
ENVISIONING ABOLITION DEMOCRACY

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

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

— Fred Moten & Stefano Harney, *The University and the Undercommons*¹

INTRODUCTION

For decades, police in Chicago chained people in their custody to the wall in dark, windowless rooms and subjected their captives to beatings, electric shocks, anal rape, and racial abuse.² In July 2016, members of the #LetUsBreathe Collective, created in the aftermath of numerous police killings in Chicago and elsewhere, occupied vacant lots adjacent to the Chicago Police Department’s Homan Square facility — one of the locations where such abuse occurred.³ The Collective sought justice, not through recourse to the criminal courts or civil litigation, but instead by reconceptualizing justice in connection with efforts to end reliance on

* Professor, Georgetown University Law Center. I am grateful to Amna Akbar, Geoff Gilbert, Sora Han, Stephen Lee, and Alexandra Natapoff for their careful engagement with this Essay and to workshop participants at the University of California, Irvine School of Law. I owe thanks also to the editors of the *Harvard Law Review* and to librarians at Georgetown Law for their outstanding work. And I am most grateful to Sherally Munshi for her brilliant ideas and editorial guidance, steadfast support, and inspiration. This Essay is dedicated to our son, Kiran Bayard, with the hope he lives to see a world that comes closer to realizing abolition democracy.

¹ Fred Moten & Stefano Harney, *The University and the Undercommons: Seven Theses*, 22 SOC. TEXT 101, 114 (2004).

² See *Chicago Torture Archive*, CHI. STUD., <https://www.chicagostudiesresourceportal.com/resources-portal/2018/2/5/chicago-torture-archive> [<https://perma.cc/5Q2A-UUCT>] (describing the creation of the Chicago Torture Archive, an archive comprised of testimonies of torture victims, torture case findings, documents of police officers sued for torture, media articles, special reports, summaries of evidence, and City Council hearings, among other sources); Juleyka Lantigua-Williams, *A Digital Archive Documents Two Decades of Torture by Chicago Police*, THE ATLANTIC (Oct. 26, 2016), <https://www.theatlantic.com/politics/archive/2016/10/10000-files-on-chicago-police-torture-decades-now-online/504233/> [<https://perma.cc/YA8F-SECB>]; see also Spencer Ackerman, *Homan Square Revealed: How Chicago Police “Disappeared” 7,000 People*, THE GUARDIAN (Oct. 19, 2015, 8:30 AM), <https://www.theguardian.com/us-news/2015/oct/19/homan-square-chicago-police-disappeared-thousands> [<https://perma.cc/VLC7-PXD6>]; Flint Taylor, Opinion, *Homan Square Is Chicago’s New “House of Screams,”* THE GUARDIAN (Apr. 13, 2016, 7:30 AM), <https://www.theguardian.com/commentisfree/2016/apr/13/homan-square-chicago-police-station-house-of-screams> [<https://perma.cc/Z8UL-CZY2>].

³ See Derrick Clifton, *How Protests in Ferguson Inspired the Occupation of “Freedom Square,”* CHI. READER (Aug. 9, 2016), <https://www.chicagoreader.com/chicago/freedom-square-homan-square-occupation-ferguson/Content?oid=23089791> [<https://perma.cc/64RW-Y9Z5>].

imprisonment and policing.⁴ The organizers redesignated Homan Square — which shares a name with the Chicago slumlord Samuel Homan⁵ — “Freedom Square.”⁶ The organizers’ idea was to begin to realize on a small scale what the scholar and activist Professor Angela Davis, echoing the words of W.E.B. Du Bois,⁷ has called “abolition democracy.”⁸

Organizers in Freedom Square and across the city amplified the penal-abolitionist platforms of the Movement for Black Lives and Black Youth Project 100 (BYP100),⁹ demanding that the state divest from policing and imprisonment and invest in new forms of more equitable and just coexistence.¹⁰ Freedom Square was to be an experiment in which participants would “imagine a world without police,”¹¹ a world where the 1.4 billion-dollar Chicago police budget¹² would be directed away from detaining human beings and toward a democratic revitalization of public education, employment, restorative justice, mental health, housing, addiction treatment, arts, and nutrition.¹³ Before they disbanded, those engaged in the Freedom Square experiment provided meals to hundreds of people each day and offered educational workshops, clothing, books, and play spaces for neighborhood children.¹⁴

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

⁴ See *id.*; *Mission & Vision*, #LETUSBREATH COLLECTIVE, <https://www.letusbreathcollective.com/mission-vision> [https://perma.cc/9A6T-QD4M].

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

⁶ Maya Dukmasova, *Abolish the Police? Organizers Say It’s Less Crazy than It Sounds*, CHI. READER (Aug. 25, 2016), <https://www.chicagoreader.com/chicago/police-abolitionist-movement-alternatives-cops-chicago/Content?> [https://perma.cc/MNB5-ZJGA].

⁷ See W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA 163–66 (Routledge 2017) (1935).

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

⁹ See *Platform*, MOVEMENT FOR BLACK LIVES, <https://policy.m4bl.org/platform/> [https://perma.cc/BW55-7Y9V] [hereinafter MOVEMENT FOR BLACK LIVES]; *BYP 100 Announces Release of the Agenda to Build Black Futures*, BLACK YOUTH PROJECT 100 (Jan. 15, 2016), <https://byp100.org/bbf/> [https://perma.cc/G7G4-98EU].

¹⁰ See Dukmasova, *supra* note 6.

¹¹ #LetUsBreathe Collective, *Freedom Square Occupation & Block Party*, FACEBOOK (Jul. 22, 2016), <https://www.facebook.com/events/257503834630695/> [https://perma.cc/PE4D-76S7].

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

¹³ Clifton, *supra* note 3.

¹⁴ See *id.*

¹⁵ Ben Norton, *Black Lives Matter Activists Launch Abolition Square Encampment, Demanding Reparations, End to Broken Windows Policing*, SALON (Aug. 5, 2016, 3:59 PM), <https://www.salon.com/2016/08/05/black-lives-matter-activists-launch-abolition-square-encampment-demanding-reparations-end-to-broken-windows-policing/> [https://perma.cc/HA4Y-LSN2].

an area near police headquarters and issued calls to “decolonize City Hall.”¹⁶ Across the country, contemporary movements against the violence of policing have taken up the cause of penal abolition, denouncing caging and minutely controlling human beings while re-envisioning democracy in genuinely liberatory terms. Through these abolitionist efforts — from those of organizers in Chicago confronting the decades of torture perpetrated by police, to those of people struggling together to address the aftermath of sexual assault and homicide, to those of community members organizing to ensure greater economic well-being and security — a new conception of justice has begun to emerge.

Justice in abolitionist terms involves at once exposing the violence, hypocrisy, and dissembling entrenched in existing legal practices, while attempting to achieve peace, make amends, and distribute resources more equitably. Justice for abolitionists is an integrated endeavor to prevent harm, intervene in harm, obtain reparations, and transform the conditions in which we live.¹⁷ This conception of justice works, for example, to eliminate the criminalization of poverty and survival while addressing the criminality of a global social order in which the eight wealthiest men own “the same amount of wealth as” fifty percent of all people on earth.¹⁸ To approach justice in these terms requires what Professor Lisa Guenther, an abolitionist philosopher, describes as “collective resistance and revolution at the scene of ‘crime’ itself.”¹⁹ Such resistance begins by unmasking the illegitimacy of much of what is subject to criminalization — for instance, the prosecution of immigration offenses, which compose at present more than half of the U.S. federal criminal docket.²⁰ Resistance at the scene of crime itself also entails

¹⁶ Yezmin Villarreal, *Day 50, and BLM's Los Angeles Protest Is Still Going Strong*, ADVOCATE (Aug. 31, 2016, 1:24 PM), <https://www.advocate.com/politics/2016/8/31/day-50-black-lives-matter-los-angeles> [https://perma.cc/62S7-TN3J]. See generally KELLY LYTLE HERNÁNDEZ, *CITY OF INMATES: CONQUEST, REBELLION, AND THE RISE OF HUMAN CAGING IN LOS ANGELES 1771–1965* (2017) (exploring the importance of decolonization to meaningful transformation of penal practices in Los Angeles and beyond).

¹⁷ Barnard Ctr. for Research on Women, *Reina Gossett + Dean Spade (Part 1): Prison Abolition + Prefiguring the World You Want to Live In*, YOUTUBE (Jan. 7, 2014), <https://www.youtube.com/watch?v=XDQIW1uJ8uQ> [https://perma.cc/5KCJ-SM77].

¹⁸ OXFAM, *AN ECONOMY FOR THE 99%*, at 2 (2017), https://d1rn3vj7xz9fdh.cloudfront.net/s3fs-public/file_attachments/bp-economy-for-99-percent-160117-en.pdf [https://perma.cc/SK3A-8C29].

¹⁹ LISA GUENTHER, *SOLITARY CONFINEMENT: SOCIAL DEATH AND ITS AFTERLIVES* 61 (2013).

²⁰ *Federal Criminal Prosecutions Referred by DHS Continue to Fall*, TRAC, SYRACUSE U. (June 14, 2017), <http://trac.syr.edu/immigration/reports/472/> [https://perma.cc/V8YH-MGRL] (reporting that, despite falling rates of prosecution in early 2017, Department of Homeland Security-referred prosecutions still accounted for 50.5% of all federal criminal prosecutions). Since 2017, immigration prosecutions have spiked. See *Immigration Criminal Prosecutions Jump in March 2018*, TRAC, SYRACUSE U. (Apr. 27, 2018), <http://trac.syr.edu/immigration/reports/510/>

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

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

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

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

[<https://perma.cc/68WW-PPL9>] (finding an estimated 19.5% increase in criminal immigration prosecutions in 2018, compared to 2017).

²¹ See Marbre Stahly Butts & Amna A. Akbar, Transformative Reforms of the Movement for Black Lives 4–5 (Apr. 2017) (unpublished manuscript), <https://law.rutgers.edu/sites/law/files/attachments/Stahly%20Butts-Akbar%20-%20Transformative%20Reforms%20of%20the%20Movement%20of%20Black%20Lives.pdf> [<https://perma.cc/6A24-H87Y>] (“Reformist reforms do not recognize that the systems that operate on Black people, and by extension on brown, immigrant and poor people, are not fundamentally broken but instead are working to re-entrench and legitimize current power arrangements. . . . On the other hand transformative demands question the legitimacy of the systems that we operate under.”); see also Allegra M. McLeod, Review Essay, *Beyond the Carceral State*, 95 TEX. L. REV. 651, 665–89 (2017) (describing the limits of contemporary criminal justice reform efforts); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1207–18 (2015) (contrasting current reformist efforts with abolitionist alternatives); Mariame Kaba, Opinion, *Police “Reforms” You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014), <https://truthout.org/articles/police-reforms-you-should-always-oppose/> [<https://perma.cc/G8XT-LRDT>] (offering “a simple guide for evaluating any suggested ‘reforms’ of U.S. policing in this historical moment”).

