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## ABOLITION AS PRAXIS OF HUMAN BEING: A FOREWORD

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### I. THE LONG ABOLITIONIST PROJECT

What are the historical conditions and political imperatives of “abolition” as a contemporary praxis? How does abolition generate a radical critique of carceral power — of “incarceration” as a logic of state and social formation? What are the limitations of liberal-to-progressive demands to reform (allegedly) dysfunctional and/or scandalous systems of legitimated state violence (for example, “mass incarceration” or “police brutality”)? How does abolitionist praxis facilitate notions of freedom, justice, security, and community that do not rely on systems of carceral state power, including but not limited to criminal justice, policing, and (domestic) militarization/war?

Abolition is a dream toward futurity vested in insurgent, counter-Civilizational histories — genealogies of collective genius<sup>1</sup> that perform liberation under conditions of duress. The late Black-liberation warrior, organizer, and Vice President of the Provisional Government of the Republic of New Afrika<sup>2</sup> Safiya Bukhari once wrote, in characteristically crystallized terms, “[b]y definition, security means the freedom from danger, fear, and anxiety.”<sup>3</sup> Security and freedom, for peoples subjected to the normalized state- and culturally condoned violence of (global) U.S. nation-building, require a decisive departure from typical

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<sup>1</sup> Here, collective genius entails the creative labors of community building and cultural-physiological reproduction undertaken under and against conditions of systemic, state-sanctioned violence and what Africana Professor Lewis Gordon has called “institutionalized dehumanization.” Lewis R. Gordon, *Fanon’s Tragic Revolutionary Violence*, in *FANON: A CRITICAL READER* 297, 306 (Lewis R. Gordon et al. eds., 1996). For prior references to this notion of collective genius, see Dylan Rodríguez, *Inhabiting the Impasse: Racial/Racial-Colonial Power, Genocide Poetics, and the Logic of Evisceration*, SOC. TEXT, Sept. 2015, at 19, 26; and Dylan Rodríguez, “Mass Incarceration” Reform as Police Endorsement, BLACK AGENDA REP. (Feb. 28, 2018), <https://www.blackagendareport.com/mass-incarceration-reform-police-endorsement> [<https://perma.cc/3YDF-SUX8>].

<sup>2</sup> See CHRISTIAN DAVENPORT, HOW SOCIAL MOVEMENTS DIE: REPRESSION AND DEMOBILIZATION OF THE REPUBLIC OF NEW AFRICA 161–295 (2015).

<sup>3</sup> SAFIYA BUKHARI, THE WAR BEFORE: THE TRUE LIFE STORY OF BECOMING A BLACK PANTHER, KEEPING THE FAITH IN PRISON & FIGHTING FOR THOSE LEFT BEHIND 37 (Laura Whitehorn ed., 2010).

demands for policy reform, formal equality, and amped-up electoral participation; rather, what is needed is a mustering of collective voice that abrogates the political-discursive limits of “demand” itself.<sup>4</sup>

The long historical praxis of abolition is grounded in a Black radical genealogy of revolt and transformative insurgency against racial chattel enslavement and the transatlantic trafficking of captive Africans.<sup>5</sup> Understood as part of the *historical present tense*, abolitionist critique, organizing, and collective movement (across scales of geography and collectivity) honor and extend this tradition. The contributors to this issue of the *Harvard Law Review* signify the breadth, rigor, and strategic brilliance of contemporary abolitionist praxis, as their work represents a broader field of creative and rigorously theorized struggle against the continuities of *carceral state violence*, including but not limited to imprisonment, jailing, detention, and policing. In this sense, abolition is not merely a practice of negation — a collective attempt to eliminate institutionalized dominance over targeted peoples and populations — but also a radically imaginative, generative, and socially productive communal (and community-building) practice. Abolition seeks (as it performs) a radical reconfiguration of justice, subjectivity, and social formation that does not depend on the existence of either the carceral state (a statecraft that institutionalizes various forms of targeted human capture) or *carceral power* as such (a totality of state-sanctioned and extrastate relations of gendered racial-colonial dominance).

Contemporary reformist approaches to addressing the apparent overreach and scandalous excesses of the carceral state — characterized by calls to end “police brutality” and “mass incarceration” — fail to recognize that the very logics of the overlapping criminal justice and policing regimes *systemically* perpetuate racial, sexual, gender, colonial, and class violence through carceral power. Thus, in addition to being ineffective at achieving their generally stated goals of alleviating vulnerable peoples’ subjection to legitimated state violence, reformist approaches ultimately reinforce a violent system that is *fundamentally asymmetrical*

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<sup>4</sup> Regarding critical theorizations of the politics of demand levied within the purview of liberal state institutions, see generally WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* (1995); RODERICK A. FERGUSON, *WE DEMAND: THE UNIVERSITY AND STUDENT PROTESTS 6–10* (2017); STEFANO HARNEY & FRED MOTEN, *THE UNDERCOMMONS: FUGITIVE PLANNING & BLACK STUDY* (2013); and Fred Moten & Stefano Harney, *The University and the Undercommons: Seven Theses*, SOC. TEXT, Summer 2004, at 101.

<sup>5</sup> Regarding the roots of abolition in Black radicalism, see HERBERT APTHEKER, *ABOLITIONISM: A REVOLUTIONARY MOVEMENT*, at xii–xiii (1989); LERONE BENNETT JR., *BEFORE THE MAYFLOWER: A HISTORY OF BLACK AMERICA* 97–126 (4th ed. 1969); and MANISHA SINHA, *THE SLAVE’S CAUSE: A HISTORY OF ABOLITION* 34–64 (2016). See generally W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* (1935).

in its production and organization of normalized misery, social surveillance, vulnerability to state terror, and incarceration.<sup>6</sup>

It is within this irreconcilable reformist contradiction that an abolitionist 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, abolitionism addresses the historical roots of that system in relations of oppressive, 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’ existence and survival as such.<sup>7</sup>

Consider abolition as both a long accumulation and future planning of acts, performed by and in the name of peoples and communities relentlessly 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 (human) 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, dispersed across geographies and historical moments, that reveal the underside 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

<sup>6</sup> Professor Ruth Wilson Gilmore offers a helpful differentiation between “reformist” logics and abolitionist strategies that make tactical use of reform. See Ruth Wilson Gilmore, *Foreword* to DAN BERGER, *THE STRUGGLE WITHIN: PRISONS, POLITICAL PRISONERS, AND MASS MOVEMENTS IN THE UNITED STATES*, at vii, vii–viii (2014).

<sup>7</sup> To consider abolitionist praxis in the context of particular peoples’ systemic, historical exposure to institutionalized forms of dehumanization, degradation, and social oppression is to significantly rethink the premises of the United Nations’ (UN) canonized conception of “genocide,” particularly in regard to the notion that peoplehood *as such* (including self-defined nations, tribes, ethnic groups, and so forth) ought to be defined by *cultural* as well as collective physical integrity. For useful points of critical rearticulation and revision of the UN’s 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*, Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, see WARD CHURCHILL, *A LITTLE MATTER OF GENOCIDE: HOLOCAUST AND DENIAL IN THE AMERICAS, 1492 TO THE PRESENT* 363–92 (1997); and CIVIL RIGHTS CONG., *WE CHARGE GENOCIDE* (William L. Patterson ed., Int’l Publishers 1970) (1951).

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 gendered racist state violence, another conceptualization of the term becomes 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 human being that undermine the totalizing logics of empire, chattel, occupation, heteropatriarchy, racial-colonial genocide, and Civilization as a juridical-narrative epoch.

I join my fellow contributors to this issue of the *Harvard Law Review* in defying a liberal-to-reactionary (white/multiculturalist) common sense<sup>8</sup> that rejects abolitionist creativity by languishing in simplistic notions of “what is practical,” “what is realistic,” “what the people will understand/accept/do,” or even “what must be reformed first/now/soon.” Alongside current and recent communities of organizers such as Critical Resistance,<sup>9</sup> Black Youth Project 100,<sup>10</sup> We Charge Genocide,<sup>11</sup> Idle No More,<sup>12</sup> and #NoDAPL and the Standing Rock Sioux,<sup>13</sup> I embrace a conception of abolition that is inseparable from its roots in (feminist, queer) Black liberation and (feminist, queer) Indigenous anticolonialism/decolonization.<sup>14</sup> To contextualize abolition within and across these complex, vibrant traditions is to significantly complicate (and productively disarticulate) teleological or formulaic notions of classical Marxist social transformation, while intervening in patriarchal and masculinist constructions of freedom/self-determination and obliterating

<sup>8</sup> This usage of “common sense” is an inflection of Antonio Gramsci’s oft-cited conception of the project of popular consensus that is the primary project of “hegemony.” See ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 419–25 (1971). Professor Stuart Hall’s engagement with Gramsci’s social theory proves especially useful for such inflection, particularly in his classic essay, *Gramsci’s Relevance for the Study of Race and Ethnicity*. See Stuart Hall, *Gramsci’s Relevance for the Study of Race and Ethnicity*, 10 J. COMM. INQUIRY 5, 20–23 (1986).

<sup>9</sup> *What Is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/not-so-common-language/> [https://perma.cc/BCZ3-5A4E].

<sup>10</sup> BLACK YOUTH PROJECT 100, <https://byp100.org/> [https://perma.cc/42YC-ZH8C].

<sup>11</sup> WE CHARGE GENOCIDE, <http://wechargegenocide.org/> [https://perma.cc/XZN7-ZU5J].

<sup>12</sup> IDLE NO MORE, <http://www.idlenomore.ca/> [https://perma.cc/E4PL-E7UU].

<sup>13</sup> Nick Estes, *Fighting for Our Lives: #NoDAPL in Historical Context*, 32 WICAZO SA REV. 115 (2017); STANDING ROCK SIOUX TRIBE, <https://www.standingrock.org/> [https://perma.cc/EAE4-8ECA]; Kim TallBear, *Badass (Indigenous) Women Caretake Relations: #NoDAPL, #IdleNoMore, #BlackLivesMatter*, SOC’Y FOR CULTURAL ANTHROPOLOGY (Dec. 22, 2016), <https://culanth.org/fieldsights/badass-indigenous-women-caretake-relations-no-dapl-idle-no-more-black-lives-matter> [https://perma.cc/53CQ-9FQA].

<sup>14</sup> Professor Dan Berger, Mariame Kaba, and David Stein offer a concise, well-executed rejoinder to simplistic and often ill-informed leftist dismissals of abolitionist praxis. See Dan Berger et al., *What Abolitionists Do*, JACOBIN (Aug. 24, 2017), <https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration> [https://perma.cc/GU69-X4WZ].

liberal-optimistic paradigms of incrementalist, reformist social justice. Abolition, in its radical totality, consists of constant, critical assessment of the economic, ecological, political, cultural, and spiritual conditions for the security and liberation of subjected peoples' fullest collective being and posits that revolutions of material, economic, and political systems compose the *necessary but not definitive or completed* conditions for abolitionist praxis.

Consider abolition, then, as a counter-Civilizational distension of "freedom" that defies the modern disciplinary (and generally militarized) orders of the citizen, the nation-state, jurisprudence, politicality, and — most importantly — the gendered racial ascendancy of the white human and its deadly regimes of normalized physiological and cultural-epistemic integrity. (The latter, in short, is: the rigorously reproduced *worldliness* of white life in a relation of power/violence over and against other life, including nonhuman life; this includes the toxic political, affective, and discursive differentiation of premature, tragic, unjust, brutal, and/or massive white death — the interruption of white ascendancy — from the long and deep asymmetries of Indigenous death, queer death, Black death, Third World death, and so forth. This is the formation of historical dominance that Professors Sylvia Wynter and Katherine McKittrick elsewhere term "white radiance."<sup>15</sup>)

A long abolitionist project is already present in the terms, reflections, and scholarly-activist theorizations offered in the following pages by Patrisse Cullors, Angel Sanchez, and Professor Allegra McLeod. This project suggests a speculative practice of immanent futurity for people who *cannot presume an individual (or even collective) tomorrow* in the long historical presence of gendered racist state violence structured in militarism, policing, occupation, and incarceration.<sup>16</sup> Such a fragile futurity convenes a creative force that is, at once, interruptive and destructive in form and method. For example, to demystify and fracture the prototheological (and always white-supremacist) sanctification of police as suprahuman and suprallegal (though somehow simultaneously *vulnerable*) embodiments of universal (that is, undifferentiated and non-hierarchical) justice, safety, and communal (bodily) integrity is but one

<sup>15</sup> See Sylvia Wynter & Katherine McKittrick, *Unparalleled Catastrophe for Our Species? Or, to Give Humanness a Different Future: Conversations*, in SYLVIA WYNTER: ON BEING HUMAN AS PRAXIS 18, 19–24 (Katherine McKittrick ed., 2015).

