Critical Resistance, a national anti-prison organization, defines prison abolition as "the creation of genuinely safe, healthy communities that respond to harm without relying on prisons and punishment" (Critical Resistance, n.d.). Prison abolition doesn't mean that there will be no violence. Rather, it acknowledges that prisons are not a just, efficient or moral solution to the problems that shape violence in our communities. As we have reduced or eliminated social assistance programs, and criminalized the options that poor people possess to cope with untenable situations, the majority of those in prisons and jails are poor people. In Illinois in 2002, 90% of women caught up in the system were locked up for non-violent crimes, largely related to poverty and addiction (Clark and Kane-Willis 2006, p. 4). As California (CA) State Senator Gloria Romero stated (CA is the state with the world's two largest prisons for women) "California can't build [more prisons as] its way out of this problem" (Romero, as cited by Braz 2006, p. 87).

While abolition is not a utopian dream but a necessity, **simultaneously reform work is required because there are real bodies in need of immediate resources**. For example, in schools students are under or over diagnosed with a "behavior disorder," there are grotesque disproportionalities in who gets suspended and expelled, and police presence in select urban schools has been naturalized. As longtime feminist anti-prison activist and scholar Karlene Faith writes, **this requires those invested in change to negotiate reform and structural change work:**

> Every reform raises the question of whether, in Gramsci's terms, it is a revolutionary reform, one that has liberatory potential to challenge the status quo, or a reform reform, which may ease the problem temporarily or superficially, but reinforces the status quo by validating the system though the process of improving it. (Faith 2002, p. 165)

Faith reminds us of the necessity of doing the "both/and" where everyday local work may involve engaging reforms, but it is also useful to place, understand and connect these reforms to a larger movement. Or, if we are keeping our eyes on the prize, what is the prize? Liberation and justice for all, including the young people in juvenile detention centers, or cleaner prisons that have better due process? Better school suspension and expulsion policies that just remove the "right" bad kids from schools, or communities and school systems that do not prioritize identifying and punishing "bad" kids?

Reform and abolition are compatible --- you can ascribe to the goal of abolition but work for reform in the interim

Robinson, 17 – PhD student in Sociology & Social Policy. Nathan is interested in criminal justice policy, particularly in Louisiana. His research focuses on adult education in U.S. prisons and on the politics of indigent legal defense. At Yale Law School, he co-directed the Green Haven Prison Project and worked for the New Orleans public defender and the ACLU's National Prison Project

Nathan, "CAN PRISON ABOLITION EVER BE PRAGMATIC?," https://www.currentaffairs.org/2017/08/can-prison-abolition-ever-be-pragmatic

Prison abolition and prison reform can actually **be reconciled fairly easily**. The **ultimate goal** is prison abolition, because in a world without hatred and violence there would be no need for prisons, and the goal is a world without hatred and violence. **In the interim**, **prisons must be made better and more humane**. **It's not that you should**,

in the world we live in now, **open the prison gates and give murderers probation**. It's that you should always remember that even if you think prison is a necessary evil, that still makes it evil, and evil things should ultimately be gotten rid of, whatever their short-term necessity. **You can be both pragmatic and utopian at the same time.** One should always adopt the "utopian" position, because it helps affirm what our ideal is and serves as a guiding star. But **you can simultaneously operate with the real-world political constraints you have**. As Angela Davis says, "the call for prison abolition urges us to imagine and strive for a very different social landscape." It's useful because it gets us thinking about big questions, picturing what very different worlds might be like and **then beginning to plot** how we might get from here to there.

Concrete policy reforms can embrace broader critique --- this is the most effective route to the redistribution of power

Levin 18 – Associate Professor, University of Colorado Law School

Benjamin, "The Consensus Myth in Criminal Justice Reform," Michigan Law Review 117, no. 2 (November 2018): 259-318. HeinOnline.

To be clear, though, this Article is meant to be neither a call for ideologi-cal purity nor a critique of incrementalism. To that end, the over/mass dis-tinction is not intended to be a stand-in (or disguise) for the incremental/ radical distinction. Indeed, **while the mass critique is fundamentally radi- cal and sweeping, that does not mean that the critique is incompatible with pragmatism or incremental reforms**.

Existing mass critiques—both inside and outside of the academy-**often do include concrete steps or policy solu-tions designed to redistribute political, social, and economic power**. 299

Putting aside, for a moment, a range of over-style policy solutions that would address mass concerns (e.g., drug decriminalization; ending mandato- ry minimum sentencing), it is important to recognize that many of the most vital criminal justice reform efforts on the ground reflect a mass approach. For example, **consider the movements to end cash bail and the push to re-duce fines and fees in the criminal system**.

In recent years, scholars and activists have focused on the problem of cash bail: people who cannot afford bail must languish in jail as they await trial or resolution of their case. 301 The movement to address cash bail gained

steam following the suicide of Kalief Browder, a young man who spent three years incarcerated at Riker's Island awaiting trial for allegedly stealing a backpack.302 The over response to the problem focuses on whether the right people are being detained (i.e., courts should use algorithms to determine if a given defendant poses a societal danger); if so, she should remain in custody pretrial.3 °3 That response addresses over concerns (i.e., more people are be- ing detained than necessary). That said, mass responses reflecting different concerns and priorities have attracted significant attention and backing. Perhaps most notable has been the rise of the community bail fund-a fund established by community members to pay bail for people awaiting trial.30 4 The idea being that the court is detaining defendants in the name of the community, but the community does not believe that the court represents its voice(s).30 5 This **mass approach to the problem does not focus on optimizing detention; rather, its goal is to resituate power and voice in the criminal sys- tem.**306 **By providing bail money to defendants, community members are able to override official decisions that might have disparate impacts** or that might not accurately reflect popular will.307 **As a part of a broader political project of community empowerment and a less punitive criminal system, the**

bail fund represents an incremental solution.

Relatedly, **media coverage has helped shed light on the problem of fines and fees in the criminal system**, **and a range of scholars and activists have taken up the cause**.3"8 **Like the cash bail issue, this is a problem deeply rooted in issues of economic and racial justice.** Poor arrestees and defendants of- ten wind up deep in debt, rearrested, or incarcerated because they are unable to pay fines or fees that courts and police departments impose. **The cri-tique of this practice is fundamentally a mass one,** rather than an over one: the issue is not that the fines should be lower, that the wrong class of defend- ants is being fined, or even that the fines or fees are sometimes levied against people who have not been convicted. Rather, **the concern is that the criminal system is driving people further into poverty and helping to drive a cycle in which people remain court-involved after their case is resolved**. In some cas- es, **the state and law enforcement entities are enriching themselves on the backs of poor and marginalized defendants. This line of criticism and law reform**, then, **explicitly confronts the place of the criminal system as a driver of inequality and as inextricably linked**

to distributive justice. A growing body of scholarship addresses these issues, and advocates are working to end these practices via impact litigation and legislative activism.311

While **these** are only two **examples**, they both **demonstrate the capacity of mass critiques to translate into on-the-ground legal and policy solutions**. That is, **while the critique itself may be sweeping and less appealing as a way to frame legal or policy arguments, it is important to recognize that the mass critique can yield mass reform movements and interventions that are pragmatic and incremental in scope**.312 It might be that these movements find support among some critics adopting an over frame, just as it may well be that mass critiques support over-inflected solutions. But recognizing the dif- ferent motivations, priorities, frames, and goals should be an important component of our understanding of the criminal justice reform movement as a collection of-at times complementary, and at times contradictory- movements.

CONCLUSION

In his powerful account of race and criminal justice in Washington, D.C., Forman argues that mass incarceration is the product of "a series of small decisions, made over time, by a disparate group of actors."313 There-fore, “mass incarceration will likely have to be undone in the same way.”314 I gree with Forman that **fixing the criminal system will require many differ- ent decisions, interventions, and solutions**. Indeed, as in many contexts, **the perfect may be the enemy of the good**, **and recognizing the promises of a range of criminal justice reforms and reformers is and will be critical to the movement's success**. But, in order to reform a system, we need to know what is wrong with it, and what "reform" means. Ultimately, this Article argues that the literature on criminal justice reform reflects two distinct ways of un- derstanding the system and its flaws. While **cooperation and compromise will be essential to addressing the broken and unjust system**, glossing over disagreement and nuance risks losing the power of the critiques that got us to this moment of possibility in the first place.

The perm can be a concrete expression of a more systemic critique --- this dialectical interaction enables revolutionary transformation

Ben **Wray 14**, International Socialist Group, The case for revolutionary reforms, http://internationalsocialist.org.uk/index.php/2014/04/the-case-for-revolutionary-reforms/

We need revolutionary change. There’s no two ways about it – if the exploitation of labour by capital continues to be the central dynamic driving economic development, we are headed for human and environmental catastrophe.¶ **But** as I’ve discussed in the previous five parts of this series, **getting from where we are to a revolutionary transformation that overthrows the** dominant property relations of the **capitalist economy** and replaces them with social relations based on democratic control of the world’s resources **is not as simple as declaring our desire for it to be** so. **I saw a petition** on change.org the other day **proposing the overthrow of capitalism**. **If one million people signed that petition and one million people signed a** further **petition to introduce full collective bargaining rights for trade-unions** in the UK, **which one would move us closer to the overthrow of capitalism? I wager the latter.¶ Whilst having an end goal in sight is important, most people don’t change their thinking about the world based on bold visions of** what could be done at some point in **the future**: they change their ideas based on evidence from their material lives which points to the inadequacy or irrationality of the status quo. In other words, we need to have ideas that build upon people’s lived experience of capitalism, and since that it is within the framework of a representative democracy system, **we need ideas based around proposals for reforms**. At the same time those **reforms have to help rather than hinder a move to more revolutionary transformation that challenges the very core of the capitalist system.¶** The dialectic of reform and revolution¶ **What we need**, therefore, **is a strategy of revolutionary reforms**. Such a notion would appear as a contradiction in terms to **many** who **identify** as reformists or revolutionaries and see **the two as dichotomous, but there is no reason why this should be the case.** Indeed, history has shown that **revolutionary transformations have always happened as a dialectical interaction between rapid, revolutionary movements and more institutional, reform-based challenges**. Even the revolutionary part of that dialectic has always been motivated by the immediate needs of the participants involved – ‘land, bread and peace’ being the first half of the slogan of the Russian Revolution.¶ What does a strategy of ‘**revolutionary reforms’ entail**? Ed Rooksby explains that it is **a political strategy that builds towards revolutionary change by using reforms to ‘push up against the limits’ of the ‘logic of capitalism’ in practice**:¶ **“At first these “feasible objectives” will be limited to reforms within capitalism—or at least to measures which**, from the standpoint of a more or less reformist working class consciousness, **appear to be legitimate and achievable within the system, but which may actually run counter to the logic of capitalism and start to push up against its limits. As the working class engages in struggle, however, the anti-capitalist implications of its needs and**

aspirations are gradually revealed. At the same time, **through its experience of struggle for reform, the working class learns about its capacity for** "self-management, initiative and **collective decision**" **and can have a "foretaste of what emancipation means".** In this way **struggle for reform helps prepare** the class **psychologically, ideologically and materially for revolution**." The late Daniel Bensaid expressed this argument through the lens of the history of **the socialist movement**:¶ "In reality all sides in the controversy **agree on** the fundamental points inspired by The Coming Catastrophe (Lenin's pamphlet of the summer of 1917) and the Transitional Programme of the Fourth International (inspired by Trotsky in 1937): **the need for transitional demands, the politics of alliances** (the united front), the logic of hegemony **and on the dialectic (not antinomy) between reform and revolution.** We are therefore against the idea of separating an ('anti-neoliberal') minimum programme and an (anti-capitalist) 'maximum' programme. We remain convinced that a consistent anti-neoliberalism leads to anti-capitalism and that the two are interlinked by the dynamic of struggle."¶ So **revolutionary reforms means a policy agenda that**, as Alberto Toscano has put it, "**at one and the same time make concrete gains within capitalism which permits further movement against capitalism**". The Italian marxist Antonio Gramsci described this approach as a 'war of positon'.

2AC – Perm – Non-Reformist Reform

The perm is an example of non-reformist reform that treats the symptoms of carceral harm in the creation of building blocks for future abolition

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Dorothy E., Abolition Constitutionalism, 133 Harv. L. Rev. 1 (2019). HeinOnline.

Abolition constitutionalism could support many of the **nonreformist reforms in which prison abolitionists and other activists are already en- gaged, including efforts to stop prison expansion** by opposing prison construction or shutting down prisons that already exist;716 **end police stop-and-frisk practices**;"7 **eliminate the requirement of money bail to release people charged with crimes**;71 **repeal harsh mandatory minimums**, even for violent crimes;7 19 **give amnesty to individual pris- oners**, including political prisoners and prisoners believed to have killed in self-defense;7 20 **and decriminalize drug use and possession and other nonviolent conduct**.721 To the extent that such practices perpetuate slav-ery in violation of the Thirteenth Amendment, **Congress, state legislatures, and city assemblies, as well as courts, are empowered by the Federal Constitution**722 and state constitutions723 **to enact these non- reformist reforms**.

