ENVISIONING ABOLITION DEMOCRACY

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What is, so to speak, the object of abolition?

Not so much the abolition of prisons but the abolition of a society that could have prisons, that could have slavery, that could have the wage, and therefore not abolition as the elimination of anything but abolition as the founding of a new society.

— Fred Moten & Stefano Harney, The University and the Undercommons

INTRODUCTION

For decades, police in Chicago chained people in their custody to the wall in dark, windowless rooms and subjected their captives to beatings, electric shocks, anal rape, and racial abuse. In July 2016, members of the #LetUsBreathe Collective, created in the aftermath of numerous police killings in Chicago and elsewhere, occupied vacant lots adjacent to the Chicago Police Department’s Homan Square facility — one of the locations where such abuse occurred. The Collective sought justice, not through recourse to the criminal courts or civil litigation, but instead by reconceptualizing justice in connection with efforts to end reliance on
imprisonment and policing.\(^4\) The organizers redesignated Homan Square — which shares a name with the Chicago slumlord Samuel Homan\(^5\) — “Freedom Square.”\(^6\) The organizers’ idea was to begin to realize on a small scale what the scholar and activist Professor Angela Davis, echoing the words of W.E.B. Du Bois,\(^7\) has called “abolition democracy.”\(^8\)

Organizers in Freedom Square and across the city amplified the penal-abolitionist platforms of the Movement for Black Lives and Black Youth Project 100 (BYP100),\(^9\) demanding that the state divest from policing and imprisonment and invest in new forms of more equitable and just coexistence.\(^10\) Freedom Square was to be an experiment in which participants would “imagine a world without police,”\(^11\) a world where the 1.4 billion-dollar Chicago police budget\(^12\) would be directed away from detaining human beings and toward a democratic revitalization of public education, employment, restorative justice, mental health, housing, addiction treatment, arts, and nutrition.\(^13\) Before they disbanded, those engaged in the Freedom Square experiment provided meals to hundreds of people each day and offered educational workshops, clothing, books, and play spaces for neighborhood children.\(^14\)

Similar efforts took shape beyond Chicago, from New York City, where organizers launched a protest called “Abolition Square” that same summer,\(^15\) to Los Angeles, where Black Lives Matter activists occupied

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\(^5\) See Taylor, supra note 2; see also JOE ALLEN, PEOPLE WASN’T MADE TO BURN 148, 162, 168 (2011) (describing Homan’s controversial and exploitative practices as a Chicago landlord).


\(^8\) ANGELA Y. DAVIS, ABOLITION DEMOCRACY 95–96 (2005); see also ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 105–15 (2003) (discussing an array of abolitionist alternatives to existing systems of policing and incarceration).


\(^10\) See Dukmasova, supra note 6.


\(^12\) Chi., Ill., Annual Appropriation Ordinance for the Year 2019, at 121 (Nov. 14, 2018).

\(^13\) Clifton, supra note 3.

\(^14\) See id.

an area near police headquarters and issued calls to “decolonize City Hall.” Across the country, contemporary movements against the violence of policing have taken up the cause of penal abolition, denouncing caging and minutely controlling human beings while re-envisioning democracy in genuinely liberatory terms. Through these abolitionist efforts — from those of organizers in Chicago confronting the decades of torture perpetrated by police, to those of people struggling together to address the aftermath of sexual assault and homicide, to those of community members organizing to ensure greater economic well-being and security — a new conception of justice has begun to emerge.

Justice in abolitionist terms involves at once exposing the violence, hypocrisy, and dissembling entrenched in existing legal practices, while attempting to achieve peace, make amends, and distribute resources more equitably. Justice for abolitionists is an integrated endeavor to prevent harm, intervene in harm, obtain reparations, and transform the conditions in which we live. This conception of justice works, for example, to eliminate the criminalization of poverty and survival while addressing the criminality of a global social order in which the eight wealthiest men own “the same amount of wealth as” fifty percent of all people on earth. To approach justice in these terms requires what Professor Lisa Guenther, an abolitionist philosopher, describes as “collective resistance and revolution at the scene of ‘crime’ itself.” Such resistance begins by unmasking the illegitimacy of much of what is subject to criminalization — for instance, the prosecution of immigration offenses, which compose at present more than half of the U.S. federal criminal docket. Resistance at the scene of crime itself also entails


working to eliminate existing punitive institutions while identifying meaningful forms of accountability and prevention to respond to actual violence and wrongdoing. Finally, such resistance involves addressing how mainstream economic practices and arrangements perpetrate violent theft every day in ways that can be thoroughly redressed only by democratizing political and economic institutions so as to prevent and respond to the highly unequal distribution of resources and life chances.

Whereas reformist efforts aim to redress extreme abuse or dysfunction in the criminal process without further destabilizing existing legal and social systems — often by trading reduced severity for certain “non-violent offenders” in exchange for increased punitiveness toward others — abolitionist measures recognize justice as attainable only through a more thorough transformation of our political, social, and economic lives.\(^{21}\) To realize justice in abolitionist terms thus entails a holistic engagement with the structural conditions that give rise to suffering, as well as the interpersonal dynamics involved in violence.

This Essay argues that this abolitionist conception of justice presents a formidable challenge to existing ideas of legal justice. Whereas conventional accounts of legal justice emphasize the administration of justice through individualized adjudication and corresponding punishment or remuneration (most often in idealized terms starkly at odds with actual legal processes), abolitionist justice offers a more compelling and material effort to realize justice — one where punishment is abandoned in favor of accountability and repair, and where discriminatory criminal law enforcement is replaced with practices addressing the systemic bases of inequality, poverty, and violence.

Much of this Essay will focus on abolitionist projects unfolding in Chicago, in part because Chicago is a place where abolitionist organizing has flourished over the last decade, bringing together interracial coalitions working for immigration justice and racial inclusion, reparations, participatory budgeting, and social and economic transformation.

But the sustained focus on a single place, with its particular history and present, is also an important dimension of the conception of justice embraced by contemporary abolitionists — namely, abolitionists are committed to justice grounded in experience rather than proceeding primarily from idealized and abstract premises with little attention to how those ideals are translated into actual practices.

The remainder of this Essay proceeds as follows: Part I further explores the project of abolition democracy. Part II focuses on how abolition democracy constitutes an alternative conception of justice, one that is taking shape in political mobilizations that aim to prefigure a fairer and more peaceful world without relying on prisons and police. Part III argues that this emergent conception of justice is more meaningful and transformative than existing ideals of legal justice, which all too often operate at such a degree of remove from the realities of legal processes that they lose their connection to the aim of justice altogether. By contrast, those committed to abolition democracy attend closely to and thereby begin to approach what justice actually demands.

I. ON ABOLITION DEMOCRACY

Abolitionist organizers understand their work to be related to the historical struggles against slavery and its afterlives, against imperialism and its legacies in more recent practices of racial capitalism, and against immigration enforcement and border fortification. As these historical movements sought to both eliminate oppressive institutions and create new forms of more just coexistence, so too do contemporary abolitionist movements. Contemporary movements for penal abolition — building on a longstanding body of abolitionist writing and theory — have embraced both a negative or deconstructive project of dismantling penal systems and a positive project of world-building. According to abolitionist thinker, writer, and organizer Mariame Kaba: “Prison abolition is two things: It’s the complete and utter dismantling of prisons, policing, and surveillance as they currently exist within our culture. And it’s also the building up of new ways of . . . relating with each other.” As Davis explains:

[T]he 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. . . . [A] host of democratic institutions are

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22 See, e.g., DAVIS, ABOLITION DEMOCRACY, supra note 8, at 95–96; DU BOIS, supra note 7; Amna A. Akbar, Toward a Radical Imagination of Law, 93 N.Y.U. L. REV. 405, 460–61 (2018).
needed to fully achieve abolition — thus abolition democracy. . . . 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 problems that set people on the track to prison, thereby helping to render the prison obsolete.24

Along these lines, Rachel Herzing, cofounder of the prison-abolitionist organization Critical Resistance, conceives of abolition as a "set of political responsibilities" to organize new forms of collective security that do not rely on police forces or incarceration.25 In Unapologetic: A Black, Queer, and Feminist Mandate for Radical Movements, Charlene Carruthers similarly defines abolition as "a long-term political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment."26

But abolition democracy does not entail only alternative forms of prevention and redress of crime. Instead, it calls for a constellation of democratic institutions and practices to displace policing and imprisonment while working to realize more equitable and fair conditions of collective life.27 The object of abolition, according to Professors Fred Moten and Stefano Harney in The University and the Undercommons, excerpted above, is "[n]ot so much the abolition of prisons but the abolition of a society that could have prisons, that could have slavery, that could have the wage, and therefore not abolition as the elimination of anything but abolition as the founding of a new society."28

