DEMANDS FOR A DEMOCRATIC POLITICAL ECONOMY†

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Those who profess to favor freedom and yet deprecate agitation, are men who want crops without plowing up the ground, they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters. . . . Power concedes nothing without a demand. It never did and it never will.
—Frederick Douglass, 1857

INTRODUCTION

We are living in a time of grassroots demands to transform our built environment and our relationships with one another and the earth. To abolish prisons and police, rent, debt, borders, and billionaires. To

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decommodify housing and healthcare and to decolonize land.⁴ To exercise more collective ownership over our collectively generated wealth.⁵ Some of us are reimagining the state. Others are dreaming of moving beyond it.⁶ But these are more than dreams. These are demands for a democratic political economy.

These demands increased in volume this year as the violence of policing continued, the fires burned in California and Oregon, and the coronavirus raged across the country. The police killings of George Floyd and Breonna Taylor set off unprecedented summerlong protests.⁷ Almost nine million acres of land have burned.⁸ Twelve tropical storms and hurricanes have made landfall, causing widespread flooding, property damage, and power outages in the Gulf Coast and beyond.⁹ Over 250,000 people have died from the coronavirus,¹⁰ and estimates suggest nearly as many will die this year from suicides, alcohol-related deaths, and drug overdoses.¹¹ Millions of people — the vast majority without a college degree, and many Black, brown, immigrant, disabled — are doing essential devalued labor at great peril to themselves and their families.¹² Tens of millions are hungry, without work or healthcare,

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⁹ See, e.g., Jason Samenow, Andrew Freedman & Matthew Cappucci, 2020 Atlantic Hurricane Season Breaks All-Time Record While Leaving Gulf Coast Battered, WASH. POST (Nov. 10, 2020, 5:00 PM), https://www.washingtonpost.com/weather/2020/11/10/record-hurricane-season-atlantic [https://perma.cc/MsF3-L4ZQ].
debt-ridden, and unable to make rent.\textsuperscript{13} Millions are confined to carceral institutions despite squalid conditions and the heightened risk of coronavirus transmission in jails, prisons, detention centers, and psychiatric institutions.\textsuperscript{14} While most of us are becoming increasingly insecure, the wealthiest among us are amassing even more wealth.\textsuperscript{15} And there is no real relief in sight.

In his remarkable Foreword, Professor Michael Klarman implicitly makes the case for this decade of protests, riots, and strikes, and the demands that spring therefrom.\textsuperscript{16} The United States “is not a democracy.”\textsuperscript{17} Our political system is “dominate[d]” by “the wealthiest Americans”\textsuperscript{18} and “well-funded interest groups,”\textsuperscript{19} whereas “working-class and middle-class Americans exercise almost no influence on political outcomes across a wide array of issues.”\textsuperscript{20}

We are living through a material and ideological crisis: people’s basic needs are not being met — not by the state, and not by the market. But it is not simply that material conditions are increasingly unsurvivable. Ordinary people have no way to determine the conditions
of their lives. People are taking to the streets because it is their “only recourse.”

More than hardball, Klarman argues that conservatives and super-elites have written, interpreted, influenced, and enforced the laws to build a world where their power and profit reign supreme. Despite large majorities who support “paid sick leave and parental leave for workers, a higher minimum wage, and higher taxes on millionaires . . . such policies do not get enacted.” In an unusually clear identification of political opponents in a piece of legal scholarship, Klarman’s charge is against Republicans, Donald Trump, the Roberts Court, libertarian businessmen, the religious right, and the right-wing media. But Klarman does not rest there: he identifies a fundamental contradiction between property rights and representative democracy in our constitutional structure from the founding until today. While he omits land theft and Indigenous genocide, he repeatedly refers to the histories and afterlives of enslavement.

As he charts the neofascist turn in Republican politics, Klarman provides a sweeping argument about how neoliberalism has come to define our law and politics — with Republicans at the helm and Democrats in tow. The “libertarian businessmen’s political agenda” is at the center of the story: “reducing taxes, cutting social welfare programs, privatizing
education and other traditional government functions, undermining labor unions, [and] eviscerating environmental regulations.”  

But Klarman overlooks the exponential rise of incarceration and policing since the civil rights movement. This is a curious omission given Klarman’s past work on criminal procedure and the Foreword’s focus on eroded democracy, expanding inequality, and racial resentment among whites. Mass criminalization is an engine of political, economic, and social disenfranchisement that has devastated Black, brown, poor, and working-class communities. It provides bipartisan scaffolding for the widening wealth and income gaps that animate how race, class, and gender are lived.

Klarman refuses many of the myths of liberalism and neoliberalism. He considers law as a terrain and tool of politics: the product of

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27 Id. at 140.
31 See generally, e.g., Elizabeth Hinton, From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America (2016) (tracing mass incarceration to mid-twentieth-century urban policies advocated by Republicans and Democrats); Naomi Murakawa, The First Civil Right: How Liberals Built Prison America (2014) (examining how liberal ideologies contributed to the growth of the American prison system).
32 The primary role of the neoliberal state is to “set up those military, defence, police, and legal structures” required for the stability of private property rights, free trade, and markets. David Harvey, A Brief History of Neoliberalism 2 (2005); see also Corinne Blalock, Neoliberalism and the Crisis of Legal Theory, 77 Law & Contemp. Probs. 71, 83–84 (2014) (identifying deregulation, privatization, and “the dismantling of the welfare state,” id. at 83, as central to neoliberal regimes); David Singh Grewal & Jedianiah Purdy, Introduction: Law and Neoliberalism, 77 Law & Contemp. Probs. 1, 6–8 (2014) (stating that under neoliberal ideology, “strong property rights and private contracting rights are the best means to increase overall welfare,” id. at 6).
dynamic social forces contending for power. From social movements to
the Civil War to the evisceration of labor unions, he describes the bloody
struggles — far outside the courtroom or Congress — over labor, land,
race, class, and gender as central to the shape and meaning of our laws.
He identifies the material incentives and ideological infrastructure that
have created the Republican Party we know today and its sizeable sup-
port among whites.\textsuperscript{33} He repudiates any fantasy that we are on a linear
march toward betterment for all. He powerfully reminds us, for exam-
ple, that “only for a relatively brief period during Reconstruction and
since the 1965 Voting Rights Act have [B]lacks been permitted to par-
ticipate in any significant way in American democracy.”\textsuperscript{34} There is no
machinery toiling on automatic toward justice. He understands the
state not merely as the government, but as something more akin to the
ruling elite.\textsuperscript{35}