<sup>16</sup> Professor Lee Edelman's critical theory of queer politicality beyond and outside liberal and heteronormative futurity is helpful in this instance. See LEE EDELMAN, NO FUTURE: QUEER THEORY AND THE DEATH DRIVE 3 (2004) ("[M]y project stakes its claim to the very space that 'politics' makes unthinkable: the space outside the framework within which politics as we know it appears and so outside the conflict of visions that share as their presupposition that the body politic must survive."). Read alongside other works cited here, including writings by Professors Fred Moten and Stefano Harney, *supra* note 4, Professor Cedric Robinson, *infra* note 120, Bukhari, *supra* note 3, Kaba, *infra* note 74, and Professor Clyde Woods, *infra* note 22, Edelman's notion of a politics enacted beyond — or against — the presumption of liberal futurity opens into a robust conversation within the general parameters of what I am referencing here as abolitionist praxis.

urgent signaling of abolitionist method in the here and now. When some on the far right (including the emergent alt-right) stake out the terms of moral panic by marshaling fearful, defensive reactions to a “war on cops,” screaming and whispering that “blue lives matter” in rebuttal to the intense and visible activation of so many around the fact of Black life’s institutionalized subjection to state terror, there is a grain of truth buried in their cynical, reprehensible posturing.

Here, then, is a central pedagogical and conceptual task for abolitionist praxis, requisite to the task of disarticulating the assumptions of the mass incarceration–reform narrative and offering a different, insurgent story against Civilization: to define and historicize “incarceration” against its modern juridical-cultural coherence as such.

## II. “SLAVERY HAS BEEN FRUITFUL IN GIVING ITSELF NAMES”: ABOLITIONIST GENEALOGIES OF “INCARCERATION”

How does the Thirteenth Amendment’s nominal abolition of plantation slavery establish the basis for the rise of the modern U.S. carceral state? What relations of gendered racial state violence are reproduced and refined in the amendment’s provisional — and ultimately piecemeal — understanding of “abolition”? How does the long historical praxis of abolition conceptualize the continuities of the racial chattel, settler-colonial, and racial-capitalist power relations? What might serve as a working, abolitionist definition of “incarceration” that resituates it in the context of these historical power relations? How does a robust definition of incarceration and “carceral power” establish the premises for abolition as a praxis of creativity (and not merely negation)?

The rise of the modern U.S. penitentiary in the early decades of the twentieth century was preceded and accompanied by the Thirteenth Amendment’s juridical translation of slavery from a racial chattel institution to a criminal justice function in 1865: “Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.”<sup>17</sup> Commonly valorized as the decree that abolished plantation slavery, the Thirteenth Amendment in fact refurbished a fundamental (racial) power relation mediated by the racist state by recodifying the terms of bodily capture and subjection (that is, enslavement by a state).

The transformation of the cultural-legal grounds for sustaining carceral slavery in the aftermath of the U.S. Civil War was structured in the rigorous continuities of gendered state and civil violence against people of African descent, in and beyond the U.S. South. Frederick Douglass, speaking a few months after Congress passed the Thirteenth Amendment, already anticipated how the racial carceral power of the

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<sup>17</sup> U.S. CONST. amend. XIII, § 1 (emphasis added).

slave relation would survive the (non)abolition of the plantation chattel regime: “I take this ground: whether this Constitutional Amendment is law [or] not . . . *I hold that the work of Abolitionists is not done . . .*”<sup>18</sup> He elaborated:

Slavery has been fruitful in giving itself names. It has been called “the peculiar institution,” “the social system,” and the “impediment” . . . . It has been called a great many names, and it will call itself by yet another name; and you and I and all of us had better wait and see what new form this old monster will assume, in what new skin this old snake will come forth next . . . .<sup>19</sup>

Douglass’s pronouncement of the undone, still-urgent work of abolition is echoed throughout the history of scholarly activist abolitionist thought. In addition to consistently explicating how the terms of the Thirteenth Amendment form the “new skin”<sup>20</sup> of the racial chattel power relation, recent contributions to this body of critical intellectual labor create a radical historicization that seats contemporary U.S. and state regimes of criminalization (“criminal justice”), policing, and incarceration within a longer national tradition of anti-Black nation-building and racist statecraft.<sup>21</sup>

In this sense, contemporary abolitionist thought is characterized by an identifiable, theoretical, and analytical concern that is inseparable from abolition as a totality of collective cultural, organizing, artistic, (self-defensive) paramilitary, educational, community-building, and decolonial practices. This critical praxis traces and narrates the institutional transitions and juridical-cultural translations of “involuntary servitude” from the carceral Middle Passage and the rise of plantation chattel to Jim Crow and the emergence of post-1960s carceral domestic war. Such tracing and (re)narration, in turn, evince the racial chattel relation as a durable, “reformable” paradigm of social, juridical, and cultural power that structures U.S. (global) statecraft and social formation in historical continuity.<sup>22</sup> By extension, this critical abolitionist method considers how the most concrete, everyday historical technologies of slave-state dominance — including but not limited to the slave ship, coffle, auction block, white slave patrol, lash, and slave-hunting animals — are reflected in post-emancipation (and present-tense) logics of policing, criminalization, and incarceration. From Douglas

<sup>18</sup> Frederick Douglass, *In What New Skin Will the Old Snake Come Forth?: An Address Delivered in New York, New York, on 10 May 1865*, in THE FREDERICK DOUGLASS PAPERS 79, 82 (John W. Blassingame & John R. McKivigan eds., 1991) (emphasis added).

<sup>19</sup> *Id.* at 85.

<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., sources cited *infra* note 29.

<sup>22</sup> See, e.g., CLYDE WOODS, DEVELOPMENT ARRESTED: THE BLUES AND PLANTATION POWER IN THE MISSISSIPPI DELTA 2 (1998) (examining how postbellum and present-day power and political structures in the Mississippi Delta represent little more than iterations on plantation power structures, clothed with other names).

Blackmon's account of the "industrial slavery,"<sup>23</sup> "slave farms,"<sup>24</sup> and "slave mines"<sup>25</sup> of the immediate post-emancipation period and Professor Erica Meiners's examination of the racialized cultural-juridical figure of "the child" as "a key technology of a shifting carceral regime,"<sup>26</sup> to Professor Damien Sojoyner's ethnographic conceptualization of (predominantly or plurality Black) public schools as sites of "enclosure" in continuity with (rather than in juxtaposition to) prisons and historical anti-Black logics of state captivity,<sup>27</sup> there is an ample and still-growing archive of study that explicates the roots of the contemporary U.S. carceral regime in the paradigmatic national power relation of racial chattel.<sup>28</sup>

Following Douglass's rejoinder to his latter nineteenth-century white abolitionist colleagues, contemporary abolitionist praxis thus amplifies the notion that abolition is an unfinished project precisely because the slave relation has never been abolished and instead has been constantly reanimated through changing regimes of carceral domestic war.<sup>29</sup> Within this abolitionist genealogy, "incarceration" constitutes — and is constituted by — the complex interaction of gendered racist relations of chattel and colonial power in their long, overlapping entwinements and divergences. As a relation of chattel-colonial dominance, incarceration emerged with particular global force through: (1) the historical technologies of captivity that structured the Transatlantic Middle Passage and

<sup>23</sup> DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK PEOPLE IN AMERICA FROM THE CIVIL WAR TO WORLD WAR II* 51–57 (2008).

<sup>24</sup> *Id.* at 117–54.

<sup>25</sup> *Id.* at 310–23.

<sup>26</sup> ERICA R. MEINERS, *FOR THE CHILDREN?: PROTECTING INNOCENCE IN A CARCERAL STATE* 6 (2016).

<sup>27</sup> See DAMIEN M. SOJOYNER, *FIRST STRIKE: EDUCATIONAL ENCLOSURES IN BLACK LOS ANGELES*, at xii–xiv (2016).

<sup>28</sup> For a more extended theoretical-historical discussion of the U.S. prison/carceral regime as a technology of social power that is (a) not reducible to the sites of criminal justice administration and incarceration and (b) in long historical continuity with the forms of carceral dominance evident in the hemispheric and transatlantic capture/trafficking of enslaved Africans, see DENNIS CHILDS, *SLAVES OF THE STATE: BLACK INCARCERATION FROM THE CHAIN GANG TO THE PENITENTIARY* 2–3 (2015).

<sup>29</sup> See, e.g., BLACKMON, *supra* note 23, at 371–82; CHILDS, *supra* note 28; ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 25–26 (2003); SALLY E. HADDEN, *SLAVE PATROLS: LAW AND VIOLENCE IN VIRGINIA AND THE CAROLINAS* 218–20 (2001); SARAH HALEY, *NO MERCY HERE: GENDER, PUNISHMENT, AND THE MAKING OF JIM CROW MODERNITY* 7, 11, 249, 257 (2016); ALEX LICHTENSTEIN, *TWICE THE WORK OF FREE LABOR: THE POLITICAL ECONOMY OF CONVICT LABOR IN THE NEW SOUTH 186–95* (1996); MATTHEW J. MANCINI, *ONE DIES, GET ANOTHER: CONVICT LEASING IN THE AMERICAN SOUTH, 1866–1928*, at 20, 40–41, 230–31 (1996); DAVID M. OSHINSKY, "WORSE THAN SLAVERY": *PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE* 33–35 (1996); Angela Y. Davis, *From the Prison of Slavery to the Slavery of Prison: Frederick Douglass and the Convict Lease System*, in *THE ANGELA Y. DAVIS READER* 74 (Joy James ed., 1998).



the hemispheric racial chattel enslavement of African-descended peoples;<sup>30</sup> and (2) the geographic-ecological production of the Western Civilizational project via the Treaty of Tordesillas, Manifest Destiny, and the manifold forms of conquest that have produced the (continuing and continuous) carceral subjection of Indigenous and Aboriginal peoples via reservations, nation-state borders, notions of “the frontier,” and other incarcerating measures.<sup>31</sup> Crucially, far from accomplishing the actual dehumanization of their captives, these epochal forms of carceral violence have been interrupted and periodically transformed by insurgent genealogies of rebellion and liberationist struggle, encompassing slave and prisoner revolts, Indigenous and anticolonial revolutions, artistic movements, antiapartheid movements, and other forms of collective (carceral abolitionist) genius.<sup>32</sup>

Given the density and breadth of systemic, institutionalized, state-sanctioned, and culturally normalized (if not valorized) violence that constitutes incarceration in direct continuity with the history of racial chattel, it seems clear that the term “mass incarceration” makes little sense, if only because the actual historical technologies of incarceration have never targeted an undifferentiated “mass,” but have consistently pivoted on the gendered racial profiling and criminalization of Black, Brown, Indigenous, queer, poor, and colonized (or colonially displaced) peoples.<sup>33</sup> (This might also be considered a form of asymmetrical domestic war.) What, then, might serve as a working abolitionist definition

<sup>30</sup> See CHILDS, *supra* note 28, at 2.

<sup>31</sup> See generally REGINALD HORSMAN, RACE AND MANIFEST DESTINY: THE ORIGINS OF AMERICAN RACIAL ANGLO-SAXONISM (1981); LUANA ROSS, INVENTING THE SAVAGE: THE SOCIAL CONSTRUCTION OF NATIVE AMERICAN CRIMINALITY (1998); DAVID E. STANNARD, AMERICAN HOLOCAUST: COLUMBUS AND THE CONQUEST OF THE NEW WORLD (1992).

<sup>32</sup> See generally DAN BERGER, CAPTIVE NATION: BLACK PRISON ORGANIZING IN THE CIVIL RIGHTS ERA (2014); JOY JAMES, IMPRISONED INTELLECTUALS: AMERICA'S POLITICAL PRISONERS WRITE ON LIFE, LIBERATION, AND REBELLION (2003).

<sup>33</sup> While this Essay is addressing an emergent liberal-progressive institutionalization of mass incarceration rhetoric, other conceptualizations of the phrase “mass incarceration” continue to circulate through abolitionist and other radical anticarceral political communities. See, e.g., Dan Berger, *Beyond Innocence: U.S. Political Prisoners and the Fight Against Mass Incarceration*, NAT'L JERICHO MOVEMENT (July 24, 2015), <https://www.thejerichomovement.com/blog/beyond-innocence-us-political-prisoners-and-fight-against-mass-incarceration> [https://perma.cc/GD2T-H84N]; Danny Haiphong, *The U.S. Is a Political Prison, Kamala Harris Is a Prison Guard*, BLACK AGENDA REP. (Jan. 30, 2019), <https://blackagendareport.com/index.php/us-political-prison-kamala-harris-prison-guard> [https://perma.cc/XUG9-PJZ7]. There are also numerous examples of the phrase's use in scholarly publications. See, e.g., JOÃO H. COSTA VARGAS, NEVER MEANT TO SURVIVE: GENOCIDE AND UTOPIAS IN BLACK DIASPORA COMMUNITIES 11–14 (2008) (describing an anti-Black genocide continuum that includes the disproportionate incarceration of Black and Brown people); Julia Sudbury AKA Julia C. Oparah, *Maroon Abolitionists: Black Gender-Oppressed Activists in the Anti-prison Movement in the U.S. and Canada*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX 293, 296, 301 (Eric A. Stanley & Nat Smith eds., 2011); Dan Berger, *Social Movements and Mass Incarceration: What Is To Be Done?*, 15 SOULS 3, 5–8 (2013) (arguing that mass incarceration stems from the

of incarceration, in correction of the reifying, compartmentalizing discourse of “mass incarceration”? We can undertake this task in two parts, each followed by a selective elaboration.