Prison abolitionists have also organized to hold police and other law enforcement agents accountable for violence and rights violations. One of their major victories is the Reparations Ordinance, passed by the Chicago City Council on May 6, 2015.724 The ordinance was a long- delayed response to the Chicago Police Department's systematic inflic- tion of torture and other forms of violence against African American suspects under the command of Jon Burge. After decades of agita- tion, the activists won a package of measures, including monetary compensation for the living survivors, tuition-free education at the City 76 Colleges for survivors and their families, and a public memorial. 2 Mariame Kaba calls the Reparations Ordinance "an abolitionist docu- ment" because it "did not rely on the court, prison, and punishment '7 7 system[s] to try to envision a more expansive view of justice. 2 The activists deliberately refused to seek criminal prosecution of the officers 728 involved or civil damages against the City of Chicago. Instead, they pressured the City Council to redress their claims through a radically democratic process, led by survivors and grassroots organizers and oc- curring outside formal legal institutions, that included street protest, partnership with international human rights organizations, and media 7 29 education.

3. **Treating the Symptoms While Ending the Disease**. – While complete prison eradication is the ultimate goal of the abolitionist pro- ject, before that aim comes to fruition abolitionists might consider invok- ing the Constitution instrumentally to mitigate the harms inflicted by carceral punishment. As law student, activist, and former prisoner Angel Sanchez puts it, abolitionists must treat prison like a "social cancer: we should fight to eradicate it but never stop treating those affected '73 by it. **The Thirteenth Amendment could facilitate a number of nonreformist reforms**. For example, abolitionists might consider taking up the constitutional arguments put forth by numerous scholars who have posited that the Thirteenth Amendment prohibits exploita-tive treatment of incarcerated people. 31 Legal scholars have also made strong constitutional arguments against the shackling of incarcer- ated people during labor and delivery732 and against solitary confinement.7 33 **Efforts to end the collateral consequences of incarcera- tion**, such as restrictions on voting rights, exclusion from public housing and other government benefits, and imposition of monetary sanctions, **can also find support in the Thirteenth Amendment's abolition of slavery**.7 34 Professor William Carter lays out a framework for defining modern badges and incidents of slavery that looks to "the connection the group to which the plaintiff belongs or that Congress seeks to protect has to the institution of chattel slavery" and "the connection the chattel slavery.1 5 Thus, when numerous "racialized policies," including those inflicted as a result of a criminal conviction, create "a permanent caste distinction of... magnitude and impermeability... [they] amount to a badge or incident of slavery.17 36 Systematic exclusion of former prisoners from labor and housing markets,7 37 for example, deprives them of full rights of citizenship, amounting to an incident of slavery.7 3 Notably, Congress has the authority to pass legislation under the Thirteenth Amendment to end practices that were instituted after the Civil War to reinstall white supremacy, such as monetary sanctions, forced prison labor, and felon disenfranchisement.739

4. Creatingthe Conditions for a Society Without Prisons.- Finally, **prison abolitionists are dedicated to working within carceral society to "build models today that can represent how we want to live in the fu- ture" and to start creating a radically different society where prisons are unimaginable**.14 **We can use constitutional support to demand the building blocks needed for this construction project** - for example, **legislation that transfers funds currently devoted to carceral systems, such as police, prisons, detention centers, and foster care, to community- based efforts to meet people's needs and resolve social conflicts nonvio- lently**. Alexander Lee, founder and director of the

Transgender, Gender Variant & Intersex Justice Project, argues that **prison abolitionists will have to form "prickly coalitions" with people outside the movement** who are engaged in providing "housing, healthcare, and other essentials [that] are the basis from which a world without prisons will be made possible.17 4 1 **Such coalitions that help to build a new society can be guided by abolitionist constitutional principles and requirements**.42

Non-reformist reform is pragmatic radicalism consistent with abolitionism --- connects specific reforms to transformative political possibilities

Berger et al. 17 – associate professor of comparative ethnic studies at the University of Washington at Bothell and the author of Captive Nation: Black Prison Organizing in the Civil Rights Era

Dan, with Mariame Kaba and David Stein, 8/24. "What Abolitionists Do." https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration

Lancaster claims that "with evangelical zeal, abolitionists insist that we must choose between abolition and reform, while discounting reform as a viable option." While one could find "evangelical zeal" among any political movement, **it is inaccurate to cast abolitionists as opposed to incremental change**. Rather, **abolitionists have insisted on reforms that reduce rather than strengthen the scale and scope of policing, imprisonment, and surveillance.**

As Lancaster well knows, the history of the American carceral state is one in which reforms have often grown the state's capacity to punish: reforms of indeterminate sentencing led to mandatory minimums, the death penalty to life without parole, sexual violence against gender-nonconforming people gave rise to "gender-responsive" prisons. Instead of pushing to adopt the Finnish model of incarceration — itself a far-fetched enterprise — **abolitionists have engaged** these **contradictions by pursuing reforms that shrink the state's capacity for violence**.

Abolitionist groups have often led fights for better conditions, connecting them to more transformative political possibilities. And **the pragmatic radicalism of abolitionists has won tangible victories**. **Starting in 1999, activists with California Prison Moratorium Project and Critical Resistance fought the further growth of the system. While California built and filled twenty-three new prisons between 1983 and 1999, the state has opened only two institutions since (one of them a prison hospital). As the state has shifted tack to emphasize jail construction — partly in response to this organizing — abolitionists have turned their focus to the county level** as well.

Similar examples of abolitionist-led fights against expanding prison and jail capacity can be found in New York, Pennsylvania, Texas, Washington, and other states around the country. In Chicago, abolitionists spearheaded a successful campaign to oust a punitive district attorney, while in Philadelphia they were central to a progressive civil rights attorney winning the district attorney primary in a landslide victory.

For more than thirty years, **abolitionists have been at the forefront of** the very **campaigns and coalitions** that Lancaster suggests the Left should be fighting **for** instead of abolition: **parole for those convicted of violent offenses, decriminalization of drug use, sentencing reductions, better conditions for imprisoned people, an end to mass surveillance, and fewer people in prison**.

Non-reformist reform involves important steps toward challenging the logic of incarceration while developing practical strategies that erode public support for mass incarceration --- this avoids the pitfalls of cooption

Sudbury 8 – Metz Professor of Ethnic Studies at Mills College. She is a leading activist scholar in the prison abolitionist movement. She was a co-founder of Critical Resistance, a national abolitionist organization

Julia, "Rethinking Global Justice: Black Women Resist the Transnational Prison-Industrial Complex." Souls: A Critical Journal of Black Politics, Culture, and Society, Volume 10, Issue 4. Taylor & Francis.

Chronic overcrowding has led to worsening conditions for prisoners. As a result of the unprecedented growth in sentenced populations, prison authorities have packed three or four prisoners into cells designed for two, and have taken over recreation rooms, gyms, and rooms designed for programming and turned them into cells, housing prisoners on bunk beds or on the floor. These new conditions have created challenges for activists, who have found themselves expending time and resources in pressuring prison authorities to provide every prisoner a bed, or to provide access to basic education programs. As prison populations continue to swell, anti-prison activists are faced with the limitations of reformist strategies. Gains temporarily won are swiftly undermined, new "women-centered" prison regimes are replaced with a focus on cost-efficiency and minimal programming and even changes enforced by legal cases like Shumate vs. Wilson are subject to backlash and resistance. 19 Of even greater concern is the well-documented tendency of prison regimes to co-opt reforms and respond to demands for changes in conditions by further expanding prison budgets. **The vulnerability of prison reform efforts to cooption has led Angela Y. Davis to call for "non-reformist reforms," reforms that do not lead to bigger and "better" prisons.** 20 **Despite the limited long-term impact of human rights advocacy and reforms, building bridges between prisoners, activists, and family members is an important step toward challenging the racialized dehumanization that undergirds the logic of incarceration.** In this way, human rights advocacy carried out in solidarity with prisoner activists is an important component of a radical anti-prison agenda. Ultimately, however, anti-prison activists aim not to create more humane, culturally sensitive, women-centered prisons, but to dismantle prisons and enable formerly criminalized people to access services and resources outside the penal system.

The New Civil Rights Movement: Challenging Post-Incarceration Sentences

After three decades of prison expansion, more and more people are living with criminal convictions and histories of incarceration. In the U.S., nearly 650,000 people are released from state and federal prisons to the community each year. 21 Organizations of formerly incarcerated people focus on creating opportunities for former prisoners to survive after release, and on eliminating barriers to reentry, including extensive discrimination against former felons. The wide array of "post-incarceration sentences" that felons are subjected to has led activists to declare a "new civil rights movement." 22 As a class, former prisoners can legally be disenfranchised and denied rights available to other citizens. While reentry has garnered official attention, with President Bush proposing a $300 million reentry initiative in his 2004 State of the Union address, anti-prison activists have critiqued this initiative for focusing on faith-based mentoring, job training, and housing without addressing the endemic discrimination against former prisoners or addressing the conditions in the communities which receive former prisoners, including racism, poverty, and gender violence. Organizations of ex-prisoners working to oppose discrimination against former prisoners and felons include All of Us Or None, the Nu Policy Leadership Group, Sister Outsider and the National Network for Women Prisoners in the U.S., and Justice 4 Women in Canada.

All of Us Or None is described by members as "a national organizing initiative of prisoners, former prisoners and felons, to combat the many forms of discrimination that we face as the result of felony convictions." 23 Founded by anti-imperialist and former political prisoner Linda Evans, and former prisoner and anti-prison activist Dorsey Nunn, and sponsored by the Northern California–based Legal Services for Prisoners with Children, All of Us Or None works to mobilize former prisoners nationwide and in Toronto, Canada. The organization's name, from a poem by Marxist playwright Bertold Brecht, invokes the need for solidarity across racial, class, and gender lines in creating a unified movement of former prisoners. Black women play a leading role in the organization, alongside other people of color. All of Us Or None focuses its lobbying and campaign work at city, county, and state levels, calling on local authorities to end discrimination based on felony convictions in public housing, benefits, and employment, to opt out of lifetime welfare and food stamp bans for felons, and to "ban the box" requiring disclosure of past convictions on applications for public employment. In addition, the organization calls for guaranteed housing, job training, drug and alcohol treatment, and public assistance for all newly released prisoners. 24

In the context of the war on drugs, many people with felony convictions also struggle with addictions. The recovery movement, which is made up of 12-step programs, treatment programs, community recovery centers, and indigenous healing programs run by and for people in recovery from addiction, offers an alternative response to problem drug use through programs focusing on spirituality, healing, and fellowship. However, the recovery movement's focus on individual transformation and accountability for past acts diverges from many anti-prison activists' focus on the harms done to criminalized communities by interlocking systems of dominance. As a result, anti-prison spaces seldom engage with the recovery movement, or tap the radical potential of its membership. Breaking with this trend, All of Us Or None has initiated a grassroots organizing effort to reach out to people in 12-step programs with felony convictions. This work is part of their wider organizing efforts that aim to mobilize former prisoners as agents of social change. Building on the strengths of identity politics, these organizations suggest that those who have experienced the prison-industrial complex first-hand may be best placed to provide leadership in dismantling it. As former prisoners have taken on a wide range of leadership positions across the movement, there has been a shift away from leadership by white middle-class progressives, and a move to promote the voices of those directly affected by the prison-industrial complex.

Shrinking the System: Decarceration

Politicians who promote punitive "tough-on-crime" policies rely on racialized controlling images of "the criminal" to inspire fear and induce compliance among voters. Once dehumanized and depicted as dangerous and beyond rehabilitation, removing people from communities appears the only logical means of creating safety. Activists who pursue decarceration challenge stereotypical images of the "criminal" by making visible the human stories of prisoners, with the goal of demonstrating the inadequacy of incarceration as a response to the complex interaction of factors that produce harmful acts. **Decarceration** usually **involves targeting a specific prison population that the public sees as low-risk and arguing for an end to the use of**

imprisonment for this population. Decarcerative strategies often involve the promotion of alternatives to incarceration that are less expensive and more effective than prison and jail. For example, Proposition 36, the Substance Abuse and Crime Prevention Act, which passed in California in 2000 and allowed first- and second-time non-violent drug offenders charged with possession to receive substance abuse treatment instead of prison, channels approximately 35,000 people into treatment annually. 25

Drug law reform is a key area of decarcerative work. Organizations and campaigns that promote drug law reform include Drop the Rock, a coalition of youth, former prisoners, criminal justice reformers, artists, civil and labor leaders working to repeal New York's Rockefeller Drug Laws. The campaign combines racial justice, economic, and public safety arguments by demonstrating that the laws have created a pipeline of prisoners of color from New York City to newly built prisons in rural, mainly white areas represented Republican senators, resulting in a transfer of funding and electoral influence from communities of color to upstate rural communities. 26 Ultimately, **the campaign calls for an end to mandatory minimum sentencing and the reinstatement of judges' sentencing discretion, a reduction in sentence lengths for drug-related offenses and the expansion of alternatives, including drug treatment, job training, and education**.

