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Reforms for Radicals? An Abolitionist Framework

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ABSTRACT

This Article draws on prison abolitionist organizing, campaigns, and intellectual work around the country to offer a framework for thinking about radical reforms rooted in an abolitionist framework. A radical reform (1) shrinks the system doing harm; (2) relies on modes of political, economic, and social organization that contradict prevailing arrangements and gesture at new possibilities; (3) builds and shifts power into the hands of those directly impacted, who are often Black, brown, working class, and poor; (4) acknowledges and repairs past harm; and (5) improves, or at least does not harm, the material conditions of directly impacted people. After laying out the framework, the Article examines three reforms: body cameras, “progressive prosecutors,” and reparations. While we agree with abolitionist organizers that no singular reform can fundamentally transform political, economic, and social relations, abolitionist frameworks create space to collectively agitate on the role of reform in transformational, rather than legitimating, projects.

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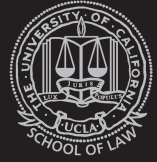


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INTRODUCTION

Amid the 2020 uprisings that began in response to the Minneapolis Police Department's murder of George Floyd, "defund and dismantle the police" emerged as the demands from the streets. These demands were echoed and etched by protestors in every major city across the country. Only five years earlier, after the mass protests following the police killings of Eric Garner, Michael Brown, and Freddie Gray, the most visible protest demands included "stop killing us" or the criminal prosecution of individual police officers. The shift toward demands that seek to dismantle and defund underlined the growing power of prison abolitionist organizing.¹ Abolitionist demands have become a terrain for reimagining social, political, and economic life. They are tools for organizing constituencies around bold ways of responding to today's crises of racial capitalism and colonialism, including police violence, incarceration, deportation, and the global pandemic. In their focus on fundamentally altering the structures that govern our society, abolitionist demands present a direct challenge to conventional liberal reform strategies and offer the possibility of political, economic, and social transformation.²

In this Article, we examine the radical visions emerging from abolitionist organizing. Abolitionist campaigns often identify the carceral state as a root source of violence and inequality, and assert the road to a more free and sustainable future lays within its undoing.³ We explore abolitionist frameworks for thinking about demands that aim to shrink and delegitimize the prison industrial complex (PIC)—which includes police—in service of moving away from a society focused on punishment to one rooted in collective care and social provision. While we are under no illusion that abolitionist frameworks are perfect or complete—or that there is any one blueprint for transformation—we believe abolition is key to building a more just world. In calling for an end to carceral systems, economies,

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1. Amna A. Akbar, *How Defund and Disband Became the Demands*, N.Y. REV BOOKS (June 15, 2020), <https://www.nybooks.com/daily/2020/06/15/how-defund-and-disband-became-the-demands> [<https://perma.cc/6VFL-N43W>]; Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [<https://perma.cc/38HB-4F32>].
 2. See Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405 (2018).
 3. When we use the term radical, we are inspired by Ella Baker's use of the phrase: "[G]etting down to and understanding the root cause." BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 1 (2003).

and cultures, abolition moves us toward a future free from white supremacy, capitalism, and patriarchy.

A grounding in abolitionist demands highlights the failure of conventional modes of reform to mitigate the scale of state and market violence and exploitation.⁴ Developing alternate horizons and frameworks is essential to advancing demands that make possible the political, economic, and social transformation that so many of us deem necessary. As movements have popularized prison abolition as a framework for wholesale transformation, others have coopted the language of abolition to continue to push conventional reform agendas. This Article lays out a framework for radical reforms rooted in abolitionist organizing and then considers specific reforms through the framework.

This Article proceeds as follows. Part I introduces the radical reform framework. Part II lays out the five elements of radical reforms and points to contemporary campaigns that reflect these elements. Finally, Part III evaluates a series of reforms through the radical reform framework: body cameras, “progressive prosecutors,” and reparations.

I. TRANSFORMATION

Barbara Jordan, one of the founders of the Combahee River Collective and a leading thinker in the Black Feminist movement, writes that “[t]he assaults from the present system necessitate that most activists work for reforms, but those of us who are radicals understand that it is possible to do so at the very same time that we work for fundamental change—a revolution.”⁵ From the Movement for Black Lives to the Democratic Socialists of America, groups organizing for radical change today are engaged in questions of policy and reform. To believe that we can both work toward fundamental change while simultaneously engaging in incremental reform efforts requires that we identify what reforms move us toward transformational change, or at least those that do not move us away from it.