*A. Incarceration Is Legitimated State Violence, Mobilizing the Power of Law, Policing, and (Gendered Racial) Common Sense to Produce, Fortify, and/or Militarize the Geographic Isolation and (Collective) Bodily Immobilization of Targeted Human Groups.*

All available empirical and archival accounts affirm that the institutional capacity, racialized asymmetry, geographic scale, multigenerational impact, and sheer longevity of U.S. incarcerating technologies stand alone in recorded human history, particularly in the realm of jails and prisons. Few peers in the modern period remotely approach the United States’ late twentieth- and early twenty-first-century scales of jailing and imprisonment; in the last century, the rates of only a handful of nation-states have exceeded or been otherwise statistically comparable to U.S. rates of criminal justice incarceration (which peaked at 1000 per 100,000 people in 2008<sup>34</sup>), among them apartheid South Africa,<sup>35</sup> the Gulag-era Soviet Union, and the Russian Federation during the immediate post-Soviet Union years.<sup>36</sup> Criminologist Marc Mauer, writing in a 1994 report for The Sentencing Project, notes that “[b]lack males in

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government will to suppress political dissidents and rebellion); Julia Sudbury, *Transatlantic Visions: Resisting the Globalization of Mass Incarceration*, 27 SOC. JUST. 133, 134–37 (2000) (linking mass incarceration in the United Kingdom with trends in the United States).

<sup>34</sup> Adam Liptak, 1 in 100 U.S. Adults Behind Bars, *New Study Says*, N.Y. TIMES (Feb. 28, 2008), <https://nyti.ms/2GD75Fu> [<https://perma.cc/MXB5-TQ2N>]; see also John Gramlich, *America’s Incarceration Rate Is at a Two-Decade Low*, PEW RES. CTR. (May 2, 2018), <http://www.pewresearch.org/fact-tank/2018/05/02/americas-incarceration-rate-is-at-a-two-decade-low/> [<https://perma.cc/YKV3-PRJT>] (showing that while the U.S. incarceration rate in 2016 was at its lowest since 1996, it remained around 860 per 100,000).

<sup>35</sup> See PETER WAGNER, PRISON POLICY INITIATIVE, THE PRISON INDEX: TAKING THE PULSE OF THE CRIME CONTROL INDUSTRY § IV (2003), [https://www.prisonpolicy.org/prisonindex/us\\_southafrica.html](https://www.prisonpolicy.org/prisonindex/us_southafrica.html) [<https://perma.cc/3XF9-4SJB>] (noting the incarceration rates for all people in apartheid South Africa in 1993 (368 per 100,000), for Black men in South Africa in 1993 (851 per 100,000), and for the African American men in the United States in 2001 (4848 per 100,000)).

<sup>36</sup> The scholarship of Professor Nils Christie remains among the most significant sources of radical criminological analysis available, and his versatile book *Crime Control as Industry* is indispensable for its deprovincializing contextualization of late twentieth- and early twenty-first-century incarceration regimes. See NILS CHRISTIE, CRIME CONTROL AS INDUSTRY: TOWARDS GULAGS, WESTERN STYLE 13–17 (3d ed. 2000). Christie notes that the Soviet Union had an extraordinary incarceration rate of 1400 per 100,000 in 1950, *id.* at 29, and others have remarked upon the Soviet Union’s extraordinarily high incarceration rate between 1934 and 1953, see J. Arch Getty et al., *Victims of the Soviet Penal System in the Pre-war Years: A First Approach on the Basis of Archival Evidence*, 98 AM. HIST. REV. 1017, 1020, 1040 (1993). Christie’s research demonstrates that post-Soviet Union Russia exhibited a rate of incarceration during the latter quarter of the twentieth century that was generally at or below the U.S. rate of the last two decades. CHRISTIE, *supra*, at 28–31.

the U.S. are incarcerated at more than four times the rate of black males in [apartheid] South Africa — 3822 per 100,000 versus 851 per 100,000.”<sup>37</sup>

Comparisons to peer European First World/Global North nation-states further indicate that the contemporary U.S. carceral regime may well constitute a singular category of historicized analysis. Professor Franklin Zimring, a renowned criminologist, writes, “the rate of imprisonment achieved by 2007 in the United States was three times that of any fully developed nation at any point in the post World War II era,”<sup>38</sup> while a 2018 report by the Prison Policy Initiative (PPI) notes that the United States imprisons and jails at a rate 500% (United Kingdom) to 1800% (Iceland) higher than any of the other founding NATO member nations.<sup>39</sup> According to the Bureau of Justice Statistics, the United States has retained a population of 2,000,000 or more incarcerated people since the early 2000s.<sup>40</sup> Further, the astronomical growth of the U.S. carceral regime since the 1970s cannot be attributed to any growth in “crime rates” (which have actually declined over the period in question<sup>41</sup>).

A vast archive of criminological data consistently demonstrates that criminal justice-based incarceration is structured in gendered racist state violence. The Sentencing Project has recently summarized the vast asymmetries in the lifetime likelihood of imprisonment for U.S. residents born in 2001: 1 out of 17 for white men, 1 out of 6 for Latino men, and 1 out of 3 for Black men; 1 out of 111 for white women, 1 out of 45 for Latina women, and 1 out of 18 for Black women.<sup>42</sup> Hispanics<sup>43</sup> are

<sup>37</sup> Marc Mauer, THE SENTENCING PROJECT, *Americans Behind Bars: The International Use of Incarceration, 1992–1993*, SCHAFER LIBR. DRUG POL’Y (Sept. 1994), <http://www.druglibrary.org/schaffer/other/sp/abb.htm> [<https://perma.cc/UCN7-XKR3>].

<sup>38</sup> Franklin E. Zimring, *The Scale of Imprisonment in the United States: Twentieth Century Patterns and Twenty-First Century Prospects*, 100 J. CRIM. L. & CRIMINOLOGY 1225, 1231 (2010).

<sup>39</sup> Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, PRISON POL’Y INITIATIVE (June 2018), <https://www.prisonpolicy.org/global/2018.html> [<https://perma.cc/E2PU-34UZ>].

<sup>40</sup> DANIELLE KAELE & MARY COWHIG, OFFICE OF JUSTICE PROGRAMS, U.S. DEP’T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2016, at 2 (2018), <https://www.bjs.gov/content/pub/pdf/cpus16.pdf> [<https://perma.cc/SZ73-QFNT>].

<sup>41</sup> *State-by-State and National Crime Estimates by Year(s)*, UNIFORM CRIME REPORTING STAT., <https://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm> [<https://perma.cc/N8ZD-HATZ>] (select “United States-Total” in column A, all categories in column B, and 1970–2014 in column C).

<sup>42</sup> *Criminal Justice Facts*, THE SENTENCING PROJECT (2017), <http://www.sentencingproject.org/criminal-justice-facts/> [<https://perma.cc/KY6L-ZXGT>].

<sup>43</sup> It should be stressed that “Hispanic” is a notoriously vexed U.S. Census demographic classification that erases socially ascribed racial differentiations within the category and thus underestimates the criminalization of Latinx populations that are racialized and racially profiled/policed as Black, Brown, and/or Indigenous. Carlos Lozada, Opinion, *Who Is Latino?*, WASH. POST (June 21, 2013), [http://wapo.st/14nhG9t?tid=ss\\_tw&utm\\_term=.13ca6e14743b](http://wapo.st/14nhG9t?tid=ss_tw&utm_term=.13ca6e14743b) [<https://perma.cc/GSV2-C2X8>].

incarcerated under state jurisdiction at a rate 170% higher than whites, while “[t]hirty-six states had overrepresentation of Native Americans in prisons, ranging from 1.2 times the rate for Whites in Missouri and Tennessee to 14.5 times the rate for Whites in Nevada.”<sup>44</sup> While rates of incarceration in the United States have slightly declined over the last decade or so and the gap between the number of incarcerated Blacks and whites is shrinking, the Pew Research Center reports that as of 2016, Black people are still subjected to state captivity at a rate more than 500% greater than whites.<sup>45</sup>

In addition to the geographic and socioeconomic crises produced by neoliberal economic abandonment of poor, racially criminalized populations, the contemporary U.S. carceral regime has been constituted by an expansion of the state’s capacity and will to engage in the juridical and cultural work of *criminalization* — that is, the discursive and legal formulation of “crime” as an affixation of notions of pathology/antisociality to particular (gendered, sexualized, racialized) human acts, behaviors, ecologies, and bodies.<sup>46</sup>

By any historical measure, the institutional formation of incarceration within the purviews of U.S. criminal justice statecraft has produced a social logic, jurisprudence, cultural structure, and militarized policing apparatus that naturalize the condition of state captivity for criminalized people, populations, and geographies.<sup>47</sup> This is to suggest, conversely, that in any given historical moment there are also *generally decriminalized* people, populations, and geographies whose incarceration — however temporary — may seem dissonant, scandalous, and inherently unjust, hence *unnatural*. In fact, the dynamic reproduction of this circuit of criminalization-decriminalization — a state-governed and extrastate process that relies on multiple methods of incarceration as the physiological and symbolic executions of an alleged social order — is precisely what coheres the normative cultural legibility of such “American” notions as freedom, citizenship, peace, safety, respectability, nation, and community.

<sup>44</sup> CHRISTOPHER HARTNEY & LINH VUONG, NAT’L COUNCIL ON CRIME AND DELINQUENCY, *CREATED EQUAL: RACIAL AND ETHNIC DISPARITIES IN THE U.S. CRIMINAL JUSTICE SYSTEM* 19 (2009).

<sup>45</sup> John Gramlich, *The Gap Between the Number of Blacks and Whites in Prison Is Shrinking*, PEW RES. CTR. (Jan. 12, 2018), <http://www.pewresearch.org/fact-tank/2018/01/12/shrinking-gap-between-number-of-blacks-and-whites-in-prison/> [<https://perma.cc/2EJZ-DKFX>].

<sup>46</sup> See CHRISTIE, *supra* note 36, at 21–23.

<sup>47</sup> See JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* 10–14 (2017) (analyzing how the African American community in Washington, D.C., has responded to violence in Black neighborhoods with increased reliance on the criminal justice system); RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 5–7 (2007) (analyzing California’s prison growth and its disproportionate impact on African Americans and Latinxs in the state’s urban areas).

The multiple (and often overlapping) carceral regimes in the United States provide a globally instructive case study of incarceration as a complex, dynamic symbiosis of modern nation-building, criminological statecraft, domestic militarization, gendered racialization, and civil and social death. A strategic focus on the *specific* U.S. carceral formation of jails, prisons, and detention centers in the late twentieth and early twenty-first centuries further enables a historically supple and geographically dynamic understanding of incarceration that can be utilized across different historical conditions and sociopolitical and cultural contexts. While this U.S. conceptualization is not easily translated to other contexts, it nevertheless is representative of incarceration as a *Civilizational* power relation and paradigmatic feature of modern societies structured in dominance.<sup>48</sup>

Contemporary journalistic, academic, artistic, activist, and popular cultural discourses on U.S. incarceration have overwhelmingly (and appropriately) focused on the punitive functions, political-economic infrastructures, and institutional-juridical protocols of jails, prisons, and detention centers within the ongoing emergence of this contemporary criminal justice regime. There is an increasingly vast field of scholarship and advocacy addressing the significant collateral consequences of incarceration, including the damage and trauma inflicted on children, systemic (as well as informal, culturally sanctioned) impediments to postrelease access to housing and employment, and the inability to participate in civil society or electoral politics on the same terms as other citizens.<sup>49</sup> The latter body of work suggests that “incarceration” is not a self-contained or historically isolated practice of legitimated state violence. That is, 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 (or their corresponding juridical protocols).

<sup>48</sup> See Stuart Hall, *Race, Articulation and Societies Structured in Dominance*, in *SOCIOLOGICAL THEORIES: RACE AND COLONIALISM* 305, 339–42 (1980) (analyzing the United States’ particular history of race and slavery as emblematic of the country’s hegemonic power struggles).

<sup>49</sup> See, e.g., MARGARET COLGATE LOVE ET AL., *COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION: LAW, POLICY AND PRACTICE* 440–48 (2016 ed.); JEFF MANZA & CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY* 84–90 (2006) (describing the barriers and challenges that formerly incarcerated people face in restoring their right to vote in various states); JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 112–26 (2003) (describing the barriers that formerly incarcerated people face in finding employment and public housing); Donald Braman, *Families and Incarceration*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 117, 118 (Marc Mauer & Meda Chesney-Lind eds., 2002); Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, in *MASS IMPRISONMENT: SOCIAL CAUSES AND CONSEQUENCES* 82, 106 (David Garland ed., 2001).