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

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

I. ON ABOLITION DEMOCRACY

Abolitionist organizers understand their work to be related to the historical struggles against slavery and its afterlives, against imperialism and its legacies in more recent practices of racial capitalism, and against immigration enforcement and border fortification.²² As these historical movements sought to both eliminate oppressive institutions and create new forms of more just coexistence, so too do contemporary abolitionist movements. Contemporary movements for penal abolition — building on a longstanding body of abolitionist writing and theory — have embraced both a negative or deconstructive project of dismantling penal systems and a positive project of world-building. According to abolitionist thinker, writer, and organizer Mariame Kaba: “Prison abolition is two things: It’s the complete and utter dismantling of prisons, policing, and surveillance as they currently exist within our culture. And it’s also the building up of new ways of . . . relating with each other.”²³ As Davis explains:

[T]he abolition of slavery was accomplished only in the negative sense. In order to achieve the *comprehensive* abolition of slavery — after the institution was rendered illegal and black people were released from their chains — new institutions should have been created to incorporate black people into the social order. . . . [A] host of democratic institutions are

²² See, e.g., DAVIS, ABOLITION DEMOCRACY, *supra* note 8, at 95–96; DU BOIS, *supra* note 7; Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 460–61 (2018).

²³ *Episode 29 — Mariame Kaba*, AIRGO (Feb. 2, 2016), <https://airgoradio.com/airgo/2016/2/2/episode-29-mariame-kaba> [<https://perma.cc/CG2Y-E4KE>].

needed to fully achieve abolition — thus abolition democracy. . . . In thinking specifically about the abolition of prisons using the approach of abolition democracy, we would propose the creation of an array of social institutions that would begin to solve the social problems that set people on the track to prison, thereby helping to render the prison obsolete.²⁴

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

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

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

²⁴ DAVIS, ABOLITION DEMOCRACY, *supra* note 8 (citing DU BOIS, *supra* note 7).

²⁵ *Vision 4 Black Lives Webinar Series: Invest/Divest*, FERGUSON NAT’L RESPONSE NETWORK (Apr. 12, 2017), <http://fergusonresponse.tumblr.com/post/156584034738/vision-for-black-lives-webinar-series-political> [https://perma.cc/V7VM-82UX] [hereinafter *Vision 4 Black Lives Webinar Series*] (notes on file with author) (comments of Rachel Herzing).

²⁶ CHARLENE A. CARRUTHERS, *UNAPOLOGETIC: A BLACK, QUEER, AND FEMINIST MANDATE FOR RADICAL MOVEMENTS*, at x (2018).

²⁷ See DAVIS, ABOLITION DEMOCRACY, *supra* note 8, at 96.

²⁸ Moten & Harney, *supra* note 1. While these understandings of abolition convey broad principles embraced by many abolitionists, it is also important to note, as Professor Dylan Rodríguez does, that abolition may mean different things in different contexts. See Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, in *Developments in the Law — Prison Abolition*, 132 HARV. L. REV. 1575, 1578 (2019) (“[A]bolition is a practice, a method, an analytic, a present-tense visioning, an infrastructure-in-the-making, a creative project, a performance, a counterwar, an ideological struggle, a pedagogy and curriculum, an alleged impossibility that is furtively present . . .”).

²⁹ See, e.g., DAVIS, ABOLITION DEMOCRACY, *supra* note 8, at 84–85, 97–103.

is measured in terms of access to repressive institutions that remain unchanged or even become strengthened by the admission of those who were previously barred,” Davis writes, “it seems to me that we need to insist on different criteria for democracy: substantive as well as formal rights, the right to be free of violence, the right to employment, housing, healthcare, and quality education.”³⁰ Abolitionists contend that existing legal regimes perpetuate violence rather than deliver justice and, through their accompanying ideologies, deflect attention from what justice in a democratic society is or could be.³¹

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

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

³⁰ *Id.* at 103.

³¹ See, e.g., *id.* at 99 (“Capital punishment is a receptacle for the legacies of racism, but now, under the rule of legal equality, it can apply its power to anyone . . .”); see also *id.* at 116–17 (cautioning against looking to the law as a means of social progress).

³² For an explanation of this dynamic, see Allegra M. McLeod, *Confronting Criminal Law’s Violence: The Possibilities of Unfinished Alternatives*, 8 HARV. UNBOUND 109, 119–23 (2013).

³³ See DAVIS, ABOLITION DEMOCRACY, *supra* note 8, at 103.

³⁴ Moten & Harney, *supra* note 1, at 114–15.

³⁵ MOVEMENT FOR BLACK LIVES, *supra* note 9.

ensuring peace and well-being, as well as the displacement of policing and imprisonment in connection with efforts to realize greater social and economic equality.

II. PREFIGURING JUSTICE, PREFIGURING ABOLITION

A groundswell of abolitionist conviction swept youth of color organizing in Chicago when, in the aftermath of a series of police killings of young people, efforts to obtain civil or criminal redress persistently came up short. In 2012, an off-duty Chicago police officer shot a twenty-two-year-old woman named Rekia Boyd in the back of her head while the officer, Dante Servin, was seated in his car.³⁶ Before he killed her, Servin had accused Boyd and her friends of making too much noise, and he murdered her in the course of the ensuing argument.³⁷ Then, in 2014, police arrested twenty-three-year-old Dominique Franklin for stealing a bottle of vodka from a Walgreens.³⁸ Officers handcuffed him.³⁹ Next, the police tased Franklin while he was handcuffed, sending electric shocks through the young man's body and causing him to fall and hit his head on a light pole.⁴⁰ Franklin died as a result of his injuries.⁴¹

Also in 2014, police officer Jason Van Dyke shot to death the teenager Laquan McDonald, firing repeatedly at close range into McDonald's head and body.⁴² McDonald, who had been walking down a roadway at night when police began to follow him, was only in possession of a folded pocket knife and appeared to be veering away from the officer at the time of the shooting.⁴³ As video footage of the events plainly revealed, other officers were on the scene and the situation was under control when Van Dyke jumped from his car and murdered McDonald, shooting him sixteen times.⁴⁴ Chicago officials, including the state's attorney and the mayor, sought to hide the footage of McDonald's murder for well over a year until they were forced to disclose the video under mounting pressure.⁴⁵ Although settlements were made with the murdered young people's families, the Chicago Police Department took no

³⁶ Ben Austen, *Chicago After Laquan McDonald*, N.Y. TIMES MAG. (Apr. 20, 2016), <https://nyti.ms/1SuTgIr> [<https://perma.cc/2TM3-665Z>].

³⁷ *Id.*

³⁸ See Maya Dukmasova, "End of the Nightstick": Chicago Poets Fight Police Violence, THE PROGRESSIVE (May 26, 2015), <https://progressive.org/magazine/end-nightstick-chicago-poets-fight-police-violence/> [<https://perma.cc/6ZSN-JMDS>].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Austen, *supra* note 36.

⁴³ Mitch Smith, *Chicago Police Officer Defends His Shooting of Laquan McDonald*, N.Y. TIMES (Oct. 2, 2018), <https://nyti.ms/2NZ9DB5> [<https://perma.cc/G7KB-Q9VN>].

⁴⁴ Austen, *supra* note 36.

⁴⁵ *Id.*

action against the officers who killed Boyd and Franklin — and the Department acted on the McDonald case only when forced to do so.⁴⁶

Across the country, as a growing number of police killings received public scrutiny, very few of them led to criminal charges, and even where perpetrators were convicted, the sentences always seemed incommensurate with the wrongs that had been done.⁴⁷ Upon bearing witness to this inaction, the perceived insufficiency of civil settlements and criminal verdicts, and the corruption plaguing law enforcement agencies and urban political establishments alike, young organizers declared the “whole system . . . guilty as hell.”⁴⁸ These organizers committed themselves to seeking redress for their grievances beyond the usual criminal and civil legal frameworks.

Rather than simply demand the termination of these murderous officers or that charges be brought against them, organizers sought to connect their outrage at these killings to the decades of torture perpetrated by Chicago police, and to the deeper conditions of social inequality, corruption, and injustice that have long characterized the distribution of life chances in Chicago and around the country. Malcolm London, a Chicago-based organizer with BYP100 and a friend of Dominique Franklin, described this disenchantment with existing legal frameworks in these terms: “Today, what is hopeful is that more and more people are starting to see that the prosecution of one officer or the indictment of one officer or winning a civil case by a couple folks is not the kind of justice that we want to see.”⁴⁹ Veronica Morris-Moore, another Chicago-based organizer, likewise concluded: “The system as it exists is never going to give justice to young people like Laquan McDonald.”⁵⁰ According to Page May, one of the founders of Assata’s Daughters, a Chicago-based intergenerational organization of radical Black Women associated with Black Lives Matter: “We are abolitionist in our politics We are fighting for a world in which the police are obsolete.”⁵¹

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

⁴⁶ *Id.*

⁴⁷ See Madison Park, *Police Shootings: Trials, Convictions Are Rare for Officers*, CNN (Oct. 3, 2018, 4:41 PM), <https://www.cnn.com/2017/05/18/us/police-involved-shooting-cases/index.html> [<https://perma.cc/5DJM-DC52>].

⁴⁸ Justin Hansford, *The Whole System Is Guilty as Hell: Interrupting a Legacy of Racist Police Culture Through a Human Rights Lens*, 21 HARV. J. AFR. AM. PUB. POL’Y 13, 15 (2015).

⁴⁹ Dukmasova, *supra* note 38.

⁵⁰ Austen, *supra* note 36.

⁵¹ *Id.*

⁵² *A Vision for Black Lives: Policy Demands for Black Power, Freedom & Justice*, MOVEMENT FOR BLACK LIVES, <https://policy.m4bl.org/> [<https://perma.cc/9GJ5-HNKL>] (outlining the Movement for Black Lives’ “platform” and six primary “demands”).