What would a society committed to abolition democracy consist of? Contemporary abolitionists recognize current democracies, and particularly that of the United States, as a farce, characterized by hollow pretensions of inclusion in the face of a collective failure to reckon honestly with histories of slavery, genocide of indigenous peoples, lynching, segregation, exploitation of the working poor, gendered violence, and the persistent inequalities those practices have wrought.29 "When equality

24 DAVIS, ABOLITION DEMOCRACY, supra note 8 (citing DU BOIS, supra note 7).
27 See DAVIS, ABOLITION DEMOCRACY, supra note 8, at 96.
28 Moten & Harney, supra note 1. While these understandings of abolition convey broad principles embraced by many abolitionists, it is also important to note, as Professor Dylan Rodríguez does, that abolition may mean different things in different contexts. See Dylan Rodriguez, Abolition as Praxis of Human Being: A Foreword, in Developments in the Law — Prison Abolition, 132 HARV. L. REV. 1575, 1578 (2019) ("[A]bolition is a practice, a method, an analytic, 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 . . . . ").
29 See, e.g., DAVIS, ABOLITION DEMOCRACY, supra note 8, at 84–85, 97–102.
is measured in terms of access to repressive institutions that remain un-
changed or even become strengthened by the admission of those who
were previously barred,” Davis writes, “it seems to me that we need to
insist on different criteria for democracy: substantive as well as formal
rights, the right to be free of violence, the right to employment, housing,
healthcare, and quality education.”30 Abolitionists contend that existing
legal regimes perpetuate violence rather than deliver justice and,
through their accompanying ideologies, deflect attention from what jus-
tice in a democratic society is or could be.31

Abolition democracy is committed, by contrast, to a conception of
justice that not only attends carefully to the actual outcomes of processes
that claim to administer justice, but also seeks to distribute resources and
opportunities more equitably. The question of how precisely to
achieve more equitable distribution, however, necessarily remains only
partially described in existing abolitionist accounts. This is so, according
to contemporary abolitionists, because our present imaginative and
institutional resources are constrained by the parameters of our highly
unequal world.32 For Davis, abolition democracy would entail realizing
some form of democratic-socialist governance with rights to employ-
ment, housing, healthcare, and education,33 whereas for Moten and
Harney, abolition entails a resistance to contemporary U.S.-style capital-
ism that bears some resemblance to communism, or that at least calls
for a politics and economy that are cooperative, solidaristic, and egal-
itarian.34 Likewise, the Movement for Black Lives defines its abolitionist
project as organized “against the ravages of global capitalism and anti-
Black racism, human-made climate change, war, and exploitation” and
for “government repair [of] the harms that have been done” through
“targeted long-term investments.”35 Although there are differences
between contemporary abolitionists’ visions of abolition democracy,
particularly its economic dimensions, contemporary abolitionists hold in
common a commitment to transforming criminal legal processes in con-
nection with expanding equitable social-democratic forms of collective
governance.

Realizing abolition democracy, then, requires that we develop new
ways of preventing and redressing violence while more expansively en-
visioning justice anew. Justice for abolitionists must entail a democrati-
cally informed effort to target the causes of interpersonal harm while

30 Id. at 103.
31 See, e.g., id. at 99 (“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 . . . .”), see also id. at 116–17
(cautioning against looking to the law as a means of social progress).
32 For an explanation of this dynamic, see Allegra M. McLeod, Confronting Criminal Law’s
33 See DAVIS, ABOLITION DEMOCRACY, supra note 8, at 103.
34 Moten & Harney, supra note 1, at 114–15.
35 MOVEMENT FOR BLACK LIVES, supra note 9.
ensuring peace and well-being, as well as the displacement of policing and imprisonment in connection with efforts to realize greater social and economic equality.

II. PREFIGURING JUSTICE, PREFIGURING ABOLITION

A groundswell of abolitionist conviction swept youth of color organizing in Chicago when, in the aftermath of a series of police killings of young people, efforts to obtain civil or criminal redress persistently came up short. In 2012, an off-duty Chicago police officer shot a twenty-two-year-old woman named Rekia Boyd in the back of her head while the officer, Dante Servin, was seated in his car. Before he killed her, Servin had accused Boyd and her friends of making too much noise, and he murdered her in the course of the ensuing argument. Then, in 2014, police arrested twenty-three-year-old Dominique Franklin for stealing a bottle of vodka from a Walgreens. Officers handcuffed him. Next, the police tased Franklin while he was handcuffed, sending electric shocks through the young man’s body and causing him to fall and hit his head on a light pole. Franklin died as a result of his injuries.

Also in 2014, police officer Jason Van Dyke shot to death the teenager Laquan McDonald, firing repeatedly at close range into McDonald’s head and body. McDonald, who had been walking down a roadway at night when police began to follow him, was only in possession of a folded pocket knife and appeared to be veering away from the officer at the time of the shooting. As video footage of the events plainly revealed, other officers were on the scene and the situation was under control when Van Dyke jumped from his car and murdered McDonald, shooting him sixteen times. Chicago officials, including the state’s attorney and the mayor, sought to hide the footage of McDonald’s murder for well over a year until they were forced to disclose the video under mounting pressure. Although settlements were made with the murdered young people’s families, the Chicago Police Department took no

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36 Ben Austen, Chicago After Laquan McDonald, N.Y. TIMES MAG. (Apr. 20, 2016), https://nyti.ms/1SuTgR [https://perma.cc/2TM3-665Z].
37 Id.
39 Id.
40 Id.
41 Id.
42 Austen, supra note 36.
44 Austen, supra note 36.
action against the officers who killed Boyd and Franklin — and the Department acted on the McDonald case only when forced to do so.\textsuperscript{46} Across the country, as a growing number of police killings received public scrutiny, very few of them led to criminal charges, and even where perpetrators were convicted, the sentences always seemed incommensurate with the wrongs that had been done.\textsuperscript{47} Upon bearing witness to this inaction, the perceived insufficiency of civil settlements and criminal verdicts, and the corruption plaguing law enforcement agencies and urban political establishments alike, young organizers declared the “whole system . . . guilty as hell.”\textsuperscript{48} These organizers committed themselves to seeking redress for their grievances beyond the usual criminal and civil legal frameworks.

Rather than simply demand the termination of these murderous officers or that charges be brought against them, organizers sought to connect their outrage at these killings to the decades of torture perpetrated by Chicago police, and to the deeper conditions of social inequality, corruption, and injustice that have long characterized the distribution of life chances in Chicago and around the country. Malcolm London, a Chicago-based organizer with BYP\textsubscript{100} and a friend of Dominique Franklin, described this disenchantment with existing legal frameworks in these terms: “Today, what is hopeful is that more and more people are starting to see that the prosecution of one officer or the indictment of one officer or winning a civil case by a couple folks is not the kind of justice that we want to see.”\textsuperscript{49} Veronica Morris-Moore, another Chicago-based organizer, likewise concluded: “The system as it exists is never going to give justice to young people like Laquan McDonald.”\textsuperscript{50} According to Page May, one of the founders of Assata’s Daughters, a Chicago-based intergenerational organization of radical Black Women associated with Black Lives Matter: “We are abolitionist in our politics . . . . We are fighting for a world in which the police are obsolete.”\textsuperscript{51}

The question, then, became what justice for abolitionists would consist of instead. Freedom Square and other abolitionist projects — especially the Movement for Black Lives’ Vision for Black Lives\textsuperscript{52} and

\begin{itemize}
  \item \textsuperscript{46} Id.
  \item \textsuperscript{47} See Madison Park, Police Shootings: Trials, Convictions Are Rare for Officers, CNN (Oct. 3, 2018, 4:41 PM), https://www.cnn.com/2017/05/18/us/police-involved-shooting-cases/index.html [https://perma.cc/5DJM-DC52].
  \item \textsuperscript{49} Dukmasova, supra note 38.
  \item \textsuperscript{50} Austen, supra note 36.
  \item \textsuperscript{51} Id.
\end{itemize}
Black Youth Project 100’s *Agenda to Build Black Futures*\(^{53}\) — took shape in part as ways to begin to address that question. Both the *Vision for Black Lives* and the *Agenda to Build Black Futures* call for justice in the aftermath of police shootings in connection with a movement to divest from the criminal arm of the state and invest in other social projects, including reparations and democratic institutions.\(^{54}\) The *Vision for Black Lives*, authored by “a collective of more than 50 organizations representing thousands of Black people from across the country,” offers an analysis of the relationship between criminal, racial, and economic justice.\(^{55}\) The *Vision* demands “an end to the wars against Black people,” and calls for “a defunding of the systems and institutions that criminalize and cage us.”\(^{56}\) While articulating an account “of a fundamentally different world,” the *Vision* recognizes as well the need for “policies that address the immediate suffering of Black people” and “current material conditions” so as to “better equip us to win the world we demand and deserve.”\(^{57}\) To that end, the *Vision* explores justice both in terms of far-reaching aspirational goals for transformation and more immediately achievable policy objectives.\(^{58}\)

The *Agenda to Build Black Futures* likewise ties the pursuit of justice in the “wake of scores of shooting deaths” to the need to address “devastating unemployment rates” and unmet calls for racial and economic justice.\(^{59}\) The pursuit of justice following police violence and in the face of economic disenfranchisement is understood throughout these writings as fundamentally entwined with realizing democratic aspirations for collective life. As Janaé Bonsu of BYP100 explained upon the release of the *Agenda*: “Until our economic needs are met so that we can participate to the fullest extent of our social and political lives, America cannot truly be considered a democratic nation.”\(^{60}\)

In her book *Undoing Border Imperialism*, the writer, organizer, and abolitionist Harsha Walia describes the potential of local social-change

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\(^{53}\) See BLACK YOUTH PROJECT 100, supra note 9.