After refusing the divisions among democracy, the state, and the
economy, Klarman falters when it comes to reforms. He explicitly places
the horizon for reform as democracy — which he briefly defines as a
political system where “a majority of voters enjoys at least a majority of
the political power”\textsuperscript{36} — and narrows his focus to the formal structures
of participation in electoral politics. Klarman calls on the Democratic
Party to advance reforms that “bolster”\textsuperscript{37} and “entrench”\textsuperscript{38} democracy:
implementing automatic voter registration at eighteen, ending felon dis-
enfranchisement, publicly financing elections, resizing the Supreme
Court, abolishing the Electoral College, and addressing the malappor-
tionment of the Senate.\textsuperscript{39} He recognizes that “[w]e are trapped in a
downward spiral in which growing economic inequality erodes democ-

\begin{itemize}
\item \textsuperscript{33} See, e.g., Klarman, supra note 16, at 117–22, 140–43, 168–71.
\item \textsuperscript{34} Id. at 107.
\item \textsuperscript{35} See, e.g., id. at 144–47, 207–11. In running a comparison of the United States with other
countries, he even refuses to render the United States as singular among a sea of European nations.
See id. at 8, 15–20.
\item \textsuperscript{36} Id. at 47.
\item \textsuperscript{37} Id. at 243.
\item \textsuperscript{38} Id. at 231.
\item \textsuperscript{39} Id. at 232–42, 246–53. For a powerful overview of reforms that would delimit the Court’s
jurisdiction and judicial review, see Ryan D. Doerfler & Samuel Moyn, Democratizing the Supreme
Court, 109 CALIF. L. REV. (forthcoming 2021) (manuscript at 22–25) (on file with the Harvard Law
School Library); and for a discussion of reforms that would incentivize campaigns to mobilize the
poor to vote, see Bertrall L. Ross II, Addressing Inequality in the Age of Citizens United, 93 N.Y.U.
\item \textsuperscript{40} Klarman, supra note 16, at 254.
\item \textsuperscript{41} Id.
\end{itemize}
As an empirical and normative matter, I am not so sure. Electoral reform is unlikely to mobilize a public where only twenty to sixty-five percent of eligible voters cast their ballots in various elections and only twenty percent trust the federal government. Nor do we have the luxury to wait and see. The rhythms and impacts of minority rule are more frequent and brutal than the election cycle. That most people have virtually “no influence on political outcomes across a wide array of issues” has very material consequences. It means widespread hunger and houselessness, declining wages and a third part-time job, no time for rest or leisure or loved ones, and high rates of alcoholism, depression, overdoses, and suicide. It means ballooning budgets for punitive control financed by the poor and defunding of schools, transportation, and infrastructure. It means living in a debt-based economy where most everyone cannot afford their daily existence. It means dirty air, undrinkable water, and rising sea levels. It means widespread premature death and insufficient medical care. It means stoking anti-poor, anti-Black, anti-immigrant, anti-Muslim, and anti-Mexican sentiment to try to ease the pain between myth and reality. It means doubling down on the nuclear family, patriarchal violence, and gender binaries. It means increased feelings of powerlessness and despondency.

The reforms Klarman advances would provide important avenues to reconstitute Democratic Party power and to weaken nativist right-wing forces. But they would not go far enough to counter the devastation minority rule has wrought through never-ending privatization and the monstrosity of the carceral state. Nor are Democrats likely to lead a meaningful agenda of redistribution and reconstruction. Consider that from Minneapolis to Los Angeles to Louisville, virtually all of the cities engulfed in protest this summer have Democratic city councils and mayors. At the federal level, the party leadership has ferociously fought pressure from the emboldened left of the party, even as “the Squad” organizes around large-scale changes that are mobilizing young people and a broader ideological base. Democrats have consistently failed to


43 Klarman, supra note 16, at 207.


mount a serious challenge to Republican power with any kind of real vision for an alternative or for large structural changes.\footnote{See Dahlia Lithwick & David S. Cohen, Opinion, \textit{Buck Up, Democrats, and Fight like Republicans}, N.Y. TIMES (Dec. 14, 2016), https://nyti.ms/2hDHrTs [https://perma.cc/NZ3V-C3T3] (characterizing Democrats’ behavior after the 2016 election of Donald Trump as “do-nothingness”).} They have been willing partners in the neoliberal project.\footnote{Klarman himself recognizes that Democrats function under the shadow of the libertarian ideas and “oligarchic money” that rule politics. Klarman, supra note 16, at 143.}

Democracy must be a bottom-up project. It cannot be entrusted to either party. Whether you think of Occupy or Ferguson or Standing Rock or the teachers’ strikes, the flourishing protests of the last decade are grassroots insurgencies against intersecting material crises produced by elite rule. It is here that we must pay attention.\footnote{For an argument about the importance of scholarship in conversation with social movements, see Amna A. Akbar, Sameer Ashar & Jocelyn Simonson, \textit{Movement Law}, 73 STAN. L. REV. (forthcoming 2021) (on file with the Harvard Law School Library). Professor Lani Guinier and Professor Gerald Torres’s argument of “demosprudence” rings similar notes. \textit{See Lani Guinier & Gerald Torres, \textit{Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements}, 123 YALE L.J. 2740, 2750 (2014) ([D]emosprudence focuses on the ways that ongoing collective action by ordinary people can permanently . . . chang[e] the people who make the law and the landscape in which that law is made.”); \textit{see also id. at 2757–58.}} Social movements are essential to contesting the strangled domain of democratic politics under neoliberal capitalism and its unrelenting expansion of the market economy. To create the conditions where popular majorities can engage in self-rule requires a vision of democracy that does not separate politics from the economy and that is committed to grassroots power and a more ambitious program of reform.