Black Youth Project 100's *Agenda to Build Black Futures*⁵³ — took shape in part as ways to begin to address that question. Both the *Vision for Black Lives* and the *Agenda to Build Black Futures* call for justice in the aftermath of police shootings in connection with a movement to divest from the criminal arm of the state and invest in other social projects, including reparations and democratic institutions.⁵⁴ The *Vision for Black Lives*, authored by “a collective of more than 50 organizations representing thousands of Black people from across the country,” offers an analysis of the relationship between criminal, racial, and economic justice.⁵⁵ The *Vision* demands “an end to the wars against Black people,” and calls for “a defunding of the systems and institutions that criminalize and cage us.”⁵⁶ While articulating an account “of a fundamentally different world,” the *Vision* recognizes as well the need for “policies that address the immediate suffering of Black people” and “current material conditions” so as to “better equip us to win the world we demand and deserve.”⁵⁷ To that end, the *Vision* explores justice both in terms of far-reaching aspirational goals for transformation and more immediately achievable policy objectives.⁵⁸

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

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

⁵³ See BLACK YOUTH PROJECT 100, *supra* note 9.

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

⁵⁵ MOVEMENT FOR BLACK LIVES, *supra* note 9.

⁵⁶ *Id.*

⁵⁷ *Id.*

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

⁵⁹ BLACK YOUTH PROJECT 100, *supra* note 9.

⁶⁰ *Id.*

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

[I]t is also the imagining and generating of alternative institutions and relations . . . resistance that is responsive to dismantling current systems of colonial empire and systemic hierarchies, while also prefiguring societies based on equity, mutual aid, and self-determination . . . a fundamental reorientation of ourselves, our movements, and our communities to think and act with intentionality, creativity, militancy, humility, and above all, a deep sense of responsibility and reciprocity.⁶¹

In Chicago and elsewhere, as organizers, community members, survivors, activist lawyers, and others worked to begin to realize the ambitions reflected in the *Vision* and *Agenda*, they approached their quest for justice as a prefigurative one. Refusing to settle for preexisting measures, groups including the Chicago Torture Justice Memorials and Black People Against Police Torture,⁶² the Movement for Black Lives, Assata’s Daughters, BYP100, Mijente, and We Charge Genocide have all pursued justice in these expansive but also immediately practicable and largely local terms.⁶³ The sections that follow describe abolitionist efforts to respond to state-perpetrated violence, address interpersonal harm, and build local power to pursue economic justice. In each case, abolitionists have sought justice not only by attending to the needs of those harmed outside of traditional legal contexts, but also by transforming the power structures and immediate social relations that breed harm in the first instance. These accounts demonstrate that justice for abolitionists is grounded in lived experience and positive transformation, concepts that will be developed in more depth in the pages that follow.

A. Justice After Violence

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

⁶¹ HARSHA WALIA, UNDOING BORDER IMPERIALISM 249 (2013).

⁶² G. Flint Taylor, *The Long Path to Reparations for the Survivors of Chicago Police Torture*, 11 NW. J.L. & SOC. POL’Y 330, 338, 340 (2016).

⁶³ See MOVEMENT FOR BLACK LIVES, *supra* note 9; *Our Politics: What We Believe*, ASSATA’S DAUGHTERS, <http://www.assatasdaughters.org/our-politics> [https://perma.cc/HXL8-7ZX9]; BLACK YOUTH PROJECT 100, *supra* note 9; Marisa Franco, *An Introduction to Mijente*, MIJENTE (Dec. 10, 2015), <https://mijente.net/2015/12/10/an-introduction-to-mijente/> [https://perma.cc/5HMJ-VX28]; *About*, WE CHARGE GENOCIDE, <http://wechargegenocide.org/about/> [https://perma.cc/CS5Z-LANA].

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

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

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

⁶⁴ See Natalie Y. Moore, *Payback*, MARSHALL PROJECT (Oct. 30, 2018, 6:00 AM), <https://www.themarshallproject.org/2018/10/30/payback> [<https://perma.cc/2EH7-TGZJ>].

⁶⁵ See *id.*; John Conroy, *Tools of Torture*, CHI. READER (Feb. 3, 2005), <https://www.chicago-reader.com/chicago/tools-of-torture/Content?oid=917876> [<https://perma.cc/Q4QM-3Q9B>].

⁶⁶ See Moore, *supra* note 64 (describing at least ten instances in which men were "sentenced to death row because of confessions Burge and his men tortured out of them").

⁶⁷ Carlos Sadovi & Bob Sexter, *Report: Cops Used Torture*, CHI. TRIB. (July 20, 2006), <https://www.chicagotribune.com/ct-jon-burge-archives-20060720-story.html> [<https://perma.cc/K6DH-UQ5A>].

⁶⁸ *Data: Jon Burge and Chicago's Legacy of Police Torture*, CHI. TRIB. (Sept. 19, 2018, 12:22 PM), <https://www.chicagotribune.com/news/ct-jon-burge-chicago-police-torture-timeline-20180919-htmstory.html> [<https://perma.cc/6G4U-GSPV>].

⁶⁹ *Id.*

⁷⁰ *Id.*

possible to come to terms with what had occurred. Through their work to bring the Chicago police torture to light, survivors and organizers compiled extensive evidence.⁷¹ Survivors' public testimony of torture offered an overwhelming record of the harms perpetrated by Chicago police.⁷² Survivors, organizers, and lawyers ultimately submitted the Chicago torture cases to international bodies, including the Inter-American Commission for Human Rights and the United Nations Committee Against Torture.⁷³ Additionally, a coalition of youth organizers associated with Black Lives Matter formed a group, We Charge Genocide, which presented evidence to the United Nations on the more recent record of violence perpetrated by Chicago police and in jails and prisons around the state.⁷⁴ This comprehensive accounting, outside the confines imposed by restrictive rules of evidence in domestic criminal and civil courts, constituted an important initial part of the process of contemplating what justice for the Chicago police torture should entail. We Charge Genocide demanded a different conceptualization of the injustice of police conduct and possible redress, framing the violations as human rights rather than civil rights violations, and appealing to international bodies in part to underscore U.S. state failure and abandonment.⁷⁵ As Professor Dylan Rodríguez argues:

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

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

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

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

⁷³ See G. Flint Taylor, *The Chicago Police Torture Scandal: A Legal and Political History*, 17 CUNY L. REV. 329, 357–58 (2014).

⁷⁴ See Press Release, We Charge Genocide, Chicago Police Violence Against Black and Latino Youth Called Out by United Nations Committee Against Torture (Dec. 1, 2014), <http://wechargegenocide.org/tag/uncat/> [<https://perma.cc/7BQB-MGQX>].

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

⁷⁶ Rodríguez, *supra* note 28, at 1604.

⁷⁷ *About*, CHI. TORTURE JUST. MEMORIALS, https://www.chicagotorture.org/?page_id=97 [<https://perma.cc/C835-GKXQ>].

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

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

⁷⁸ *History of the Campaign*, CHI. TORTURE JUST. MEMORIALS, https://www.chicagotorture.org/?page_id=615 [<https://perma.cc/R36A-VS7G>].

⁷⁹ See Jeremy Ohmes, *The Charge Is Torture*, SCH. ART INST. CHI., <http://www.saic.edu/150/charge-torture> [<https://perma.cc/A5KB-H6C2>].

⁸⁰ Taylor, *supra* note 62, at 342.

⁸¹ See *id.* at 342–44.

⁸² *Id.* at 338.

⁸³ See *id.* at 342; Sandhya Somashekhar, *Why Chicago Used the Word “Reparations,”* WASH. POST (May 8, 2015), <https://wapo.st/1EijFwO> [<https://perma.cc/TR3E-HTWX>].

⁸⁴ Taylor, *supra* note 62, at 330 n.*.

⁸⁵ *Id.* at 338.

perpetrated: “The racial component of this is an essential part of the torture itself . . . [the] victims were subject to repeated racial epithets. The . . . box that was used to electrocute them was called the ‘n —’ box It was painted black.”⁸⁶

Ultimately, movement participants developed proposed legislation, which they named the Illinois Reparations for Police Torture Victims Act.⁸⁷ The proposed legislation would provide reparations for Burge’s victims who were still incarcerated and would begin to address “the long-term trauma that torture inflicted on its victims and their families.”⁸⁸ It called for establishing “a center for torture victims and families” to offer rehabilitative support and treatment, community education, and vocational assistance, as well as the appointment of an Innocence Inquiry Commission to address credible claims of innocence by torture victims.⁸⁹

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

In the end, the movement succeeded in pushing Chicago to launch an ongoing torture memorial project, to appropriate more than five million dollars in reparations for survivors, and to create a center that provides medical, mental health, and other support services to survivors of police trauma.⁹⁰ Activists also won a provision in the legislation to change the Chicago public school curriculum to focus on the contemporary history of police torture and its connections to colonialism and slavery.⁹¹

⁸⁶ Somashekhar, *supra* note 83 (quoting Mariame Kaba) (internal quotation marks omitted).

⁸⁷ Taylor, *supra* note 62, at 339.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Hal Dardick, John Byrne & Steve Mills, *Mayor Backs \$5.5 Million Reparations Deal for Burge Police Torture Victims*, CHI. TRIB. (Apr. 14, 2015, 7:14 PM), <https://www.chicagotribune.com/news/ct-burge-reparations-emanuel-met-20150414-story.html> [<https://perma.cc/G8KP-2XXG>].

⁹¹ See CHI. PUB. SCH. DEP’T SOC. SCI. & CIVIC ENGAGEMENT, REPARATIONS WON: A CASE STUDY IN POLICE TORTURE, RACISM, AND THE MOVEMENT FOR JUSTICE IN CHICAGO 30 (2017), http://blog.cps.edu/wp-content/uploads/2017/08/ReparationsWon_High-School.pdf [<https://perma.cc/9X74-D45S>].