*B. Incarceration Is a Systemic Logic and Institutional Methodology that Produces and Coheres Spatial, Cultural, and Juridical Structures of Human Dominance Within Social and State Formations.*

Incarceration takes the form of narrative, juridical, spatial, and sociopolitical processes through which criminalized or otherwise (ontologically and socioculturally) pathologized populations are rendered collective targets of state-sanctioned social liquidation and political neutralization. These processes may or may not involve premature physiological death and militarized killing. The immediate and accumulated individual and collective experiences of incarceration, however, are consistently articulated by captive populations in the vernaculars of warfare, survival, and involuntary intimacy with constant bodily and spiritual vulnerabilities to violence and degradation.<sup>50</sup>

As such, incarceration is simultaneously repressive and productive power, a method of normalized (legally ordained) dominance and violence over particular peoples' physiologies and environments. It is a technology of social order and a cohering of peace, lawfulness, and security through war, violence, and punishment. Incarceration, understood as a systemic logic and institutional methodology, materializes through *numerous regimes of dominance*, from apartheid, military occupation, imprisonment, and compulsory schooling to Native American reservations, environmental racism, and normative sexual categorizations.<sup>51</sup>

Such a capacious and distended conception of incarceration indicates its historical inseparability from the emergence of Western modernity and the architectures of the peculiar Civilizational project — Civilization as a global colonial and racial chattel formation — that forms its historical condition of possibility. Incarceration facilitates protracted and immediate, spectacular and fatal forms of oppressive violence through the power relations of race, gender, class, sexuality, (dis)ability, national origin, religion, and citizenship, among other socially ascribed differentiations of human beings.

<sup>50</sup> See, e.g., MUMIA ABU-JAMAL, *LIVE FROM DEATH ROW* 89–91 (1995); BUKHARI, *supra* note 3, at 107; CHILDS, *supra* note 28, at 11; MARSHALL “EDDIE” CONWAY & DOMINQUE STEVENSON, *MARSHALL LAW: THE LIFE & TIMES OF A BALTIMORE BLACK PANTHER* 133–34 (2011); HALEY, *supra* note 29, at 160; LEONARD PELTIER, *PRISON WRITINGS: MY LIFE IS MY SUN DANCE* 143 (Harvey Arden ed., 1999); DYLAN RODRÍGUEZ, *FORCED PASSAGES: IMPRISONED RADICAL INTELLECTUALS AND THE U.S. PRISON REGIME* 146 (2006); Dylan Rodríguez, “Allow One Photo per Year”: *Prison Strikes (Georgia 2010, California 2011–12) as Racial Archives, from “Post-Civil Rights” to the Analytics of Genocide*, in *THE NATION AND ITS PEOPLES: CITIZENS, DENIZENS, MIGRANTS* 70, 87 (John S.W. Park & Shannon Gleeson eds., 2014); Cassandra Shaylor, “It’s like Living in a Black Hole”: *Women of Color and Solitary Confinement in the Prison Industrial Complex*, 24 *NEW ENG. J. ON CRIM. & CIV. CONFINEMENT* 385, 409 (1998); *THROUGH THE WIRE* (P.O.V. Films 1989).

<sup>51</sup> See RODRÍGUEZ, *supra* note 50, at 41–47.

Contrary to being a scandalous excess of the racial/racist state in the post–Civil Rights Period, incarceration is more accurately understood as a paradigmatic — that is, fundamental, indispensable, and structuring — modality of what Frantz Fanon and Wynter call “sociogeny”<sup>52</sup>: the complex, changing processes through which external sociocultural “codes” produce notions of life, (human) being, identity/self, and historicity, within which “difference is psychically lived, fantasised, [and] contested.”<sup>53</sup> Incarceration — which is to say, carceral statecraft and the logics of carceral power/dominance — is a form of warfare against those (human) beings that embody the symbolic orders of death, pathology, and unassimilability into the order of Civilization, an order that thrives in the long historical disordering, immobilization, and/or (attempted) destruction of other human socialities. Any attempt to conceptualize the ongoing formation and geographic metastasizing of incarcerating regimes thus requires that the labors of dynamic critical theorization and conceptual reflection be situated in the radical possibility that the historical targets of incarceration are also the complex embodiment of its imminent undoing, hence its abolition as such.

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Consider the *storytelling* implications of a radical racial chattel genealogy of the contemporary carceral regime, premised on the narrative techniques of historical continuity, transgenerational knowledge/wisdom, and the inhabitation of a permanent, physiologically activated condition of insurgency against U.S. slave coloniality (in and beyond western Africa, the Caribbean, and North America). The racial chattel relation forms as it facilitates the condition of modernity as well as modern (state) institutionality (that is, the very coherence and preconceptual premises of modern institutions as socially organizing bureaucratic structures — order, administrative/labor hierarchy, disciplinarity/compliance, stability, normative white subjectivity). As a racial-colonial, genocidal, and protogenocidal project of white Civilization-building, the long historical construction of racial chattel *and its emancipated rearticulation in racial criminalization* permanently disarticulate any allegation of the alleged “mass” of “mass incarceration”: there is no such mass; there are only fatal, systemically enforced differentiations of places, people, physiologies, subjectivities, and futurities.

<sup>52</sup> See FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 11 (Charles Lam Markmann trans., Grove Press 1967) (1952); Sylvia Wynter, *Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation — An Argument*, 3 CR: NEW CENTENNIAL REV. 257, 269 (2003).

<sup>53</sup> David Marriott, *Inventions of Existence: Sylvia Wynter, Frantz Fanon, Sociogeny, and “the Damned,”* 11 CR: NEW CENTENNIAL REV. 45, 79 (2011).

Consider this deeply historicized abolitionist project in stark contrast to a strain of liberal criminological reformism that has seized multiple overlapping publics in recent years, appropriating the languages of abolition in the service of expanding rather than radically challenging carceral-policing statecraft.

### III. PITFALLS OF THE “MASS INCARCERATION” NARRATIVE: COLLATERAL CONSEQUENCES OF COUNTERABOLITIONIST REFORMISM

How have recent reformist discourses addressing “mass incarceration” produced a narrative that obscures rather than clarifies the origins, casualties, and structuring logics of carceral power? What are the policy implications of the reformist diagnosis of the mass incarceration crisis as a largely unintended — and ultimately fixable — outcome of systemic unfairness, poorly conceived and/or maladministered laws, class/racial/gender/religious/citizenship bias, and/or jurisprudential dysfunction? How does “mass incarceration reform,” as conceived by liberal-to-progressive think tanks, pundits, activists, elected officials, academics, and state agents, rely on a reinvigoration, refinement, and expansion of policing and criminal prosecution?

The ascendancy of the phrase “mass incarceration” merits our critical attention, as it has become a lingua franca of academic, activist, non-profit, journalistic, public policy, popular-cultural, and state discourses. As a result, a relatively coherent narrative telos is attaining increasingly wide political-ideological traction.

First, there is an uneven though spreading lamentation that a contemporary, half-century statecraft of gendered racial terror has intensified a national institutional-cultural *capacity and will* to criminalize, police, prosecute, incarcerate, and culturally denigrate targeted bodies, places, and populations. While never quite affirming that the terms of this liberal confession suggest an acknowledgment of the actual presence of infrastructures and juridical protocols of domestic war (against “drugs,” “gangs,” undocumented migrants/“illegal aliens,” queer people, “terrorists,” and so forth), the rhetoric of mass incarceration offers a vague articulation of righteous objection to the possibility that both law and law enforcement have been manipulated by the powerful to sustain relations of dominance over the structurally vulnerable, the historically disfranchised, and the racially oppressed.

In the echo of this lamentation, an ensemble of alarmed accounts and wrenching testimonials by journalists, activists, social scientists, legal advocates, survivors, and other witnesses ratifies the notion that otherwise noble law-and-order state projects (including but not limited to wars on drugs, gangs, and so forth) have exceeded their operational objectives and leaked into institutionalized practices of human dysselection. In this ensemble of accounts and testimonials, it is not difficult to



identify a generalized underlying assertion that such juridically sanctioned, culturally normalized state violence is a betrayal of American values as well as a violation of the mystified egalitarian ethos that constitutes the U.S. national formation.<sup>54</sup> Legal scholar and former President of the John Jay College of Criminal Justice Professor Jeremy Travis resonates this durable reformist bildungsroman in a 2015 address to the National Forum on Criminal Justice:

[T]he unifying theme that we must keep in mind is this: we live in an era of mass incarceration because we have chosen, through policy choices, to dramatically expand the use of prison as a response to crime. There is a corollary to this finding: [i]f our democracy got us here, it is our democracy that must get us out of here.<sup>55</sup>

Here, it is the tyranny of the (white/multiculturalist) “we” that animates the subject of patriotic outrage, asserting a universalized American accountability that so easily bypasses the long historical facts of particular peoples’ alienation from the nation-building project.

Next, there are spreading, dense accounts of degradation and suffering that traverse individualized tragedy to collectively, communally voiced, insurgent outrage (it becomes clear, however, that many of these accounts actually *preceded* the growing, increasingly generalized acknowledgement of the crisis). This outrage is borne out of the most privileged publics — which is to say, the publics structured in the social-historical entitlements of white supremacy and its postapartheid, multiculturalist variations — and their recent confrontation with revelations of a national scandal; “mass incarceration” was unfolding, flourishing, and metastasizing under their oblivious noses. Other publics, that is, those long subjected to the acute institutional mobilizations of domestic war (communal racial profiling, geography-specific police infiltration and occupation, gendered cultural attacks on poor and working-poor Black, Native, and Latinx women, criminalization of queer sexuality), openly wonder what reality their privileged counterparts were inhabiting for all those years and debate whether and how to coalesce with their entitled, liberal-progressive outrage.

A protracted skirmish ensues, as organized political blocs, local-to-large-scale cultural institutions, and grass roots to emergent virtual/social media collectives attempt to make sense — that is, to *definitively narrate* — this turmoil. Entering the fray (at the same time that they

<sup>54</sup> For some of the most rigorously researched and well-argued examples of this reformist narrative, see PETER K. ENNS, *INCARCERATION NATION: HOW THE UNITED STATES BECAME THE MOST PUNITIVE DEMOCRACY IN THE WORLD* 157 (2016); GLENN C. LOURY, *RACE, INCARCERATION, AND AMERICAN VALUES* 28 (2008); and JOHN F. PFAFF, *LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION — AND HOW TO ACHIEVE REAL REFORM* 162 (2017).

<sup>55</sup> See Jeremy Travis, President of John Jay Coll. of Criminal Justice, Opening Address at the 2015 National Forum on Criminal Justice: Reducing Mass Incarceration (Aug. 3, 2015).

are formed by it) are multiple blocs of organic and professional intellectuals — of the racial state, nonprofit/foundation regimes, and liberal cultural industry, including thinktank- and corporate-commissioned academics, writers, and artists — who collectively strive to restore a paradigmatic liberal faith in the virtues and possibilities of righteous national reform against this state-sanctioned climate of atrocity. Symptomatically, the likes of Van Jones, Kim Kardashian, and Jared Kushner join in the skirmish, side by side.<sup>56</sup> From an April 2016 *New York Times* op-ed: “Reform is imperative, not just for its economic or budgetary benefits, but for individuals who deserve a second chance and the families and communities who stand beside them.”<sup>57</sup>

FIGURE 1<sup>58</sup>



In response to the catch-phrased problem of mass incarceration, a growing, outraged rhetoric of liberal humanist alarm reaches for shared moral grievance: *The New Yorker* asserted in 2012 that “[t]he scale and the brutality of our prisons are the moral scandal of American life,”<sup>59</sup> and the Open Society Foundations announced a \$50 million grant to the American Civil Liberties Union in 2014 by proclaiming, “America’s

<sup>56</sup> See, e.g., Jeremy Diamond & Alex Rogers, *How Jared Kushner, Kim Kardashian West and Congress Drove the Criminal Justice Overhaul*, CNN (Dec. 21, 2018, 3:49 PM), <https://www.cnn.com/2018/12/18/politics/criminal-justice-overhaul/index.html> [<https://perma.cc/HU36-QECT>].

<sup>57</sup> Jason Furman & Douglas Holtz-Eakin, Opinion, *Why Mass Incarceration Doesn’t Pay*, N.Y. TIMES (Apr. 21, 2016), <https://nyti.ms/1WHolpe> [<https://perma.cc/M62G-RZ9D>].

<sup>58</sup> CNN (@CNN), TWITTER (Oct. 21, 2018, 10:10 AM), <https://twitter.com/CNN/status/1054057248065011714> [<https://perma.cc/P54V-4NWL>].