Former drug war prisoners play a leadership role in decarcerative efforts in the field of drug policy reform. Kemba Smith, an African–American woman who was sentenced to serve 24.5 years as a result of her relationship with an abusive partner who was involved in the drug industry, is one potent voice in opposition to the war on drugs. While she was incarcerated, Smith became an active advocate for herself and other victims of the war on drugs, securing interviews and feature articles in national media. Ultimately, Smith's case came to represent the failure of mandatory minimums, and in 2000, following a nation-wide campaign, she and fellow drug war prisoner Dorothy Gaines were granted clemency by outgoing President Clinton. After her release, Smith founded the Justice for People of Color Project (JPCP), which aims to empower young people of color to participate in drug policy reform and to promote a reallocation of public expenditures from incarceration to education. While women like Kemba Smith and Dorothy Gaines have become the human face of the drug war, prison invisibilizes and renders anonymous hundreds of thousands of drug war prisoners. The organization Families Against Mandatory Minimums (FAMM) challenges this process of erasure and dehumanization through its “Faces of FAMM” project. The project invites people in federal and state prisons serving mandatory minimum sentences to submit their cases to a database and provides online access to their stories and photographs. 27 **The “Faces of FAMM” project highlights cases where sentencing injustices are particularly visible in order to galvanize public support for sentencing reform**. At the same time, it dismantles popular representations of the war on drugs as a necessary protection against dangerous drug dealers and traffickers, demonstrating that most drug war prisoners are serving long sentences for low-level, non-violent drug-related activities or for being intimately connected to someone involved in these activities.

Decarcerative work is not limited to drug law reform. Free Battered Women's (FBW) campaign for the release of incarcerated survivors is another example of decarcerative work. The organization supports women and transgender prisoners incarcerated for killing or assaulting an abuser in challenging their convictions by demonstrating that they acted in self-defense. Most recently, FBW secured the release of Flozelle Woodmore, an African–American woman serving a life sentence at CCWF for shooting her violent partner as an 18 year old. Released in August 2007, after five parole board recommendations for her release were rejected by Governors Davis and then Schwarzenegger, Woodmore's determined pursuit of justice made visible and ultimately challenged the racialized politics of gubernatorial parole releases. 28 While the number of women imprisoned for killing or assaulting an abuser is small—FBW submitted 34 petitions for clemency at its inception in 1991, and continues to fight 23 cases—FBW's campaign for the release of all incarcerated survivors challenges the mass incarceration of gender-oppressed prisoners on a far larger scale. FBW argues that experiences of intimate partner violence and abuse contribute to the criminalized activities that lead many women and transgender people into conflict with the law, including those imprisoned on drug or property charges, and calls for the release of all incarcerated survivors. Starting with a population generally viewed with sympathy—survivors of intimate partner violence—FBW generates a radical critique of both state and interpersonal violence, arguing that “the violence and control used by the state against people in prison mirrors the dynamics of battering that many incarcerated survivors have experienced in their intimate relationships and/or as children.” 29 In theorizing the intersections of racialized state violence and gendered interpersonal violence, FBW lays the groundwork for a broader abolitionist agenda that refutes the legitimacy of incarceration as a response to deep-rooted social inequalities based on interlocking systems of oppression.

By gradually shrinking the prison system, Black women activists involved in decarcerative work hope to erode the public's reliance on the idea of imprisonment as a commonsense response to a wide range of social ills. At the other end of anti-expansionist work are activists who take a more confrontational approach. By starving correctional budgets of funds to continue building more prisons and jails, they hope to force politicians to embrace less expensive and more effective alternatives to incarceration.

No More Prisons: Moratorium

Prison moratorium organizing aims to stop construction of new prisons and jails. Unlike campaigns against prison privatization, which oppose prison-profiteering by private corporations, and seek to return imprisonment to the public sector, prison moratorium work opposes all new prison construction, public or private. In New York, the Brooklyn-based Prison Moratorium Project (PMP), co-founded by former prisoner Eddie Ellis and led by young women and gender non-conforming people of color, does this work through popular education and mass campaigns against prison expansion. Focusing on youth as a force for social change, New York's PMP uses compilations of progressive hip hop and rap artists to spread a critical analysis of the prison-industrial complex and

its impact on people of color. PMP's strategies have been effective; for example, in 2002 the organization, as part of the Justice 4 Youth Coalition, succeeded in lobbying the New York Department of Juvenile Justice to redirect $53 million designated for expansion in Brooklyn and the Bronx. 30 PMP has also worked to make visible the connections between underfunding, policing of schools, and youth incarceration through their campaign “Stop the School-to-Prison Pipeline.” By demonstrating how zero tolerance policies and increased policing and use of surveillance technology in schools, combined with underfunded classrooms and overstretched teachers, has led to the criminalization of young people of color and the production of adult prisoners, PMP argues for a reprioritization of public spending from the criminal justice system to schools and alternatives to incarceration. 31

Moratorium work often involves campaigns to prevent the construction of a specific prison or jail. In Toronto, for example, the Prisoner Justice Action Committee formed the “81 Reasons” campaign, a multiracial collaboration of experienced anti-prison activists, youth and student organizers, in response to proposals to build a youth “superjail” in Brampton, a suburb of Toronto. 32 The campaign combined popular education on injustices in the juvenile system, including the disproportionate incarceration of Black and Aboriginal youth, with an exercise in popular democracy that invited young people to decide themselves how they would spend the $81 million slated for the jail. Campaigners mobilized public concerns about spending cuts in other areas, including health care and education, to create pressure on the provincial government to look into less expensive and less punitive alternatives to incarceration for youth. While this campaign did not ultimately prevent the construction of the youth jail, the size of the proposed facility was reduced. More importantly, the campaign built a grassroots multiracial antiprison youth movement and raised public awareness of the social and economic costs of incarceration.

Moratorium campaigns face tough opposition from advocates who believe that building prisons stimulates economic development for struggling rural towns. Prisons are “sold” to rural towns that have suffered economic decline in the face of global competition, closures of local factories, and decline of small farms. In the context of economic stagnation, prisons are touted as providing stable, well-paying, unionized jobs, providing property and sales taxes and boosting real estate markets. The California Prison Moratorium Project has worked to challenge these assertions by documenting the actual economic, environmental, and social impact of prison construction in California's Central Valley prison towns. According to California PMP:

We consider prisons to be a form of environmental injustice. They are normally built in economically depressed communities that eagerly anticipate economic prosperity. Like any toxic industry, prisons affect the quality of local schools, roads, water, air, land, and natural habitats. 33

California PMP opposes prison construction at a local level by building multiracial coalitions of local residents, farm workers, labor organizers, anti-prison activists, and former prisoners and their families to reject the visions of prison as a panacea for economic decline. 34 In the Californian context, where most new prisons are built in predominantly Latino/a communities and absorb land and water previously used for agriculture, PMP facilitates communication and solidarity between Latino/a farm worker communities, and urban Black and Latino/a prisoners in promoting alternative forms of economic development that do not rely on mass incarceration. Scholar-activist Ruth Wilson Gilmore's research on the political economy of prisons in California has been critical in providing evidence of the detrimental impact of prisons on local residents and the environment. 35 As an active member of CPMP, Gilmore's work is deeply rooted in anti-prison activism and in turn informs the work of other activists, demonstrating the important relationship between Black women's activist scholarship and the anti-prison movement. 36

A World Without Prisons: Abolition

Font ID=I;This system of locking people in cages cannot be fixed or reformed; it must be abolished. 37

Many **anti-prison activists view campaigns for decarceration** or moratorium **as building blocks toward the ultimate goal of abolition**. These **practical actions promise short and medium-term successes that are essential markers on the road to long-term transformation**. However, abolitionists believe that like slavery, the prison-industrial complex is a system of racialized state violence that cannot be “fixed.” The contemporary prison abolitionist movement in the U.S. and Canada dates to the 1970s, when political prisoners like Angela Y. Davis and Assata Shakur, in conjunction with other radical activists and scholars in the U.S., Canada, and Europe, began to call for the dismantling of prisons. 38 The explosion in political prisoners, fuelled by the FBI's Counter Intelligence Program (COINTELPRO) and targeting of Black liberation, American Indian and Puerto Rican independence movements in the U.S. and First Nations resistance in Canada as “threats” to national security, fed into an understanding of the role of the prison in perpetuating state repression against insurgent communities. 39 The new anti-prison politics were also shaped by a decade of prisoner litigation and radical prison uprisings, including the brutally crushed Attica Rebellion. These “common” prisoners, predominantly working-class people of color imprisoned for everyday acts of survival, challenged the state's legitimacy by declaring imprisonment a form of cruel and unusual punishment and confronting the brute force of state power. 40 By adopting the term “abolition” activists drew deliberate links between the dismantling of prisons and the abolition of slavery. Through historical excavations, the “new abolitionists” identified the abolition of prisons as the logical completion of the unfinished liberation marked by the 13th Amendment to the United States Constitution, which regulated, rather than ended, slavery. 41

Organizations that actively promote dialogue about what abolition means and how it can translate into concrete action include Critical Resistance (CR), New York's Prison Moratorium Project, Justice Now, California Coalition for Women Prisoners, Free Battered Women, and the Prison Activist Resource Center in the U.S. and the Prisoner Justice Action Committee (Toronto), the Prisoners' Justice Day Committee (Vancouver) and Joint Action in Canada. CR was founded in 1998 by a group of Bay Area activists including former political prisoner and scholar-activist Angela Y. Davis. Initially, CR focused on popular education and movement

building, coordinating large conferences where diverse organizations could generate collective alternatives to the prison-industrial complex. Later work has included campaigns against prison construction in California's Central Valley and solidarity work with imprisoned Katrina survivors. CR describes abolition as:

[A] political vision that seeks to eliminate the need for prisons, policing, and surveillance by creating sustainable alternatives to punishment and imprisonment … . An abolitionist vision means that we must build models today that can represent how we want to live in the future. It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead the average person to believe that things really could be different. It means living this vision in our daily lives. 42

In this sense, **prison abolitionists are tasked with a dual burden: first, transforming people's consciousness so that they can believe that a world without prisons is possible, and second, taking practical steps to oppose the prison-industrial complex**. **Making abolition more than a utopian vision requires practical steps toward this long-term goal. CR describes four steps that activists can get involved in: shrinking the system, creating alternatives, shifting public opinion and public policy, and building leadership among those directly impacted** by the prison-industrial complex. 43 Since its inception in the San Francisco Bay Area, Critical Resistance has become a national organization with chapters in Baltimore, Chicago, Gainesville, Los Angeles, New Orleans, New York, Tampa/St. Petersburg, and Washington, D.C. As such, CR has played a critical role in re-invigorating abolitionist politics in the U.S. This work is rooted in the radical praxis of Black women and transgender activists.

2AC – Reformism Good – Top

Achievable and incremental changes to hyper-incarceration should take priority over "root causes." Short-term fixes are critical to support for any broader agenda.

Marie **GOTTSCHALK** Poli Sci @ Penn **'9** "The Long Reach of the Carceral State: The Politics of Crime, Mass Imprisonment, and Penal Reform in the United States and Abroad" *Law & Social Inquiry* 34 (2) p. 466-467

The experience of other industrialized countries may shed some light on how to mitigate the carceral state in the United **S**tates. Almost in passing, Brodeur (2007) makes a profound and underappreciated observation about penal reform, suggesting that **the "root causes" approach to progressive penal reform, however well intentioned, may be shortsighted** (77). **This approach seeks to solve the crime and punishment dilemma by focusing on amelio- rating structural problems like** widespread **poverty**, high **unemployment**, dysfunctional schools, an ineffective **health-care system, and outcomes dramatically stratified by race**.

Fifteen or so years ago, the focus on the structural roots of crime and punishment was critical to help neutralize the culture of poverty and the moral poverty **arguments that supported the development of the carceral state**. Attention to structural causes—and how they create cultural pathologies—at a time of rising (and then falling) crime rates and media hysteria over crime also helped mitigate somewhat the demonization of people living in high crime, inner-city communities. **But if the aim today is to shrink the country's extraordinary incarceration rate** over the next few years—not the next few decades—perhaps **the focus on structural causes and solutions is misplace**d.