The Chicago reparations initiative provides one instance of what reimagining justice in abolitionist terms might look like. As Kaba describes:

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

So while financial restitution was a part of that package, it also did a whole bunch of other things. . . . [W]e asked for a whole series of things that we thought would be about rethinking justice for people who have been wronged, survivors of violence Chicago is the first municipality in history to ever pass a reparations bill for law enforcement violence. So that's something that other cities are looking at for themselves now, as avenues for justice that are not personal and individual indictments of the police, not calls for cops to be jailed . . . [not] the same kind of language we hear over and over again⁹²

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

B. Realizing Transformative Peace and Justice

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

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

⁹² Dan Sloan, *A World Without Prisons: A Conversation with Mariame Kaba*, LUMPEN MAG. (Apr. 7, 2016), <http://www.lumpenmagazine.org/a-world-without-prisons-a-conversation-with-mariame-kaba/> [https://perma.cc/M8LH-XUB4].

violent assaults.⁹³ Then mediators, often individuals formerly involved in gangs, intervene to help resolve or de-escalate disputes.⁹⁴ The program is accompanied by ongoing empirical analysis that has demonstrated success in the form of “statistically significant reductions in violence,” and is being replicated in communities around the country.⁹⁵ Advance Peace, pioneered in Richmond, California, adopts a similar model of relying on mediators to intervene in disputes, but also provides financial support and mentorship to young people at risk of perpetrating violence.⁹⁶ The program claims to have significantly reduced youth homicides in the jurisdiction.⁹⁷

The Oakland Power Projects, organized by the Critical Resistance chapter in Oakland, California, offer another approach to addressing harm in which community street medics and healthcare workers train residents in de-escalation and other tactics.⁹⁸ These other tactics are aimed at assisting neighbors confronted with a loved one facing a mental health crisis — a frequent reason for calls to police that result in violence and unnecessary jailing.⁹⁹ The program expects that the trainees will go on not only to provide assistance to community members in need, but also to train others so that the relevant skillset and means of support become increasingly widespread in communities over time.¹⁰⁰ Likewise, the Harm Free Zone project in Durham, North Carolina, and the Audre Lorde Project’s Safe OUTside the System Safe Neighborhood Campaign in Brooklyn, New York, both educate interested community residents and train them to take action to prevent harm without police intervention.¹⁰¹ The Safe Neighborhood Campaign focuses in particular on reducing harm to queer and gender-nonconforming people of color — who are often subject to harassment and assault by police and private

⁹³ *Essential Elements*, CURE VIOLENCE, <http://cureviolence.org/the-model/essential-elements/> [https://perma.cc/5RTQ-MLR4].

⁹⁴ See, e.g., Michael J. Lewis, *Two Ex-gang Members Stop a Long-Running War in the Bronx Using Unconventional Methods*, CURE VIOLENCE BLOG (Jan. 11, 2016), <http://cureviolence.org/post/two-ex-gang-members-stop-a-long-running-war-in-the-bronx-using-unconventional-methods/> [https://perma.cc/72G3-2THJ]; THE INTERRUPTERS (Kartemquin Films 2011).

⁹⁵ *Scientific Evaluations*, CURE VIOLENCE, <http://cureviolence.org/results/scientific-evaluations/> [https://perma.cc/8V3Q-MVHJ].

⁹⁶ *The Solution*, ADVANCE PEACE, <https://www.advancepeace.org/about/the-solution/> [https://perma.cc/B2K8-76GE].

⁹⁷ *Id.* (“As a result of [Advance Peace’s] efforts, Richmond, California, experienced a 66% reduction in firearm assaults causing injury or death between 2010 and 2017.”).

⁹⁸ Candice Bernd, *Community Groups Work to Provide Emergency Medical Alternatives, Separate from Police*, in WHO DO YOU SERVE, WHO DO YOU PROTECT?: POLICE VIOLENCE AND RESISTANCE IN THE UNITED STATES 151, 152–55 (Maya Schenwar et al. eds., 2016) [hereinafter WHO DO YOU SERVE].

⁹⁹ *Id.* at 151–52.

¹⁰⁰ *Id.* at 154.

¹⁰¹ Rachel Herzing, *Big Dreams and Bold Steps Toward a Police-Free Future*, in WHO DO YOU SERVE, *supra* note 98, at 111, 116.

individuals — by “working with local businesses and community spaces to provide” places that are safe for those fearing victimization.¹⁰²

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

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

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

¹⁰² *Id.* at 116. The Safe Neighborhood Campaign self-describes as “an anti-violence program led by and for Lesbian, Gay, Bisexual, Two Spirit, Trans, and Gender Non Conforming people of color.” *Safe Outside the System (SOS)*, AUDRE LORDE PROJECT, <https://alp.org/programs/sos> [https://perma.cc/GB8P-634W].

¹⁰³ See Herzing, *supra* note 101, at 155.

¹⁰⁴ *Id.* at 156.

¹⁰⁵ Kelly Hayes & Mariame Kaba, *The Sentencing of Larry Nassar Was Not “Transformative Justice.” Here’s Why*, THE APPEAL (Feb. 5, 2018), <https://theappeal.org/the-sentencing-of-larry-nassar-was-not-transformative-justice-here-s-why-a2ea323a6645/> [https://perma.cc/NRG2-P7G8].

economic change.¹⁰⁶ These processes manifest changed dynamics on a small scale in the most difficult interpersonal encounters, while simultaneously considering what broader transformation is immediately necessary and realizable.¹⁰⁷

Participants in the Movement for Black Lives, for example, have turned to transformative justice processes in response to sexual harm perpetrated by certain members of the anti-violence racial justice movement against others. When one of BYP100's leaders was accused of sexual assault, the organization and the survivor, who is also a Movement member, convened a transformative justice process to come to terms with the harm done.¹⁰⁸ The survivor, Kyra, made BYP100 aware of the assault in a letter when the perpetrator, Malcolm London, became the focus of widespread attention on social media and elsewhere after his arrest at a protest of the police killing of Laquan McDonald.¹⁰⁹

At the same time that Kyra made her experience of assault public, she also underscored that she did not believe the criminal process could deliver justice or provide meaningful redress.¹¹⁰ Kyra, Malcolm, and the transformative justice facilitators then embarked on a more than year-long effort to address Kyra's assault, and along the way, they published accounts of their respective experiences.¹¹¹

In consultation with her support team, Kyra decided that what she wanted from the process was for Malcolm to publicly acknowledge the harm he had caused and to commit to "a political education process about sexual violence and enthusiastic consent."¹¹² She also wanted to build her own confidence so that she might feel ready and able to meet with Malcolm face-to-face and address together what had happened.¹¹³ More generally, she asked that BYP100 include in its orientation, political education, and organizing processes a curriculum on enthusiastic consent and the history of sexual violence in the black community that

¹⁰⁶ Patrisse Cullors's essay offers a further demonstration of what transformative justice entails. See Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, in *Developments in the Law — Prison Abolition*, 132 HARV. L. REV. 1689, 1689–96 (2019).

¹⁰⁷ *Id.*

¹⁰⁸ See Post by Sarah Daoud on Behalf of Kyra, *Black Youth Project (BYP100) Community Accountability Process (Chicago, 2015–2016)*, TRANSFORMATIVE JUST. INITIATIVE 1–2 (Nov. 27, 2015), <https://transformativejusticeinitiative.files.wordpress.com/2016/02/by100-survivor-statement.pdf> [<https://perma.cc/F8J3-EBQK>].

¹⁰⁹ *Id.* at 1.

¹¹⁰ *Id.* at 2.

¹¹¹ *Summary Statement Re: Community Accountability Process (March 2017)*, TUMBLR: TRANSFORMING HARM (Mar. 8, 2017), <http://transformharm.tumblr.com/post/158171267676/summary-statement-re-community-accountability> [<https://perma.cc/Y88K-A3X5>].

¹¹² *Community and Organization Accountability Process Update (3/1/16)*, TUMBLR: TRANSFORMING HARM (Mar. 1, 2016), <http://transformharm.tumblr.com/post/140296664386/community-and-organization-accountability-process> [<https://perma.cc/S2EW-7NHK>].

¹¹³ *Id.*

Kyra — who already had five years of experience in sexual violence prevention education — would help to develop.¹¹⁴ Finally, Kyra requested that platforms be created within the broader movement for discussions about sexual violence and how organizations might attend to these problems.¹¹⁵

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

Beyond the work of the individual participants, BYP100 developed new policies to address sexual harm.¹¹⁸ BYP100 generally resolved to place any member accused of sexual assault on a membership hiatus, to meet with both parties to hear their respective accounts, and to begin an internal deliberation regarding further action that might include possible permanent revocation of membership, arranging the facilitation of a mediation session, an internal accountability session, and an “agreement to atone as a condition of full membership reinstatement.”¹¹⁹ BYP100 also explored how to realize enthusiastic consent practices among membership and provide community healing spaces.¹²⁰

A Healing and Safety Council was created to convene transformative justice processes whenever a member has been hurt.¹²¹ The Council is composed of two squads, one focused on prevention and one on intervention, and both collaborate to respond to harm in the organization’s chapters and to foster a culture of “healing praxis.”¹²² As part of this approach, the Council created a Safety Plan that allows each member to indicate how they would want BYP100 members to respond if harm were to befall them, and it also produced a manual, *Stay Woke Stay Whole: Black Activist Manual*, as a guide for preventing and intervening in harm.¹²³

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

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Summary Statement Re: Community Accountability Process (March 2017)*, *supra* note 111.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

understood their work together as creating a framework for an alternative response, one which was consistent with their critiques of criminal legal practices and with their commitment to realizing justice in other terms.¹²⁴ This is difficult work and there is by no means consensus on the role such processes ought to play in responding to sexual harm or other forms of violence. But by devising an alternative approach to addressing interpersonal violence and working to realize meaningful accountability and amends, participants begin to prefigure a world without prisons and police, shrinking the role of criminal law in their lives, and in so doing, paving the way for others to do the same.

C. *Reimagining Security, Expanding Sanctuaries*

Abolitionists have also begun to broadly reconceptualize what actually constitutes criminal wrongdoing and to advocate for a democratization of local political economies as a means of reducing harm and ensuring collective well-being. For abolitionists, much of the conduct that is the focus of criminal law enforcement should not be understood as criminal at all. The vast majority of police stops, arrests, and prosecutions in the United States involve low-level quality-of-life offenses and other trivial infractions.¹²⁵ Abolitionists work to eliminate much of this low-level criminal enforcement altogether. They instead look to build local democratic power to reinvest public resources in projects that actually provide meaningful security, while simultaneously reducing the violent theft perpetrated daily by mainstream economic practices and institutions. A significant part of this work entails contesting existing resource allocations, which are understood themselves to be deeply unjust — and a cause, in fact, of much criminalized conduct.¹²⁶

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

¹²⁴ *Id.*

¹²⁵ See, e.g., Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611, 613 n.3 (2014) (noting that, in 2009 alone, a “conservative estimate” from sixteen states documented 5.9 million misdemeanor filings compared to only 1.4 million felony filings); see also DIV. OF CRIMINAL JUSTICE SERVS., N.Y. STATE, ADULT ARRESTS: 2005–2014 (2015), <http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/NewYorkCity.pdf> [<https://perma.cc/V88F-VG78>] (indicating that, between 2005 and 2014, roughly two-thirds of all New York City arrests were for misdemeanors). See generally ISSA KOHLER-HAUSMANN, MISDEMEANORLAND: CRIMINAL COURTS AND SOCIAL CONTROL IN AN AGE OF BROKEN WINDOWS POLICING (2018); ALEXANDRA NATAPOFF, PUNISHMENT WITHOUT CRIME: HOW OUR MASSIVE MISDEMEANOR SYSTEM TRAPS THE INNOCENT AND MAKES AMERICA MORE UNEQUAL (2018).