<sup>59</sup> Adam Gopnik, *The Caging of America*, NEW YORKER (Jan. 30, 2012), <https://www.newyorker.com/magazine/2012/01/30/the-caging-of-america> [<https://perma.cc/N4YS-LG96>].

bloated prisons are an appalling and expensive failure, the politics of fear overwhelming common sense and human decency.”<sup>60</sup>

“Morality,” “common sense,” and “decency” are rhetorical signals of a hegemonic effort to renarrate generations of police terror and carceral displacement as unintended, atrocious consequences of a tragically “misled” War on Drugs culminating in 2.3 million people held captive by the state.<sup>61</sup> The reason for such frantic renarration is somewhat simple, in part: carceral domestic war cannot be “reformed”; it can only be eliminated (abolished); to do otherwise is to sustain it under revised executive/policy directives, policing tactics, jurisprudential approaches, and cultural discourses. But if this domestic war is reframed as a *discrete, mistaken excess* owing to criminological error, electoral opportunism, and moral failure — “mass incarceration” — it can be redressed and reformed within the existing systems of law, policy, and liberal justice.

If there is such a massive problem, the story goes, it can be fixed. If we bring rational heart to mind in another adventure of humanist reform, if we follow the stories into the tragedy and insist over and over again that such harrowing details are not the intended outcome of this state, this nation-building epoch, this policy-formed marshaling of cultural and domestic military force, then solutions are imminent. The threads of a racial modernity are to again be pulled taut around the jagged, always-disarticulating edges of the civil underside, where statecraft unfolds on the intimate geography of the flesh.

The story continues, open to optimistic revision as reform reproduces fundamental relations of dominance, violence, and systemic vulnerability.

<sup>60</sup> Chris Stone, *Ending Mass Incarceration*, OPEN SOC’Y FOUNDS. (Nov. 7, 2014), <https://www.opensocietyfoundations.org/voices/ending-mass-incarceration> [https://perma.cc/JT38-4CCQ].

<sup>61</sup> The figure 2.3 million differs from the more commonly cited figure of 2 million because it includes an informed estimate of incarcerated populations that are excluded from most criminological counts, including but not limited to children, undocumented people, and people detained under the exceptionalist auspices of the post-2001 U.S. “War on Terror.” The most frequently quoted figures are drawn from the Bureau of Justice Statistics. See KAEBLE & COWHIG, *supra* note 40. PPI, however, offers a more comprehensive view of the U.S. carceral state’s population in its illustrative yearly summary. Peter Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie*, PRISON POL’Y INITIATIVE (Mar. 14, 2018), <https://www.prisonpolicy.org/reports/pie2018.html> [https://perma.cc/7KAE-75YE]. PPI describes its annual report as bringing clarity to the current state of incarceration in the United States:

This report offers some much needed clarity by *piecing together this country’s disparate systems of confinement*. The American criminal justice system holds almost 2.3 million people in 1719 state prisons, 102 federal prisons, 1852 juvenile correctional facilities, 3163 local jails, and 80 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.

*Id.*

What I have begun to characterize as the narrative structure of “mass incarceration” reformist discourse is also an attempt to trace the cultural-political fallout of carceral domestic warfare. The consequences of this marshaling of police power, criminal justice policy, and racialized national culture are transgenerational and have fundamentally deformed the capacities of targeted communities and people to reproduce within a sociality that is constituted by the logics and protocols of gendered racist state violence so incisively demystified by organizations like We Charge Genocide, which we will examine more closely below.<sup>62</sup> Such a fallout cannot be triaged or redressed through liberal promises of futurity, redeemed citizenship, and revalued civil life precisely because these deformations are relatively indelible and are *inhabited and carried* by their involuntary inheritors. Given the depth of these systemically induced, targeted casualties, it becomes urgently necessary to study the *collateral consequences* wrought by mass-incarceration-reform discourse in and of itself.

The liberal-to-progressive schema of mass incarceration reform rests on allegations of unfairness, systemic bias, racial disparity, and institutional dysfunction that in turn demand vigorous reforms of the racial state, largely by way of internal auditing, aggressive shifts in law and policy, and piecemeal rearrangements of state infrastructure. Exemplifying the institutionalization of this political-analytical position is the advocacy of New York University School of Law’s influential Brennan Center for Justice, founded in 1995 by the “family, friends, former clerks, and admirers” of Justice Brennan.<sup>63</sup> A nonprofit and nonpartisan policy think tank seeking “to improve our systems of democracy and justice” in order to “hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all,”<sup>64</sup> the Brennan Center held a conference in 2014 titled “Shifting Law Enforcement Goals to Reduce Mass Incarceration,” headlined by U.S. Attorney General Eric Holder and with panels populated by an array of federal prosecutors (from New Jersey, Maryland, Kansas, Alabama, Louisiana, and the U.S. Department of Justice, among others), a former president of the National Rifle Association and former chair of the American Conservative Union, and police officials.<sup>65</sup> The conference welcome letter references the policing logic driving the emergence of a liberal-progressive mass incarceration–reform bloc:

This conference offers an opportunity to assess the way federal prosecutors can shift priorities. It will allow us to hear how state and local law

<sup>62</sup> See *infra* pp. 1602–05..

<sup>63</sup> GLENN MORAMARCO, BRENNAN CTR. FOR JUSTICE, REGULATING ELECTIONEERING: DISTINGUISHING BETWEEN “EXPRESS ADVOCACY” & “ISSUE ADVOCACY,” at iv (1998), [www.brennancenter.org/sites/default/files/legacy/d/cfr5.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/cfr5.pdf) [<https://perma.cc/2G9B-YB7V>].

<sup>64</sup> BRENNAN CTR. FOR JUSTICE, SHIFTING LAW ENFORCEMENT GOALS TO REDUCE MASS INCARCERATION (2014).

<sup>65</sup> See *id.* at 2–3.

enforcement can innovate so that safety does not come with the high costs of unnecessary incarceration. And it will gather the nations' top budget experts to explore how economic incentives can steer policy — wisely or unwisely — throughout the system.

We are deeply grateful to U.S. Attorney General Eric Holder for his encouragement for this work and his presence today. We are appreciative, as well, to the law enforcement leaders who will speak out in this conference. . . .

The Brennan Center works to reform the systems of democracy and justice. We seek to ensure that American institutions follow core values. *Thus we are committed to ending mass incarceration as a mission for our organization.*<sup>66</sup>

This conference resulted in the publication of the “Blue Ribbon” Brennan Center report *Federal Prosecution for the 21st Century* (foreword by former U.S. Attorney General Janet Reno<sup>67</sup>), which “recommends concrete reforms to federal prosecution practices to support twenty-first-century criminal justice policies. This new approach would reorient prosecutor incentives and practices toward the twin goals of reducing crime and *reducing mass incarceration*.”<sup>68</sup>

The report reproduces the seemingly canonized criminological assumption that the expansion of gendered racist incarceration at such a pace and scale is *in fact and unquestionably* an “unintended” outcome of the last half century or so of U.S. criminal justice statecraft. Thus, it seamlessly cites criticisms of mass incarceration from prominent right-wing figures like Senator Rand Paul and New Jersey Governor Chris Christie, while quoting then-California Attorney General Kamala Harris’s advocacy for “a third way forward: smart on crime” and New York City Police Department Commissioner William Bratton’s 2014 pledge (born of an almost laughable, widely ridiculed deficit of self-awareness) to engage in “collaborative problem-solving with the community.”<sup>69</sup> On the back of these implicit endorsements, *Federal Prosecution for the 21st Century* outlines a strategy that incentivizes prosecutors to “address the root causes of violence or unethical behavior . . . [and] focus on prevention strategies . . . in an attempt to prevent crimes rather than just punish offenders after they commit them.”<sup>70</sup>

The reformist promise animating the Brennan Center’s work pivots on the liberal belief that racist state violence is *not* a fundamental and

<sup>66</sup> *Id.* at i (emphasis added).

<sup>67</sup> See Janet Reno, *Foreword* to LAUREN-BROOKE EISEN ET AL., BRENNAN CTR. FOR JUSTICE, *FEDERAL PROSECUTION FOR THE 21ST CENTURY I* (2014), [http://www.brennancenter.org/sites/default/files/analysis/Federal\\_Prosecution\\_For\\_21st\\_Century.pdf](http://www.brennancenter.org/sites/default/files/analysis/Federal_Prosecution_For_21st_Century.pdf) [<https://perma.cc/6UGV-AGP7>].

<sup>68</sup> EISEN ET AL., *supra* note 67, at 3 (emphasis added).

<sup>69</sup> *Id.* at 13.

<sup>70</sup> *Id.* at 14.

systemic (or otherwise-intended) production of the U.S. racial/racist state. This premise enables the Brennan Center's primary strategy for mass incarceration reform: a methodological revision and bureaucratic invigoration of *criminal prosecution* that heavily invests in the prospect of a more balanced symbiosis of preemptive policing, preventative criminology, and focused, punitive incarceration within the statecraft of sustained, rationalized domestic carceral war. In this instance, to "end mass incarceration" is tantamount to endorsing an expanded policing regime guided by neoliberal managerial methods and personnel assessments. In this collapsing of purposes, the Brennan Center proposes borrowing from corporate approaches to "organizational change," expounding rhetorics and methods of institutional leanness, agility, and more efficient management of organizational waste and disciplining of ineffective or underachieving personnel.<sup>71</sup> By way of example, the Brennan Center's reformist model advocates something called "Success-Oriented Funding," in which government resources and grant opportunities are linked to the figure of the prosecutor as the leader of a state-led reform from above.<sup>72</sup>

Considered from a critical abolitionist position, *Federal Prosecution for the 21st Century* reflects the dense brainstorming of a reconfigured post-1960s domestic war. It articulates a rigorous, dynamically planned and executed regime of state strategies for addressing the overlapping economic, geographic, and political crises cultivated by cresting racial-colonial liberation struggles: deindustrialization and its racially structured displacements and abandonments of working people; the rise and decline of neoliberal/global capitalism; complex and always-resurgent white nationalism (including liberal variations); and the absolute persistence of collective, creative human praxis that counters the hegemony and armed dominance of White Life.<sup>73</sup> The context and substance of the Brennan Center's recent convening of police, prosecutors, and liberal academics is structured in a collective state of denial that this half century of martial-judicial planning generated predictable and asymmetrical casualties — including the transparent and tediously orchestrated decades-long construction of the misnamed condition of "mass incarceration."

Studied and reread as such, *Federal Prosecution for the 21st Century* proposes to withdraw the ground troops of gendered racist carceral war

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<sup>71</sup> While the literature on the management of corporate organizational change is vast, the particular inspiration for this reference is a short handbook distributed to administrators at the University of California, Riverside. JEFFREY M. HIATT, *EMPLOYEE'S SURVIVAL GUIDE TO CHANGE* 34–43 (3d ed. 2013).

<sup>72</sup> See EISEN ET AL., *supra* note 67, at 14.

<sup>73</sup> See ALEXANDER G. WEHELIYE, *HABEAS VISCUS: RACIALIZING ASSEMBLAGES, BIOPOLITICS, AND BLACK FEMINIST THEORIES OF THE HUMAN* 3–4 (2014); Wynter & McKittrick, *supra* note 15, at 18–24; Casey Goonan, *Policing and the Violence of White Being: An Interview with Dylan Rodriguez* [sic], 1 PROPTER NOS 8, 8–16 (2016).

(that is, the war machine of astronomical Black captivity) for the sake of a reconstructed approach to community occupation and redirected, tactically intensified policing. Such an approach reproduces and enhances the long historical technology of gendered racial criminal profiling — a methodology of policing as well as a morbid and magical statecraft with roots in criminological eugenics and the early twenty-first-century racial-economic crises of U.S. industrialization. The technology of the criminal profile actively imagines as it (simultaneously and immediately) apprehends and narrates the *particular profiled being* as cultural figuration, physical comportment (including gesture, fashioning, and skin-blood-bone physiology), and potential domestic enemy combatant.

The reform of mass incarceration, in this instance, actually endorses an *expansion of carceral policing logics* beyond the discrete institutional-spatial sites of prisons, jails, detention centers, and juvenile facilities. This expanded regime of control, containment, and policing of particular profiled beings (bodies, spaces, communities) is to be implemented through weaponized, high-efficiency state surveillance and the ramping up of ostensibly *extracarceral* state violence, resonating histories of border rangers, frontier war, slave patrols, and punitive industrial- and agricultural-labor discipline. Thus, while the reform of mass incarceration declares an anticarceral intention, its reconstructionist vision proliferates an invigorated logic and refurbished technology of carcerality in the reproduction of gendered racist state violence. Abolitionist and Black radical feminist scholar, activist, and grassroots organizer Mariame Kaba crystallizes this critical framing:

What a strange moment we're in . . . Prison "reform" is in vogue.

. . . .