By giving structural problems primacy in efforts to end mass incarceration, we are essentially accepting that the extensive US penal system is here to stay for a very long time to come. After all, **structural problems call for comprehensive, often expensive, long-term solutions and commitments**. **Long-term fixes** are problematic not just because they take a long time. As Brodeur notes, they are nettlesome because they **are harder to sustain from one** change of **administration to the next.** In the case of the United States, **the absence of a respected, expert, nonpartisan civil service that maintains policy continuity**, despite political shifts, **compounds the problem**. **The focus on structural problems overshadows the fact that about two-thirds of the people in prison are serving time for nonviolent offenses**, **many** of them property **or petty drug offenses** that would not warrant a sentence in many other countries. **It also deflects attention away from the fact that prisons exacerbate many social ills that contribute to crime and poverty and are unlikely to significantly rehabilitate anyone**. **Other countries that once had exceptionally high incarceration rates,** notably Finland**, successfully brought down their rates by focusing on changes in penal policy** rather than by mounting a sustained attack on structural problems and the root causes of crime (Lappi-Seppälä 2007, 234; Brodeur 2007, 75).

Four decades ago, the United States had many of the same structural problems it has today, but it did not have such an expansive penal system. **Since then, the U**nited **S**tates **has embarked on a war on drugs** and a broader war on crime characterized by penal policies and penal conditions unprecedented in modern US history and unheard of or disdained in other developed countries. **A deeper commitment** to lifting many more people out of poverty **is an admirable goal**. **But by making that the centerpiece of any penal reform agenda, opponents of the carceral state risk losing a sense of urgency**. **Criminal justice is fundamentally a political problem,** not a crime and punishment problem. **The real challenge is how to create the political will and political pressure to pursue and implement these policies**. **The central question is: "when in all other respects we defend policies based on social equality**, full citizenship, **solidarity**, and respect for reason and humanity, **why should we choose to adopt criminal justice policies that show so little appreciation of these very values and principles**?" (Lappi-Seppälä 2007, 290).

2AC – Reformism Good – Generates Further Change

Reformism is necessary and generates further reforms --- there is no dividing line between reform and abolition

Matthews 18 – Professor of Criminology and Director of Studies for the MA in Criminology at the University of Kent's School of Social Policy, Sociology and Social Research

Roger, " Penal abolitionism and reformism revisited." Brazilian Journal of Public Policy, 8(1), 21-36. HeinOnline.

One of the unfortunate legacies of the first wave of abolitionism is the reluctance to engage to seek improvements in prison conditions, **since it is maintained that they only serve to religitimise the system**. The most debilitating phrase associated with this approach is "a prison, is a prison, is a prison" which means that **whatever improvements you make people remain incarcerated and therefore there is no point in engaging in short-term reforms**14. The **messages** that tend to be **associated with this** pessimistic **position include**:

* **If reforms are effective they only religitimise the penal system**

* That there is a historical relationship between penal reforms and the expansion of imprisonment

* **Reforms that challenge the prison system tend to get absorbed or neutralised**

* Reform has the effect of refining the system in ways that facilitate its capacity to target the most vulnerable people

* The rhetoric of rehabilitation obscures the further entrenchment of the prison

* The pursuit of "alternatives to custody" invariably leads to net-widening.

* There is always a mismatch between intentions and outcomes

* You may change or improve certain aspects of incarceration but you leave the overarching structure intact.

These claims are debilitating and disarming and serve to dissuade observers from engaging in reforms. What **all serious activists know**, however, is **that even small reforms can be beneficial** and that **successful reforms often lead to further reforms**.

In contrast to these defeatist messages associated with some of the more hard line abolitionists**, the second wave of abolitionists** - who might be referred to as 'partial' or selective' abolitionists - maintain that although prisons do not reduce crime, deter offenders and are often counterproductive, they **are prepared to engage in** what they see as **progressive reforms**. **Angela Davis**, for example, **although claiming that prisons are obsolete argues that certain groups like the mentally ill should not be imprisoned . Instead of using prisons as a 'dumping ground' for th**e mentally ill, the **drug addicted, and the impoverished, Davis advocates the development of welfare programmes** for vulnerable communities. **She re-engages with the reform- -abolition debates** flagged up by Mathieson, but provides a significantly different response. Thus: The most difficult questions for advocates of prison abolition is how to establish a balance between reforms that are clearly necessary to safeguard the lives of prisoners and those strategies designed to promote the eventual abolition of prisons as the dominant form of punishment. In other words, **I do not think that there is a dividing line between reform and abolition**. For example, **it would be utterly absurd for a radical prison activist to refuse to support the demand for better health care inside** Valley State, California's largest women **prison, under the pretext that such reforms would make the prison a more viable institution**6.

In addition, Davis in line with other second wave abolitionists remains committed to a policy of decar-ceration, the development of alternatives to custody, the removal of certain categories of offenders from prison and challenging the "prison industrial complex" . Most second wave abolitionists would probably agree with these objectives, but the question remains of how they are to be realised

and how their achieve- ment is linked to the overall aim of abolition. The solution to these questions abolitionists suggest is based on the development of a case against imprisonment and mobilising appropriate social support.

Reformism is effective and brings revolutionary change closer rather than pushing it away

Richard **Delgado 9**, self-appointed Minority scholar, Chair of Law at the University of Alabama Law School, J.D. from the University of California, Berkeley, his books have won eight national book prizes, including six Gustavus Myers awards for outstanding book on human rights in North America, the American Library Association's Outstanding Academic Book, and a Pulitzer Prize nomination. Professor Delgado's teaching and writing focus on race, the legal profession, and social change, 2009, "Does Critical Legal Studies Have What Minorities Want, Arguing about Law", p. 588-590

2. The **CLS critique of piecemeal reform**¶ **Critical scholars reject the idea of piecemeal reform. Incremental change, they argue, merely postpones** the **wholesale reformation that must occur to create a decent society**. Even worse**, an unfair social system survives by using piecemeal reform to disguise and legitimize oppression. Those who control the system weaken resistance by pointing to the occasional concession to**, or periodic court **victory of, a black plaintiff or worker as evidence that the system is fair** and¶ just. In fact, Crits believe that teaching the¶ common law or using the case method in law school is a disguised means of preaching incrementalism and thereby maintaining the current power structure." To avoid this, CLS scholars¶ urge law professors to abandon the case method, give up the effort to find rationality and order¶ in the case law, and teach in an unabashedly political fashion.¶ **The** CLS **critique of piecemeal reform is familiar, imperialistic and wrong.** Minorities know from bitter experience that occasional court victories do not mean the Promised Land is at hand**. The critique** is imperialistic in that it **tells minorities and other oppressed peoples how they should interpret events affecting them. A court order directing a housing authority to disburse funds for heating in subsidized housing may postpone the revolution, or it may not. In the meantime, the order keeps a number of poor families warm. This may mean more to them than it does to a comfortable academic working in a warm office. It smacks of paternalism to assert that the possibility of revolution later outweighs the certainty of heat now**,¶ unless there is evidence for that possibility. The **Crits do not offer** such **evidence. Indeed,** some **incremental changes may bring revolutionary changes closer, not push them further away. Not all small reforms induce complacency; some may whet the appetite for further combat. The welfare family may hold a tenants' union meeting in their heated living room**. CLS **scholars' critique of piecemeal reform often misses these possibilities, and neglects the question of whether total change, when it comes, will be what we want.**

2AC – Reformism Good – Empirically Effective

Decarceration trends disprove pessimistic accounts that reform inevitably fails

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Roger, " Penal abolitionism and reformism revisited." Brazilian Journal of Public Policy, 8(1), 21-36. HeinOnline.

For many years **criminology has been dominated by a pessimism and impossibilism**. **There has been an overwhelming tide of gloom in Anglo-American criminology which has become preoccupied with the growing number of people in prison to an extent that that the "cracks" in the penal edifice have often either been ignored or downplayed**. **However, over the last decade or so there are signs that the tide is turning and that significant efforts are being made, even in the US, to limit prison use and to improve the situa- tion** 29.

Significantly, **there has been a growing politicisation of prison issues** in recent years with a growing num-ber of official and unofficial reports providing revealing insights into prison life. Even Barak **Obama**, while President of the United States **commuted long prison sentences for some inmates, limited the use of soli-tary confinement, expanded mental health services and assisted those leaving prison**. Moreover, **the Obama** 2 30 **administration announced that it would phase out the use of some private prisons** . **David Cameron, while Prime Minister of Britain dutifully followed suit** claiming that the prison system was "a scandalous failure" and that prisoners should not be seen as liabilities but potential assets. He expressed a commitment to im- - proving rehabilitation and education in prisons, while reducing the prison population by extending the use 31 of satellite tagging and community penalties . These statements are a long way from traditional conserva-tive "get tough" policies.

Shelley Listwan, and her colleagues noted a decade ago that **there has been opposition to** what she calls **the "penal harm movement" in the US involving continued support for rehabilitation, the repeal of man-datory and determinate sentencing policies, developing diversion programmes for juveniles** such as the RE-CLAIM initiative in Ohio, **limiting** the **re-entry** of to prison as a result of parole violations **and the passing of The Second Chance Act** (2007) which was designed to provide treatment programs for those re-entering 2 the community . In addition, **we have seen in California the decarceration of thousands of prisoners** who have been placed on parole since 2011. In the fifteen months after passing California's Realignment Act the size of the prison population was reduced by 27,527 inmates saving an estimated $453 million, with rema- rkably little impact on the overall safety of Californians.33

Although this strategy was in many ways unique **there are a number of examples over the past decade** or so **of particular prisons** in different States in the US **being closed down** in an attempt to limit prison capacity 34 and reduce expenditure . Most recently, there has been a commitment by the Mayor of New York to close the troubled Rikers Island prison. This involves a plan to reduce the inmate population by fifty per cent and this in turn and this requires reducing the number of people sent to prison in New York – even those char- 35 ged with serious felonies . This initiative has been proposed in a context in which the prison population in 36 New York city has dropped markedly . Significantly, **there has been a decline in State and Federal prison po- pulations in the US since 2013** (PEW 2015)" . **There have also been notable reductions in prison populations in different States since the turn of the century**. During 1999-2000, 12 State experienced such a reduction38. In 2002, 25 States reduced funding for prisons and in 2003 17 States either closed prisons or delayed prison 39 construction . In 2011, 26 States reduced their prison population -most notably California. There has also been a 40 per cent decrease in juvenile incarceration in the US between 1998-2013, with fewer young people behind bars than at any point since 1975 41.

North America is not the only country experiencing a decrease in prison numbers. In the Netherlands, some 13,500 prison cells are currently empty and five prisons are destined to close in the near future. This decrease has been attributed to a significant decrease in recorded crime. Similarly, Sweden has seen a de- crease in its prison population in recent years and there were plans to close four prisons in 2014-15. This decrease in prison numbers has been attributed to a combination of an increased focus on rehabilitation and 41 the passing of more lenient sentences for some offences .

Reformism has shifted the politics of crime, caused big drops in incarceration, and reduced racial disparities --- this proves that incremental changes work

Cole 17 – Hon. George J. Mitchell Professor in Law and Public Policy, Georgetown University, and National Legal Director for the American Civil Liberties Union

David, "The Changing Politics of Crime and the Future of Mass Incarceration," in 1 REFORMING CRIMINAL JUSTICE: INTRODUCTION AND CRIMINALIZATION (Erik Luna ed., 2017). https://www-media.floridabar.org/uploads/2018/06/ADA-Reforming-Criminal-Justice-Vol-I.pdf

In an election that Trump won, these are important reminders that the politics of crime has moved on from the "tough-on-crime" mantra that dominated in the latter part of the 20th century. I graduated law school in 1984. For most of my legal career, all the news on criminal justice was bad. Incarceration increased at record rates from the mid-1970s to the early 2000s.17 Racial disparities grew as well. Richard Nixon introduced the "war on crime." Ronald Reagan and George H.W. Bush launched and pursued the "war on drugs." Bill Clinton took time off from his first presidential campaign to sign the death warrant for Ricky Ray Rector, a man who as a result of a brain injury barely comprehended what was happening to him.18 Clinton went on to sign the Anti-Terrorism and Effective Death Penalty Act,19 which restricted federal court review of state criminal convictions. States, meanwhile, were enacting longer and longer sentences, building more prisons, putting more police on the street, and watching as their prisons filled with young men, mostly of color. For decades, the ACLU opposed virtually all criminal law bills—because they all made a bad situation worse.