¹²⁶ Cf. DAVIS, ABOLITION DEMOCRACY, *supra* note 8, at 103; MOVEMENT FOR BLACK LIVES, *supra* note 9 (“We demand economic justice for all and a reconstruction of the economy to ensure Black communities have collective ownership, not merely access.”).

place where all people are truly safe from state and private violence.¹²⁷ Organizers have exposed how, despite Chicago's purported status as a "sanctuary city," policing often renders life in Chicago insecure for many youth of color — immigrant and U.S.-born alike — who are subject to arbitrary stops and arrests on a recurring basis.¹²⁸ The difference between "innocence" and "criminality," abolitionists have underscored, is often just the product of policing practices that target low-income communities of color, such as "stop and frisk," "broken windows" policing, predictive policing, and the use of "gang databases" to track youth who wear gang colors, sport tattoos, or associate with community members believed to be gang affiliated.¹²⁹ As organizer Reyna Wences and Professor Ruth Gomberg-Muñoz explain, "most municipal sanctuary measures have a central weakness: they only seek to protect immigrants deemed as 'law-abiding,' leaving those already ensnared in a racist system of criminalization and policing unprotected."¹³⁰

The debate over the true meaning of "sanctuary cities" has sparked a broader conversation, in which abolitionists have played a major part, about what security, safety, and well-being might consist of instead. Organizers for racial and immigration justice — working with BYP100, Mijente, Communities Organized Against Deportations, and researchers at the University of Illinois at Chicago — have collaborated to gather evidence and raise awareness in order to eliminate the Chicago gang database and redirect resources toward education and social services.¹³¹ As Wences and Gomberg-Muñoz write: "As [these groups] draw attention to racist policing practices and the false promises of city leaders who vow to protect them, organizers mobilize community members to create real sanctuary in their relationships with each other and a wider Chicago community truly invested in equality and justice."¹³²

These efforts have also focused attention on budgeting processes, challenging the direction of public funds to policing and punishment rather than social, restorative, or other projects. BYP100, in conjunction with some other organizations, has produced a powerful analysis of

¹²⁷ See, e.g., *About*, ERASE THE DATABASE, <http://erasethedatabase.com/about> [<https://perma.cc/S4NB-HPVB>] (describing a Chicago activist coalition's mission to "urg[e] the city of Chicago [to] expand what it means to be a 'Sanctuary City' to protect immigrants" and U.S.-born people of color "who are targeted by police").

¹²⁸ See Reyna Wences & Ruth Gomberg-Muñoz, *To Create True Sanctuary Cities, We Must End Racist Policing*, TRUTHOUT (May 14, 2018), <https://truthout.org/articles/to-create-true-sanctuary-cities-we-must-end-racist-policing> [<https://perma.cc/QR4Z-QN7Y>]; see also Monica Davey & Mitch Smith, *Chicago Police Dept. Plagued by Systemic Racism, Task Force Finds*, N.Y. TIMES (Apr. 13, 2016), <https://nyti.ms/1SgbFbX> [<https://perma.cc/RJP9-GJT6>] (summarizing longstanding patterns of institutionalized racism and discriminatory treatment in Chicago policing).

¹²⁹ Wences & Gomberg-Muñoz, *supra* note 128.

¹³⁰ *Id.*

¹³¹ See *id.*

¹³² *Id.*

how participatory budgeting could reshape public spending in cities across the country.¹³³ In Chicago in 2017, for example, the city allocated nearly \$1.5 billion of its \$8.2 billion operating budget (or 17.6%) to the Department of Police, far exceeding expenditures on critical resources like health services and programs for youth.¹³⁴ The Department of Public Health, by contrast, was allocated about a third of one percent (0.4%) of total budget expenditures.¹³⁵ The Department of Family and Support Services, which houses youth programs, violence reduction programs, after-school programs, and homeless services, also was allocated less than one percent of total expenditures.¹³⁶ *BYP100* Chicago is spearheading an organizing campaign for a participatory city-budgeting process in which the public is empowered to defund police and reinvest resources by “setting a living wage and by fully funding healthcare, social services, public schools, and sustainable economic development projects.”¹³⁷ This is not only an effort to change the allocation of resources, however; the organizers are working more broadly to democratize the local political economy and to underscore the antidemocratic character of existing public-spending decisions.¹³⁸

Organizers in other cities have made similar calls to tie abolitionist organizing around the criminal process to economic justice and democratic political economy reform. Zachary Norris, the executive director of the Ella Baker Center for Human Rights in Oakland, California,¹³⁹ has launched a “truth and reinvestment” campaign advocating for reinvestment from the criminal legal system into low-income communities and communities of color.¹⁴⁰ Norris, the Ella Baker Center, and organized community members have called their campaign “50% for Jobs Not Jails, Books Not Bars, and Healthcare Not Handcuffs,”¹⁴¹ and much of their work has involved local advocacy around budgeting decisions, such as working to redistribute dollars from sheriffs’ and probation offices to community-based worker-resource centers for people

¹³³ See CTR. FOR POPULAR DEMOCRACY ET AL., *FREEDOM TO THRIVE: REIMAGINING SAFETY AND SECURITY IN OUR COMMUNITIES* 21 (2017), <https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf> [https://perma.cc/36T3-LM7X].

¹³⁴ *Id.* at 21.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 20.

¹³⁸ *Id.* at 79–80.

¹³⁹ *Our Team*, ELLA BAKER CTR. FOR HUM. RTS., <https://ellabakercenter.org/about/staff-and-board> [https://perma.cc/J92Q-EQF7].

¹⁴⁰ See Zachary Norris, Ella Baker Center, *Truth and Reinvestment: Why We Need Reparations for Right Now*, MEDIUM (Mar. 9, 2016), <https://medium.com/@ellabakercenter/truth-and-reinvestment-why-we-need-reparations-for-right-now-2dba1f26cb49> [https://perma.cc/5FYG-UNLZ].

¹⁴¹ *Jobs Not Jails for Alameda County*, ELLA BAKER CTR. FOR HUM. RTS., <https://ellabakercenter.org/jobs-not-jails-for-alameda-county-o> [https://perma.cc/QYJ2-43D6].

returning to communities after incarceration.¹⁴² Anthony Newby, working with Neighborhoods Organizing for Change (NOC), a black-led community organization in Minneapolis, pressured the city and state to reinvest public funds after the killing of Jamar Clark by police in 2015.¹⁴³ Newby and other organizers shut down an airport terminal and the Mall of America.¹⁴⁴ Ultimately, Newby and his collaborators managed to secure thirty million dollars for reinvestment.¹⁴⁵ The next stage for his organization and movement, Newby has said, is to think about how to most meaningfully invest that money so it does not simply go to providers who are committed to preserving the status quo.¹⁴⁶

In Washington, D.C., in 2015 and 2016, local Black Lives Matter activists successfully opposed the mayor's proposed anticrime legislation, which would have expanded funding for policing, increased police presence, and increased penalties for a range of offenses.¹⁴⁷ Organizers pushed instead for a separate initiative that would use "a community-based public health approach to violence prevention."¹⁴⁸ At the same time, activists in D.C. also pressed the city to increase investment in community land trusts, a form of collective property ownership that maintains the affordability of homes in gentrifying neighborhoods over time,¹⁴⁹ and organizers made significant strides towards implementing a living wage.¹⁵⁰

As these projects have unfolded, the Movement for Black Lives and other organizers have developed accompanying webinars, have compiled hyperlinked resources for litigation and legislative advocacy, and have explored model domestic and foreign legislation.¹⁵¹ The idea is

¹⁴² *Vision 4 Black Lives Webinar Series*, *supra* note 25 (comments by Zachary Norris).

¹⁴³ See Anthony Newby, *In North Minneapolis, Funding Should Be Problem-Solving, Not Punitive*, STAR TRIB. (Dec. 15, 2015, 6:37 PM), <http://www.startribune.com/in-north-minneapolis-funding-should-be-problem-solving-not-punitive/362549591/> [<https://perma.cc/4VRJ-AQDA>].

¹⁴⁴ See Amanda Holpuch, *Black Lives Matter Protest Shuts Down Mall of America and Airport Terminal*, THE GUARDIAN (Dec. 23, 2015, 4:46 PM), <https://www.theguardian.com/us-news/2015/dec/23/black-lives-matter-organizers-protest-mall-of-america> [<https://perma.cc/VXN7-J92W>].

¹⁴⁵ *Vision 4 Black Lives Webinar Series*, *supra* note 25 (comments by Zachary Norris).

¹⁴⁶ *Id.*

¹⁴⁷ See Abigail Hauslohner & Aaron C. Davis, *Black Lives Matter Activists Disrupt Bowser Speech on How to Stop Killings*, WASH. POST (Aug. 27, 2015), <http://wapo.st/1fIrrKp> [<https://perma.cc/542E-UNSA4>]; Brent J. Cohen, *Implementing the NEAR Act to Reduce Violence in D.C.*, D.C. POL'Y CTR. (May 25, 2017), <https://www.dcpolicycenter.org/publications/implementing-near-act-reduce-violence-d-c/> [<https://perma.cc/87PX-2TQR>] (explaining that community advocates were a major cause of revisions to the NEAR Act).

¹⁴⁸ Cohen, *supra* note 147.

¹⁴⁹ See Mary Hui, *In Bid to Keep Homes Affordable, Anacostia Will Have Its First Community Land Trust*, WASH. POST (Sept. 24, 2017), <http://wapo.st/2fK6wty> [<https://perma.cc/2AF5-CWFR>].