As someone who has devoted years of her life to the work of first reforming and then later abolishing prisons, one might think that I would be excited about recent developments. In fact, my natural skepticism is now at its peak mainly because I am a student of history. The prison itself was born out of a reform movement and since its inception in the U.S. in the late 18th century, we have been tinkering towards imperfection. With every successive call for "reform," the prison has remained stubbornly brutal, violent and inhumane.<sup>74</sup>

<sup>74</sup> Mariame Kaba, *Prison Reform's in Vogue and Other Strange Things . . .*, TRUTHOUT (Mar. 21, 2014), <https://truthout.org/articles/prison-reforms-in-vogue-and-other-strange-things/> [https://perma.cc/J68P-HV8K]; see also Mariame Kaba, *Foreword* to ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR*, at xv (2017) (advocating against reform as a solution to police violence); Mariame Kaba & Erica R. Meiners, *Arresting the Carceral State*, JACOBIN (Feb. 24, 2014), <https://www.jacobin-mag.com/2014/02/arresting-the-carceral-state/> [https://perma.cc/Q3YK-3NFN] (addressing a parallel pattern occurring with school "reform" in response to the school-to-prison pipeline); Mariame Kaba & Kelly Hayes, Op-Ed, *A Jailbreak of the Imagination: Seeing Prisons for What They Are*

Further supporting Kaba's informed skepticism, the discourse of "mass incarceration" in the early twenty-first century has, with some exceptions, been constituted and deformed by the overlapping ideological fields of white, multiculturalist, and/or civil rights liberalism: that is, the term tends to enable forms of critical analysis that pivot on notions of unfairness, systemic bias, racial disparity, and institutional dysfunction. This generalized position, in turn, endorses and mobilizes around vigorous *reforms* of the state's incarceration and criminalization infrastructure, largely by way of internal auditing, aggressive legal and policy shifts, and rearrangements of carceral capacities and protocols. Such a reformist approach fails to critically address incarceration in and of itself, as a systemic logic and methodology of social formation that sustain the gendered racist power relations of chattel slavery, colonial conquest, and white-supremacist nation-building.

Given the circulation and influence of Professor Michelle Alexander's *The New Jim Crow* across communities and publics, from progressive Black church communities and abolitionist activists to public policy think tanks and elected officials, the book's narrative arc can be read alongside *Federal Prosecution for the 21st Century* as a crystallization of the key plot points and political implications of mass incarceration reformism. As numerous critics have incisively and rigorously outlined the book's analytical and methodological shortcomings,<sup>75</sup> I will focus this brief critical reflection on the significance of Alexander's text as a popularly circulated *narrative structure* that galvanizes a counter-abolitionist, reformist approach to managing the asymmetrical casualties of the contemporary carceral-racial state.

Lucidly illustrating a post-Civil Rights Era marked by anti-Black criminalization and targeted, large-scale incarceration, Alexander posits the book's main thesis through a historical analogy that frames post-1970s Black incarceration as a "New Jim Crow."<sup>76</sup> Strangely, the book contradicts its own narrative historical premises in latter chapters, asserting that the contemporary carceral condition in fact cannot and should not be seriously equated with (old) Jim Crow: although "[t]he parallels between the two systems of control are striking," she asserts, it

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and *Demanding Transformation*, TRUTHOUT (May 3, 2018), <https://truthout.org/articles/a-jail-break-of-the-imagination-seeing-prisons-for-what-they-are-and-demanding-transformation/> [<https://perma.cc/V7F7-KFJ9>] (calling for radical change and questioning "reformers'" commitment to ending the carceral violence that has led to mass incarceration).

<sup>75</sup> See James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV. 21, 34–64 (2012); Mechtild Nagel, *Beyond The New Jim Crow*, 9 PEACE STUD. J. 78, 83–88 (2016); Joseph D. Osel, *Black Out: Michelle Alexander's Operational Whitewash: The New Jim Crow Reviewed*, 1 INT'L J. RADICAL CRITIQUE (2012); Anders Walker, *The New Jim Crow? Recovering the Progressive Origins of Mass Incarceration*, 41 HASTINGS CONST. L.Q. 845, 853–72 (2014).

<sup>76</sup> MICHELLE ALEXANDER, *THE NEW JIM CROW* 11 (2010).



is more important to understand that “there are important differences.”<sup>77</sup> Cataloguing the institutional, cultural, and political divergences between the racist state regimes of Jim Crow segregation and post-Jim Crow racial incarceration,<sup>78</sup> the book effectively compartmentalizes its own structuring historical analogy by asserting that “[the] list of the differences between slavery and Jim Crow . . . might well be longer than the list of similarities. The same goes for Jim Crow and mass incarceration.”<sup>79</sup>

In its penultimate chapter, *The New Jim Crow* compounds this narrative contradiction by replicating an optimistic racial-historical telos that seems abruptly incompatible with almost all of the secondary empirical evidence outlined in the previous two hundred-plus pages. Alleging that the recent historical period (and onset of the presidency of Barack Obama) is marked by an “absence of racial hostility in the public discourse” as well as an absence of “overt racial hostility among politicians . . . and . . . law enforcement officials,”<sup>80</sup> the book actively undermines the potential critical force of its own accumulated descriptions of “mass incarceration.” Alexander writes:

[E]ven granting that some African Americans may fear the police today as much as their grandparents feared the Klan . . . and that the penal system may be as brutal in many respects as Jim Crow (or slavery), the absence of racial hostility in the public discourse and the steep decline in vigilante racial violence is no small matter. It is also significant that the “whites only” signs are gone and that children of all colors can drink from the same water fountains, swim in the same pools, and play on the same playgrounds. Black children today can even dream of being president of the United States.

Those who claim that mass incarceration is “just like” Jim Crow make a serious mistake. Things have changed.<sup>81</sup>

Alexander’s assertion that the emergence of mass incarceration is accompanied by a generalized cultural-political *decline* in racist discourse and reactionary racist mobilization is distressing for both its historical inaccuracy and its potentially dangerous cultural, policy, and activist implications. On the one hand, this narrative grossly misestimates the post-1960s (and post-President Obama) reawakening and expansion of organized white-supremacist and white-nationalist movements and ideologies, evidenced by the *near tripling* of Ku Klux Klan membership during the 1970s,<sup>82</sup> the numerical cresting of white

<sup>77</sup> *Id.* at 195.

<sup>78</sup> *Id.* at 195–208.

<sup>79</sup> *Id.* at 195.

<sup>80</sup> *Id.* at 197.

<sup>81</sup> *Id.*

<sup>82</sup> MANNING MARABLE, RACE, REFORM, AND REBELLION: THE SECOND RECONSTRUCTION AND BEYOND IN BLACK AMERICA, 1945–2006, at 171 (3d ed. 2007).

reactionary “hate groups” in 2011, and accelerated mainstreaming of white nationalism and overtly white-supremacist ideologues during and after the 2016 presidential election.<sup>83</sup>

On the other hand, and perhaps more fundamentally, there is the deeper question of whether the Jim Crow narrative analogy itself provides a remotely adequate critical prism through which to apprehend the formation of the contemporary U.S. carceral regime. Here, Alexander’s failure to substantively engage an extensive body of prior thinking and writing on the topic at hand extends beyond citational negligence and leaks into complicity with a peculiar historical-analytical illiteracy — specifically, the failure to apprehend the formation of the contemporary carceral-criminalization regime within a genealogy (hence, institutional and historical continuity) of gendered racist regimes of (individual and collective) bodily immobilization, state-induced (land and geographic) displacement, and subjection to relations of chattel dominance. In fact, mass incarceration narrativity *relies on* this rhetorical and analytical ploy of analogy to pivot away from the deep archive of critical praxis that rigorously explicates the deep, dynamic connections between the racial-colonial carceral forms that form the vast *conditions of material-historical possibility* for the epoch so-named as mass incarceration.<sup>84</sup>

As the book and its author have become widely known among multiple publics in the years following *The New Jim Crow*’s 2010 publication, mass incarceration narrativity has veered into the quicksand of racial state auto-critique and self-instituted reformist assessment. In this sense, a clear *narrative logic* links *The New Jim Crow* and the previously discussed Brennan Center conference/Blue Ribbon publication to an emergent (if periodically retracting) statecraft of criminal justice reform.<sup>85</sup>

As an alternative, the ongoing present tense of normalized and legally sanctioned carceral torture (violence against the physiological, psychic, and cultural integrity of incarcerated people) can be apprehended

<sup>83</sup> According to the Southern Poverty Law Center’s (SPLC) inventory of racist, nativist, and white-supremacist “hate groups” in the United States, there was a numerical historical peak in 2011 and a resurgence during the first years of the Trump presidency. See Mark Potok, *The Year in Hate and Extremism*, INTELLIGENCE REP., Spring 2017, at 37, 39, [https://www.splcenter.org/sites/default/files/intelligence\\_report\\_162.pdf](https://www.splcenter.org/sites/default/files/intelligence_report_162.pdf) [<https://perma.cc/AG3D-NATX>]. Further, the SPLC notes that its inventory almost certainly underestimates the presence of organized white supremacy and white nationalism by virtue of their spreading presence online. *Id.* at 38.

<sup>84</sup> See, e.g., PATRICK ELLIOT ALEXANDER, FROM SLAVE SHIP TO SUPERMAX: MASS INCARCERATION, PRISONER ABUSE, AND THE NEW NEO-SLAVE NOVEL (2018); BEYOND WALLS AND CAGES: PRISONS, BORDERS, AND GLOBAL CRISIS (Jenna M. Loyd et al. eds., 2012); MARTHA D. ESCOBAR, CAPTIVITY BEYOND PRISONS: CRIMINALIZATION EXPERIENCES OF LATINA (IM)MIGRANTS (2016); A. NAOMI PAIK, RIGHTLESSNESS: TESTIMONY AND REDRESS IN U.S. PRISON CAMPS SINCE WORLD WAR II (2016).

<sup>85</sup> See *supra* pp. 1595–96.

as the cumulative fulfillment of the terror enabled by the Thirteenth Amendment's judicial rearticulation and distension of the racial chattel relation. As numerous abolitionist scholars have noted, the rise of the contemporary prison industrial complex is a direct outcome of the liberal-progressive "prison reform" successes of the 1970s.<sup>86</sup> The political convergence between liberals, progressives, and "law-and-order" conservatives/reactionaries, located within the accelerating political and geographical displacements of globalization, generated a host of material transformations and institutional shifts that reorganized the scale and reach of the state's carceral capacities — prisons and jails — in direct, intensified relation to hegemonic political, cultural, and economic institutions, including public policy and legislative bodies, electoral and lobbying apparatuses, the medical and architectural/construction industries, corporate news media, and various other institutional forms.<sup>87</sup>

Thus, *the reform of the prison resulted in its expansion and bureaucratic multiplication*: for example, the reform of prison overcrowding came to involve an astronomical growth in new prison construction (rather than decarceration and release), the reformist outrage against preventable deaths and severe physiological suffering from (communicable, congenital, and mental) illnesses yielded the piecemeal incorporation of medical facilities and staff into prison administration (as opposed to addressing the fact that massive incarceration inherently creates and circulates sickness), and reformist recognition of carceral state violence against emotionally disordered, mentally ill, and disabled captives led to the creation of new prisons and pharmaceutical regimens for the "criminally insane," and so on.<sup>88</sup> Following the historical trajectory of Professor Angela Y. Davis's concise and accurate assessment that "during the [American] revolutionary period, the penitentiary was generally viewed as a progressive reform, linked to the larger campaign for the rights of citizens,"<sup>89</sup> it is crucial to recognize that the post-

<sup>86</sup> On the linkages between prison/jail reform efforts and the genesis of the U.S. prison industrial complex, see MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS* 8–9 (2006).

<sup>87</sup> ELLIOTT CURRIE, *CRIME AND PUNISHMENT IN AMERICA* 4–5 (2d ed. 2013). For an authoritative study of the emergence of the California prison system in the latter twentieth and early twenty-first centuries, see GILMORE, *supra* note 47.

<sup>88</sup> For examples of the extensive scholarship on the expansion of prison under the guise of "reform," see ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* (2005); GILMORE, *supra* note 47, at 23, 88–97; TERRY A. KUPERS, *PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT* (1999); JOHN BARTLOW MARTIN, *BREAK DOWN THE WALLS* (1954); Norval Morris, *The Contemporary Prison: 1965–Present*, in *THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN MODERN SOCIETY* 227, 249–53 (Norval Morris & David J. Rothman eds., 1995); and ALISA ROTH, *INSANE: AMERICA'S CRIMINAL TREATMENT OF MENTAL ILLNESS* (2018).

<sup>89</sup> DAVIS, *supra* note 29, at 27.