Today, by contrast, **there is good news**. **Incarceration rates have flattened out and have started to fall. The nation's total prison population has declined every year since 2010. The per capita imprisonment rate peaked a**t 506 per 100,000 **in 2008**, and was 458 in 2015.20 **Six states**—Alaska, California, Connecticut, New York, New Jersey, and Vermont—**have reduced their prison populations by at least 20%,** without an increase in crime, in the last decade or so.21 **Ten more states have reduced their prison populations by between 10% and 20%.**22 **Thirty-six states and the federal Bureau of Prisons have seen declines in their prison populations from their peak years**, generally in the early 2000s.23 In a single year, from 2013 to 2014, Mississippi experienced a decrease of 15% in its prison population.24

During 2015, lawmakers in at least 30 states adopted changes in policy and practice that are likely to contribute to further declines in incarcerated populations. Six states expanded access to parole, reducing returns to prison for parole violations. Fourteen reduced the collateral consequences of convictions, including bans on voting and welfare. Four reclassified certain felonies as misdemeanors. And similar reforms have been adopted in many other states over the past five years.25

Racial disparities, still shockingly large, **have decreased in the first decade of the 21st century**. **For example, between 1988 and 1993, African-Americans were arrested for drug offenses at rates about 5 times that of whites.**26 **In 2007**, however, **the black arrest rate was between 3.5 and 3.9 times higher than the white arrest rate**.27 **For all crimes, African-Americans were arrested at four times the rate of whites in 1989, but 2.5 times the rate of whites in 2006**.28 **Racial disparities in traffic stops**—"**driving while black"—have fallen in recent years, with roughly proportional stops reported in many places**.29 Substantial disparities linger in particular jurisdictions, and blacks and Hispanics are still more likely to be searched in a traffic stop than whites in general.30

In New York City, as a result of a lawsuit, an advocacy campaign, and the election of Mayor Bill de Blasio in 2013, "**stop-and-frisk" encounters**, which were disparately targeted at black and Hispanic men, **dropped** from a high of 686,000 in 2011 to 22,000 in 2015, on pace for 15,000 in 2016.31 Racial disparities remain, but as a result, **black and Hispanic men are the disproportionate beneficiary of the reduction in stop**.

These developments reflect a significant change in the prevailing politics of crime. Where in prior decades new criminal justice laws were a one-way ratchet making criminal law more harsh, today they are now more likely to reduce the severity of the criminal laws than to enhance it. The Fair Sentencing Act of 2010,32 for example, reduced the disparity between sentences for crack and powder cocaine from 100-to-1 to 18-to-1. President Obama was the first president to visit a federal prison. He directed the Justice Department to review solitary confinement, leading to a 2016 guidance that reduced its use in the federal prison system, especially for juveniles and the mentally ill, and urged states to follow suit.33 Under a clemency initiative, President Obama commuted the sentences of nearly 2,000 people, a marked increase over most of his predecessors.34 **The Justice Department's Civil Rights Division conducted high-profile investigations of several police departments across the country for systematic civil-rights abuses, including Chicago, Baltimore, New**

Orleans, Cleveland, Newark, and Ferguson, Missouri. **Many of these reports led to consent decrees that require meaningful reform and provide for ongoing monitoring**.

Reform works but it's not inevitable --- this highlights the need for concrete policy actions

Sundt et al. 17 – Professor of Criminal Justice at the School of Public and Environmental Affairs

Jody, with Kathryn Schwaeble and Cullen C. Merritt, "Good governance, political experiences, and public support for mandatory sentencing: Evidence from a progressive US state." https://scholarworks.iupui.edu/bitstream/handle/1805/14672/Good_Gov_Final_Draft_Authors_Copy.pdf?sequence=3

Beginning in 2010, the United States prison population declined for the first time in more than 30 years. Five years later, it stood at 2005 levels (Carson and Anderson, 2016). **The public mood in the US has also moderated. Citizens are willing to downsize prisons** (Sundt, Cullen, Jonson, and Thielo, 2015) as long as it does not come at the cost of public safety (Pew Charitable Trusts, 2012), and **even traditionally "tough" US states like Texas are pursuing reforms with broad citizen support for treatment and prevention** (Thielo, Cullen, Cohen, and Chouhy, 2016). **Optimists and reform advocates point to these developments as signs of a social movement toward greater tolerance**.

There are also signs, however, that declines in the US incarceration rate and the political will for reform are tenuous. **Most of the decline in the US prison population may be attributed to California and the federal prison system, while many states continue to increase their rates of incarceration** (Carson and Anderson, 2016). **In California, reforms were driven by a unique confluence of political, legal, and economic conditions** (Schlanger, 2013). **Declines in the federal prison population occurred under the Obama Administration, which made criminal justice reform a priority. Now, the Trump Administration has signalled a return to "law and order**" and a rise in the homicide rate in several cities are again raising alarms about the threat of violent crime (Epstein, 2017). To borrow a phrase, it appears that reports of the death of punitive policy in the US are exaggerated.

Nevertheless, it is clear that the politics of punishment are changing. If the prison build-up was the result of public demand for more punishment (Enns, 2014), will changes in public mood ultimately result in broader, sustained reductions in incarceration and a rollback of "tough" sentencing laws? This question draws our attention to the way **punishment is tied to political life**. Cutting through the complexity about the causes of mass incarceration in the US, Travis, Western, and Redburn (2014) explain that **growth in imprisonment resulted from a choice to pass laws increasing sentence lengths for a broader range of crimes**.

By locating the source of mass incarceration within political processes that affect sentencing and local decision making, scholars focus our attention more explicitly on the relationship between governance and punishment. For example, Simon (2007) emphasizes how crime became a tool for governing, and **crime control emerged as a tangible political good provided to fearful constituents who lost confidence in the ability of traditional institutions and professionals to address public safety**. **Barker** (2009) **also locates the growth in incarceration in political life and argues that the ways individuals participate in democratic processes affects how states use punishment and maintain legitimacy with their citizens**. **Pfaff** (2017) **shows how local political incentives and disincentives encourage prosecutors and other local criminal justice officials to overreact to increases in crime but little reason to change policy when crime falls**.

The idea that nothing has changed for the better is a destructive fallacy.

Randall **Kennedy 12**, Harvard Law Professor, *Race, Crime, and the Law*, Knopf Doubleday Publishing Group, pp. 388-389

True, **it is sometimes genuinely difficult to determine an appropriate remedial response. The proper way to address that** difficulty, however, **is to acknowledge and grapple with it, not bury it beneath** unbelievable **assertions that**, in fact, **no** real **problem exists. Whitewashing racial wrongs** (especially while simultaneously proclaiming that courts are doing everything reasonably possible to combat racially invidious government action) corrupts officials and **jades onlookers,**

nourishing simplistic, **despairing, and defeatist critiques of the law that are profoundly destructive**.¶ The second impression that I want to leave with readers should serve as an antidote to these overwrought, defeatist critiques by acknowledging that **the administration of criminal law has changed substantially for the better over the past half century and that there is reason to believe that, properly guided, it can be improved even more. Today there are more formal and informal protections against racial bias than ever before, both in terms of the protections accorded to blacks against criminality and the treatment accorded to black suspects**, defendants, and convicts. **That deficiencies, large deficiencies, remain is clear. But comparing racial policies today to those that prevailed in 1940 or 1960 or even 1980 should expose the fallacy of asserting that nothing substantial has been changed for the better**.¶ **This** point **is worth stressing because of the** prevalence and **prominence of pessimistic thinking about the race question in America**n life. **Some commentators maintain**, in all seriousness, **that there has been no significant improvement in** the overall **fortunes of black Americans** during the past half century, **that advances that appear to have been made are merely cosmetic, and that the U**nited **S**tates **is doomed to remain a pigmentocracy. This pessimistic strain often turns paranoid and apocalyptic in commentary about the administration of criminal law**.¶ **It is profoundly misleading**, however, **to focus exclusively on the ugliest aspects of the American legal order. Doing so conceals real achievements: the Reconstruction Constitutional Amendments**, the Reconstruction **civil rights** laws, **Strauder v. Alabama, Dempsey v. Moore, Brown v. Mississippi, Powell v. Alabama, Norris v. Alabama, Batson v. Kentucky, the resuscitation of Reconstruction** by the civil rights movement, **the changing demographics of the bench, bar, and police departments—in sum, the stigmatization** (albeit incomplete) **of invidious racial bias**. **Neglecting these achievements robs them of support**. Recent sharp **attacks upon basic guarantees bequeathed by the New Deal ought to put everyone on notice of** the **perils of permitting** social **accomplishments to lose their** rightful **stature in the public's estimation**. Moreover, **one-dimensional condemnations of the racial situation in America renders attractive certain subversive proposals that are, given actual conditions, foolish, counterproductive, and immoral**. I think here in particular of the call for racially selective jury nullification. **Such proposals should be openly challenged on the grounds that they fundamentally misperceive the racial realities of American life.**

Reforms are effective --- the First Step Act proves they make tangible differences even when flawed

Lau 19 – staff writer at the Brennan Center

Tim, 7/25. "Historic Criminal Justice Reforms Begin to Take Effect." https://www.brennancenter.org/our-work/analysis-opinion/historic-criminal-justice-reforms-begin-take-effect

The First Step Act, which Congress passed last December, **represents the most substantial criminal justice reform legislation in a generation. The law aims to shorten mandatory minimum sentences** for some drug offenses **and to improve conditions for people currently in prison**. But since the First Step Act was signed into law, advocates have voiced concerns about oversight and funding for its implementation.

However, the law got an unexpected boost last week when the Justice Department confirmed that it would redirect $75 million from existing programs to fund the First Step Act through the end of September, the conclusion of the 2019 fiscal year.

Additionally, **officials unveiled a new tool that helps individuals earn credits toward an earlier release date.** Known as the FSA Risk and Needs Assessment System (RNAS). While some concerns remain about the tool's development, it should provide guidance for in-prison programming — including education, vocational training, and drug treatment — aimed at reducing recidivism. **These programs will allow participants to work toward** eventually transferring to **prerelease custody**, such as a halfway house or home confinement.

This introduction had major consequences for families around the country, as its rollout was tied to an increase in the number of days people in prison can earn toward early release based on good behavior. This so-called "good time fix" seems small, but had an immediate effect.

Justice Department officials announced that more than 3,100 people would be released from federal prisons across the country, due to the "fix's" retroactive application.

Explaining Friday's prison release

People serving time in federal prisons are eligible to earn "good time credit," or small reductions to their sentences, based on good behavior. The First Step Act increased the cap on good time credits from around 47 days to 54 days per year of sentence imposed — a change that will benefit up to 85 percent of people in federal prison.

This change was a long time in the making. Many believe that Congress always intended people to be able to earn 54 days of good conduct time per year, and that federal prison administrators were creatively interpreting the law to detain people longer. But in 2010, the Supreme Court disagreed. If Congress meant for people to be able to earn a full 54 days, it would have to say so in new legislation.

The First Step Act did just that. The change is retroactive, meaning it helps people who have been waiting for this change for years. But it was originally intended to go into effect immediately after the First Step Act was signed into law. Thanks to a drafting oversight and agency intransigence, it kicked in only after the RNAS tool's release. Once that was published, last week, the saga came to a close, leading to immediate release for 3,100 people.

Risk assessments and prison reform

The new risk assessment tool has the potential to improve the lives of many people, but the design process has received criticism from advocates, who argued that an organization consulted to assist with its implementation was hostile to criminal justice reform and lacked the appropriate expertise. Others feared the final product would exacerbate racial disparities and hold back rehabilitation. Whether these concerns remain warranted is an open question. "We're continuing to evaluate the risk assessment tool and any outstanding concerns connected to its implementation," said Ames Grawert, senior counsel in the Brennan Center's Justice Program. "In the meantime, people should participate in the upcoming public comment period and share their thoughts about the tool."

The impact of the First Step Act's sentencing reforms

Other parts of the First Step Act have been in action for months now — specifically, **its sentencing reforms**.

The U.S. federal prison population has increased by more than 700 percent since 1980, disproportionately impacting African American, Native American, and Latino communities. Federal mandatory minimum sentences helped catalyze this growth. Accordingly, **reform advocates** including the Brennan Center **insisted that the First Step Act include sentencing reform provisions to address overly harsh prison sentences** — especially for drug offenses. Around **2,000 people annually will benefit from the reforms included in the law**.

Many already have. The First Step Act allows for retroactive application of the Fair Sentencing Act of 2010, which reduced the sentencing disparity between crack cocaine and powder cocaine offenses that disproportionately penalized African American defendants. This **reform in the law has led to more than 1,600 sentence reductions**.