In this Response, I lay out a more capacious vision of democracy emerging from today’s grassroots movements on the left: where the pursuit of “non-reformist reforms” is one strategy to move us toward a democratic political economy where people possess the agency and power to self-determine the conditions of their lives. Organizers are increasingly using the heuristic of non-reformist reforms to conjure the possibility of advancing reforms that facilitate transformational change. Articulated in protests, strikes, campaigns, and policy platforms by organizations like Mijente, Black Visions Collective, Sunrise Movement, the Right To
The City Alliance, and the International Longshore and Warehouse Union, non-reformist reforms provide a framework for thinking about reforms that aim to build grassroots power as they redress the crises of our times. They embody a combined concern with democracy and the economy, the ends and processes of grassroots power: to fight criminalization and privatization as we organize for collective self-determination.

The Response proceeds as follows. In Part I, I lay out the conceptual framework of non-reformist reforms, its origins, and its current articulation in abolitionist, antiracist, and anticapitalist organizing. In Part II, I turn to defund the police as one example of a non-reformist reform. In Part III, I explain that movements are making demands for the public to have greater say in the commons: our collectively generated wealth, the land, and our shared built environment. These demands for redistribution reflect the deepening of anticapitalist and antiracist critique in many of today’s movements and a shift in thinking about the nature of reform that creates greater self-determination for poor, working-class, Black, and brown people — and a more just and sustainable future for us all.

I. NON-REFORMIST REFORMS

As a matter of rhetoric, the left often fashions itself as against reform and outside of formal politics — characterizations that liberals and


scholars echo. But today’s left social movements are turning to demands, reforms, and policy platforms. This is not a rejection of electoral and legislative politics: it is a cautious embrace, marking a shift for the emergent left. The demands are amplified by an increasingly organized strategy to elect left and socialist candidates to office, to challenge the Democratic Party’s ties to corporate money and the billionaire class, and to redefine the realm of the possible. Congressional Representatives Alexandria Ocasio-Cortez, Ilhan Omar, and the growing Squad are supported by a developing constellation of organizations focused on electoral strategy — and these elected officials have become important amplifiers for radical demands. The turn to reform undoubtedly reflects the defeat of the revolutionary politics of the New Left and Black Power era — itself an index of frustration with what the civil rights movement achieved — as well as a recognition of the immensity of U.S. military and police power that rose up to crush movements here and around the world. But it also reflects a sober assessment of the limited scale of left, working-class, and poor people power amid decades of state repression and the rise of the neoliberal agenda.

51 Woodly, supra note 21, at 343 (arguing that social movements are “essential components of democracy” and not “interventions from outside routinized democracy” in the way that democratic theorists tend to assume).


56 See generally, e.g., CAMP, supra note 18 (discussing the rise of the carceral state and the government’s attempts to suppress radical social movements).
Klarman documents.\textsuperscript{57} It is a bid for power that recognizes that mass disenfranchisement is central to the elite’s hold on the state and the economy. A growing number of organizers now understand the need to organize poor, working-class, Black, brown, and immigrant people to effectuate transformational change.\textsuperscript{58}

Reform has long been a central question in debates about left and socialist strategy,\textsuperscript{59} with a range of terms to capture the aspiration for a reform program aimed at a larger project of transformation.\textsuperscript{60} Organizers are increasingly invoking non-reformist reforms, the term

\textsuperscript{57} See Klarman, supra note 16, at 140–44, 207–08. Lack of organization among the “inadequately employed” is itself in part “the result of the sedimentation of a neoliberal commonsense.” Deva Woody, Seeing Collectivity: Structural Relation Through the Lens of Youngian Solidarity, 14 CONTEMP. POL. THEORY 213, 229 (2015).

\textsuperscript{58} Importantly, many contemporary campaigns emerge in defensive posture: against the violence and disregard of legal process toward the poor — whether that be criminal prosecution, deportation, or eviction. E.g., #DefundHate, DET. WATCH NETWORK, https://www.detentionwatchnetwork.org/defundhate [https://perma.cc/W7AC-LT6L].


coined in the 1960s by French economist-philosopher and socialist André Gorz. In *Strategy for Labor*, Gorz defined a non-reformist reform as one that does not comport with “capitalist needs, criteria, and rationales.” Instead it advances a logic of “what should be” and requires “implementation of fundamental political and economic changes.” Whether the change is “sudden” or “gradual” is immaterial: non-reformist reforms require a “modification of the relations of power,” in particular “the creation of new centers of democratic power.”

The non-reformist reform framework is prevalent in abolitionist organizing against the prison industrial complex and deployed by those who embrace racial justice, anticapitalism, and socialism more broadly. In *Golden Gulag*, Professor Ruth Wilson Gilmore calls for non-reformist reforms, which she defines as “changes that, at the end of the day, unravel rather than widen the net of social control through criminalization.” Through decades of campaigns against carceral infrastructure, abolitionist campaigns have produced rubrics demarcating an approach to reform focused on reducing the scale, power, tools, and legitimacy of the carceral state. The focus on the ideological scaffolding of carceral control — the equation of policing with safety, for example — signals a keen understanding of the interlocking ideological and material infrastructure of our lives. In turn, it suggests, like Gorz

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61 ANDRÉ GORZ, STRATEGY FOR LABOR: A RADICAL PROPOSAL 7 (Martin A. Nicolaus & Victoria Ortiz trans., 1967). He also uses the terms “structural reforms,” id. at 8, “revolutionary reforms,” id. at 6, and “anti-capitalist reforms,” id. at 7.