1970s emergence of the prison industrial complex is one of the most significant “reformist” achievements in U.S. history and is not simply the perverse social project of reactionaries and conservatives. The contemporary carceral regime’s roots and sustenance are fundamentally located in the American liberal-progressive impulse toward reforming institutionalized state violence rather than abolishing it. Professor Paul Butler, a former prosecutor, thus reached a protoabolitionist conclusion in 2016, suggesting that “attempts to reform the system might actually hinder the more substantial transformation American criminal justice needs.”<sup>90</sup>

While there is no significant, recent collective movement — above-ground or underground — to wage militarized self-defensive counterwarfare against gendered racist policing as such, there is little doubt that the collective, galvanized genius reflected in the shared knowledge, creative organizing practices, and critical activist labors of vulnerable and targeted communities is guiding a cultural, ideological, spiritual, and tactically jurisprudential counterattack against police terror, police killing, police torture, police unaccountability . . . police *violence* in most if not all its forms. Let us briefly consider such an example.

#### IV. BEYOND “POLICE BRUTALITY”: WE CHARGE GENOCIDE (CHICAGO, 2014–2016)

How does the critical public intellectual work of grassroots organizations and collectives like Chicago-based grassroots group We Charge Genocide (WCG) produce a living archive of abolitionist pedagogy, analysis, and scholarly activist methodology? What concepts, terms, and languages are introduced by such abolitionist work, and how do they challenge, redefine, or productively replace an existing reformist lexicon (for example, “police brutality”)? How does such abolitionist praxis produce useful counternarratives of the historical present tense?

During an intensely creative and productive two years of activity that included unprecedented testimony to the United Nations (UN) Committee Against Torture in Geneva,<sup>91</sup> WCG left an indelible imprint on contemporary abolitionist praxis and its accompanying critical public discourse. Announced as an “intergenerational effort to center the voices of the young people most impacted by police violence,”<sup>92</sup> WCG

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<sup>90</sup> 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).

<sup>91</sup> WE CHARGE GENOCIDE, POLICE VIOLENCE AGAINST CHICAGO’S YOUTH OF COLOR: A REPORT PREPARED FOR THE UNITED NATIONS COMMITTEE AGAINST TORTURE (2014).

<sup>92</sup> WE CHARGE GENOCIDE (June 1, 2016), <http://wechargegenocide.org/sunsetting-we-charge-genocide/> [<https://perma.cc/U9V9-JBW9>].

resonated a Black (youth, feminist) radical tradition that implicitly referenced the scholarly-activist antilynching labors of Ida B. Wells<sup>93</sup> while explicitly referencing the analytic and methodological frameworks of the Civil Rights Congress, which authored the groundbreaking *We Charge Genocide* petition to the UN in 1951.<sup>94</sup>

Notable in its 2014 UN report *Police Violence Against Chicago's Youth of Color* is the organization's critical engagement with the common assumptions undergirding the notion of "police brutality," particularly the generalized logic of *exception* that depicts such state violence as abnormal and infrequent rather than entirely systemic and historically widely encountered by policed Black and Brown communities/people. The abolitionist logic of WCG's testimonial and empirically driven narrative of its surrounding historical geography suggests that Chicago's regime of police violence cannot be subsumed by the rubric of "police brutality" because the explanatory coherence of the latter concept rests on two categorical assumptions: (1) that the identified police actions and behaviors (if proven true) are in fact violations of law and policy (that is, "brutality" suggests the police have exceeded or otherwise abrogated their law-sanctified entitlement to exert state-legitimated violence); and (2) that such actions and behaviors can be discretely grieved, redressed, and/or corrected through established juridical and institutional protocols (for example, citizen complaints, whistleblower grievances, internal investigations, and criminal prosecutions). WCG has constructed in the place of "police brutality" a far more nuanced, rigorous conceptualization of systemic, institutionalized, juridically condoned police torture, cruelty, inhumane and degrading treatment, murder, harassment, and unjustified detention.<sup>95</sup>

Demystifying the tacit liberal premises of conventional police-brutality rhetorics, WCG's UN report provides serial first-person accounts and broad statistical analyses that cumulatively depict a *social condition of police terror/violence* that structures the lives of Chicago's Black and Latinx youth:

The prevalence of harassment, involuntary searches, and verbal abuse are [sic] not the result of unusual transgressions by select, individual [Chicago Police Department] officers. Rather, they are [sic] illustrative of institutional racial bias and systemic endorsement of targeting and harassment of young people of color. . . . This cruel and degrading treatment of Chicago's youth of color serves to silence, traumatize, and control entire communities. It creates a climate where youth of color feel unsafe and learn

<sup>93</sup> See generally IDA B. WELLS, SOUTHERN HORRORS AND OTHER WRITINGS: THE ANTI-LYNCHING CAMPAIGN OF IDA B. WELLS, 1892–1900 (Jacqueline Jones Royster ed., 1997).

<sup>94</sup> WE CHARGE GENOCIDE, *supra* note 91, at 12 (referencing CIVIL RIGHTS CONG., *supra* note 7).

<sup>95</sup> *Id.* at 2–9.

that they always are suspects and that their lives are not valued in the eyes of the state.<sup>96</sup>

The report's citations of police torture and violence include, but are not limited to, killings of unarmed youth, sexual assault/rape, racially targeted mass arrests, and a structure of state impunity that reproduces a densely normalized cultural climate of gendered racist police aggression.<sup>97</sup>

Coming to terms with WCG's critical-analytic method 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.<sup>98</sup> Put differently, as an abolitionist political-cultural (and scholarly) text, *Police Violence Against Chicago's Youth of Color* constructively displaces reformist narratives of police brutality and gendered racist state violence that presume both to be dysfunctional exceptions to the normative operations of state and civil society. Rather, the text generates a radical renarration of policing, flowing from a present-tense testimonial archive of survivors that echoes the long historical continuities of anti-Black racism, colonial dominance, and militarized white supremacy.<sup>99</sup> In the terms of such a renarration, the challenge of institutional (police) reform is subsumed to, if not drastically displaced by, the imperatives of survival, communal bodily integrity, radical social and economic justice, and self-defense against always potentially deadly state violence.

Such imperatives compel a substantive consideration of what appears to be an entirely reasonable notion, if we are to take the implications of the WCG renarrative seriously: that perhaps the regime of gendered racist police violence ought not to be incessantly reformed, but rather extinguished.

<sup>96</sup> *Id.* at 4.

<sup>97</sup> *See id.* at 6–11.

<sup>98</sup> *See* ALLYSON COLLINS, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES (1998); Opinion, *To Honor Eric Garner's Life, Reform the Police*, N.Y. TIMES (May 15, 2018), <https://nyti.ms/2L4c1Bt> [<https://perma.cc/NXX9-GA5X>].

<sup>99</sup> *See, e.g.*, WE CHARGE GENOCIDE, *supra* note 91, at 6 (“Three police cars arrived on the scene, and police jumped out of their cars with guns drawn, and Roshad ran. Police chase [sic] Roshad through an alley onto the back porch of a house. Several people heard Roshad say, ‘Please don’t shoot, please don’t kill me, I don’t have a gun.’ People saw him with his hands up when the police shot Roshad 5 times and killed him.”).

FIGURE 2<sup>100</sup>

WCG is one site of creative, collective narrative genius that disrupts and transforms liberal commonsense languages while contributing to a long-term abolitionist praxis that recognizes the long historical present tense of ordinary peoples' normalized encounters with state-facilitated and state-condoned social evisceration. This collective genius emanates from a complexly shared relationship to an indisputable fact: that the United States is an accumulation and reproduction of centuries of gendered racist state violence, institutionalized dehumanization, and genocidal logics of domination.

#### V. TO INHABIT INSURGENT HUMAN BEING: THE CREATIVITY IMPERATIVE OF ABOLITIONIST PRACTICE

What ethical and historical responsibilities structure our potential engagements in abolitionist praxis? How does such praxis encompass both dynamic, reflexive, and consistent (auto-)critique and specific organizing methods, political strategies, and theoretical frameworks? If abolition is a creative — and not merely a negating or “destructive” — praxis, then how can it be understood within Wynter's poetic, artistic,

<sup>100</sup> PPL's Response Team (@ChiCopWatch), TWITTER (Nov. 13, 2014, 8:05 AM), <https://twitter.com/ChiCopWatch/status/532927362183483392> [<https://perma.cc/TX7F-982W>].

experimental conception of “human being” that demystifies the hegemony of the Western, white “genre” of Man?<sup>101</sup>

The contributors to this issue of the *Harvard Law Review* invite an identification with abolitionist praxis that embraces rigorous, sustained responsibilities. Professor Allegra McLeod, Angel Sanchez, and Patrisse Cullors remind us that working within the abolitionist genealogy may also amount to an unavoidable ethical necessity for anyone who acknowledges that a transformation of the existing social-cultural form is the prerequisite for a liberation of (human) being from a half-millennium of chattel-colonial carceral violence. In concert with their essays, I would emphasize that this work must be undertaken with a deeply historical, critical appreciation of how (feminist, queer) Black radicalism and Indigenous anti-/de-colonial praxis have long identified militarized, misogynist, and racist-colonial carcerality as both the spatial method and preferred conceptual apparatus for the distended, ongoing New World/Civilizational project and its preeminent modern iteration in U.S. nation-building.

In resonance with my fellow authors, Bukhari illuminates the materiality of insurgent — and ultimately transformed — being as the mutual, compulsory subject of large-scale, institutionally driven abolitionist social change. Her conception of Black liberation in this instance provides an invaluable directive for all who place themselves in the historical service of an abolitionist project:

We must exorcise those characteristics of ourselves and traits of the oppressor nation in order to carry out that most important revolution — the internal revolution. This is the revolution that creates a new being capable of taking us to freedom and liberation. As we are creating this new being, we must simultaneously be struggling to defeat racism, capitalism, and imperialism — and liberate the Black Nation.<sup>102</sup>

Extrapolating Bukhari’s rejoinder, Professor Martha Escobar’s recent book *Captivity Beyond Prisons* provides a similarly nourishing lesson in rigorous abolitionist praxis and scholarship.<sup>103</sup> Driven by the concreteness of migrant, border-crossing women’s experiences with the racist-misogynist U.S. state, Escobar’s text has significant implications for abolitionist organizing methodologies and strategies: by demystifying the connections between the anti-Black chattel-carceral state and the recent gendered racial criminalization of undocumented migrants that is driving an “expansion of the carceral society beyond the territorial boundaries of the US nation-state,”<sup>104</sup> she demonstrates the necessity of a strategic retheorization and rethinking of activist silos, particularly

<sup>101</sup> See Wynter & McKittrick, *supra* note 15.

<sup>102</sup> BUKHARI, *supra* note 3, at 61.

<sup>103</sup> See ESCOBAR, *supra* note 84.

<sup>104</sup> *Id.* at 4.



those separating the liberal-progressive mainstream of the immigrant-rights movement and the emergent work of prison and carceral abolition.<sup>105</sup> The most incisive contribution of this scholarly project is its analysis of the territorializing constructions of political interest that often unduly compartmentalize reformist, rights-based activisms and thus compromise the possibility of creative, productive confrontation with the root causes of suffering, misery, and interpersonal violence for such populations as criminalized Latina migrant women.<sup>106</sup> Arguing that there is an acute need to foster substantive, principled articulations of a dialogue among different formations of activist community, Escobar contends that “the urgency of engaging such labor” is signified in “the experiences of [Latina] (im)migrant women,” for whom the stakes are particularly heightened in material consequences of state-sanctioned violence.<sup>107</sup> I invoke Bukhari and Escobar as examples of abolitionist praxis that are neither exceptional nor singular, but rather are *symptomatic* of the thoughtful, self-critical, radically collective sensibilities that have historically guided abolitionist thought and organizing methods.

There is thus a frightening beauty to historical abolitionist praxis, to the extent that it hinges on assertions of collective forms of being as (criminalized, systemically pathologized) acts of insurgent self-determination, security, and communal reproduction — without the sturdy guarantees, epistemological presumptions, and material entitlements of social futurity that characterize Western Euroamerican (white) civil subjectivities.<sup>108</sup> *Insurgent abolitionist futurity* — as a collective, vulnerable, experimental, and speculative imagination/performance/practice of liberation from carceral-Civilizational violence — constitutes a radical challenge to the fraudulent universality of this liberal (read: white, humanist) social futurity.<sup>109</sup>

The lie of liberal futurity is nestled in the longer historical arc of the reformist narratives explicated in the previous pages: that the “American” past may be structured in multiple, mind-boggling, systemic eviscerations of human populations and their ways of life; that these eviscerations may have been undeniably racial and racial-colonial in their origins, administration, and rationalization; that such serial tragedies of targeted suffering and demise have nonetheless formed staging points for serial, dramatic national reforms and institutional reconfigurations that exhibit an exceptional American will to vindicate egalitarian

<sup>105</sup> *Id.* at 13–15.

<sup>106</sup> *See id.* at 94–95.

<sup>107</sup> *Id.* at 176.