¹⁵⁰ Martin Austerhuhle, *Bowser Signs Bill Raising D.C.'s Minimum Wage to \$15, with Nod from Obama*, WAMU 88.5 AM. U. RADIO (June 27, 2016), https://wamu.org/story/16/06/27/bowser_signs_bill_raising_dcs_minimum_wage_to_15_with_nod_from_obama/ [<https://perma.cc/834H-GVJR>].

¹⁵¹ See MOVEMENT FOR BLACK LIVES, *supra* note 9.

that other communities may turn to these resources to devise their own related projects. Through these and other efforts, local organizers have built a national movement that serves to denaturalize common assumptions about crime and punishment, connecting criminal law reform to mobilizations for a living wage, affordable housing, cooperative ownership, and a redistribution of public resources.

Professor Keeanga-Yamahtta Taylor has underscored how the Movement for Black Lives has reshaped public discourse on crime, policing, and race.¹⁵² But the movement has also revitalized local democratic politics, reshaping local and state budgeting efforts, in large part by organizing communities to actively redirect their own state and local governments. In localities around the United States, organizers are engaging in the collective institution-building political work essential to realizing abolition democracy.¹⁵³ Ultimately, for abolitionists, the question of what democracy and justice might look like without prisons and police remains open, but these are attempts to begin to prefigure more meaningful forms of redress and a more liberatory democratic politics.¹⁵⁴

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

While abolition democracy holds open the question of what justice requires and attends to the substance of redress in particular contexts, conventional legal theories, by contrast, consist of formal, abstract, and well-settled but seldom-examined constructions.¹⁵⁵ Conventional accounts of legal justice typically neglect the overwhelming discontinuity between the ideals of justice proclaimed and their deeply inadequate, often violent, racialized, and ultimately destructive realization. Abolition democracy is, of course, committed to a set of ideals as well. But the problem with conventional accounts of legal justice is not simply one of as-yet-imperfect implementation of existing ideals of legal justice. Rather, the very foundations of existing conceptions of legal justice are inadequate, compromised, limited in the ideas of justice exhorted, and corrupted by inescapably vicious and inegalitarian institutional histories and cultures. Moreover, the standard approaches to assessing whether legal justice is served fail to attend to actual experience, focusing almost exclusively on idealized justifications of existing practices.

¹⁵² See KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 153–77 (2016).

¹⁵³ See DAVIS, ABOLITION DEMOCRACY, *supra* note 8, at 95–96.

¹⁵⁴ For a further exploration of the ideas presented in sections II.B and II.C, see Allegra M. McLeod, *Law, Critique, and the Undercommons*, in *A TIME FOR CRITIQUE* (Didier Fassin & Bernard E. Harcourt eds. (forthcoming 2019)).

¹⁵⁵ See *supra* pp. 1613–16.

A. Criminal Justice

The most widely embraced conception of how legal justice should take shape in the aftermath of harm involves recourse to the criminal legal system. Various justifications for criminal arrest, criminal prosecution, and criminal punishment vie for dominance in legal theory, with some embracing retributivism,¹⁵⁶ others advocating deterrence-based rationales, and still others focused on the community's expression of shared norms.¹⁵⁷ But the realities of the criminal legal process are starkly at odds with these theoretical justifications. Instead, criminal prosecution generally fails to address the needs of survivors of harm.¹⁵⁸ It also degrades and brutalizes those subject to prosecution.¹⁵⁹ All the while, the criminal legal system neglects the underlying causes of the problems at hand so that they are almost certain to occur again. The widespread attachment to the idea that criminal adjudication promises justice is often accepted as an unquestioned article of faith even as it is dramatically belied by experience.

Although the primary objection to penal abolition is that murder, rape, and child sexual assault demand a criminal prosecutorial response,¹⁶⁰ the truth is that the criminal process fails to respond at all to many of these most egregious forms of wrongdoing,¹⁶¹ and when it does, the redress available through the criminal process is typically deeply inequitable, violent, and at odds with any conception of meaningful amends or principled accountability. Consider first the case of state-perpetrated violence, such as police killings of ordinary men and women or the torture carried out by the Chicago police under the direction of

¹⁵⁶ See generally Russell L. Christopher, *Deterring Retributivism: The Injustice of "Just" Punishment*, 96 NW. U. L. REV. 843, 845–47 (2002).

¹⁵⁷ See SANFORD H. KADISH ET AL., *CRIMINAL LAW AND ITS PROCESSES* 96–132 (10th ed. 2017) (surveying various justifications for punishment, including utilitarianism, retribution, and related theories such as vengeance and social cohesion, and mixed theories); David Scott, *Why Prison? Posing the Question*, in *WHY PRISON?* 1, 10–15 (David Scott ed., 2013) (critically reviewing common arguments justifying the existence of prisons, including retribution and deterrence theories).

¹⁵⁸ See, e.g., Mary Fan, *Adversarial Justice's Casualties: Defending Victim-Witness Protection*, 55 B.C. L. REV. 775, 776 (2014) ("The evidence is mounting that undergoing rituals of adversarial adjudication retraumatizes victims of violent and sexual assault crimes."); Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 SUFFOLK U. L. REV. 467, 472 (2005) ("[T]he criminal justice process is too slow and poorly equipped to protect against the immediate devastating consequences of assault.").

¹⁵⁹ Angel Sanchez's essay, *In Spite of Prison*, offers one example of this disconnect between theory and experience. See Angel E. Sanchez, *In Spite of Prison*, in *Developments in the Law — Prison Abolition*, 132 HARV. L. REV. 1650 (2019).

¹⁶⁰ See, e.g., Julia C. Oparah, *Why No Prisons?*, in *WHY PRISON?*, *supra* note 157, at 278, 285.

¹⁶¹ See, e.g., Aamer Madhani, *Unsolved Murders: Chicago, Other Big Cities Struggle; Murder Rate a "National Disaster"*, USA TODAY (Aug. 10, 2018, 3:19 PM), <https://www.usatoday.com/story/news/2018/08/10/u-s-homicide-clearance-rate-crisis/051681002/> [https://perma.cc/32WS-NCX6].

Burge.¹⁶² In the case of murders or assaults by agents of the state, criminal prosecution typically fails to deliver much in the way of redress at all,¹⁶³ perhaps because those responsible for initiating criminal proceedings are compromised by their close ties to policing and related state institutions.¹⁶⁴ The failure to impose any proportional punishment in these cases plainly violates retributive premises, as well as deterrence goals, and also falls far short of expressing community norms. The frequent refusal to impose any consequences in cases of state-perpetrated violence — for instance, in fifteen recent high-profile cases in which Black people were killed by police or died in custody, only three resulted in a conviction¹⁶⁵ — strongly suggests the inadequacy of the criminal process in responding to this form of homicidal violence. But the problem is deeper than advocates for convictions might suggest; justice would still not be meaningfully served even if all those police officers guilty of these acts were prosecuted, convicted, and sentenced to prison.¹⁶⁶

This is so for at least three reasons. First, criminal prosecutions of state violence — such as murders perpetrated by police — focus on individual culpability of particular officers, leaving unchanged the institutional and cultural dynamics responsible for the pervasive violence of policing and its concentration on particular bodies and in specific disenfranchised communities.¹⁶⁷ In fact, by characterizing the problem at hand as simply one of incapacitating isolated “bad apple[s],” criminal

¹⁶² See *supra* pp. 1624–28.

¹⁶³ See, e.g., *infra* text accompanying note 165.

¹⁶⁴ See, e.g., Safia Samee Ali & William Sherman, *Why Police Officers Often Aren't Convicted for Using Lethal Force*, NBC NEWS (July 30, 2016, 4:07 PM), <https://www.nbcnews.com/news/us-news/why-police-officers-often-aren-t-convicted-using-lethal-force-n619961> [<https://perma.cc/3566-NWKX>] (“[O]fficers across the country are often not charged . . . due to . . . a set of factors . . . including . . . the weight of an officer’s word, and, of course, the softer approach prosecutors take with police defendants.”); Joseph P. Williams, *Why Aren't Police Prosecuted?*, U.S. NEWS (July 13, 2016, 1:31 PM), <https://www.usnews.com/news/articles/2016-07-13/why-arent-police-held-accountable-for-shooting-black-men> [<https://perma.cc/B236-PC8Z>] (“[L]ocal prosecutors can be reluctant to charge members of a department they closely work with on a daily basis.”).

¹⁶⁵ See Jasmine C. Lee & Haeyoun Park, *15 Black Lives Ended in Confrontations with Police. 3 Officers Convicted.*, N.Y. TIMES (Oct. 5, 2018), <https://nyti.ms/2B143S> [<https://perma.cc/H6VT-5MNW>].

¹⁶⁶ See Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1425 (2016) (“[S]uccessful’ reform efforts substantially improve community perceptions about the police without substantially improving police practices.”).

¹⁶⁷ See, e.g., Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457, 489, 496–503 (2000).

prosecutions and convictions of abusive officers may even stand to legitimize policing practices in general, though those practices tend to dehumanize men, women, and children on a daily basis.¹⁶⁸

Second, the law itself countenances many forms of excessive force deployed by police — granting to police what Professor Paul Butler calls “super powers.”¹⁶⁹ So the legal standards applied in prosecutions of murderous officers will often fail to capture the scope of violent conduct that ought rightly to be condemned, suggesting certain abuses are innocent when in fact they cause grave harm.¹⁷⁰

Third, and perhaps most important, the conviction and incarceration of police who have perpetrated violence do not offer tangible recompense to survivors and others who have been harmed, nor do those responses work to prevent similar acts from occurring in the future.¹⁷¹ The only sense in which one can understand such convictions and incarcerations as delivering justice is against the backdrop of a status quo of utter impunity or public acquiescence, taking for granted that the application of criminal sanctions offers meaningful redress without inquiring more deeply into what interests are actually served by such an outcome and of what the promised justice substantially consists. By contrast, the work of abolitionist organizers to address the Chicago police torture sought to devise a remedial scheme that served to make survivors as close to whole as possible, to address the underlying causes of the violence at hand, and to commit to preventing it from occurring in the future.¹⁷²

The case of rape and sexual assault is instructive here as well. Rapes and sexual assaults are seldom criminally reported, rarely criminally prosecuted, and infrequently result in criminal conviction or substantial punishment.¹⁷³ Yet, even when a police officer is severely punished for sexual abuse — such as Daniel Holtzclaw, who was sentenced to 263 years of incarceration for sexually assaulting multiple women while

¹⁶⁸ See Kaba, *supra* note 21 (“This is not a problem of individually terrible officers rather it is a problem of a corrupt and oppressive policing system built on controlling & managing the marginalized while protecting property.”).