62 Id. at 7.

63 Id. at 8.

64 Id. at 8 & n.3.

65 See Ruth Wilson Gilmore & Craig Gilmore, Restating the Obvious, in INDEFENSIBLE SPACE: THE ARCHITECTURE OF THE NATIONAL INSECURITY STATE 141, 145 (Michael Sorkin ed., 2008) (stating that non-reformist reforms are “systemic changes that do not extend the life or breadth of deadly forces such as prisons” (citing André Gorz and Professor Thomas Mathieson)); see also THOMAS MATHIESON, THE POLITICS OF ABOLITION REVISITED 231 (2015) (“[T]he short-term reforms which you work for... as a road to the long-term goal of abolition... must also consistently be of an abolishing kind.”).


67 GILMORE, supra note 60, at 242.

68 E.g., CRITICAL RESISTANCE, supra note 60. For scholarly engagement, see generally Beth A. Colgan, Beyond Graduation: Economic Sanctions and Structural Reform, 69 DUKE L.J. 1529 (2020), which examines reforms of economic sanctions within the criminal legal system through an abolitionist lens; and Marbre Stahly-Butts & Amna A. Akbar, Transformative Reforms, Abolitionist Demands, STAN. J.C.R. & C.L. (forthcoming 2020) (on file with the Harvard Law School Library), which advances a framework for considering transformative reforms committed to an abolitionist future.

did, that a revolutionary program of reform must continually deepen consciousness around the violence and exploitation of the status quo as it advances the possibility of alternatives.

While Gorz is remembered as a champion for non-reformist reforms, his work is decidedly ambivalent: a “very clear dividing line” will not always exist between “reformist” and “non-reformist reforms.”70 Assessing a demand for “the construction of 500,000 new housing units a year,” for example, would require an assessment of whether the proposal involved “the expropriation of those who own the required land, and whether the construction would be a socialized public service, thus destroying an important center of the accumulation of private capital; or if, on the contrary, this would mean subsidizing private enterprise with taxpayers’ money to guarantee its profits.”71 The non-reformist reform does not aim to create policy solutions to discrete problems; rather it aims to unleash people power against the prevailing political, economic, and social arrangements and toward new possibilities.

But whether something is non-reformist or reformist is about more than the nature of the demand and its particulars: it is also a question of how the campaign is waged. Consider another example: abolition of the death penalty. The conventional liberal approach emphasizes that death is too great a power for the state, and reassures the public that life sentences will continue to ensure safety of local communities. In this guise, the campaign aims to shrink the state’s carceral power in one particular way but does not question mass human caging. As the campaign attempts to undermine the death penalty, its logic shores up the legitimacy, righteousness, and necessity of life sentences.72 A non-reformist approach would frame the problem of the death penalty as stemming from the larger violence of prisons and policing and its historical continuities with lynching and enslavement. Life without parole then is not the solution, it is illegitimate carceral violence:

70 Gorz, supra note 61, at 7; see also Brett Story, Prison Land: Mapping Carceral Power Across Neoliberal America 164–66 (2019).
what abolitionist organizers in Pennsylvania have dubbed “death by incarceration.”

If the same demand can be framed or implemented in reformist or non-reformist ways, the line is undoubtedly murky in practice. But this does not make the attempt to distinguish futile. Instead it clarifies that reform projects are contradictory gambits if the aim is transformation: they always have the possibility of reifying the status quo. Nonetheless, there are essential distinctions for developing transformative programs of reform that aim to undermine the prevailing order in service of building a new one.

The hallmarks of non-reformist reforms are three. First, non-reformist reforms advance a radical critique and radical imagination. Reform is not the end goal; transformation is. Non-reformist reforms are “conceived not in terms of what is possible within the framework of a given system and administration, but in view of what should be made possible in terms of human needs and demands.” In advancing an agenda to meet human need, non-reformist reforms advance a critique about how capitalism and the carceral state structure society for the benefit of the few, rather than the many. They also posit a radical imagination for a state or society oriented toward meeting those needs.

By contrast, reformist reforms draw on and advance critiques of our system — whether that be capitalism or the carceral state — that do not question underlying premises or advance alternative futures. In fact, reformist reforms “reject[] those objectives and demands — however deep the need for them — which are incompatible with the preservation of the system.” Here, one can think of the quick rejections by so many of defund the police or the Green New Deal — despite the mounting evidence that liberal reforms have done little to limit police violence or to slow the speed at which we are hurtling toward increasingly frequent

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74 See Amna A. Akbar, Toward a Radical Imagination of Law, 93 N.Y.U. L. Rev. 405, 408 (2018).

75 MILIBAND, supra note 59, at 158 (considering reforms that “are at best steps and partial means towards a much larger purpose, which is declared to be the ‘overthrow’ of capitalism and the achievement of an altogether different, that is socialist, society”).

76 GORZ, supra note 61, at 7.

77 Id.
environmental disasters. Liberal reformism effectively shields the status quo from deep critique. The end goal of liberal reformism is just that: reform.

The non-reformist reform then provides a framework for demands that will undermine the prevailing political, economic, social system from reproducing itself and make more possible a radically different political, economic, social system. For abolitionists, the underlying system to undermine is the prison industrial complex and the horizon to build toward is abolition democracy. For socialists, the underlying system is capitalism and the horizon socialism. In theory and practice, these are intertwined, variegated, and debated political projects.

I am suggesting neither a false neatness within nor artificial distinctions between rich left traditions. But I mention it to make a point so obscured in legal discourse: that approaches to reform reflect ideological commitments, critiques of or acquiescence to underlying systems, aspirations for the future, and theories of change. Reforms communicate analyses of our conditions, tell stories about possibilities, and contribute to dynamic relations of power. So the target and object of the non-reformist framework will depend on one’s political project and analysis, as will whether one accepts a reformist or non-reformist orientation.