<sup>108</sup> Among the most durably relevant, historically nuanced explications of this notion remains Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

<sup>109</sup> On insurgent futurities, see generally FUTURES OF BLACK RADICALISM (Gaye Theresa Johnson & Alex Lubin eds., 2017); HARNEY & MOTEN, *supra* note 4; JOSÉ ESTEBAN MUÑOZ, CRUISING UTOPIA: THE THEN AND THERE OF QUEER FUTURITY (2009); and Special Issue, *Afrofuturism*, SOC. TEXT, Summer 2002.

justice, individual opportunity, and the incorporation of respectable, rights-bearing citizens into the futurity of imperial optimism; that the lasting triumph of this vindicated American “freedom” requires righteous, properly waged war — domestically and globally — against any who pose actual or potential threats to the *structure of entitlement and presumption* that constitutes this liberal futurity.

In this narrative-political context, liberal-progressive reforms of the carceral-racial state constitute an intensive, historically specific re-mapping, reimagination, and rearticulation of the durable white-supremacist entitlement that characterizes liberal futurity. This process, which I have elsewhere referenced as the ongoing post-1960s epoch of White Reconstruction,<sup>110</sup> is guided by a Civilizational mandate to plan, manage, and reimagine liberal (white) futurity *against the duress of the other beings’ insurgencies*. In this way, the juridical abolition of official apartheid and the formal elimination of selective forms of gendered racial colonialism are maneuvers of sustainability. More precisely, this process is a period-specific turn toward a flexibility of racial power (and suppleness of racialized relations of dominance) that pivots on state and social reform precisely because the presumptive citizen-subject, proctor, and administrator of that reform is already vested — historically, systemically, *and juridically* — with the entitlements of a social future. Within the popularized cultural politics and delimited upward socioeconomic mobilities endorsed by contemporary White Reconstruction (which both relies on and despises “affirmative action” and “diversity” as mechanisms for reordering the epidermal layers of a generally-but-not-always white institutionality), there are renewed possibilities for attachment, allegiance, and affinity to the universalist (“colorblind”-to-“postracial”) fraud of liberal futurity. There is an invitation to thrill in this compulsory fiction, perhaps even to fantasize a “people-of-color” future within the reconstructed white-supremacist ascendancy even as material conditions yield palimpsests of degradation and humiliation.

On the other hand, even if we are not living within a historical conjuncture in which surrounding material and political-cultural conditions appear to enable collective engagement in a decisive abolition of oppressive systems and power relations, it is possible to *inhabit* abolitionist futurity through already-existing human praxis — which is to say, following Wynter, that the totality of what I have been referencing as a global abolitionist genealogy is available to those who are both willing and able to attempt a (collective, critically reflective) praxis of human

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<sup>110</sup> See Dylan Rodríguez, *Goldwater’s Left Hand: Post-raciality and the Roots of the Post-racial Racist State*, 26 CULTURAL DYNAMICS 29, 31 (2014). Also in progress are two books, DYLAN RODRÍGUEZ, WHITE RECONSTRUCTION, PT. 1: ESSAYS ON VIOLENCE AND INSURGENCY (forthcoming May 2020) (on file with author); DYLAN RODRÍGUEZ, WHITE RECONSTRUCTION, PT. 2: A COUNTER-NARRATIVE (forthcoming Aug. 2020) (on file with author).

being *against the alienated, coercive universalization of white/Western/Civilizational human being*.

Wynter references the latter as “Man2,” the “uniquely secular liberal monohumanist *conception* of the human — Man-as-*homo oeconomicus*.”<sup>111</sup> In turn, she argues that it is this “genre” of human being that *narrates itself* through the Western humanist (“monohumanist”) episteme as the singular physiological and ontological embodiment of an evolved, eugenic, and Civilization-embodiment humanity.<sup>112</sup> The primary epoch-shaping fallout of this “genre-specific” articulation of (white/Western/Civilizational) human being is its self-rendition as *universal Man*, the abstracted normative subject of modern rights/jurisprudence/rational knowledge, which in turn asserts the “dysselected” (pathological, under- or dys-evolved, culturally/genetically defective and inferior) status of *all other genres of human being* (the Afro-descended, the aboriginal, the unassimilable, the irrational, the subhuman).

[T]he West, over the last five hundred years, has brought the *whole* human species into its *hegemonic*, now purely secular . . . model of being *human*. . . . This is a model that *supposedly* preexists — rather than *coexists* with — all the models of other human societies *and* their religions / cultures. . . . This is the enacting of a uniquely secular liberal monohumanist *conception* of the human — Man-as-*homo oeconomicus* — as well as of its rhetorical overrepresenting of that member-class conception of being human (as if it is the *class of classes* of being human itself).<sup>113</sup>

While Wynter references the Masai people as the counterpoint to Man2 in the next part of her essay,<sup>114</sup> it is no less feasible (or necessary) to recognize and embrace the counter-Civilizational human praxis of other ordinary and extraordinary people in the belly of the Western, Euroamerican beast who inherit and inhabit a state of intimate, proximate, and permanent conflict (if not war) with the militarized, standardized, and canonical genre of (white) humanity of which she writes. Put another way, it may be within the complex mess of human praxis engaged by the very peoples *incarcerated by the Civilizational geography, episteme, and (U.S.) nation-state form* that abolitionist creativities also flourish — and potentially, flourish into fully articulated revolt against Civilizational carcerality, epistemology, normativity, and the violent/violating normality of (white/Western/Civilizational) human being itself.<sup>115</sup> *These assertions of insurgent being are abolitionist acts*, in

<sup>111</sup> Wynter & McKittrick, *supra* note 15, at 21.

<sup>112</sup> *Id.* at 21–22.

<sup>113</sup> *Id.* at 21.

<sup>114</sup> *Id.* at 22.

<sup>115</sup> Wynter elaborates:

the sense that peoples inhabiting the layered undersides of modern citizenship and civil society — those who systemically, regularly experience the disciplinary, violent, and punitive policing of civility and sociality in and of themselves — are actively creating, sustaining, and otherwise performing modalities of social life (crucially, methods of survival if not collective thriving) that fundamentally challenge the assumptive coherence and humanist universality of “civility” and “the citizen.” Abolitionist praxis suggests a radical acknowledgement that both of the latter concepts are artifacts of dominance that remain fatal in their militarized enforcement and indelible in their juridical reproduction of a peculiar gendered racial normativity.

The long genealogy of abolitionist radicalisms evidences militant struggles to protect the collective spiritual, cultural, and physiological integrity of particular peoples who exist on the underside of liberal futurity and its structure of entitlement. In this sense, the insurgency of abolitionist futurity is its politicization of this underside position and its renarration of the terror that so often subsumes those who can neither materially presume nor find existential entitlement in the futurity of their (individual and collective) bodily coordinates, spiritual life, and modality of human being. Here, too, is the frightfully beautiful abolitionist present and future tense: at stake is an ongoing, necessary confrontation with the life-deforming algorithms of a Civilization project that rests on the intersecting and entwined logics of chattel incarceration (enslavement) and racial-colonial genocide (cultural, biological, ecological, and otherwise).

Consider abolition as an art form, the kind of creative truth that mixes the stuff of history into memory, survival, breath, and stubborn, vexed, and often-nourishing community that constantly escapes the guarantees of any organizing plan. In some ways, this is not the time to insist on the renewed urgency of a radical abolitionist struggle, because such a time preceded all of this, and its messengers have already presented themselves to us in the poetry, letters, manifestos, collect phone calls, and never-quite-private conspiratorial conversations we share with each other sometimes, but really, *all the damn time*. More than just a synonym or rhetorical cipher for revolutionary change or radical social transformation, abolition is an artful disruption of the presumed

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We need to speak instead of our *genres of being human*. Once you redefine being human in hybrid *mythoi* [self-narrated, self-mythologized] and *bios* [bio-physical] terms, and therefore in terms that draw attention to the relativity and original multiplicity of our *genres* of being human, all of a sudden what you begin to recognize is the central role that our discursive *formations*, aesthetic fields, and systems of knowledge must play in the performative enactment of all such genres of being hybridly human.

*Id.* at 31.

futurity. Certainly, it is as Professor Ruth Wilson Gilmore says: “Abolition is a theory of change, it’s a theory of social life. It’s about making things.”<sup>116</sup>

Abolition, in such terms, is a fundamentally *creative* force, even and especially in those rare historical moments when a definitive destruction of oppressive structures and power relations appears possible, practical, and capable of catalyzing a (potentially) radically different social form. Within the last sesquicentennial, such periods of creative destruction and creativity from destruction have flourished through multiple genealogies of radical confrontation with the global Civilization form, resulting in the downfall of multiple apartheid orders, expulsion of colonial occupations, redistribution of life-sustaining wealth and resources, and periodic liberation of chattel-captive populations. It is imperative to apprehend such moments of victory as contradictory, imperfect, and flawed; put another way, the signature historical moments of “successful” abolitionist struggle produce utterly human historical outcomes *in the most antihumanist, counter-Civilizational sense of “human”* (contradictory, imperfect, flawed). Yet, it is equally imperative to critically study, teach, theorize, and narrate such historical moments as revelations of radical possibility that obliterate the cultural tendency to reify (which is to say, presume permanency and ahistorical existence of) existing systems of state violence, geographic displacement and capture, economic evisceration, and institutionalized dehumanization.<sup>117</sup> *Such a creative destruction, and creativity of thought-in-destruction, is a primary pedagogical purpose of abolitionist praxis.*<sup>118</sup>

This historicized redefinition of incarceration exceeds conventional criminological notions of spatially and temporally discrete/compartmentalized, juridically sanctioned state captivity and conceptualizes steel and concrete places of containment for the “duly convicted” as centers of institutional gravity that materially reproduce, experiment with, and culturally signify a paradigm of social power that *permeates social relations generally*.

A genealogy of twentieth- and twenty-first-century radical thought among incarcerated and formerly incarcerated people in and beyond the United States has constructed a durable, rigorous, and dynamic critical theorization of the carceral state and social form. From George Jackson

<sup>116</sup> Clément Petitjean, *Prisons and Class Warfare: An Interview with Ruth Wilson Gilmore*, VERSO (Aug. 2, 2018), <https://www.versobooks.com/blogs/3954-prisons-and-class-warfare-an-interview-with-ruth-wilson-gilmore> [https://perma.cc/57DL-DPCE].

<sup>117</sup> On institutionalized dehumanization, see generally LEWIS R. GORDON, *FANON AND THE CRISIS OF EUROPEAN MAN: AN ESSAY ON PHILOSOPHY AND THE HUMAN SCIENCES* 81 (1995) (describing institutionalized dehumanization as a state of war).

<sup>118</sup> On the notion of abolition as pedagogy, see Dylan Rodríguez, *The Disorientation of the Teaching Act: Abolition as Pedagogical Position*, RADICAL TCHR., Summer 2010, at 7, 8–9.

and Assata Shakur to Raúl Salinas, Angela Y. Davis, Leonard Peltier, and Marilyn Buck,<sup>119</sup> these thinkers articulate a complex urgency imperative to abolitionist praxis that pivots on its creative, collective, and transformative challenge to historical conditions of gendered, racial-colonial dominance that fundamentally relies on criminalization and systemic human immobilization to produce and reproduce a Civilizational order. Following this body of thought, abolition is a generative, imaginative, and productive concept precisely because it entails a radical reconfiguration of relations of power, community, collective identity, and sociality that *does not rely on carcerality and its constitutive, oppressive forms of state and cultural violence*.

Abolitionist praxis addresses carcerality as a *logic of power* that generates multiple, overlapping, and differently scaled *carceral regimes* (reservations, plantations, segregated cities/towns, prisons, military bases, and so forth). Thus, eliminating carceral-state violence via prisons, jails, police, detention centers, and military bases is but one aspect of a broader rethinking — and remaking — of collective, insurgent “power” that simultaneously asserts a liberated autonomy from and posits a radical challenge to long historical relations of gendered, racial-colonial dominance. This recognition of carcerality as an institutional logic and methodology informs abolition as a praxis of creativity — abolitionism articulates a fundamental critique of existing systems of oppression while *attempting to actively imagine as it practices forms of collective power that are liberated from hegemonic paradigms*, including but not limited to forms of power constituted by the logic of carcerality, patriarchy, coloniality, racial chattel, racial capitalism,<sup>120</sup> and heteronormativity.

The following contributions must be cherished, discussed, and debated precisely because they originate from this creative imperative.

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<sup>119</sup> While much of this praxis has circulated through unpublished correspondence, essays, poetry, and oral presentations, there are valuable and prominent published texts that are readily accessible. See ABU-JAMAL, *supra* note 50; IF THEY COME IN THE MORNING: VOICES OF RESISTANCE (Angela Y. Davis ed., Verso 2016) (1971); GEORGE L. JACKSON, BLOOD IN MY EYE (Black Classic Press 1990) (1972); RAÚL SALINAS, RAÚL SALINAS AND THE JAIL MACHINE: MY WEAPON IS MY PEN: SELECTED WRITINGS (Louis G. Mendoza ed., 2006); SCHOOLING THE GENERATIONS IN THE POLITICS OF PRISON (Chinosole ed., 1996).

<sup>120</sup> See CEDRIC J. ROBINSON, BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION 9–29 (Univ. of N.C. Press, 2000) (1983).