Left social movement organizers often reject what they call “reformist reforms.” Instead, organizers say they are seeking “non-reformist reforms” or

4. E.g., Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1427–39 (2016); Sam Levin, *It’s Not About Bad Apples: How US Police Reforms Have Failed to Stop Brutality and Violence*, GUARDIAN (June 16, 2020 06:00 AM), <https://www.theguardian.com/us-news/2020/jun/16/its-not-about-bad-apples-how-us-police-reforms-have-failed-to-stop-brutality-and-violence> [https://perma.cc/RCAU-S69K].

5. ROBIN KELLEY, FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION 156 (2002).

“abolitionist steps.” The Movement for Black Lives calls “not [for] reform but [for] transformation.”⁶ Whereas a reform is simply a change, a transformation reflects a change in structure, composition or character.⁷ In the words of Barbara Jordan, it is a “fundamental change.” In distinguishing between types of reform, organizers critique conventional reform efforts for their limited horizon and their failure to fundamentally challenge existing power relations. These organizers advance an alternative framework for reforms focused on transforming political, economic, and social relationships, undermining the logic of the status quo, and advancing more collective modes of governing public life and addressing social problems. Building on this language and this commitment to transformational change, we present a framework for what we are calling radical reforms. In the words of Ella Baker, one of the architects of the civil rights movement, radical simply means “getting down to and understanding the root cause.”⁸ For our purposes, a radical reform attempts to get to the root of the issues we face. Yet, a radical reform in and of itself does not result in fundamental change. No reform can. But a radical reform, like “non-reformist reforms” or “abolitionist steps,” aids in the ongoing collective project of transformation.

Since the 2014 Ferguson and 2015 Baltimore uprisings in response to the police killings of Michael Brown and Freddie Gray, racial justice organizing has grown in scale. Abolitionist frameworks, Black queer feminism, and critiques of racial capitalism have become common reference points. In concert, these political orientations have resulted in calls for fundamental or radical shifts in power relationships, institutions, and governing logics. The initial August 2016 release of the Movement for Black Lives (M4BL) policy platform, “A Vision for Black Lives: Policy Demands for Black Power, Freedom, and Justice,” marked an important shift toward abolitionist politics within the racial justice left.⁹ Authored by almost fifty organizations and endorsed by another five hundred, the Vision is the most comprehensive, collectively authored, and widely endorsed articulation of

6. Jon Schwarz, *Black Lives Matter Wants to End Police Brutality. History Suggests It Will Go Much Further.*, INTERCEPT (June 27, 2020, 3:00 AM), <https://theintercept.com/2020/06/27/black-lives-matter-police-brutality-history/> [<https://perma.cc/RAW5-ZYR6>]; see also MOVEMENT FOR BLACK LIVES, ABOUT, <https://policy.m4bl.org/about> [<https://perma.cc/C7B2-WHDH>].

7. See *Transformation*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/transformation> [<https://perma.cc/5BA7-8MEZ>] (last visited Feb. 14, 2022); see also True Leap Press, *Black Liberation and the Abolition of the Prison Industrial Complex: An Interview With Rachel Herzog*, 1 PROPTER NOS 2, 65 (2016).

8. RANSBY, *supra* note 3, at 1.

9. *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms> [<https://perma.cc/9EXY-P2A8>] [hereinafter *Vision for Black Lives*] (last visited June 1, 2021).

demands to come out of Ferguson, Baltimore, or the larger Black Lives Matter ecosystem.¹⁰ The Vision includes six major demands: (1) end the war on Black people, (2) invest/divest, (3) reparations, (4) political power, (5) economic justice, and (6) community control. While abolition is a major organizing framework of the Vision, only a few of the demands focus explicitly on the carceral state. Many of the demands redress the harms of other forms of state and market violence and exploitation, or foster the conditions necessary to grow the power of Black communities toward self-determination.¹¹ These demands are not superfluous but necessary to abolitionist projects, which require a transformation of political, economic, and social structures.