Whereas reformist reforms aim to improve, ameliorate, legitimate, and even advance the underlying system, non-reformist reforms aim for political, economic, social transformation: for example, socialism or abolition democracy. They seek to delegitimate the underlying system in service of building new forms of social organization. Rather than legitimate, they seek to sustain ideological crisis as a way to provoke action and develop public consciousness about the possibilities of alternatives and our collective capacity to build them together.

Second, non-reformist reforms must draw from and create pathways for building ever-growing organized popular power. They aim to shift

78 See generally, e.g., DAVID WALLACE-WELLS, THE UNINHABITABLE EARTH: LIFE AFTER WARMING (2019) (discussing the impact and recent acceleration of global warming); Soss & Weaver, supra note 30 (discussing the deepened police involvement in the lives of members of “race–class subjugated communities,” id. at 567).
79 See Sameer M. Ashar, Essay, Deep Critique and Democratic Lawyering in Clinical Practice, 104 CALIF. L. REV. 201, 203–06, 217–19 (2016) (defining “deep critique” as “thinking beneath and beyond liberal legalist approaches to social problems . . . through collaborative work with people, communities, and thinkers at the margins of our social structure,” id. at 218).
80 See, e.g., JACKIE WANG, CARCERAL CAPITALISM (2018) (examining the political economy of the carceral state).
81 See, e.g., MICHAEL HARDT & ANTONIO NEGRI, ASSEMBLY 251 (2017) (“In neoliberal hands, reform has come to mean, primarily, a shift of control from states to financial markets . . . .”)
82 GORZ, supra note 61, at 8 (arguing that non-reformist reforms must modify “the relations of power”); see also Kali Akuno, Build and Fight: The Program and Strategy of Cooperation Jackson, in JACKSON RISING: THE STRUGGLE FOR ECONOMIC DEMOCRACY AND BLACK
power away from elites and toward the masses of people. This is a matter of substance and process, from where the demand comes, the vision it advances, and the space it creates. Whether through demands on the state or the workplace, non-reformist reform “always requires the creation of new centers of democratic power[,] . . . a restriction on the powers of State or Capital, an extension of popular power, that is to say, a victory of democracy over the dictatorship of profit.” In their focus on power, non-reformist reforms challenge liberal legal frameworks that tend to obscure power relations. Non-reformist reforms are about building the power of people to wage a long-term struggle of transformation.

In contrast to reforms formulated by expert elites, non-reformist reforms come from social movements, labor, and organized collectives of poor, working-class, and directly impacted people making demands for power over the conditions of their lives and the shape of their institutions. People living under perilous conditions must generate analysis of those conditions, and advance solutions, in collective formations.

SELF-DETERMINATION IN JACKSON, MISSISSIPPI 17 (Kali Akuno & Ajamu Nangwaya, Cooperation Jackson eds., 2017) (stating that non-reformist reforms “seek to create new logics, new relations, and new imperatives that create a new equilibrium and balance of forces to weaken capitalism and enable the development of an anti-capitalist alternative”). For legal scholarship focused on how law can support power-building of organized collectives, in particular of Black, brown, immigrant, poor, and working-class people, see K. Sabeel Rahman & Jocelyn Simonson, The Institutional Design of Community Control, 108 CALIF. L. REV. 679, 696–98 (2020); and Kate Andrias & Benjamin I. Sachs, Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality, 130 YALE L. J. (forthcoming 2020) (manuscript at 25–33) (on file with the Harvard Law School Library).

83 GORZ, supra note 61, at 8 n.3 (“[Non-reformist] reform is by definition a reform implemented or controlled by those who demand it.”); see also Vivek Chibber, Our Road to Power, JACOBIN (Dec. 5, 2017), https://www.jacobinmag.com/2017/12/our-road-to-power [https://perma.cc/A2WD-W7GR] (advocating reforms that “have the dual effect of making future organizing easier, and also constraining the power of capital to undermine them down the road”).


85 For a discussion on how anticarceral organizers reconstruct popular expertise, see Simonson, supra note 84 (manuscript at 58–66).

86 This echoes the Gramscian concept of organic intellectual. See ANTONIO GRAMSCI, The Intellectuals, in SELECTIONS FROM THE PRISON NOTEBOOKS OF ANTONIO GRAMSCI 5, 5–7 (Quintin Hoare & Geoffrey Nowell Smith eds. & trans., 1971).
Collective processes — whether in organizations, unions, or assemblies — become schools of democratic governance in action: processes of enfranchisement and exercises in self-determination that build power and motivate further action.87

Third, non-reformist reforms are about the dialectic between radical ideation and power building. Non-reformist reforms come from contestatory exercises of popular power.88 They attempt to expand organized collective power to build pathways for transformation. As such, they are not in themselves about finding an answer to a policy problem: They are centrally about an exercise of power by people over the conditions of their own lives. They aim to create “a vast extension of democratic participation in all areas of civic life — amounting to a very considerable transformation of the character of the state and of existing bourgeois democratic forms.”89

Because the end goal is building power rather than identifying a policy fix, non-reformist reforms can only be effective when pursued in relation to a broader array of strategies and tactics for political, economic, social transformation. That includes protests and strikes as well as political education, mutual aid, organizing, and the building of alternative institutions.

Along with other strategies and tactics, reforms are in dialectical relationship with transformation: deepening consciousness, building independent power and membership, and expanding demands.90 As Gorz put it, reforms have to be imagined as part of a longer-term “strategy of progressive conquest of power by the workers.”91

II. DEFUND THE POLICE

Consider the appeals to defund and dismantle the police, the loudest demands voiced by organizers in Minneapolis in response to the police


88 See GORZ, supra note 61, at 111, 124–25 (arguing that if the labor movement “begins vigorously to work out an anti-capitalist alternative[,] . . . then it will destroy the ideology which justifies technocracy,” id. at 124).