\(^{54}\) See MOVEMENT FOR BLACK LIVES, supra note 9 (responding to “the sustained and increasingly visible violence against Black communities” with calls for transformative political, social, and economic policies); BLACK YOUTH PROJECT 100, supra note 9 (outlining an agenda for “[d]ivestment from local, state, and federal policing and prisons and invest[ment] . . . in Black futures” in “the wake of scores of shooting deaths . . . and increasingly unsustainable communities”).

\(^{55}\) MOVEMENT FOR BLACK LIVES, supra note 9.

\(^{56}\) Id.

\(^{57}\) Id.

\(^{58}\) The Movement advocates for a transformative approach to reform. See Butts & Akbar, supra note 21, at 13 (“Contrary to what is sometimes suggested, the Movement does not reject reform: it rejects those surface-level reforms that don’t challenge the system of racial capitalism and white hegemony in which criminal injustice thrives.”); Akbar, supra note 22, at 426 (describing the Movement’s vision as a “long-term aspiration . . . grounded in . . . practical need”).

\(^{59}\) BLACK YOUTH PROJECT 100, supra note 9.

\(^{60}\) Id.
projects in terms of *prefiguration* — as ways to prefigure and thereby begin to realize incrementally the sort of changed world we would want to live in. For Walia, fundamental change requires more than a “struggle against power and control”:

> [It is also the imagining and generating of alternative institutions and relations . . . resistance that is responsive to dismantling current systems of colonial empire and systemic hierarchies, while also prefiguring societies based on equity, mutual aid, and self-determination . . . a fundamental reorientation of ourselves, our movements, and our communities to think and act with intentionality, creativity, militancy, humility, and above all, a deep sense of responsibility and reciprocity.]

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In Chicago and elsewhere, as organizers, community members, survivors, activist lawyers, and others worked to begin to realize the ambitions reflected in the *Vision* and *Agenda*, they approached their quest for justice as a prefigurative one. Refusing to settle for preexisting measures, groups including the Chicago Torture Justice Memorials and Black People Against Police Torture, the Movement for Black Lives, Assata’s Daughters, BYP100, Mijente, and We Charge Genocide have all pursued justice in these expansive but also immediately practicable and largely local terms. The sections that follow describe abolitionist efforts to respond to state-perpetrated violence, address interpersonal harm, and build local power to pursue economic justice. In each case, abolitionists have sought justice not only by attending to the needs of those harmed outside of traditional legal contexts, but also by transforming the power structures and immediate social relations that breed harm in the first instance. These accounts demonstrate that justice for abolitionists is grounded in lived experience and positive transformation, concepts that will be developed in more depth in the pages that follow.

### A. Justice After Violence

A challenge often posed in response to calls for abolition is whether or how it is possible to react to the most awful forms of violence in a manner consistent with an abolitionist ethic. By pursuing how abolitionists imagine and work toward justice without prisons and police, a way of thinking through this problem comes into sharper focus.

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Perhaps the most notorious Chicago officer guilty of torture is the late Jon Burge, a corrupt, vicious, and brutal white police commander who presided over a regime of terror from the 1970s until the 1990s.64 People under Burge’s control were suffocated with their heads held in plastic bags, forced to submit false confessions, and tortured with electric shocks applied to their genitals from a telephone field-generator box in a manner that Burge learned during his military service in Vietnam.65 Many of those subject to these forms of torture ultimately provided coerced confessions; a significant number were sentenced to death.66

Efforts to seek justice in the aftermath of the torture perpetrated by Burge and his deputies came to include not only or primarily a quest for punishment for Burge’s wrongs, but also a wide-ranging reckoning that offers a window into abolitionists’ ongoing work to envision justice anew. In fact, more conventional forms of legal justice were largely unattainable for the Chicago police torture; by the time the active campaign on the part of city officials to deny, destroy, and conceal evidence of Burge’s wrongdoing ended, the statute of limitations on most of his crimes had expired,67 and civil remedies alone seemed inadequate for the scope of the harms perpetrated. In 2011, Burge was sentenced to four and a half years in federal prison following a conviction for perjury and obstruction of justice for lying about his wrongdoing.68 Burge served three and a half years of that sentence.69 Former Illinois Governor George Ryan pardoned or commuted the sentences of several of the many men tortured by Burge and his deputies who were on Illinois’s death row or serving long sentences, and several of those people who had been incarcerated for decades settled lawsuits with the city for substantial sums of money.70 But these outcomes registered for all involved as insufficient, not evidence of justice achieved.

Consequently, as the movement to seek far-reaching justice for the Chicago police torture took shape, survivors and other organizers first created a public record of the scope of the violence, and, before taking further action, began to reflect fully and collectively on how it might be

64 See Natalie Y. Moore, Payback, MARSHALL PROJECT (Oct. 30, 2018, 6:00 AM), https://www.themarshallproject.org/2018/10/30/payback [https://perma.cc/2EH7-TGZJ].
66 See Moore, supra note 64 (describing at least ten instances in which men were “sentenced to death row because of confessions Burge and his men tortured out of them”).
69 Id.
70 Id.
possible to come to terms with what had occurred. Through their work to bring the Chicago police torture to light, survivors and organizers compiled extensive evidence.71 Survivors’ public testimony of torture offered an overwhelming record of the harms perpetrated by Chicago police.72 Survivors, organizers, and lawyers ultimately submitted the Chicago torture cases to international bodies, including the Inter-American Commission for Human Rights and the United Nations Committee Against Torture.73 Additionally, a coalition of youth organizers associated with Black Lives Matter formed a group, We Charge Genocide, which presented evidence to the United Nations on the more recent record of violence perpetrated by Chicago police and in jails and prisons around the state.74 This comprehensive accounting, outside the confines imposed by restrictive rules of evidence in domestic criminal and civil courts, constituted an important initial part of the process of contemplating what justice for the Chicago police torture should entail. We Charge Genocide demanded a different conceptualization of the injustice of police conduct and possible redress, framing the violations as human rights rather than civil rights violations, and appealing to international bodies in part to underscore U.S. state failure and abandonment.75 As Professor Dylan Rodríguez argues:

[We Charge Genocide introduced a] critical analytic [that] requires a significant departure from liberal approaches to police reform that tend to reproduce episodic narrations of police brutality that fail to conceptualize gratuitous, sometimes spectacular performances of gendered racist policing as part of a general historical continuity of power relations that structure U.S. state institutions and the social-economic formations within which they perform their sovereignty.76

Movement participants — including survivors, activists, educators, artists, and lawyers — also formed the Chicago Torture Justice Memorials (CTJM) project, soliciting proposals from the broader community as to how to memorialize the Chicago police torture and continue to work toward justice.77

71 See, e.g., WE CHARGE GENOCIDE, POLICE VIOLENCE AGAINST CHICAGO’S YOUTH OF COLOR (2014); CHI. TORTURE JUSTICE MEMORIALS, ALTERNATIVE REPORT BY THE CHICAGO TORTURE JUSTICE MEMORIALS ON SURVIVORS OF TORTURE IN CHICAGO (2016).

72 See Data: Jon Burge and Chicago’s Legacy of Police Torture, supra note 68.


75 See WE CHARGE GENOCIDE, supra note 71, at 11–13.

76 Rodríguez, supra note 28, at 1604.

Throughout 2012, CTJM conducted roundtables, workshops, readings, performances, and other educative events.78 In the fall it opened an exhibit at a local art gallery entitled “Opening the Black Box, the Charge is Torture,” featuring seventy-five torture-related exhibits that were submitted by artists, educators, architects, and activists as proposals to memorialize the Chicago police torture.79 Later in the year, as CTJM continued to present its series of cultural and educative events, including a film festival, CTJM also drafted the original Reparations Ordinance.80 CTJM became instrumental in holding open and pursuing the question of what justice for the Chicago police torture should involve.