2AC – Reformism Good – Coalitions

Coalitional politics is vital to make their strategy effective --- that requires an approach of compromise

Michelle **Alexander 10**, associate professor of law at Stanford Law School, civil rights lawyer, advocate and legal scholar, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 2010, The New Press, p. 255-259

This brings us to a critical question: who is the us that civil rights **advocates are fighting for? Judging from the plethora of groups that have embarked on their own civil rights campaigns** since Martin Luther King Jr.'s assassination– **women, gays, immigrants. Latinos, Asian Americans—the answer seems to be that us includes everyone except white men**.¶ This result is not illogical. When Malcolm X condemned "the white man" and declared him the enemy, he was not, of course, speaking about any par- ticular white man, but rather the white, patriarchal order that characterized both slavery and Jim Crow. Malcolm X understood that the United States was created by and for privileged white men. It was white men who dominated politics, controlled the nation's wealth, and wrote the rules by which everyone else was forced to live. No group in the United States can be said to have experienced more privilege, and gone to greater lengths to protect it, than "the white man."¶ Yet the white man, it turns out, has suffered too. The fact that his suffering has been far less extreme, and has not been linked to a belief in his inherent inferiority, has not made his suffering less real. Civil rights **advocates, however, have treated the white man's suffering as largely irrelevant** to the pursuit of the promised land. As civil rights lawyers unveiled plans to desegregate public schools, it was poor and working-class whites who were expected to bear the burden of this profound social adjustment, even though many of them were as desperate for upward social mobility and quality education as African Americans. According to the 1950 census, among Southerners in their late twenties, the state-by-state percentages of functional illiterates (people with less than five years of schooling) for whites on farms overlapped with those for blacks in the cities. The majority of Southern whites were better off than Southern blacks, but they were not affluent or well educated by any means; they were semiliterate (with less than twelve years of schooling). Only a tiny minority of whites were affluent and well educated. They stood far apart from the rest of the whites and virtually all blacks.59¶ What lower-class whites did have was what W.E.B. Du Bois described as "the public and psychological wage" paid to white workers, who depended on their status and privileges as whites to compensate for low pay and harsh working conditions.60 **As described in chapter 1, time and time again, poor and working-class whites were persuaded to choose their racial status interests over their common economic interests with blacks, resulting in the emergence of new caste systems** that only marginally benefited whites but were devastating for African Americans. ¶ **In retrospect, it seems clear that nothing could have been more important** in the 1970s and 1980s **than finding a way to create a durable, interracial**, bottom-up **coalition for social and economic justice to ensure that another caste system did not emerge** from the ashes of Jim Crow. **Priority should have been given to figuring out some way for** poor and working-class **whites to feel as though they had a stake**—some tangible interest—**in the nascent integrated racial order.** As Lani Guinier points out, however, the racial liberalism expressed in the Brown v. Board of Education decision and endorsed by civil rights litigators "did not offer poor whites even an elementary framework for understanding what they might gain as a result of integration."61¶ Nothing in the opinion or in the subsequent legal strategy made clear that segregation had afforded elites a crucial means of exercising social control over poor and working-class whites as well as blacks. The Southern white elite, whether planters or industrialists, had successfully endeavored to make all whites think in racial rather than class terms, predictably leading whites to experience desegregation, as Derrick Bell put it, as a net "loss."62¶ Given that poor and working-class whites (not white elites) were the ones who had their world rocked by desegregation, it does not take a great leap of empathy to see why affirmative action could be experienced as salt in a wound. Du Bois once observed that the psychological wage of whiteness put "an indelible black face to failure."63 Yet with the advent of affirmative action, suddenly African Americans were leapfrogging over poor and working class whites on their way to Harvard and Yale and taking jobs in police departments and fire departments that had once been reserved for whites. ¶ Civil rights advocates offered no balm for the wound, publicly resisting calls for class-based affirmative action and dismissing claims of unfairness on the grounds that whites had been enjoying racial preferences for hundreds of years. Resentment, frustration, and anger expressed by poor and working-class whites was chalked up to racism, leading to a subterranean discourse about race and to implicitly racial political appeals, but little honest dialogue.¶ Perhaps **the time has come to give up the racial bribes and begin an honest conversation about race in America. The topic of the conversation should be how us can come to include all of us. Accomplishing this degree of unity may mean giving up fierce defense of** policies and **strategies that exacerbate racial tensions** and produce for racially defined groups primarily psychological or cosmetic racial benefits. ¶ Of course, **if meaningful progress is to be made, whites must give up their racial bribes too**, and be willing to sacrifi ce their racial privilege. Some might argue that in this game of chicken, whites should make the fi rst move. **Whites should demonstrate that their silence in the drug war cannot be bought by tacit assurances** that their sons and daughters will not be rounded up en masse and locked away. Whites should prove their commitment to dismantling not only mass incarceration, but all of the structures of racial inequality that guarantee for whites the resilience of white privilege. After all, why should "we" give up our racial bribes if whites have been unwilling to give up theirs? In light of our nation's racial history, that seems profoundly unfair. But if your strategy for racial justice involves waiting for whites to be fair, history suggests it will be a long wait. It's not that white people are more unjust than others. Rather it seems that an aspect of human nature is the tendency to cling tightly to one's advantages and privileges and to rationalize the suffering and exclusion of others. This tendency is what led Frederick Douglass to declare that "power concedes nothing without a demand; it never has and it never will." ¶ So what is to be demanded in this moment in our nation's racial history? If the answer is more power, more top jobs, more slots in fancy schools for "us"—a narrow, racially defined us that excludes many—we will continue the same power struggles and can expect to achieve many of the same results. Yes, we may still manage to persuade mainstream voters in the midst of an economic crisis that we have relied too heavily on incarceration, that prisons are too expensive, and that drug use is a public health problem, not a crime. But **if the movement that emerges to end mass incarceration does not meaningfully address** the **racial divisions** and resentments **that gave rise to mass incarceration, and if it fails to cultivate an ethic of genuine care**, compassion, **and concern for every human being—of every class, race, and nationality—within our nation's borders, including** poor **whites, who are often pitted against poor people of color, the collapse of mass incarceration will not mean the death of racial caste in America. Inevitably a new system of racialized social control will emerge**–one that we cannot foresee, just as the current system of mass incarceration was not predicted by anyone thirty years ago. No task is more urgent for racial justice advocates today than ensuring that America's current racial caste system is its last.¶ **Given what is at stake at this moment in history, bolder, more inspired action is required than we have seen to date**. Piecemeal, top-down policy reform on criminal justice issues, combined with a racial justice discourse that revolves largely around the meaning of Barack Obama's election and "postracialism," will not get us out of our nation's racial

quagmire. We must flip the script. Taking our cue from the courageous civil rights advocates who brazenly refused to defend themselves, marching unarmed past white mobs that threatened to kill them, **we, too, must be the change we hope to create.** If we want to do more than just end mass incarceration—if we want to put an end to the history of racial caste in America—**we must lay down our racial bribes, join hands with people of all colors** who are not content to wait for change to trickle down, **and say to those who would stand in our way: Accept all of us or none**. ¶ That is the basic message that Martin Luther King Jr. aimed to deliver through the Poor People's Movement back in 1968. He argued then that the time had come for racial justice advocates to shift from a civil rights to a human rights paradigm, and that the real work of movement building had only just begun.64 **A human rights approach**, he believed, **would offer far greater hope for those of us determined to create a thriving, multiracial, multiethnic democracy free from racial hierarchy** than the civil rights model had provided to date. **It would offer a positive vision of what we can strive for—a society in which all human beings of all races are treated with dignity, and have the right to** food, shelter, health care, education, and **security**.65 **This expansive vision could open the door to meaningful alliances between** poor and working-class **people of all colors, who could begin to see their interests as aligned, rather than in conflict—no longer in competition for scarce resources in a zero-sum game.**

2AC – Reformism Good – Public Support

Public buy-in is critical to success --- no change is possible without broad political support.

Cole 17 – Hon. George J. Mitchell Professor in Law and Public Policy, Georgetown University, and National Legal Director for the American Civil Liberties Union

David, "The Changing Politics of Crime and the Future of Mass Incarceration," in 1 REFORMING CRIMINAL JUSTICE: INTRODUCTION AND CRIMINALIZATION (Erik Luna ed., 2017). https://www-media.floridabar.org/uploads/2018/06/ADA-Reforming-Criminal-Justice-Vol-I.pdf

Whatever the causes of the new politics of crime, **the urgent questions now are what should be done. This report offers an extraordinary range of detailed and pragmatic answers**. **Those seeking to improve the system will find** here **multiple ways to fix multiple problems**. I leave the details to the experts, but want to emphasize a few general points here.

First, **it is important to make the cause of reducing incarceration appealing to a wider swath of voters**. To this end, it is important to understand and emphasize the ways in which incarceration harms us all. Fiscal concerns, for example, affect all of us. If we are needlessly spending tax dollars incarcerating people who don't pose a threat, that's money that cannot be spent on schools, infrastructure, or job creation. Recidivism, too, affects all of us, as we are all potentially victims of crime. If incarceration itself breeds recidivism, we should be motivated to identify alternatives to incarceration that produce better results.

Second, **reform efforts must be bipartisan. Most state legislatures are in Republican control, so if Republicans are not on board, reform will be a nonstarter**. And even where Democrats are in the majority, **bipartisan support is critical to ensure that the issue not become an opportunity for demagoguery. As the latter part of the 20th century demonstrated, it is all too easy for politicians of both parties to encourage fear of crime and fan the flames of retribution. If reform efforts are bipartisan, there will be less temptation to engage in partisan finger-pointing** by both sides. If we are going to be truly smart on crime, we need to rise above partisan politics. But the good news, as noted above, is that this has already begun to happen.

Third, reformers need to focus on the states. This is not just because the federal government is unlikely to be a sympathetic forum in the short term, but because that's where the problem—and the solution—lies. As noted above, states are overwhelmingly the principal enforcers of criminal law, and as a result, house about 90% of the nation's prison population.39 We routinely talk about the per capita incarceration rate of the United States, but in fact each state has its own independent political and legal processes, and incarceration rates vary widely among the states. The only way to achieve systemic reform is to work at the state level.

Fourth, reformers should seek to engage faith-based communities in the effort. At the heart of any major reform effort must be the idea, common to virtually all religions, that human beings are capable of redemption, or as noted criminal defense attorney Bryan Stevenson often puts it, no one is as bad as the worst thing they've ever done.40 Many religious organizations are already involved in prison work. Religious groups can provide an opportunity to bridge partisan divides. Prison Fellowship, for example, is a conservative Christian organization devoted to helping inmates rehabilitate through religious involvement and support.41

Fifth, we must press for investment in disadvantaged communities, and in forms other than more police and prisons. As two recent award-winning books, Evicted and Ghettoside, demonstrate, those born into inner-city poverty face enormous obstacles, most of which are beyond the capacity of the criminal justice system to fix.42 The "Justice Reinvestment" program tries to address that fact, by seeking to reduce incarceration and direct the savings to programs in disadvantaged communities that promise to reduce crime without resorting to incarceration (such as better schools, after-care, and job training).43

Sixth, reform should focus on prosecutors' incentives. John Pfaff has shown that prosecutors' increased proclivity to charge arrestees with felonies is one of the principal drivers of the rise in imprisonment rates.44 Prosecutors should be encouraged to adopt a more nuanced approach, reserving the most serious charges for the most dangerous offenders, and generally favoring the least severe penalty absent specific reasons to seek a longer sentence. As attorney general, Eric Holder issued a memo to federal prosecutors to that effect with respect to drug crimes. But the vast majority of prosecutors are county officials, enforcing state law, so the U.S. attorney general's memos do not apply to them.

New Jersey has imposed charging guidelines on prosecutors.45 California used financial incentives, requiring counties to hold more convicted criminals in county jails rather than state prisons. The ACLU, where I am the national legal director, has conducted public education about prosecutors' responsibility for mass incarceration in connection with electoral campaigns for district attorney. And many advocates have sought to reduce the severity of statutory penalties, which has the effect of reducing the lopsided advantage prosecutors exercise over defendants that may coerce many to plead guilty.

Finally, and perhaps most importantly, reform efforts must not be limited to nonviolent drug and property crimes. To be sure, those are the easiest problems to tackle, and it may make sense to start there. But we cannot stop there, because the majority of those serving time are doing so for violent crimes. The solution is not to stop punishing violent crime, of course. But we might pursue social investments in high-crime communities to reduce the prevalence of violent crime in the first place. We might reduce the sentences handed out for violent crime; deterrence is more a function of the certainty of punishment than of its severity,46 so sentences can be reduced without undermining deterrence. Moreover, individuals tend to "age out" of criminal behavior as they get older,47 so we should consider reviewing and commuting the sentences of those serving long sentences, much as President Obama did with respect to prisoners serving long sentences for drug crimes.

At one extreme, sentences of life in prison without the possibility of parole grew by 22% from 2008 to 2012.48 One in nine prisoners, totaling about 160,000 prisoners, are serving a life sentence.49 Some 10,000 of those are for nonviolent offenses, and another 10,000 are serving life sentences for crimes committed as juveniles.50 In part because of the "aging out" phenomenon, those who do eventually obtain release from life sentences are less prone to recidivism.51

The essays collected in this report offer **many more concrete steps that state and local governments can take to reduce our collective reliance on mass incarceration**. Collectively, they demonstrate that **the problem is not that we don't know how to address this problem, but that until now, we have lacked the will to do so**. That the United States is the world leader in incarceration is a national tragedy. It's also unnecessary. All of the nations that we associate ourselves with have much lower per capita incarceration rates. They manage to keep crime rates low without locking up large swaths of their young and most disadvantaged people. We could do the same. This report provides a road map, offering multiple options to achieve a more sensible criminal justice system. **All that is needed is the will to change**. And in recent years, Americans of all political stripes, from red, blue, and purple states, from cities and rural areas, have begun to develop that will. My hope is that this report helps us realize this truly worthy bipartisan goal.