89 MILIBAND, supra note 59, at 188.


91 GORZ, supra note 61, at 16.
killing of George Floyd and then fueled by unprecedented numbers of people taking to the streets all summer across the country. The scale and longevity of these protests speak to the mass constituency for defund the police. The almost century-long history of mass protest sparked by police violence combined with this year’s protests suggests the power of police violence to mobilize people in ways that electoral reform projects are unlikely to do today.

The demand to defund and dismantle the police stems from decades of abolitionist organizing against the carceral state — organizing that has proliferated since the Ferguson and Baltimore rebellions and the rise of the Movement for Black Lives. As more and more young people took to organizing for justice and accountability in the wake of the police killings of Mike Brown, Freddie Gray, and Sandra Bland, their analysis of police shifted. More and more organizers studied local budgets and noticed how disproportionate sums of money feed carceral infrastructure. A fundamental critique of prisons, police, and capitalism took hold alongside deepening antiracist agendas. Now, from the Black Visions Collective to the Sunrise Movement to Mijente, a broad range of left social movement organizations have endorsed defund the police as an abolitionist strategy.

In its bare form, defund the police is oppositional rather than conciliatory. The demand stands in stark contrast to conventional approaches to police reform that typically focus on re-legitimating police in response to crisis and reinvesting in police through trainings, technologies, and policies. Defund the police challenges reforms that redress police violence as if it is a product of bad behavior or poor decisionmaking by an individual officer or insufficient institutional oversight, incentives, and training. Wide-ranging research shows the limited or negligible efficacy

92 See Adrian Florido, These Are the Minneapolis Activists Leading the Push to Abolish the Police, NPR (June 26, 2020, 11:37 AM), https://www.npr.org/2020/06/26/882001628/these-are-the-minneapolis-activists-leading-the-push-to-abolish-the-police [https://perma.cc/RLA8-8CKY]; Akbar, supra note 2; Mariame Kaba, Opinion, Yes, We Mean Literally Abolish the Police, N.Y. TIMES (June 12, 2020), https://nyti.ms/2YB44UG [https://perma.cc/Q4KJ-PLGW]; Buchanan et al., supra note 7.

93 See Adam Serwer, Eighty Years of Fergusons, BUZZFEED NEWS (Aug. 24, 2019, 5:40 PM), https://www.buzzfeednews.com/article/adamserwer/eighty-years-of-fergusons [https://perma.cc/4XX3-KCAV].


95 For examples of organizing around local budgets, see BLACK YOUTH PROJECT 100 ET AL., supra note 2.

96 See Akbar, supra note 2.

of mainstream reforms to mitigate police violence. 98 Not only are their results of such efforts mixed, but also they are central to the substantial growth of police budgets over the last several decades. 99

Defund suggests the problem with police is not isolated, nor is it a result of a few bad apples. It brings attention to the central tool of police: violence and exploitation, be it ticketing and fining, sexual assault and humiliation, tasering, arrest, or killing. 100 In turn, defund the police calls into question the fundamental premise of policing shared by liberal reformers: that it produces safety. 101 By pointing to violence as central and routine, rather than occasional and aberrant, organizers argue that training, policy, and technology will not remediate police violence. Once that violence is understood as central, Mariame Kaba explains, it becomes clear that the “only way to diminish police violence is to reduce contact between the public and the police.” 102

But defund does not simply challenge the ideology of liberal reform: by targeting police funding, defund challenges its materiality. State and local governments are estimated to spend $115 billion on police. 103 Whereas liberal reform invests in police — easily on the scale of hundreds of millions of dollars 104 — defund calls for divestment from police. It challenges the orientation toward financing policing at the cost of the public: how conventional reform sustains a social contract that provides


102 Kaba, supra note 92.


increasingly little to the public apart from prisons, police, and jails — and the courts that sustain them.\textsuperscript{105}

Defund is properly understood alongside campaigns to oppose policing and jail infrastructure projects that have proliferated across the country.\textsuperscript{106} Chicago and Durham organizers have campaigned against the building of police training facilities and headquarters.\textsuperscript{107} There are campaigns against the building of new jails and for the closing of old jails, including detention centers for children and immigrants, with


recent victories in Los Angeles, St. Louis, Atlanta, and Seattle. The calls to divest from the carceral state are often accompanied by demands to build infrastructures of care in Los Angeles, a youth development department in Florida, “universal healthcare,” “guaranteed jobs,” “universal basic income,” and “social workers, nurses, and counselors”; and in Seattle, money for Black, Indigenous, and people of color.
of color–led organizations through participatory budgeting — which, alongside People’s Budgets, are on the rise in the United States.115

Defund, then, intervenes in the violence of neoliberal capitalism. When demands to divest are paired with demands to invest elsewhere, campaigns point to neoliberal statecraft as made up of political choices about how our collectively generated tax dollars are spent. They posit an alternative to cutting taxes, gutting social welfare programs, piling on carceral fines and fees, criminalizing the poor, and financing billions of dollars of infrastructure for an unparalleled carceral state. To raise taxes on the wealthy rather than to impose fines and fees on the poor. To house rather than jail the houseless. Demands to divest gesture at a future where local budgets and infrastructure are under popular control and tend to human need rather than the elite power.