In addition to creating a thorough public record of the wrongs perpetrated by Chicago officials and initiating a collective deliberation about what justice should entail, organizers demanded both a formal apology and reparations (in the form of broad financial compensation and rehabilitative services) for all survivors.81 Two groups involved in advocacy to address the Chicago police torture — Black People Against Police Torture, a grassroots organization, and the National Conference of Black Lawyers — insisted on characterizing the relief sought as “reparations.”82 The rubric of reparations was important to organizers because it directly called to mind the racialized character of the violence — Burge and his white commanders targeted Black men, used racially abusive language in their torture sessions, painted their electrocution device black, and operated exclusively in Black communities ravaged by practices of segregation and the legacies of slavery.83 According to G. Flint Taylor, an activist lawyer who represented Chicago torture survivors and worked on the campaign to obtain reparations,84 “the direct linking of Chicago police torture to the brutality of slavery through the concept of reparations — like the . . . link to the international scope of torture — was an important step in establishing a true and complete narrative through which torture victims could seek acknowledgment and remedies.”85 As Kaba describes, the word “reparations” reflected that any compensation was meant to make amends for abuse at the hands of the state, and emphasized that race and bias were essential to the violence

80 Taylor, supra note 62, at 342.
81 See id. at 342–44.
82 Id. at 338.
84 Taylor, supra note 62, at 330 n.*.
85 Id. at 338.
perpetrated: “The racial component of this is an essential part of the torture itself... [the] victims were subject to repeated racial epithets. The ... box that was used to electrocute them was called the ‘n —–’ box ... . It was painted black.”

Ultimately, movement participants developed proposed legislation, which they named the Illinois Reparations for Police Torture Victims Act. The proposed legislation would provide reparations for Burge’s victims who were still incarcerated and would begin to address “the long-term trauma that torture inflicted on its victims and their families.” It called for establishing “a center for torture victims and families” to offer rehabilitative support and treatment, community education, and vocational assistance, as well as the appointment of an Innocence Inquiry Commission to address credible claims of innocence by torture victims.

Abolitionist efforts in Chicago differed from more conventional efforts to seek justice in several respects. Whereas litigation is limited by the resources and incentives of lawyers, the public campaign in Chicago could grow and adapt according to the direct input of survivors and organizers. Additionally, litigation is limited by legal rules that are not necessarily designed to promote justice — rules that, for instance, exclude certain kinds of evidence, define officer reasonableness in highly deferential terms, or, as in this case, apply a statute of limitations to deny the pursuit of justice altogether. The movement in Chicago sought justice, then, that could not be achieved through legal redress, and the focus on facilitating an ongoing and public dialogue between survivors, activists, and educators distinguishes the Chicago movement’s legislative lobbying efforts from other similar reformist initiatives.

In the end, the movement succeeded in pushing Chicago to launch an ongoing torture memorial project, to appropriate more than five million dollars in reparations for survivors, and to create a center that provides medical, mental health, and other support services to survivors of police trauma. Activists also won a provision in the legislation to change the Chicago public school curriculum to focus on the contemporary history of police torture and its connections to colonialism and slavery.

86 Somashekhar, supra note 83 (quoting Mariame Kaba) (internal quotation marks omitted).
87 Taylor, supra note 62, at 339.
88 Id.
89 Id.
The Chicago reparations initiative provides one instance of what reimagining justice in abolitionist terms might look like. As Kaba describes:

[T]he reparations ordinance . . . [is] an abolitionist document . . . [b]ecause it’s a document that did not rely on the court, prison, and punishment system, to try to envision a more expansive view of justice.

So while financial restitution was a part of that package, it also did a whole bunch of other things. . . . [W]e asked for a whole series of things that we thought would be about rethinking justice for people who have been wronged, survivors of violence . . . . Chicago is the first municipality in history to ever pass a reparations bill for law enforcement violence. So that’s something that other cities are looking at for themselves now, as avenues for justice that are not personal and individual indictments of the police, not calls for cops to be jailed . . . [not] the same kind of language we hear over and over again . . . .92

Instead of the typical calls for punitive responses to harm, participants engaged in a broad and deep democratic process to contemplate how to make amends. They then sought redress and repair in a form that would begin to make the survivors whole, prevent future harm, and educate young people so that they have an understanding of some of the root causes and persistent legacies of racial inequality and violence.

B. Realizing Transformative Peace and Justice

Along with rethinking how to respond to the most awful forms of state-perpetrated violence, abolitionists in Chicago and elsewhere have sought to address other forms of less public interpersonal harm. This has involved developing alternative means of preventing violence and alternative means of responding in the aftermath of harm. These efforts are small-scale attempts to prefigure different relationships between people, to develop meaningful and thick mutual support networks, to constitute real alternatives to police and jail intervention, and to build power that may be used to realize farther-reaching change.

Many of these local projects provide alternative first responders, mediation support, or other forms of mutual aid to those who would otherwise likely be subject to victimization, arrest, possible police violence, or incarceration. In these various programs around the country, community members aim to intervene before conflicts escalate. In Chicago and some other major cities, for example, teams of “violence interrupters,” associated with a program called Cure Violence, work to identify community conflicts likely to escalate into gun violence or other

Then mediators, often individuals formerly involved in gangs, intervene to help resolve or de-escalate disputes. The program is accompanied by ongoing empirical analysis that has demonstrated success in the form of “statistically significant reductions in violence,” and is being replicated in communities around the country. Advance Peace, pioneered in Richmond, California, adopts a similar model of relying on mediators to intervene in disputes, but also provides financial support and mentorship to young people at risk of perpetrating violence. The program claims to have significantly reduced youth homicides in the jurisdiction.

The Oakland Power Projects, organized by the Critical Resistance chapter in Oakland, California, offer another approach to addressing harm in which community street medics and healthcare workers train residents in de-escalation and other tactics. These other tactics are aimed at assisting neighbors confronted with a loved one facing a mental health crisis — a frequent reason for calls to police that result in violence and unnecessary jailing. The program expects that the trainees will go on not only to provide assistance to community members in need, but also to train others so that the relevant skillset and means of support become increasingly widespread in communities over time. Likewise, the Harm Free Zone project in Durham, North Carolina, and the Audre Lorde Project’s Safe OUTside the System Safe Neighborhood Campaign in Brooklyn, New York, both educate interested community residents and train them to take action to prevent harm without police intervention. The Safe Neighborhood Campaign focuses in particular on reducing harm to queer and gender-nonconforming people of color — who are often subject to harassment and assault by police and private

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96 The Solution, ADVANCE PEACE, https://www.advancepeace.org/about/the-solution/ [https://perma.cc/BrK8-76GE].
97 Id. (“As a result of [Advance Peace’s] efforts, Richmond, California, experienced a 66% reduction in firearm assaults causing injury or death between 2010 and 2017.”).
98 Candice Bernd, Community Groups Work to Provide Emergency Medical Alternatives, Separate from Police, in WHO DO YOU SERVE, WHO DO YOU PROTECT?: POLICE VIOLENCE AND RESISTANCE IN THE UNITED STATES 151, 152–55 (Maya Schenwar et al. eds., 2016) [hereinafter WHO DO YOU SERVE].
99 Id. at 151–52.
100 Id. at 154.
individuals — by “working with local businesses and community spaces to provide” places that are safe for those fearing victimization. 102

In Eugene, Oregon, White Bird Clinic’s Crisis Assistance Helping Out on the Streets (CAHOOTS) program, which receives public funding, serves as another type of alternative first-responder initiative that is operated through a central city ambulance dispatch. 103 CAHOOTS assists in teams composed of at least one nurse or EMT and one crisis worker in cases of “drug and substance abuse, poverty-related issues, and mental health crises” without involving police — often intervening to support people who are homeless and other populations otherwise subject to frequent police contact, arrest, and incarceration. 104

The ambition of these various local projects is to expand capacity and membership over time, to demonstrate their success and promise, and to change people’s minds more broadly about the necessity of police interventions across a wide variety of contexts, and to thereby build local power in support of more peaceable means of collective democratic governance. Of course, not all interpersonal harm will be prevented through these measures; but neither is such harm effectively addressed through existing penal measures. These projects hold more promise than penal measures, however, because they initiate a shift in resources, values, and political power, transforming the people whose lives they touch and shifting attention toward how to reduce harm on the ground such that over time more far-reaching change may become possible.