¹⁶⁹ Butler, *supra* note 166, at 1446.

¹⁷⁰ See Allegra M. McLeod, *Police Violence, Constitutional Complicity, and Another Vantage*, 2016 SUP. CT. REV. 157, 159–69.

¹⁷¹ See Scott, *supra* note 157, at 11–12 (explaining how incarceration does not serve deterrence-based goals).

¹⁷² See *supra* pp. 1613–14.

¹⁷³ See Allegra M. McLeod, *Regulating Sexual Harm: Strangers, Intimates, and Social Institutional Reform*, 102 CALIF. L. REV. 1553, 1556–57 (2014) (citing LYNN LANGTON ET AL., U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006–2010, at 4 (2012)); see also Kimberly A. Lonsway & Joanne Archambault, *The “Justice Gap” for Sexual Assault Cases: Future Directions for Research and Reform*, 18 VIOLENCE AGAINST WOMEN 145, 157 (2012); Seidman & Vickers, *supra* note 158, at 472.

working as a police officer¹⁷⁴ — the punishment prescribed often fails to redress the wrong committed. The incarceration of Holtzclaw, for example, leaves in place the dynamics of unconstrained power and control by police officers over poor, drug-addicted women of color involved in sex work such that his crimes can readily occur again. Holtzclaw’s sentence also offers little to the survivors of his assaults. The proportionality of the sentence to the crimes remains ultimately uncertain as it neither makes his victims whole, nor requires any acceptance of responsibility, nor otherwise calibrates the consequences of his conduct to the harms he caused. Moreover, the pronouncement of a lifetime sentence like this one fails to express with any specificity the norms of the community vis-à-vis sexual assault, as it does not address the community’s practices that render sexual misconduct pervasive and largely unredressed. It does not demand active accountability at all. Finally, the sanction violates any principled conception of justice as it entails imposing on another human being — however vile his conduct — a life in a cage, where he will almost certainly be brutalized, possibly sexually violated,¹⁷⁵ or left to decompensate in a state of solitary confinement widely regarded as torture.¹⁷⁶

It is also instructive to consider the prevalence of gun-related homicides. In certain neighborhoods in Chicago and other cities, like Richmond, California, gun-related homicides are frequent events.¹⁷⁷ As Professor Marie Gottschalk notes: “The homicide rate in Chicago’s affluent Hyde Park . . . is 3 per 100,000. . . . The homicide victimization rate for young black men involved in criminally active groups in a high crime neighborhood on Chicago’s west side is 3,000 per 100,000, or about 600 times the national rate.”¹⁷⁸ But as in the case of rape and

¹⁷⁴ See Elliott C. McLaughlin, Sara Sidner & Michael Martinez, *Oklahoma City Cop Convicted of Rape Sentenced to 263 Years in Prison*, CNN (Jan. 22, 2016), <https://www.cnn.com/2016/01/21/us/oklahoma-city-officer-daniel-holtzclaw-rape-sentencing/index.html> [<https://perma.cc/VJC5-E3KZ>].

¹⁷⁵ See Nancy Wolff et al., *Sexual Violence Inside Prisons: Rates of Victimization*, 83 J. URB. HEALTH 835, 836, 841 (2006). See generally JOANNE MARINER, HUMAN RIGHTS WATCH, NO ESCAPE: MALE RAPE IN U.S. PRISONS (2001).

¹⁷⁶ See, e.g., Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477, 508 (1997); see also Reginald Dwayne Betts, *Only Once I Thought About Suicide*, 125 YALE L.J.F. 222 (2016).

¹⁷⁷ See, e.g., Stef W. Knight & Michael Sykes, *The Deadliest City: Behind Chicago’s Segregated Shooting Sprees*, AXIOS (Aug. 14, 2018), <https://www.axios.com/chicago-gun-violence-murder-rate-statistics-4addeec-d8d8-4ce7-a26b-81d428c14836.html> [<https://perma.cc/DRB3-LVH7>]; Joaquin Palomino & Kimberly Veklerov, *In Richmond, High Number of Homicides Go Unsolved*, S.F. CHRON. (Apr. 8, 2017, 5:14 PM), <https://www.sfchronicle.com/crime/article/In-Richmond-many-murders-go-unsolved-11055724.php> [<https://perma.cc/Y32F-7ZYW>].

¹⁷⁸ MARIE GOTTSCHALK, CAUGHT: THE PRISON STATE AND THE LOCKDOWN OF AMERICAN POLITICS 276–77 (2014).

sexual assault, the vast majority of these incidents go unsolved.¹⁷⁹ Chicago police solve roughly only one in every twenty shootings.¹⁸⁰ As a consequence, these cases typically go unaddressed by the criminal process — and again the criminal process is failing to impose retributive justice, achieve deterrence objectives, or express community norms. In those one-in-twenty cases where charges are brought, the ultimate conviction and sentencing of one young person does little to address the underlying dynamics that fuel this violence, to offer meaningful accountability, or to make the victims or their survivors whole.

Of course, the vast majority of criminally prosecuted conduct does not involve serious harm along these lines at all. Most of the work of criminal courts involves processing arrests of poor people for trivial or even victimless crimes — petty thefts, minor drug possession or sales, trespassing, or offenses related to addiction, mental illness, and poverty.¹⁸¹

While some of what is most abhorrent in prison-based punishment is associated with horrific conditions in prisons and jails,¹⁸² the problems with this conception of justice would still abound even if the conditions could be improved to the point where they were analogous to the most pristine Scandinavian prisons.¹⁸³ Punishment, even in sanitized prisons, would still not respond to the needs of survivors or the public, and would still treat the perpetrators as disposable even if the place where they were deposited was relatively comfortable. It is also disingenuous to suggest that U.S. prisons could become more like those of Norway or Finland without the sorts of broader changes to the U.S. political economy urged by abolitionists — and if such changes were achieved, it is not clear why a more democratic and welfarist expansion and redistribution of resources would be best allocated to beautifying prisons rather than radically reducing reliance upon them.

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

¹⁷⁹ See Annie Sweeney & Jeremy Gorner, *Chicago Police Solve One in Every 20 Shootings. Here Are Some Reasons Why That's So Low.*, CHI. TRIB. (Aug. 8, 2018), <https://www.chicagotribune.com/news/local/breaking/ct-met-chicago-violence-clearance-rate-20180807-story.html> [https://perma.cc/JEH3-2WAG].

¹⁸⁰ *Id.*

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

¹⁸² See, e.g., Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 887–89 (2009).

¹⁸³ See, e.g., Erwin James, *The Norwegian Prison Where Inmates Are Treated Like People*, THE GUARDIAN (Feb. 25, 2013, 3:00 PM), <https://www.theguardian.com/society/2013/feb/25/norwegian-prison-inmates-treated-like-people> [https://perma.cc/EMD5-DUBM].

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

B. Procedural Justice

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

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

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

¹⁸⁴ See *supra* pp. 1615–16.

¹⁸⁵ See TOM TYLER, *WHY PEOPLE OBEY THE LAW* 3 (1990).

¹⁸⁶ Tracey L. Meares, *Policing: A Public Good Gone Bad*, BOS. REV. (Aug. 1, 2017), <http://bostonreview.net/law-justice/tracey-l-meares-policing-public-good-gone-bad> [https://perma.cc/94M9-XJLF].

¹⁸⁷ PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, U.S. DEP’T OF JUSTICE, *FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING* 9 (2015).

The core problem with this approach to redeeming criminal law enforcement and rendering it consistent with the demands of justice is primarily that procedural justice focuses on a feeling of respect or fairness rather than on realizing substantively just conditions at a more fundamental level. As Professor Monica Bell explains in a powerful critique of procedural justice, legitimacy theory locates the problems with the criminal legal process in the social dynamics of officer-citizen interactions rather than in more foundational structural problems and group-level dynamics.¹⁸⁸ The inability of the criminal legal process to deliver meaningful justice in the aftermath of severe interpersonal harm, and its overemphasis on the enforcement of laws against conduct that ought not to be criminalized, will not be corrected by police training or by making officers more respectful of those they police.

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

C. Civil Justice

Another common conception of legal justice is organized around the civil legal system and specifically the body of law referred to as tort law. As Professor Benjamin Zipursky, a tort law scholar, explains, “[T]ort law is a private right of action that the state, through courts, empowers certain plaintiffs to have against certain defendants.”¹⁸⁹ An adjunct or alternative to criminal punishment, then, is to pursue justice through a civil lawsuit where the person wronged seeks to be made whole, taking something from the wrongdoer to remove his or her unjust gain and transferring that sum to the victim or survivor of the harm.¹⁹⁰

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

¹⁸⁸ Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2058–59 (2017).

¹⁸⁹ Benjamin C. Zipursky, *Civil Recourse and the Plurality of Wrongs: Why Torts are Different*, 2014 N.Z. L. REV. 145, 146.

¹⁹⁰ This view of tort law as primarily concerned with transferring something from the wrongdoer to the person wronged, known as civil recourse theory, has been persuasively advanced by Professors John Goldberg and Benjamin Zipursky. See John C.P. Goldberg & Benjamin C. Zipursky, *Torts as Wrongs*, 88 TEX. L. REV. 917, 946 (2010) (“Tort law provides victims with an avenue of *civil recourse* against those who have committed relational and injurious wrongs against them.”). Although civil recourse theory has been the subject of some debate, see, e.g., Guido Calabresi, *Civil Recourse Theory’s Reductionism*, 88 IND. L.J. 449, 451–59 (2013); Jane Stapleton, *Evaluating Goldberg and Zipursky’s Civil Recourse Theory*, 75 FORDHAM L. REV. 1529, 1532 (2006), civil recourse theory most closely approximates the idealized version of how civil legal systems deliver justice.

legal system stand in stark contrast to their idealized expression. A person has no right to a lawyer to pursue civil claims and the relevant legal processes are difficult to comprehend and frequently inaccessible to laypeople. So for many poor victims and survivors of police violence, sexual assault, or other wrongs, a civil lawsuit offers no promise of justice at all.¹⁹¹ Qualified immunity and other doctrines shield many who would otherwise be viewed as culpable from civil liability.¹⁹² Even where victims or survivors are able to retain counsel and survive a motion to dismiss their claims, the rules of evidence in a civil trial are such that the survivor's account of his or her own story will be distorted, subject to the grueling scrutiny of cross-examination, and likely otherwise deformed.¹⁹³ Whether a judge or jury returns a favorable verdict may well be informed by racial, gender, or other bias, as it often is.¹⁹⁴ In the end, any collection of monetary damages by the survivor will only occur after legal fees and other expenses are paid, which substantially reduces any recovery. For all of these reasons, the experience of the civil legal process falls far short of the dignified vision of justice conjured by the purported promises of the rule of law.