As articulated by abolitionist organizers, defund advances a radical critique of police and neoliberal capitalism and a radical imagination around building a society that tends to people’s needs. It comes from abolitionist organizing. Voiced amid a surge of protest, defund contributed to an explosion of abolitionist organizing and engagement with local politics all over the country.117


116 See, e.g., K. SABEEL RAHMAN & HOLLIE RUSSON GILMAN, CIVIC POWER: REBUILDING AMERICAN DEMOCRACY IN AN ERA OF CRISIS 175–83 (2019) (stating that participatory budgeting efforts in New York and Chicago “have been generally successful in mobilizing a wide cross section of residents to engage as participants,” id. at 178); McLeod, supra note 60, at 1634–35 (discussing a Chicago-based campaign for participatory budgeting to defund the police and reinvest resources in healthcare, social services, education, and economic development); Laura Bliss, The Movement Behind LA’s Decision to Cut Its Police Budget, BLOOMBERG CITYLAB (June 4, 2020, 2:07 PM), https://www.bloomberg.com/news/articles/2020-06-04-people-s-budgets-movement-takes-on-police-reform [https://perma.cc/8F5K-HD2G].

117 See Email from Rachel Foran, Organizer, Survived & Punished NY, to author (Oct. 9, 2020, 3:54 PM) (on file with the author) (“This summer, the abolitionist movement grew immensely.”); see also McLeod, supra note 60, at 1635–37 (discussing how organizers have worked to “tie abolitionist organizing around the criminal process to economic justice and democratic political economy reform,” id. at 1635).
non-reformist reform. But as with most any demand, defund can be mobilized in reformist ways: to end rather than to sustain grassroots power and protest; to re legitimate and recalibrate rather than to contribute to an effort to delegitimate and dismantle policing. Until relatively recently, liberal reformers were not advocating budget cuts: now, some have accepted defunding to varying degrees, even as they continue to push conventional reforms. Whereas abolitionist organizers advocate defund as a strategy to undercut and delegitimate police, liberal reformers advance limited defunding to recalibrate and relegitimate police function. This interest convergence provides opportunities and challenges for transformative organizing, and it points to the necessity of ongoing organizing.

III. DEMANDS FOR REDISTRIBUTION

Today's social movement organizations are advancing a range of what could be understood as non-reformist reforms: defund and dismantle the police, cancel rent, give land back, abolish ICE, free them all, and make reparations. Reflecting a growing intersectional consciousness that integrates an analysis of how capitalism, white supremacy, and heteropatriarchy sustain one another, they plow through the mythic divides between the state and the market; law, politics, and the economy; and race, gender, and class. They aim to build grassroots power as

118 Of course, the particulars will matter. Whether defund the police passes as a non-reformist reform from a more squarely anticapitalist perspective might require distinct analysis from what I have presented above, focused on an abolitionist frame.


122 As Charlene Carruthers, a founder of BYP100 (Black Youth Project 100), put it: “We are participating in various projects of abolition — abolition of prison, abolition of capitalism, and abolition of patriarchal violence.” CHARLENE A. CARRUTHERS, UNAPOLOGETIC: A BLACK, QUEER, AND FEMINIST MANDATE FOR RADICAL MOVEMENTS 18 (2018); see also LACLAU & MOUFFE, supra note 48, at 185 (stating that “the terrain of . . . anti-capitalist struggle” is “the extension of democratic rights from the classic ‘political’ domain to that of the economy”); IAN
they respond to the fundamental crises we face. These demands attempt to advance radical critique and radical imagination and to transform the political, economic, and social system. They will not all succeed, and there will undoubtedly be debates and differences on which reforms are truly non-reformist. But the aspiration for non-reformist reforms marks a fundamental shift for the left — and provides a broader way for thinking about the democratic project we should pursue.

Notably, the demands take a particular shape: They are not about rights or discrimination, diversity or recognition, criminalization or training. They are demands for redistribution: a say in how we spend our collective wealth, how we relate to the land, and how we reimagine the infrastructure in which we live.123 This is what is meant by a democratic political economy where people have a bigger choice than between two candidates for the highest office, where they have real say over all aspects of their lives, where they are not subject to unchecked private or state power.124 As two U.K. activists put it, today’s left demands are “about putting power and resources in the hands of everyday people, through new forms of democratic public and community ownership at national, regional, and local levels.”125 This is a direct challenge to a view of politics that is constrained by the ballot box and does not touch “an economy in which elites extract and monopolise wealth and power through their ownership of resources that should serve the common good, be they land, energy, or the money supply itself.”126 It

123 This shift could properly be characterized as away from questions of recognition and toward questions of distribution. See Nancy Fraser, *The Old Is Dying and the New Cannot Be Born* 10–11 (2019).


125 Christine Berry & Joe Guinan, *People Get Ready! Preparing for a Corbyn Government* 18 (2019) (describing Corbynism). Elite rule results, in part, from “our tendency to accept a highly proscribed notion of democracy, one that limits popular power to the field of electoral politics, ignoring the other institutions and structures (workplaces, prisons, schools, hospitals, the environment, and the economy itself) that shape people’s lives.” Astra Taylor, *Democracy May Not Exist, But We’ll Miss It When It’s Gone* 9 (2019).

126 Berry & Guinan, *supra* note 125, at 18.
provides instead an imagination and a strategy for fighting for multiracial grassroots solidarity and a society organized to meet human need rather than to serve profit.

Defund and dismantle the police are central among demands for more democratic power over the commons and contesting the shape of our cities, their infrastructures, and budgets. There are other examples. Consider the Sunrise Movement’s Green New Deal, which has transformed climate politics with its focus on infrastructure, labor, and social provision.127 The Green New Deal requires that we restructure our economy so we can move to clean, renewable energy sources and net-zero greenhouse gas emissions.128 It calls for enormous investments in public transit, universal healthcare, housing, and higher education.129 Central to its vision is moving toward well-paid care work and green jobs for massive public infrastructure projects, with an emphasis on communities of color, which have long borne the brunt of ecological decline, neoliberal divestment, and substandard pay for essential work.130