Transformative justice takes a related approach, working to prefigure changed social relations by intervening in the aftermath of interpersonal harm. Transformative justice — developed by antiviolence activists of color — is a community-based approach to responding to violence or interpersonal harm that works, as Kaba and Kelly Hayes describe, to “build support and more safety for the person harmed, figure out how the broader context was set up for this harm to happen, and how that context can be changed so that this harm is less likely to happen again.” 105 Transformative justice differs from certain other experiments in restorative justice — which are often focused primarily, if not exclusively, on individualized responsibility — in that transformative justice processes aspire to work toward broader social, political, and


103 See Herzing, supra note 101, at 155.

104 Id. at 156.

economic change. These processes manifest changed dynamics on a small scale in the most difficult interpersonal encounters, while simultaneously considering what broader transformation is immediately necessary and realizable.

Participants in the Movement for Black Lives, for example, have turned to transformative justice processes in response to sexual harm perpetrated by certain members of the anti-violence racial justice movement against others. When one of BYP100’s leaders was accused of sexual assault, the organization and the survivor, who is also a Movement member, convened a transformative justice process to come to terms with the harm done. The survivor, Kyra, made BYP100 aware of the assault in a letter when the perpetrator, Malcolm London, became the focus of widespread attention on social media and elsewhere after his arrest at a protest of the police killing of Laquan McDonald.

At the same time that Kyra made her experience of assault public, she also underscored that she did not believe the criminal process could deliver justice or provide meaningful redress. Kyra, Malcolm, and the transformative justice facilitators then embarked on a more than year-long effort to address Kyra’s assault, and along the way, they published accounts of their respective experiences.

In consultation with her support team, Kyra decided that what she wanted from the process was for Malcolm to publicly acknowledge the harm he had caused and to commit to “a political education process about sexual violence and enthusiastic consent.” She also wanted to build her own confidence so that she might feel ready and able to meet with Malcolm face-to-face and address together what had happened. More generally, she asked that BYP100 include in its orientation, political education, and organizing processes a curriculum on enthusiastic consent and the history of sexual violence in the black community that
Kyra — who already had five years of experience in sexual violence prevention education — would help to develop.\textsuperscript{114} Finally, Kyra requested that platforms be created within the broader movement for discussions about sexual violence and how organizations might attend to these problems.\textsuperscript{115}

After fifteen months of work with their separate teams, Kyra and Malcolm met together with all parties involved in the transformative justice process to discuss what had happened between them.\textsuperscript{116} This convening marked the end of the process, which Kyra, Malcolm, and all involved described as deeply impactful, both personally and as a possible fount of wide-ranging change in practices of positive sexual intimacy in the broader community.\textsuperscript{117}

Beyond the work of the individual participants, BYP\textsubscript{100} developed new policies to address sexual harm.\textsuperscript{118} BYP\textsubscript{100} generally resolved to place any member accused of sexual assault on a membership hiatus, to meet with both parties to hear their respective accounts, and to begin an internal deliberation regarding further action that might include possible permanent revocation of membership, arranging the facilitation of a mediation session, an internal accountability session, and an “agreement to atone as a condition of full membership reinstatement.”\textsuperscript{119} BYP\textsubscript{100} also explored how to realize enthusiastic consent practices among membership and provide community healing spaces.\textsuperscript{120}

A Healing and Safety Council was created to convene transformative justice processes whenever a member has been hurt.\textsuperscript{121} The Council is composed of two squads, one focused on prevention and one on intervention, and both collaborate to respond to harm in the organization’s chapters and to foster a culture of “healing praxis.”\textsuperscript{122} As part of this approach, the Council created a Safety Plan that allows each member to indicate how they would want BYP\textsubscript{100} members to respond if harm were to befall them, and it also produced a manual, \textit{Stay Woke Stay Whole: Black Activist Manual}, as a guide for preventing and intervening in harm.\textsuperscript{123}

Rather than viewing this process as a prescription of how to respond to wrongdoing across the board in all circumstances, all participants

\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Summary Statement Re: Community Accountability Process (March 2017), supra note 111.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} Id.
\textsuperscript{123} Id.
understood their work together as creating a framework for an alternative response, one which was consistent with their critiques of criminal legal practices and with their commitment to realizing justice in other terms. This is difficult work and there is by no means consensus on the role such processes ought to play in responding to sexual harm or other forms of violence. But by devising an alternative approach to addressing interpersonal violence and working to realize meaningful accountability and amends, participants begin to prefigure a world without prisons and police, shrinking the role of criminal law in their lives, and in so doing, paving the way for others to do the same.

C. Reimagining Security, Expanding Sanctuaries

Abolitionists have also begun to broadly reconceptualize what actually constitutes criminal wrongdoing and to advocate for a democratization of local political economies as a means of reducing harm and ensuring collective well-being. For abolitionists, much of the conduct that is the focus of criminal law enforcement should not be understood as criminal at all. The vast majority of police stops, arrests, and prosecutions in the United States involve low-level quality-of-life offenses and other trivial infractions. Abolitionists work to eliminate much of this low-level criminal enforcement altogether. They instead look to build local democratic power to reinvest public resources in projects that actually provide meaningful security, while simultaneously reducing the violent theft perpetrated daily by mainstream economic practices and institutions. A significant part of this work entails contesting existing resource allocations, which are understood themselves to be deeply unjust — and a cause, in fact, of much criminalized conduct.

To carry out this work, abolitionists have undertaken a variety of different projects across the country. In Chicago, organizers have launched a public debate about what it would mean to make cities genuinely secure, demanding that Chicago become a true sanctuary city and pushing the city to make good on its claims of being a sanctuary — a

124 Id.
126 Cf. DAVIS, ABOLITION DEMOCRACY, supra note 8, at 103; MOVEMENT FOR BLACK LIVES, supra note 9 (“We demand economic justice for all and a reconstruction of the economy to ensure Black communities have collective ownership, not merely access.”).
place where all people are truly safe from state and private violence. The difference between “innocence” and “criminality,” abolitionists have underscored, is often just the product of policing practices that target low-income communities of color, such as “stop and frisk,” “broken windows” policing, predictive policing, and the use of “gang databases” to track youth who wear gang colors, sport tattoos, or associate with community members believed to be gang affiliated. As organizer Reyna Wences and Professor Ruth Gomberg-Muñoz explain, “most municipal sanctuary measures have a central weakness: they only seek to protect immigrants deemed as ‘law-abiding,’ leaving those already ensnared in a racist system of criminalization and policing unprotected.”

The debate over the true meaning of “sanctuary cities” has sparked a broader conversation, in which abolitionists have played a major part, about what security, safety, and well-being might consist of instead. Organizers for racial and immigration justice — working with BYP100, Mijente, Communities Organized Against Deportations, and researchers at the University of Illinois at Chicago — have collaborated to gather evidence and raise awareness in order to eliminate the Chicago gang database and redirect resources toward education and social services.

These efforts have also focused attention on budgeting processes, challenging the direction of public funds to policing and punishment rather than social, restorative, or other projects. BYP100, in conjunction with some other organizations, has produced a powerful analysis of
how participatory budgeting could reshape public spending in cities across the country. In Chicago in 2017, for example, the city allocated nearly $1.5 billion of its $8.2 billion operating budget (or 17.6%) to the Department of Police, far exceeding expenditures on critical resources like health services and programs for youth. The Department of Public Health, by contrast, was allocated about a third of one percent (0.4%) of total budget expenditures. The Department of Family and Support Services, which houses youth programs, violence reduction programs, after-school programs, and homeless services, also was allocated less than one percent of total expenditures. BYP Chicago is spearheading an organizing campaign for a participatory city-budgeting process in which the public is empowered to defund police and reinvest resources by “setting a living wage and by fully funding healthcare, social services, public schools, and sustainable economic development projects.” This is not only an effort to change the allocation of resources, however; the organizers are working more broadly to democratize the local political economy and to underscore the antidemocratic character of existing public-spending decisions.

Organizers in other cities have made similar calls to tie abolitionist organizing around the criminal process to economic justice and democratic political economy reform. Zachary Norris, the executive director of the Ella Baker Center for Human Rights in Oakland, California, has launched a “truth and reinvestment” campaign advocating for reinvestment from the criminal legal system into low-income communities and communities of color. Norris, the Ella Baker Center, and organized community members have called their campaign “50% for Jobs Not Jails, Books Not Bars, and Healthcare Not Handcuffs,” and much of their work has involved local advocacy around budgeting decisions, such as working to redistribute dollars from sheriffs’ and probation offices to community-based worker-resource centers for people

134 Id. at 21.
135 Id.
136 Id.
137 Id. at 20.
138 Id. at 79–80.
139 Our Team, ELLA BAKER CTR. FOR HUM. RTS., https://ellabakercenter.org/about/staff-and-board [https://perma.cc/J9ZQ-EQF7].
returning to communities after incarceration. Anthony Newby, working with Neighborhoods Organizing for Change (NOC), a black-led community organization in Minneapolis, pressured the city and state to reinvest public funds after the killing of Jamar Clark by police in 2015. Newby and other organizers shut down an airport terminal and the Mall of America. Ultimately, Newby and his collaborators managed to secure thirty million dollars for reinvestment. The next stage for his organization and movement, Newby has said, is to think about how to most meaningfully invest that money so it does not simply go to providers who are committed to preserving the status quo.