Even in those rare instances where civil litigation succeeds at compensating a victim sufficiently so he or she is able to obtain mental health and medical care and meet other needs, the civil legal process comes up short in other fundamental respects. The structure of a civil lawsuit generally conceptualizes justice in individual terms or with reference to a predefined common class in the case of a class action. But the parties aggrieved by serious wrongs are often spread throughout a community, and a process that seeks justice ought to address those aggrieved more holistically than by transferring a sum of money to a single survivor or even a group of similarly situated aggrieved individuals. For example, following the Chicago police torture, several successful civil lawsuits resulted in sizable settlements, but this left hundreds of people who had similarly survived torture and been sentenced to death or long

¹⁹¹ See LEGAL SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 4–8 (2017).

¹⁹² See Rob Yale, *Searching for the Consequences of Police Brutality*, 70 S. CAL. L. REV. 1841, 1850 (1997) (describing qualified immunity as a barrier to civil recovery in police brutality claims).

¹⁹³ See, e.g., Taylor Dolven, *Shot by Cops, Smeared in Court*, VICE NEWS (Oct. 30, 2017), https://news.vice.com/en_us/article/pazq57/police-shootings-rule-609 [<https://perma.cc/SL3X-J23C>] (describing evidentiary rules that disadvantage survivors of police brutality in civil lawsuits against their perpetrators); see also Deborah Epstein & Lisa A. Goodman, *Discounting Credibility: Doubting the Testimony and Dismissing the Experiences of Domestic Violence Survivors and Other Women*, 167 U. PENN. L. REV. (forthcoming 2019) (surveying the ways in which the civil legal process discredits and denigrates the testimony and credibility of sexual violence survivors).

¹⁹⁴ See, e.g., Samuel R. Sommers, *Race and the Decision Making of Juries*, 12 LEGAL & CRIMINOLOGICAL PSYCHOL. 171, 183 (2007) (summarizing “compelling evidence” that “race can exert a causal effect on trial outcomes”).

prison sentences without recourse for what they had endured.¹⁹⁵ Moreover, it took a city resolution decades later to provide many survivors and their families with reparations to recognize what they had experienced.¹⁹⁶ The relatively unconstrained power and authority of the Chicago police to surveil and deploy force in the city's most segregated and disadvantaged communities remain in place.

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

D. Grounded Justice, Abolition Democracy, and the Unfinished

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

It was with this conception of justice in mind that abolitionists in Chicago sought and obtained reparations for survivors: a fund to support those victimized by police, a center that would provide resources for medical and mental health services to those who need them, an ongoing project of public memorialization of the wrongs that had occurred, and a change to the public school curriculum so students could learn from — and the city could prevent — similar events from occurring in the future.¹⁹⁷ Transformative justice processes seek to undertake some of this same work of meeting the needs of those aggrieved, minimizing future harm, and promoting responsibility and greater understanding. But beyond redress of wrongdoing, justice in abolitionist terms is also concerned with preventing harm in ways that more equitably distribute material resources, such as through participatory budgeting. In the process, abolitionists reimagine and realize greater collective security while expanding and deepening democratic engagement.

¹⁹⁵ See Taylor, *supra* note 73, at 380–81.

¹⁹⁶ See Moore, *supra* note 64.

¹⁹⁷ See *id.*; Marwa Eltagouri, *Chicago's New Center for Police-Torture Victims Is First of Its Kind in U.S.*, CHI. TRIB. (May 27, 2017, 6:05 PM), <https://www.chicagotribune.com/news/local/breaking/ct-burge-torture-justice-center-met-20170526-story.html> [https://perma.cc/U9A2-YWD2].

This approach to justice rejects purely abstract and highly idealized theories of criminal accountability or civil justice and remains committed instead to incrementally changing the means of prevention and redress of harm, learning from public input and experience on an ongoing basis. To the rejoinder, “But what would we do without police and prisons?” contemporary abolitionists respond, “What you are really asking is: ‘What would we do without civil death, exploitation and state-sanctioned violence?’”¹⁹⁸ For in the United States, prisons and policing have always been deeply implicated in and inextricably connected to racialized abuse and disenfranchisement.¹⁹⁹ Instead, in the turn away from policing and prisons, abolitionists reject the project of “rearrang[ing] the trappings of annihilation and bondage” while calling ourselves “free.”²⁰⁰ For abolitionists, to realize “freedom or safety, and to make peace with our own fears, passive punishments must be replaced with active amends and accountability.”²⁰¹

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

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

. . . .

Punishment and revenge will not heal the harm that has been done to me. It will not take away the pain, nor will it make me feel better about myself But . . . a radical shift in our culture, in our way of surviving and handling these atrocities and collectively preventing them, will.²⁰²

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

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

¹⁹⁸ See Hayes & Kaba, *supra* note 105.

¹⁹⁹ See, e.g., DU BOIS, *supra* note 7, at 624–25. See generally NAOMI MURAKAWA, *THE FIRST CIVIL RIGHT: HOW LIBERALS BUILT PRISON AMERICA* (2014); DAVID M. OSHINSKY, “WORSE THAN SLAVERY”: PARCHEMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 84, 109–10 (1996); BRUCE WESTERN, *PUNISHMENT AND INEQUALITY IN AMERICA* 11–33 (2006).

²⁰⁰ Hayes & Kaba, *supra* note 105.

²⁰¹ *Id.*

²⁰² Joshua Briond, *Navigating Justice for Sexual Abuse Survivors, When You’re a Prison Abolitionist and a Survivor*, AFROPUNK (Dec. 19, 2017), <https://afropunk.com/2017/12/navigating-need-justice-sexual-abuse-survivors-youre-abolitionist-survivor/> [<https://perma.cc/U7T2-NUZV>].

CONCLUSION

To return to Homan Square where we began: when organizers re-named that space Freedom Square, they did more than call attention to criminal law enforcement practices at the adjacent police site. They also called to mind a forgotten history involving the slumlord Samuel Homan, and others like him, who played a crucial role in the mid-twentieth century in shaping Chicago's highly segregated, unequal landscape — characterized by pockets of poverty and violence and other spaces of concentrated resources and advantage — that has persisted well into the twenty-first century.²⁰³ Homan profited from predatory real estate practices, which forced many African Americans in Chicago into substandard housing, deepening racial isolation, and economic desperation. Homan should perhaps be most infamous for having “renovated” a twenty-two unit building on West Ohio Street into 101 barely habitable dwellings, which accommodated nearly 300 African American tenants who were charged several times more than previous white residents were charged for reconfigured tiny rooms with shared bathrooms and kitchens.²⁰⁴ Then, the building burned — in circumstances strongly suggestive of arson rather than an accident.²⁰⁵ Whatever the cause of the fire, however, Homan was at least responsible for having long profited off tenants to whom he provided no means of escape, and amassing wealth from the degradation of others — indeed, from many of the building's residents who either burned to death or were severely injured in the fire.²⁰⁶ Today, Chicago remains among the most segregated cities in the country, with many African American citizens living in impoverished neighborhoods, like the one surrounding Homan Square, that are characterized by intergenerational disadvantage, intense police surveillance, unemployment, violence, and despair, even as there remains much that is vital and hopeful in those places, too.²⁰⁷

²⁰³ See Whet Moser, *Chicago Isn't Just Segregated, It Basically Invented Modern Segregation*, CHI. MAG. (Mar. 31, 2017), <https://www.chicagomag.com/city-life/March-2017/Why-Is-Chicago-So-Segregated/> [<https://perma.cc/SAB3-VWJ2>].

²⁰⁴ ALLEN, *supra* note 5, at 148.

²⁰⁵ *Id.* at 148–58.

²⁰⁶ See *id.* The jury issued a statement condemning Homan: “We, the Jury, find the unbelievably shocking conditions in the death building at 940–42 West Ohio Street — the overcrowding, the vicious violations of safety and building code provisions and of ordinary standards of decency — to be directly contributory to the deaths *The Jury cannot stress too strongly its belief that there would have been no deaths in this tenement had the operator had even the slightest feelings of human decency toward his tenants.*” *Id.* at 168. The verdict continued that the responsibility for these terrible conditions lay not only with Samuel Homan but also “at the doorstep of the Police Department, the Building Inspection Department, real estate operators and boards, and thousands of home owners throughout Chicago.” *Id.* at 168–69.

²⁰⁷ See Aaron Williams & Armand Emamdjomeh, *America is More Diverse Than Ever — But Still Segregated*, WASH. POST (May 10, 2018), <https://wapo.st/2KyC4jA?> [<https://perma.cc/P6Z2-YARM>];

In recent years, charitable groups and housing development corporations have sought to revitalize the economically depressed neighborhood surrounding Homan Square, but tax-exempt donations and corporate development do not suffice as a just measure of repair.²⁰⁸ After all, such efforts are generally spearheaded by those who have inherited the spoils of racialized dispossession, rather than by the dispossessed,²⁰⁹ and such projects fail to address the roots of intergenerational disadvantage — falling far short of democratizing the basic economic and political institutions that determine the distribution of life chances. Contemporary abolitionists, by contrast, have committed themselves to remedying persistent maldistribution and to centering the voices and leadership of those too often excluded. This Essay has also sought to hold at its center those voices, otherwise largely absent in legal discourse, and to envision abolition democracy by learning from their aspirational work, imaginings, and ideas.

see also Madhani, *supra* note 161; Moore, *supra* note 64. For an in-depth examination of how the criminal system operates in Cook County, see STEVE BOGIRA, COURTROOM 302 (2005).

²⁰⁸ See Corilyn Shropshire, *40 Years After Sears Left Homan Square, Catalog Building Gets Second Life*, CHI. TRIB. (June 22, 2017, 1:53 PM), <https://www.chicagotribune.com/business/ct-sears-homan-square-affordable-housing-0623-biz-20170622-story.html> [<https://perma.cc/VF7Q-8CTF>].

²⁰⁹ See, e.g., *id.* (describing a housing development near Homan Square funded in part by the Chicago Housing Authority, the Federal Home Loan Bank of Chicago, and Nationwide Insurance through the Royal Bank of Canada).