2AC – Reformism Works – Police Reform

Reform works --- the comparison between cities where policy changes were adopted and other areas demonstrates that targeted reforms make a material difference

Sinyangwe 20 – data scientist, policy analyst and co-founder of Campaign Zero

Samuel, 6/1. "Police Are Killing Fewer People In Big Cities, But More In Suburban And Rural America." https://fivethirtyeight.com/features/police-are-killing-fewer-people-in-big-cities-but-more-in-suburban-and-rural-america/?campaign_id=9&emc=edit_nn_20200605&instance_id=19111&nl=the-morning&regi_id=61244245&segment_id=30155&te=1&user_id=9f7c62b5e943b1845985ebb98a44733d

Six years after nationwide protests against police violence captured the country's attention, the recent killings of Breonna Taylor and George Floyd have put the issue of police violence back into national focus. Many are left asking what, if anything, has really changed?

In the absence of comprehensive federal data, **databases such as Fatal Encounters, Mapping Police Violence and The Washington Post's Fatal Force project have tracked** these **killings year after year**. And the data produced by these projects suggests that police, at least on a national level, are killing people as often now as they were before Michael Brown's death in Ferguson, Missouri, sparked widespread protests in 2014.

But these numbers don't tell the whole story. While **the** nationwide **total of people killed by police** nationwide has remained steady, the numbers **have dropped significantly in America's largest cities**, **likely due to reforms to use-of-force policies implemented in the wake of high-profile deaths**. Those decreases, however, have been offset by increases in police killings in more suburban and rural areas. It seems that **solutions that can reduce police killings exist**, in other words — **the issue may be whether an area has the political will to enact them**.

Indeed, **looking** only **at the 30 most populous cities in the country**,1 **you see a substantial decrease in the number of people killed by police in recent years**.

Police departments in America's 30 largest cities killed 30 percent fewer people in 2019 than in 2013, the year before the Ferguson protests began, according to the Mapping Police Violence database. Similarly, The Washington Post's database shows 17 percent fewer killings by these agencies in 2019 compared to 2015, the earliest year it tracks.

This data isn't perfect. The databases have slightly different methodologies for collecting and including police killings. And not everyone who's shot winds up dying, which means some people who are shot by police don't end up in one of these tracking projects. So to better test and understand the progress made in these big cities, I compiled an expanded database of all fatal and nonfatal police shootings by these departments, which expands our view of any changes in police behavior. Based on data published on police departments' websites and reported in local media databases, I found data covering police shootings in 2013-2019 for 23 of the 30 departments.2 An analysis of this data shows that police shootings in these departments dropped 37 percent from 2013 to 2019.

So why haven't these trends resulted in fewer people killed by police nationwide?

Examining the geography of police killings based on population density (a methodology developed by the real estate site Trulia, which was featured in a previous FiveThirtyEight article), police killings in suburban and rural areas appear to have increased during this time period — offsetting reductions in big cities.

This shift mirrors other trends within the criminal justice system. For example, since 2013, the number of people in jail per capita in urban areas has fallen by 22 percent, while rates have increased by 26 percent in rural areas, according to a study by the Vera Institute of Justice.

Similarly, **arrest rates have declined in major cities at a faster pace than arrest rates in suburban and rural areas. Fewer arrests means fewer police encounters that could escalate to deadly force** — police are substantially more likely to use force when making an arrest than in other interactions with the public — so **falling arrest numbers could have a marked effect on police killings**. Comparing police shootings data to the arrests data each department reported in the FBI Uniform Crime Report shows that departments that reported larger reductions in arrests from 2013-20183 also reported larger reductions in police shootings. Specifically, **cities that reduced police shootings also made 35 percent fewer arrests in 2018 than 2013,** compared to only a 4 percent drop in arrests in cities where police shootings increased or remained constant. These **declining arrest rates have been attributed, in part, to reforms**

reducing enforcement of low-level offenses such as marijuana possession, disorderly conduct, loitering and prostitution.

Other reforms may be making a difference as well. Police shootings dropped in Philadelphia, San Francisco and Baltimore after the cities began reforming their use-of-force policies to match recommendations from the Department of Justice. **In Chicago, police shootings dropped following protests over the shooting of Laquan McDonald and fell further after the city adopted more restrictive use-of-force policies and a new police accountability system. Denver also adopted more restrictive use-of-force policies in 2017, requiring de-escalation as an alternative to force. Los Angeles police shootings reportedly declined to the lowest number in 30 years in 2019, which officials attribute to new policies requiring officers to use de-escalation and alternatives to deadly force. Shootings dropped precipitously in Phoenix a year after public scrutiny led the department to evaluate its practices and implement changes to its use-of-force policy.** And, in response to local protests over the 2012 killing of James Harper, **Dallas implemented a range of policies to emphasize de-escalation, which local authorities credit with producing a sustained decline in police shootings.**

This suggests that **reforms may be working in the places that have implemented them**. Many of these reforms were initiated in response to protests and public outcry over high-profile deaths at the hands of police — most notably in Baltimore following the police killing of Freddie Gray, in San Francisco following the killing of Mario Woods, and in Chicago and Dallas following the deaths of Laquan McDonald and James Harper. This suggests that **protests and public pressure may have played an important role in producing policy changes that reduced police shootings**, at least in some cities.

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2AC – Abolitionism Fails – Utopian

Abolition is a utopian goal that doesn't meaningfully improve quality of life. Claims that "reform always fails" are rooted in a misconception of the past five decades' project of counter-reform.

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Roger, "How to End Mass Incarceration," https://www.jacobinmag.com/2017/08/mass-incarceration-prison-abolition-policing

Meanwhile, the Left is divided over how to imagine and advocate for our goals. **Prison abolitionism has gathered steam** among some activists, **although it shows little sign of winning over the wider public**. **With evangelical zeal, abolitionists insist that we must choose between abolition and reform, while discounting reform as a viable option**.

The history of the prison system, they say, is a history of reform — and look where that has gotten us.

I have tried to show here what's wrong with **this argument**. It is remarkably innocent of history. In fact, **the history of reform was interrupted some time around 1973 and what we have had instead** for the past five decades **is a history of counter-reform**. **The unconscionable conditions we see today are not inevitable byproducts of the prison**; **they are the results of the punitive turn**.

Abolitionists base their approach on an analogy between the prison system and chattel slavery. This is a strained analogy at best, and it only appears convincing in light of the oversized and unusually cruel American penal system. Slavery was an institution for the extraction of unfree labor over a person's (and his or her children's) lifetime; the prison is an institution that imposes unfreedom for a set period of time as punishment for serious infractions — historically with the express bargain that at least theoretically the lawbreaker was to be improved and reintegrated into society. The better analogy might be with other disciplinary institutions, which also to varying degrees curb freedoms in the name of personal and social good: the school, the hospital, the psychiatric institution.

Abolitionists usually respond to the obvious criticism — "but every country has prisons" — by citing Angela Davis's polemical work, Are Prisons Obsolete? Slavery, too, was once universal, they point out; it required the abolitionists' utopian vision to put an end to that unjust institution.

But this, too, misstates history. By the time American abolitionism got fully underway in the 1830s, much of Europe and parts of Latin American had already partially or wholly abolished slavery. The Haitian Revolution had dealt the institution a major blow, and slavery was imploding in parts of the Caribbean. A world without slavery was scarcely unthinkable. The same cannot be said of prisons: all signs suggest that the public — and not only in the United States — believes that prisons are legitimate.

Abolitionist arguments usually gesture at restorative justice, imagining that some sorts of community institutions will oversee non-penal forms of restitution. But here, we are very far out on a limb. Such models might more or less work in small-scale, face-to-face indigenous or religious communities. But, in modern cities, it is implausible to think that families, kinship networks, neighborhood organizations, and the like can adjudicate reconciliation in a fair, consistent manner.

In short, **abolitionism promises a heaven-on-earth that will never come to pass**. What we really need to do is fight for measures that have already proven **humane, effective, and consistent with social and criminal justice.**

Consider Finland. In the 1950s, it had high crime rates and a punitive penal system with high incarceration rates and terrible prison conditions. In these regards Finland then was much like the United States today. After decades of humanitarian and social-democratic reforms, the country now has less than one-tenth the rate of incarceration as the United States. Its prisons resemble dormitories with high-quality health care, counseling services, and educational opportunities. Not coincidentally, **its prison system does not breed anger, resentment, and recidivism**.

Finland's system aligns with that of other Nordic and Northern European nations, **all of whom remained continuously on the path of reform**. There, small-scale penal institutions are insulated from public opinion, with its periodic rages against lawbreakers, and prioritize genuine criminological expertise. **They have expressly rehabilitative aims**, **working** not only to punish but also **to repair the person and restore him to society**. Penalties top out at around twenty years, consistent with the finding that longer sentences have neither a rehabilitative nor a deterring effect. Many Scandinavian prisons have no walls and allow prisoners to leave during the day for jobs or shopping. Bedrooms have windows, not bars. Kitchens and common areas resemble Ikea displays.

Rather than call for the complete abolition of prisons — a policy unlikely to win broad public support — the American left should fight to introduce these conditions into our penal system. We should **strive not for pie-in-the-sky imaginings but** for **working models already achieved** in Scandinavian and other social democracies. We should demand dramatically better prison conditions, the release of nonviolent first offenders under other forms of supervision, discretionary parole

for violent offenders who provide evidence of rehabilitation, **decriminalization of simple drug possession**, and a broad revision of sentencing laws**. Such demands would attract support from a number of prominent social movements, creating a strong base from which we can begin to build a stronger, universal safety net**.

2AC – Abolitionism Fails – Counterproductive

Focus on abolitionism is counterproductive --- fails to achieve meaningful change and obscures larger forces at play

J. Harvie **Wilkinson 14**, judge serving on the United States Court of Appeals for the Fourth Circuit, former Associate professor at the University of Virginia School of Law, formerly had a position in the Civil Rights Division of the U.S. Department of Justice, June, "In Defense of American, Criminal Justice", Vanderbilt Law Review, http://www.vanderbiltlawreview.org/content/articles/2014/06/In-Defense-of-American-Criminal-Justice.pdf