In Washington, D.C., in 2015 and 2016, local Black Lives Matter activists successfully opposed the mayor’s proposed anticrime legislation, which would have expanded funding for policing, increased police presence, and increased penalties for a range of offenses. Organizers pushed instead for a separate initiative that would use “a community-based public health approach to violence prevention.” At the same time, activists in D.C. also pressed the city to increase investment in community land trusts, a form of collective property ownership that maintains the affordability of homes in gentrifying neighborhoods over time, and organizers made significant strides towards implementing a living wage.

As these projects have unfolded, the Movement for Black Lives and other organizers have developed accompanying webinars, have compiled hyperlinked resources for litigation and legislative advocacy, and have explored model domestic and foreign legislation. The idea is

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142 Vision 4 Black Lives Webinar Series, supra note 25 (comments by Zachary Norris).
145 Vision 4 Black Lives Webinar Series, supra note 25 (comments by Zachary Norris).
146 Id.
148 Cohen, supra note 147.
149 See Mary Hui, In Bid to Keep Homes Affordable, Anacostia Will Have Its First Community Land Trust, WASH. POST (Sept. 24, 2017), http://wapo.st/2tK6wty [https://perma.cc/2AF5-CWF9].
151 See MOVEMENT FOR BLACK LIVES, supra note 9.
that other communities may turn to these resources to devise their own related projects. Through these and other efforts, local organizers have built a national movement that serves to denaturalize common assumptions about crime and punishment, connecting criminal law reform to mobilizations for a living wage, affordable housing, cooperative ownership, and a redistribution of public resources.

Professor Keeanga-Yamahtta Taylor has underscored how the Movement for Black Lives has reshaped public discourse on crime, policing, and race. But the movement has also revitalized local democratic politics, reshaping local and state budgeting efforts, in large part by organizing communities to actively redirect their own state and local governments. In localities around the United States, organizers are engaging in the collective institution-building political work essential to realizing abolition democracy. Ultimately, for abolitionists, the question of what democracy and justice might look like without prisons and police remains open, but these are attempts to begin to prefigure more meaningful forms of redress and a more liberatory democratic politics.

III. ABOLITION’S CHALLENGE TO LEGAL THEORY, IMAGINING JUSTICE ANEW

While abolition democracy holds open the question of what justice requires and attends to the substance of redress in particular contexts, conventional legal theories, by contrast, consist of formal, abstract, and well-settled but seldom-examined constructions. Conventional accounts of legal justice typically neglect the overwhelming discontinuity between the ideals of justice proclaimed and their deeply inadequate, often violent, racialized, and ultimately destructive realization. Abolition democracy is, of course, committed to a set of ideals as well. But the problem with conventional accounts of legal justice is not simply one of as-yet-imperfect implementation of existing ideals of legal justice. Rather, the very foundations of existing conceptions of legal justice are inadequate, compromised, limited in the ideas of justice exhort, and corrupted by inescapably vicious and inegalitarian institutional histories and cultures. Moreover, the standard approaches to assessing whether legal justice is served fail to attend to actual experience, focusing almost exclusively on idealized justifications of existing practices.

153 See Davis, Abolition Democracy, supra note 8, at 95–96.
154 For a further exploration of the ideas presented in sections II.B and II.C, see Allegra M. McLeod, Law, Critique, and the Undercommons, in A TIME FOR CRITIQUE (Didier Fassin & Bernard E. Harcourt eds. (forthcoming 2019)).
155 See supra pp. 1613–16.
A. Criminal Justice

The most widely embraced conception of how legal justice should take shape in the aftermath of harm involves recourse to the criminal legal system. Various justifications for criminal arrest, criminal prosecution, and criminal punishment vie for dominance in legal theory, with some embracing retributivism, others advocating deterrence-based rationales, and still others focused on the community’s expression of shared norms. But the realities of the criminal legal process are starkly at odds with these theoretical justifications. Instead, criminal prosecution generally fails to address the needs of survivors of harm. It also degrades and brutalizes those subject to prosecution. All the while, the criminal legal system neglects the underlying causes of the problems at hand so that they are almost certain to occur again. The widespread attachment to the idea that criminal adjudication promises justice is often accepted as an unquestioned article of faith even as it is dramatically belied by experience.

Although the primary objection to penal abolition is that murder, rape, and child sexual assault demand a criminal prosecutorial response, the truth is that the criminal process fails to respond at all to many of these most egregious forms of wrongdoing, and when it does, the redress available through the criminal process is typically deeply inequitable, violent, and at odds with any conception of meaningful amends or principled accountability. Consider first the case of state-perpetrated violence, such as police killings of ordinary men and women or the torture carried out by the Chicago police under the direction of

157 See SANFORD H. KADISH ET AL., CRIMINAL LAW AND ITS PROCESSES 96–132 (10th ed. 2017) (surveying various justifications for punishment, including utilitarianism, retribution, and related theories such as vengeance and social cohesion, and mixed theories); David Scott, Why Prison? Posing the Question, in WHY PRISON? 1, 10–15 (David Scott ed., 2013) (critically reviewing common arguments justifying the existence of prisons, including retribution and deterrence theories).
159 Angel Sanchez’s essay, In Spite of Prison, offers one example of this disconnect between theory and experience. See Angel E. Sanchez, In Spite of Prison, in Developments in the Law — Prison Abolition, 132 HARV. L. REV. 1650 (2019).
In the case of murders or assaults by agents of the state, criminal prosecution typically fails to deliver much in the way of redress at all, perhaps because those responsible for initiating criminal proceedings are compromised by their close ties to policing and related state institutions. The failure to impose any proportional punishment in these cases plainly violates retributive premises, as well as deterrence goals, and also falls far short of expressing community norms. The frequent refusal to impose any consequences in cases of state-perpetrated violence — for instance, in fifteen recent high-profile cases in which Black people were killed by police or died in custody, only three resulted in a conviction — strongly suggests the inadequacy of the criminal process in responding to this form of homicidal violence. But the problem is deeper than advocates for convictions might suggest; justice would still not be meaningfully served even if all those police officers guilty of these acts were prosecuted, convicted, and sentenced to prison.

This is so for at least three reasons. First, criminal prosecutions of state violence — such as murders perpetrated by police — focus on individual culpability of particular officers, leaving unchanged the institutional and cultural dynamics responsible for the pervasive violence of policing and its concentration on particular bodies and in specific disenfranchised communities. In fact, by characterizing the problem at hand as simply one of incapacitating isolated "bad apple[s]," criminal

163 See, e.g., infra text accompanying note 165.
166 See Paul Butler, The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform, 104 GEO. L.J. 1419, 1425 (2016) (“[S]uccessful” reform efforts substantially improve community perceptions about the police without substantially improving police practices.”).
167 See, e.g., Jeffrey Fagan & Garth Davies, Street Stops and Broken Windows: Terry, Race, and Disorder in New York City, 28 FORDHAM URB. L.J. 457, 489, 496–503 (2000).
prosecutions and convictions of abusive officers may even stand to legitimize policing practices in general, though those practices tend to dehumanize men, women, and children on a daily basis.\footnote{See Kaba, supra note 21 (“This is not a problem of individually terrible officers rather it is a problem of a corrupt and oppressive policing system built on controlling & managing the marginalized while protecting property.”).}

Second, the law itself countenances many forms of excessive force deployed by police — granting to police what Professor Paul Butler calls “super powers.”\footnote{Butler, supra note 166, at 1446.} So the legal standards applied in prosecutions of murderous officers will often fail to capture the scope of violent conduct that ought rightly to be condemned, suggesting certain abuses are innocent when in fact they cause grave harm.\footnote{See Allegra M. McLeod, Police Violence, Constitutional Complicity, and Another Vantage, 2016 SUP. CT. REV. 157, 159–69.}

Third, and perhaps most important, the conviction and incarceration of police who have perpetrated violence do not offer tangible recompense to survivors and others who have been harmed, nor do those responses work to prevent similar acts from occurring in the future.\footnote{See Scott, supra note 157, at 11–12 (explaining how incarceration does not serve deterrence-based goals).} The only sense in which one can understand such convictions and incarcerations as delivering justice is against the backdrop of a status quo of utter impunity or public acquiescence, taking for granted that the application of criminal sanctions offers meaningful redress without inquiring more deeply into what interests are actually served by such an outcome and of what the promised justice substantially consists. By contrast, the work of abolitionist organizers to address the Chicago police torture sought to devise a remedial scheme that served to make survivors as close to whole as possible, to address the underlying causes of the violence at hand, and to commit to preventing it from occurring in the future.\footnote{See supra pp. 1613–14.}