Making a distinctly urgent claim to land, Indigenous organizers are asserting environmental justice as Indigenous sovereignty.131 The NDN Collective’s just-launched “landback” campaign calls for land back to Indigenous communities as central to restoring “a relationship with Mother Earth that is symbiotic and just.”132
Deal demands divestment from police, “La Migra,” and child protective services;\(^{133}\) reinvestment in free housing, education, healthcare, transportation, and food;\(^{134}\) a “moratorium on oil, gas, and coal extraction”;\(^{135}\) “land, water, air, and animal restoration”;\(^{136}\) “protection and restoration of sacred sites”;\(^{137}\) and “enforcement of treaty rights and other agreements.”\(^{138}\)

The Red Nation elaborates on its framework like this:

Our philosophy of reform is to reallocate social wealth back to those who actually produce it: workers, the poor, Indigenous peoples, the Global South, women, migrants, caretakers of the land, and the land itself. . . . By fighting for non-reformist reforms in and with our most vulnerable communities, we will drain power and resources from state surveillance and harm and reinvest these resources in the wellbeing of all.\(^{139}\)

The Red Nation gives voice to a particular orientation of non-reformist reforms today. In their focus on budgets, land, and material infrastructure, movements are making demands on and for the commons. Centrally, these demands are assertions that wealth belongs to the people and the land that generated it. These demands assert a right for the public to have a say as movements build capacity to exercise it. They create a mold for thinking about reform projects that is fundamentally distinct from conventional legal frameworks.

Expanding our vision for democracy and the demands we must prioritize is essential if we wish to live in a more just world and a more sustainable future. Just as Klarman documents privatization and union-busting as central to concentrating power,\(^{140}\) an emancipatory agenda must include contestation of private and corporate power, including in the workplace. Organizing against private power will be central for building popular power against the exploitation of the market.


\(^{136}\) Id. at 32; see also id. at 32–35.

\(^{137}\) Id. at 36; see also id. at 36–37.

\(^{138}\) Id. at 38; see also id. at 38–40.

\(^{139}\) Id. at 16–17.

\(^{140}\) See, e.g., Klarman, supra note 16, at 16, 140–46 (arguing that the privatization of certain public services and the undermining of labor unions resulted in part from the theory that “democratic politics was insufficiently protective of property rights,” id. at 140).
From tenant organizing to strikes by teachers, nurses, hotel workers, communication and auto workers, Uber and Lyft drivers, graduate students, and professional athletes, we are living in a time of labor and housing organizing.\textsuperscript{141} By striking, organizing, and making demands against private power, workers and communities exercise and build their power — and hopefully win concessions. But the most powerful organizing does more: it provides nodes for solidarity and continued organizing and builds analysis and capacity to respond to intersecting crises. Recent teachers’ strikes became larger struggles about the privatization of education and defunding of public schools.\textsuperscript{143} The #NoDAPL Standing Rock encampment and the No Keystone XL campaign contested how the state, corporations, and police work together to exploit the earth in violation of Indigenous sovereignty and treaty rights — and has catalyzed waves of native organizing.\textsuperscript{144} Tenant organizing against landlords points to how cities work with developers and police to create increasingly unaffordable housing, including through the machinery of evictions and gentrification.\textsuperscript{145} When tenants collectively buy the buildings in which they rent as a way to remove property from the market, they decommodify


\textsuperscript{145} See generally John Whitlow, Gentrification and Countermovement: The Right to Counsel and New York City’s Affordable Housing Crisis, 46 FORDHAM URB. L.J. 1081 (2019) (discussing the potential for a “tenant-based countermovement that targets the structural underpinnings of state-facilitated, market-based gentrification and displacement,” id. at 1087).
housing. Such organizing raises expectations, deepens consciousness, sharpens analysis, and builds power and capacity for the next fight.

Social movement organizations create space for democratic participation, contestation, and action. Central to the conception of these radical reforms are that they mobilize and enfranchise the grassroots. These demands speak to the crises of our times by the people demobilized within democratic politics. They aim to build democratic power and a democratic political economy in a mutually constitutive way. These demands posit an alternative to the neoliberal carceral state: a society not about profit and punishment and the individual; one where we work together to tend to people’s needs and to care for human and nonhuman life, including the land.

As today’s left social movement ecosystem develops its analysis in relation to campaigns and experiments — engaging in dynamic praxis — this turn toward our built environment, the land, and our collective wealth creates space for interconnected analysis and large multi-racial movements. So many more of us would benefit from a state and society where we have a real say over the shape of our lives and our communities, on the streets, at home, and at work. It is from here that we must build democracy.

**CONCLUSION**

Klarman’s Foreword recognizes that the crises of our time are urgent and deep. While I agree with much of his assessment and many of his proposed reforms, democracy is about more than the ballot box, and the Democratic Party cannot legislate it into being. Democracy is a practice. It is about contestation and self-determination. Its terrain includes labor, housing, and healthcare. Its shape is constituted by prisons and police, fines and fees, local budgets, tax dollars, and infrastructure projects. It is about the environment and our relationship to all forms of life. It is about the ideas and structures we must deconstruct, and those we build. It is about today’s social movements, their

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147 Organizing is centrally about raising people’s expectations “about what people should expect from their jobs; the quality of life they should aspire to; and] . . . what they have a right to expect from their employer, their government, their community, and their union.” JANE MCALEVEY WITH BOB OSTERTAG, *RAISING EXPECTATIONS (AND RAISING HELL): MY DECADE FIGHTING FOR THE LABOR MOVEMENT 12* (2012).

148 On the need for critical theory to return to its roots in praxis, see BERNARD E. HARCOURT, *CRITIQUE & PRAXIS: A CRITICAL PHILOSOPHY OF ILLUSIONS, VALUES, AND ACTION* (2020).

149 Simonson, *supra* note 84 (manuscript at 54) (stating that “[c]ontestation is necessary for democracy” in order to have “political opposition to hegemonic ideas that uphold dominant and oppressive political structures” (citing Professor Chantal Mouffe’s work on agonism)).
turn to non-reformist reforms, and their demands for a democratic political economy.