One final count in the indictment remains. **Can we truly call a system democratic when a very large section of the citizenry—**African-Americans—**feel oppressed by or excluded from it? Is this a reason to discredit American criminal justice? The reaction to the verdict in the** George **Zimmerman trial** in July 2013—in parts angry, reflective, and resigned—**reminded us that many African-Americans feel as though the criminal justice system does not work for them.** Washington Post columnist Eugene Robinson argued, "Our society considers young black men to be dangerous, interchangeable, expendable, guilty until proven innocent." 362 Manhattan Institute scholar and New Republic contributor John McWhorter argued that, for African-Americans, "the poisonous relationship between young black men and law enforcement is the prime manifestation of racism in modern America." 363 And President Obama noted that "the African American community is looking at this issue through a set of experiences and history that doesn't go away," one wrapped up in "a history of racial disparities in the application of our criminal law." 364¶ **There is something to these criticisms. Americans have tried to address them over the years** by requiring objective, race-neutral justifications for government actions within the criminal justice system. **We have**, for example, **required that the jury venire be composed of a fair cross-section of the community, and in Batson v. Kentucky, the Supreme Court outlawed the use of peremptory challenges of jurors based upon their race. We can insist that objective criteria support stop and frisks. And we can focus on racial discrepancies in criminal-law enforcement—which may lead, for example, to four times as many marijuana arrests for black Americans as white Americans, despite similar rates of use**.367¶ But efforts such as these won't solve our problems altogether. This is because the story is more complicated than simply a criminal justice system that has failed to win the trust and confidence of many in the African-American community. The problem of racial equality and criminal justice is one of "painful complexity." 368 **We can acknowledge that we have not yet reached our goal of race neutrality in the dispensation of justice while acknowledging also that this alone does not account for the racial makeup of our prisons and halfway houses.** Then–New York Mayor Michael Bloomberg stated, "Ninety percent of all people killed in our city—and 90 percent of all those who commit the murders and other violent crimes—are black and Hispanic." 369 That is the great double-edged sword. It understandably leads to more stops and more arrests in high-crime areas. It understandably leads to more convictions of those of whatever race who commit the crimes. But it also leads to understandable anger and resentment on the part of disadvantaged young black males who want to make a decent go of American life, only to find themselves the object of recurrent false suspicion and repeated frisks.¶ **The solution to the problem of race and criminal justice is not a total overhaul of the system. That just renders the criminal justice system the scapegoat** for a much larger set of social problems. **The criminal justice system feels the effects of those problems; it does not cause them. Drug and gun crimes are not any less a blight upon society because of the racial makeup of the offenders**; indeed, as Robinson noted, **"[N]owhere will you find citizens more supportive of tough law-and-order policies than in poor, high-crime neighborhoods**." 370 **Our criminal justice system rightly aims to reduce dangerous behavior, and the beneficiaries of success in that endeavor may be those less advantaged citizens for whom basic safety will make for greater opportunity, not to mention better prospects for a brighter life.** ¶ **To cast ceaseless blame on America's criminal justice system is to ignore the enormity of the problems it has been asked to solve. It only diverts attention from the larger ways in which America has failed its underclass**. As Michael Gerson recently noted, "The problem of African American boys and young men is a complex mix of lingering racial prejudice, urban economic dislocation, collapsing family structure, failing schools and sick, atomized communities." 371 To chastise criminal justice when many levers of upward mobility are so compromised is an inversion of priorities. A complete "fix" of what the critics allege ails criminal justice will do nothing to restore shattered family structures, improve failing schools, impart necessary job skills, restore religious and community support groups, or provide meaningful alternatives in deprived neighborhoods to the gangs and drug rings that steer young people toward lifelong addictions and lives of crime. Society doesn't create opportunity by sacrificing the basic social need for order. To the contrary, **improvements in communities and institutions will only take root in the kind of** safe **environment that, at its best, a strong criminal justice system can provide. And when we provide opportunity, we in turn reduce the pressure on the criminal justice system and lessen the monumental task that lack of opportunity for the poorest Americans has left it to perform**.¶ How a society chooses to balance justice and safety with rights and liberties will invariably be the subject of vigorous debate. Our criminal justice system is no exception. Many good and intelligent people will disagree passionately about the contours of our criminal law. That is all to the good. **We should not grow complacent in the face of particular problems, both for the sake of individual defendants and for the rule of law itself.** ¶ But **instead of engaging in a constructive debate about the American approach to criminal justice, legal elites largely have condemned the entire enterprise. The system, we are told, is broken**, and only sweeping reforms imposed from on high can save it. **But the rhetoric that fuels the wholesale assault upon the system not only will fail to achieve any meaningful change, it obscures the many strengths of our institution**s. By focusing so much on what is wrong, we inevitably forget what is right.¶ The terms of engagement must change. My call is

not for scholars to whitewash our system's failings but to realize the picture is far more nuanced and complex than they have presented it. **Given the volume of matters it is asked to address and immensity of the task it is asked to perform, our criminal justice system functions rather well. It is both unrealistic and uncharitable to portray the system as an engine of oppression and injustice. Ironically, many of the features that critics claim operate one-sidedly against defendants often work to their benefit. The American criminal justice system strikes a valuable front-end note. It strikes difficult balances between protecting the innocent and convicting the guilty, between procedural protections and administrative realities. It rightly allows these contestable choices to be made democratically, but only to a point. Such qualities are hardly the hallmarks of a failed system**.¶ **Indeed, those who have been among the most persistent critics of the criminal justice system were among the first to call for its utilization in the aftermath of the September 11th** terrorist attacks.372 And **since that time, the refrain has often been that acts of terrorism are crimes that should be dealt with in the customary way through enforcement of federal criminal law.**373 I recognize that this plea for criminal trials does not constitute an acknowledgment of the system's perfection, but **it does indicate that the system imparts a legitimacy** for the deprivation of liberty that other routes of trying suspected terrorists may lack. This is no place to explore the complicated question of whether alleged terrorism is more aptly regarded as a criminal offense or as an act of war. Separation of powers concerns and the need for action to prevent mass casualties make the question an exceptionally complicated one. **I note only the irony that many who reject the considerable virtues of the American criminal justice system are at least prepared to look upon it as a preferred solution when the values of liberty and security are in epochal tension.**¶ To be sure, **there is plenty of room for reform, and all parts of the legal profession should head for the front lines. But let us not forget our system's virtues as we seek to correct its vices. Otherwise, any legitimate concerns will be lost in the din of diatribe.** We have gone too long without a degree of balance or moderation in our assessment of the American criminal justice system. It is time we gave our institutions a fair trial.

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2AC – Abolitionism Fails – Public Support

Abolitionism makes the ideal the enemy of the good --- reduces public support

Keller 19 – the founding editor of the Marshall Project, a nonprofit news organization focused on criminal justice. Prior to that he was a correspondent, editor and op-ed columnist for the New York Times

Bill, 6/12. "Is 'Abolish Prisons' the Next Frontier in Criminal Justice?" https://www.bloomberg.com/opinion/articles/2019-06-12/-abolish-prisons-the-next-frontier-in-criminal-justice-reform

To reformists who work in or with the system, the **abolitionists can be** exasperating — **a case of the ideal being the enemy of the good**. **DeAnna Hoskins, president of JustLeadershipUSA, which mobilizes former prisoners to press for reform, points to the campaign that persuaded New York to close the jail complex on Rikers** Island. **The plan depends on building smaller, more humane jails in four boroughs to house a much-reduced population of prisoners**. Along with the inevitable resistance of prospective new neighbors, **the city now faces vocal opposition from abolitionists who object to any new jails on principle**.

"**That's just not realistic**," **Hoskins said. "We're not going to close Rikers on Monday and not have any type of detainment**." She added, "**When we talk about abolishing prisons and abolishing law enforcement, it's actually reducing the power and the reach of those entities**."

One of the liveliest abolition debates concerns parole and probation, which get less attention than incarceration but regulate the lives of 4.5 million Americans, twice as many as are confined in prisons and jails. Because a parolee can be returned to prison for a technical infraction such as a missed appointment or a trace of drugs in a urine sample, the parole-to-prison pipeline is a major feeder of mass incarceration.

Vincent Schiraldi, the co-director of the Columbia University Justice Lab, ran the New York City probation department when Michael Bloomberg, the founder and majority owner of Bloomberg LP, was mayor. Schiraldi estimates that the borough of Manhattan alone spends roughly $16 million a year for supervision of ex-offenders.

"If probation didn't exist, who would spend that $16 million inventing probation?" he asked. "Who would spend that $16 million to hire a bunch of people — with guns and badges and civil service protections — to drive in every day from Queens and Long Island to help those people, who mostly live in Harlem, learn how to live in Harlem?"

Experts have proposed a range of replacements for the supervisory bureaucracy. One option, already practiced in New York City for parolees regarded as less risky, is to replace parole officers with ATM-like kiosks that scan fingerprints. Check in once a month, answer a few questions on a computer screen and get on with your life. Schiraldi's version of abolition favors a more human approach: outsourcing supervision to organizations that would be paid to help the formerly incarcerated navigate the outside world.

Years ago, when he was running Pennsylvania's corrections department, the professor Horn offered an even more radical suggestion: give parolees vouchers they can use to buy education, housing, drug treatment or other services and let them decide what help they need to reenter society. These are services the current bureaucracy performs poorly, if at all. Horn concedes that to prepare prisoners for such an independent life would require transforming prisons into prep schools, devoted to graduating people with marketable skills and control of their demons, especially addiction.

Although polling is scarce, it's a fair bet that "abolition" is not a voter magnet. The electorate may want the system to be less cruel and more rehabilitative, but voters also want a professional answering that 911 call when their kid gets shot — and not a member of neighborhood watch. **The bipartisan coalition that has found common ground on criminal justice would be severely strained by such a lurch to the left. The conservative attack ads write themselves**.

2AC – Abolitionism Fails – Pragmatism Best

The absence of pragmatic proposals that can actually be implemented dooms the alternative to failure --- turns their impacts

Louis Michael **Seidman 11**, Professor of Constitutional Law at Georgetown, Hyper-Incarceration and Strategies of Disruption: Is There a Way Out, moritzlaw.osu.edu/osjcl/Articles/Volume9_1/Seidman.pdf

Understanding the problems with ameliorative approaches naturally leads us to ask whether we can do better. Suppose we forsake the goal of modest **piecemeal reform and aim instead at radical transformation**. Strategies of this sort rest on the supposed fragile and vulnerable character of the ideology that justifies the system. On this view, it may seem that this system is impregnable, but that is only an illusion. The careful and relentless exposure of the hypocrisy, brutality, and injustice at the base of the system can bring it down.¶ These strategies are closely allied to important strands of the critical legal studies movement. Some people allied with the movement ("crits") believed that the internal contradictions of liberalism could be exploited to such an extent that the system could be revealed for what it is—an empty shell that supports power and privilege only so long as we allow it to do so.54¶ Projects along these lines would, for example, explore the contradictions in mainstream accounts of blameworthiness. Moral condemnation, on this view, amounts to no more than an ideological cover for the exercise of power by some people over others.55 It does not follow, though, that the economic model can simply replace the moral model. It, too, rests on unchallenged assumptions about what, precisely, counts as a "cost" and a "benefit"—about who is benefited and on whom the costs are imposed.56¶ Once we clear away the ideological detritus, we are left with a simple question: Do we really want to live in a decent society? Critical Legal Studies has many strands and many of its adherents had complicated positions. Still, at least in their optimistic moods, many crits thought that, with the freedom provided by deconstruction of constraining structures of thought, people would make the right decision.57¶ I must confess to more than a little attraction to this way of thinking. A fair amount of my own work has been influenced by it. **As a serious strategy for producing change**, though, **it leaves much to be desired**. **One problem with focusing on micro-processes is that they may be more deeply embedded than some crits supposed.** ¶ It is true that as a logical or intellectual matter the justificatory standards that shield the criminal justice system from criticism are quite vulnerable. No one has provided a good answer to the arguments deconstructing free will on the one hand and instrumental rationality on the other, at least as they apply to our practices of criminal punishment. **It is** nonetheless simply **a mistake to suppose that these structures of thought will collapse once they are shown to be incoherent. They reflect ways of living and perceiving, rather than merely intellectual arguments.** It will not do to try to dismantle them so as to damage the system they protect; they are impervious to attack precisely because they protect that system**.¶ Nor is it obvious that if the structures were somehow dismantled, their collapse would produce a more humane system**. **The structures serve functions that would have to be served by something else if they disappeared**. On the one hand, belief in personal responsibility and the possibility of moral choice is, itself, a determinant of behavior. Without it, there might well be more crime. On the other hand, **cost-benefit analysis is a check on** wanton and **purposeless brutality. Without it, there might well be more punishment.** ¶As Meir Dan-Cohen pointed out years ago, we would be well served if we could maintain "acoustic separation" between the mainstream and target communities.58 We could then inculcate personal responsibility in the target community, thereby reducing crime, while convincing the mainstream community that members of the target community have very constricted choices, thereby reducing punishment. We could convince the target community that it is instrumentally rational to obey the law because of the strong possibility of punishment, while convincing the mainstream community of the instrumental rationality of reducing punishment levels. But nobody has a clue how to maintain such separation or, indeed, how to induce either set of beliefs in the first place. In any event, advocates of radical transformation want to dismantle these false categories altogether, rather than maintaining them for separate communities. ¶ Moreover, **even if a frontal assault on justificatory rationales were a more promising strategy, we would still need to give it some specific programmatic content. Ameliorative strategies have their limits** and problems, **but at least they consist of real proposals that** are being, or **might actually be, implemented**. **What kind of program does radical deconstruction entail**? ¶ **It is not only naïve but also inexcusably solipsistic to suppose that writing law review articles is such a program**. Perhaps **localized subversion** holds out greater promise,59 but **there is a** remaining **vagueness about what this subversion would consist of.** In any event, **as invigorating** and liberating as these **individual acts of defiance may be, the chance of their sparking** a global **change seems** quite **remote**. ¶ **A program of large-scale organization of target communities and building bridges based on racial solidarity between those communities and mainstream African Americans seems more promising.** But there is no need to rehearse yet again the difficulties of mobilizing dispirited and isolated minority communities, the powerful reasons middle class African Americans have for distancing themselves from those communities, or the panicked opposition among the privileged that such organization produces. Moreover, even in this context, the problem of programmatic content remains. **If organizers offer no practical programs at all, they appear unreasonable and utopian**. If they offer such programs, they fall back into the amelioration trap. ¶ In any event, **as a comfortable, wealthy, white academic, I am afraid that I am not about to start knocking on doors in the inner city. As a personal matter, I nonetheless remain committed to the practice of dismantling justificatory categories, but people like me need to give up on the absurd claim that doing so promises immediate social transformation**. **The categories deserve attack because they are false and constricting.** The people who argue for them deserve censure because they should know better and because their arguments provide a cover for an unjust status quo. **Acts of rebellion**, whether in law reviews or as **localized subversion**, are good in themselves. But **no one should suppose that**

these acts will ultimately **solve our problems**. And, **in the meantime, the** waste and **suffering from hyper-incarceration goes on unabated**