The case of rape and sexual assault is instructive here as well. Rapes and sexual assaults are seldom criminally reported, rarely criminally prosecuted, and infrequently result in criminal conviction or substantial punishment.\footnote{See Allegra M. McLeod, Regulating Sexual Harm: Strangers, Intimates, and Social Institutional Reform, 102 CALIF. L. REV. 1553, 1556–57 (2014) (citing LYNN LANGTON ET AL., U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006–2010, at 4 (2012); see also Kimberly A. Lonsway & Joanne Archambault, The “Justice Gap” for Sexual Assault Cases: Future Directions for Research and Reform, 18 VIOLENCE AGAINST WOMEN 145, 157 (2012); Seidman & Vickers, supra note 158, at 472.} Yet, even when a police officer is severely punished for sexual abuse — such as Daniel Holtzclaw, who was sentenced to 263 years of incarceration for sexually assaulting multiple women while
working as a police officer— the punishment prescribed often fails to redress the wrong committed. The incarceration of Holtzclaw, for example, leaves in place the dynamics of unconstrained power and control by police officers over poor, drug-addicted women of color involved in sex work such that his crimes can readily occur again. Holtzclaw’s sentence also offers little to the survivors of his assaults. The proportionality of the sentence to the crimes remains ultimately uncertain as it neither makes his victims whole, nor requires any acceptance of responsibility, nor otherwise calibrates the consequences of his conduct to the harms he caused. Moreover, the pronouncement of a lifetime sentence like this one fails to express with any specificity the norms of the community vis-à-vis sexual assault, as it does not address the community’s practices that render sexual misconduct pervasive and largely undressed. It does not demand active accountability at all. Finally, the sanction violates any principled conception of justice as it entails imposing on another human being—however vile his conduct—a life in a cage, where he will almost certainly be brutalized, possibly sexually violated, or left to decompensate in a state of solitary confinement widely regarded as torture.

It is also instructive to consider the prevalence of gun-related homicides. In certain neighborhoods in Chicago and other cities, like Richmond, California, gun-related homicides are frequent events. As Professor Marie Gottschalk notes: “The homicide rate in Chicago’s affluent Hyde Park . . . is 3 per 100,000. . . . The homicide victimization rate for young black men involved in criminally active groups in a high crime neighborhood on Chicago’s west side is 3,000 per 100,000, or about 600 times the national rate.” But as in the case of rape and

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sexual assault, the vast majority of these incidents go unsolved. As a consequence, these cases typically go unaddressed by the criminal process — and again the criminal process is failing to impose retributive justice, achieve deterrence objectives, or express community norms. In those one-in-twenty cases where charges are brought, the ultimate conviction and sentencing of one young person does little to address the underlying dynamics that fuel this violence, to offer meaningful accountability, or to make the victims or their survivors whole.

Of course, the vast majority of criminally prosecuted conduct does not involve serious harm along these lines at all. Most of the work of criminal courts involves processing arrests of poor people for trivial or even victimless crimes — petty thefts, minor drug possession or sales, trespassing, or offenses related to addiction, mental illness, and poverty.

While some of what is most abhorrent in prison-based punishment is associated with horrific conditions in prisons and jails, the problems with this conception of justice would still abound even if the conditions could be improved to the point where they were analogous to the most pristine Scandinavian prisons. Punishment, even in sanitized prisons, would still not respond to the needs of survivors or the public, and would still treat the perpetrators as disposable even if the place where they were deposited was relatively comfortable. It is also disingenuous to suggest that U.S. prisons could become more like those of Norway or Finland without the sorts of broader changes to the U.S. political economy urged by abolitionists — and if such changes were achieved, it is not clear why a more democratic and welftarist expansion and redistribution of resources would be best allocated to beautifying prisons rather than radically reducing reliance upon them.

Across all of these contexts — from the frequent failure to redress homicides, rapes, and sexual assaults, to the overcriminalization of poor people charged with petty offenses — the prevailing accounts of how the criminal process delivers justice are blatantly violated. Criminal

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180 Id.

181 See KOHLER-HAUSMANN, supra note 125; NATAPOFF, supra note 125; Kohler-Hausmann, supra note 125.


justice — the idea that criminal conviction and punishment render justice in the aftermath of harm — appears to be a delusion, grounded in ideology rather than attention to actual criminal prosecutions and their aftermath. To equate the criminal legal process with justice is to insist upon an idealist notion of what criminal punishment will deliver, without accounting at all for the experiences of those whose lives it touches. Moreover, as I have described earlier in this Essay, efforts to reform criminal legal processes in order to attempt to realize idealized visions of justice are doomed to simply further entrench existing injustices if they are not accompanied by more transformative demands.184

B. Procedural Justice

Procedural justice — an influential approach to criminal law reform — works to render the criminal legal process more just by changing the way police and other officials interact with those they serve in order to signal respect and fairness, and to improve perceptions of law enforcement’s legitimacy. Social psychologist Tom Tyler introduced this account of procedural justice in his widely influential study Why People Obey the Law, in which he argued that legal compliance occurs not so much because people fear punishment but because they believe the law is legitimate and respect its authority.185 Professor Tracey L. Meares explains the relevance of procedural justice to criminal law reform:

Scholars of procedural justice note that people generally care much more about how they are treated by police than whether those police are effective crime fighters or make decisions that benefit them personally. People of all races and genders wish to be treated with dignity, respect, and concern for their rights; that this minimal expectation sets such a surprisingly high bar means that it offers a compelling starting point for thinking about police reform across conventional social barriers.186

Criminal law reform organized around procedural justice aims to improve communities’ perceptions of the criminal legal system (and thereby increase legal compliance) by changing the tenor of how law enforcement engages community members. The most prominent embrace of procedural justice took shape in the May 2015 Final Report of the White House Task Force on 21st Century Policing, the foundation of which is a reform strategy centered on building trust in and legitimacy of law enforcement.187

184 See supra pp. 1615–16.
The core problem with this approach to redeeming criminal law enforcement and rendering it consistent with the demands of justice is primarily that procedural justice focuses on a feeling of respect or fairness rather than on realizing substantively just conditions at a more fundamental level. As Professor Monica Bell explains in a powerful critique of procedural justice, legitimacy theory locates the problems with the criminal legal process in the social dynamics of officer-citizen interactions rather than in more foundational structural problems and group-level dynamics. The inability of the criminal legal process to deliver meaningful justice in the aftermath of severe interpersonal harm, and its overemphasis on the enforcement of laws against conduct that ought not to be criminalized, will not be corrected by police training or by making officers more respectful of those they police.

The procedural justice framework is also inadequate in that it calibrates its argument for greater fairness and respect in law enforcement to increased legal compliance. Justice ought not to be primarily concerned with how often people comply with legal rules but instead should attend broadly to the quality of collective life, fair and more equitable distribution of material resources, and human flourishing.

C. Civil Justice

Another common conception of legal justice is organized around the civil legal system and specifically the body of law referred to as tort law. As Professor Benjamin Zipursky, a tort law scholar, explains, “[T]ort law is a private right of action that the state, through courts, empowers certain plaintiffs to have against certain defendants.” An adjunct or alternative to criminal punishment, then, is to pursue justice through a civil lawsuit where the person wronged seeks to be made whole, taking something from the wrongdoer to remove his or her unjust gain and transferring that sum to the victim or survivor of the harm.

The problems with this fault-based approach to civil justice are severalfold. First, as with criminal justice, the actual operations of the civil

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190 This view of tort law as primarily concerned with transferring something from the wrongdoer to the person wronged, known as civil recourse theory, has been persuasively advanced by Professors John Goldberg and Benjamin Zipursky. See John C.P. Goldberg & Benjamin C. Zipursky, *Torts as Wrongs*, 88 TEX. L. REV. 917, 946 (2010) (“Tort law provides victims with an avenue of civil recourse against those who have committed relational and injurious wrongs against them.”). Although civil recourse theory has been the subject of some debate, see, e.g., Guido Calabresi, *Civil Recourse Theory’s Reductionism*, 88 IND. L.J. 449, 451–59 (2013); Jane Stapleton, *Evaluating Goldberg and Zipursky’s Civil Recourse Theory*, 75 FORDHAM L. REV. 1529, 1532 (2006), civil recourse theory most closely approximates the idealized version of how civil legal systems deliver justice.
legal system stand in stark contrast to their idealized expression. A person has no right to a lawyer to pursue civil claims and the relevant legal processes are difficult to comprehend and frequently inaccessible to laypeople. So for many poor victims and survivors of police violence, sexual assault, or other wrongs, a civil lawsuit offers no promise of justice at all.\(^{191}\) Qualified immunity and other doctrines shield many who would otherwise be viewed as culpable from civil liability.\(^{192}\) Even where victims or survivors are able to retain counsel and survive a motion to dismiss their claims, the rules of evidence in a civil trial are such that the survivor’s account of his or her own story will be distorted, subject to the grueling scrutiny of cross-examination, and likely otherwise deformed.\(^{193}\) Whether a judge or jury returns a favorable verdict may well be informed by racial, gender, or other bias, as it often is.\(^{194}\) In the end, any collection of monetary damages by the survivor will only occur after legal fees and other expenses are paid, which substantially reduces any recovery. For all of these reasons, the experience of the civil legal process falls far short of the dignified vision of justice conjured by the purported promises of the rule of law.

Even in those rare instances where civil litigation succeeds at compensating a victim sufficiently so he or she is able to obtain mental health and medical care and meet other needs, the civil legal process comes up short in other fundamental respects. The structure of a civil lawsuit generally conceptualizes justice in individual terms or with reference to a predefined common class in the case of a class action. But the parties aggrieved by serious wrongs are often spread throughout a community, and a process that seeks justice ought to address those aggrieved more holistically than by transferring a sum of money to a single survivor or even a group of similarly situated aggrieved individuals. For example, following the Chicago police torture, several successful civil lawsuits resulted in sizable settlements, but this left hundreds of people who had similarly survived torture and been sentenced to death or long
prison sentences without recourse for what they had endured.  
Moreover, it took a city resolution decades later to provide many survivors and their families with reparations to recognize what they had experienced. The relatively unconstrained power and authority of the Chicago police to surveil and deploy force in the city’s most segregated and disadvantaged communities remain in place.

Tort law typically uses the status quo as a benchmark for what it aims to restore, but the status quo itself is often profoundly unjust. The civil legal process can bring about change to the status quo, if at all, only in the most piecemeal, individualized, and incremental manner. It is not a process that can be relied upon to seek justice in terms that aim to fundamentally transform the world as it is.

D. Grounded Justice, Abolition Democracy, and the Unfinished

Justice, for abolitionists, is grounded in paying careful attention to experienced harm and its aftermath, addressing the needs of survivors, and holding people who have perpetrated harm accountable in ways that do not degrade but seek to reintegrate, while understanding the root causes of wrongdoing and working to address them. Justice grounded in attending to how redress is experienced also aims to change the world as it is so that those affected have greater resources to heal and so that harm is less likely to befall others in the future.

It was with this conception of justice in mind that abolitionists in Chicago sought and obtained reparations for survivors: a fund to support those victimized by police, a center that would provide resources for medical and mental health services to those who need them, an ongoing project of public memorialization of the wrongs that had occurred, and a change to the public school curriculum so students could learn from — and the city could prevent — similar events from occurring in the future. Transformative justice processes seek to undertake some of this same work of meeting the needs of those aggrieved, minimizing future harm, and promoting responsibility and greater understanding. But beyond redress of wrongdoing, justice in abolitionist terms is also concerned with preventing harm in ways that more equitably distribute material resources, such as through participatory budgeting. In the process, abolitionists reimage and realize greater collective security while expanding and deepening democratic engagement.

195 See Taylor, supra note 73, at 380–81.
196 See Moore, supra note 64.
This approach to justice rejects purely abstract and highly idealized theories of criminal accountability or civil justice and remains committed instead to incrementally changing the means of prevention and redress of harm, learning from public input and experience on an ongoing basis. To the rejoinder, “But what would we do without police and prisons?” contemporary abolitionists respond, “What you are really asking is: ‘What would we do without civil death, exploitation and state-sanctioned violence?’” For in the United States, prisons and policing have always been deeply implicated in and inextricably connected to racialized abuse and disenfranchisement. Instead, in the turn away from policing and prisons, abolitionists reject the project of “rearrang[ing] the trappings of annihilation and bondage” while calling ourselves “free.” For abolitionists, to realize “freedom or safety, and to make peace with our own fears, passive punishments must be replaced with active amends and accountability.”

Because of this commitment to active amends and accountability, justice consistent with an abolitionist ethic offers more to survivors of harm. Writing as a survivor and prison abolitionist, Joshua Briond reflects:

> We’re supposed to feel that it is acceptable to put beings in cages . . . as if that suffices for the harm that has already been done and the inevitable harm that will continue to take place . . . .

Punishment and revenge will not heal the harm that has been done to me. It will not take away the pain, nor will it make me feel better about myself . . . . But . . . a radical shift in our culture, in our way of surviving and handling these atrocities and collectively preventing them, will.

Abolitionist justice also better responds to the dignity and humanity of those who have perpetrated wrongs. At the same time, it aims to address the surrounding contexts and causes of criminalized conduct.

Although its general contours are clear enough, justice for abolitionists must also remain unfinished so that the abolitionist movement may evolve with experience. Justice in an abolitionist framework is not only grounded in this way, with attention to how justice is experienced, but it also strives perpetually to remain open to change in response to changing needs and changing times.

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198 See Hayes & Kaba, supra note 105.
200 Hayes & Kaba, supra note 105.
201 Id.
CONCLUSION

To return to Homan Square where we began: when organizers renamed that space Freedom Square, they did more than call attention to criminal law enforcement practices at the adjacent police site. They also called to mind a forgotten history involving the slumlord Samuel Homan, and others like him, who played a crucial role in the mid-twentieth century in shaping Chicago’s highly segregated, unequal landscape — characterized by pockets of poverty and violence and other spaces of concentrated resources and advantage — that has persisted well into the twenty-first century. Homan profited from predatory real estate practices, which forced many African Americans in Chicago into substandard housing, deepening racial isolation, and economic desperation. Homan should perhaps be most infamous for having “renovated” a twenty-two unit building on West Ohio Street into 101 barely habitable dwellings, which accommodated nearly 300 African American tenants who were charged several times more than previous white residents were charged for reconfigured tiny rooms with shared bathrooms and kitchens. Then, the building burned — in circumstances strongly suggestive of arson rather than an accident. Whatever the cause of the fire, however, Homan was at least responsible for having long profited off tenants to whom he provided no means of escape, and amassing wealth from the degradation of others — indeed, from many of the building’s residents who either burned to death or were severely injured in the fire. Today, Chicago remains among the most segregated cities in the country, with many African American citizens living in impoverished neighborhoods, like the one surrounding Homan Square, that are characterized by intergenerational disadvantage, intense police surveillance, unemployment, violence, and despair, even as there remains much that is vital and hopeful in those places, too.

204 ALLEN, supra note 5, at 148.
205 Id. at 148–49.
206 See id. The jury issued a statement condemning Homan: “We, the Jury, find the unbelievably shocking conditions in the death building at 940-42 West Ohio Street — the overcrowding, the vicious violations of safety and building code provisions and of ordinary standards of decency — to be directly contributory to the deaths . . . . The Jury cannot stress too strongly its belief that there would have been no deaths in this tenement had the operator had even the slightest feelings of human decency toward his tenants.” Id. at 168. The verdict continued that the responsibility for these terrible conditions lay not only with Samuel Homan but also “at the doorstep of the Police Department, the Building Inspection Department, real estate operators and boards, and thousands of home owners throughout Chicago.” Id. at 168–69.
In recent years, charitable groups and housing development corporations have sought to revitalize the economically depressed neighborhood surrounding Homan Square, but tax-exempt donations and corporate development do not suffice as a just measure of repair.\textsuperscript{208} After all, such efforts are generally spearheaded by those who have inherited the spoils of racialized dispossession, rather than by the dispossessed,\textsuperscript{209} and such projects fail to address the roots of intergenerational disadvantage — falling far short of democratizing the basic economic and political institutions that determine the distribution of life chances. Contemporary abolitionists, by contrast, have committed themselves to remedying persistent maldistribution and to centering the voices and leadership of those too often excluded. This Essay has also sought to hold at its center those voices, otherwise largely absent in legal discourse, and to envision abolition democracy by learning from their aspirational work, imaginings, and ideas.

\textit{see also} Madhani, \textit{supra} note 161; Moore, \textit{supra} note 64. For an in-depth examination of how the criminal system operates in Cook County, see \textsc{Steve Bogira}, \textsc{Courtroom 302} (2005).\textsuperscript{208} See Corilyn Shropshire, \textit{40 Years After Sears Left Homan Square, Catalog Building Gets Second Life, CHI. TRIB.} (June 22, 2017, 1:53 PM), \url{https://www.chicagotribune.com/business/ct-sears-homan-square-affordable-housing-0623-biz-20170622-story.html} [https://perma.cc/VF7Q-8CTF].\textsuperscript{209} See, \textit{e.g.}, \textit{id.} (describing a housing development near Homan Square funded in part by the Chicago Housing Authority, the Federal Home Loan Bank of Chicago, and Nationwide Insurance through the Royal Bank of Canada).