By 2020, organizations in the M4BL ecosystem were running a range of campaigns inspired by the Vision for Black Lives, from campaigns to close prisons to mutual aid projects.¹² Abolitionist currents are increasingly strong within racial justice, immigrant, and Indigenous organizing more broadly. In June 2018, for example, Mijente, a Latinx immigrant justice organizing hub, released its own abolitionist platform, “Free our Future: An Immigration Policy Platform for Beyond the Trump Era.”¹³ Its core demands included abolishing ICE, decriminalizing migration, and ending all forms of immigration detention.¹⁴ In 2021, the Executive Director of Detention Watch Network wrote an editorial arguing that the immigrant justice movement should embrace abolition,¹⁵ and Muslim, South Asian, and Arab groups issued a grassroots policy agenda to abolish the War on Terror.¹⁶ The Red Nation’s Red Deal also centers abolitionist and anti-

10. *Id.*

11. *Id.*

12. See *The Breathe Act*, MOVEMENT FOR BLACK LIVES, <https://breatheact.org> [<https://perma.cc/JHJ2-FMTA>] (last visited June 1, 2021).

13. MIJENTE, FREE OUR FUTURE: AN IMMIGRATION POLICY PLATFORM FOR BEYOND THE TRUMP ERA (2018), https://mijente.net/wp-content/uploads/2018/06/Mijente-Immigration-Policy-Platform_0628.pdf [<https://perma.cc/T89D-PZR5>] [hereinafter FREE OUR FUTURE].

14. *Id.*

15. Silky Shah, *The Immigrant Justice Movement Should Embrace Abolition*, THE FORGE (Mar. 4, 2021), <https://forgeorganizing.org/article/immigrant-justice-movement-should-embrace-abolition> [<https://perma.cc/EG8K-RYCQ>].

16. JUST. FOR MUSLIMS COLLECTIVE, P'SHIP FOR THE ADVANCEMENT OF NEW AMS., VIGILANTE LOVE, HEART TO GROW, U.S. CAMPAIGN FOR PALESTINIAN RTS., P'SHIP TO END GENDERED ISLAMOPHOBIA & PROJ. S., ABOLISHING THE WAR ON TERROR & BUILDING COMMUNITIES OF CARE: A GRASSROOTS POLICY AGENDA FOR THE BIDEN-HARRIS ADMINISTRATION AND THE 117TH CONGRESS (2021), <https://static1.squarespace.com/static/5daa2e451959d419aa03a0ed/t/60380009ddf0701b42b6b8fe/1614282764135/Abolish+WOT+Policy+Agenda.pdf> [<https://perma.cc/N4PY-SL3U>].

capitalist commitments in its articulation of a radical Indigenous platform “to save our earth.”¹⁷

For an abolitionist, the criminal legal system does not seek justice, repair harm, neutrally arbitrate between good and bad, or create public safety.¹⁸ The criminal legal system is central to the political economy of the United States, a tool of stratification by race, gender, and class within our unequal society. It maintains and legitimizes unequal and exploitative power relationships. Police, jails, and prison escalate and embody harm rather than resolve or redress it. Criminalization obscures fundamental social, economic, and political injustices and displaces nonpenal modes of responding to all manner of social problems.¹⁹ As a result, an abolitionist approach to reform is not geared toward improvement of the criminal legal system itself. Abolitionist frameworks aim to divest resources, legitimacy, and power from the criminal legal system in service of its eventual elimination.²⁰

Abolitionists, like Ruth Wilson Gilmore and Angela Davis, have long insisted that organizing for abolition means organizing against capitalism.²¹ Meanwhile, Black feminists like Charlene Carruthers, and organizations such as Black Youth Project 100 (BYP100) argue that ending gender-based violence requires abolition and that abolition requires ending patriarchy.²² In the words of Mariame Kaba, founder and director of Project NIA, “abolition is about making things as much as it is about dismantling.”²³ The abolitionist future is expansive. It includes

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17. See THE RED NATION, *THE READ DEAL: INDIGENOUS ACTION TO SAVE OUR EARTH* (2021).
 18. For an overview of abolitionist critique, see Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781 (2020). For a classic abolitionist critique, see ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* (2003).
 19. See generally *Abolition of Policing Workshop: Facilitation Guide*, CRITICAL RESISTANCE, <http://criticalresistance.org/abolition-of-policing-workshop/> [https://perma.cc/3KXU-ZBTT] (providing resources to educate community members on the effects of policing and criminalization); *No One Is Disposable: Everyday Practices of Prison Abolition, With Tourmaline and Dean Spade*, BARNARD CTR. FOR RSCH. ON WOMEN (Feb. 7, 2014, 4:00 PM), <http://bcrw.barnard.edu/event/no-one-is-disposable-everyday-practices-of-prison-abolition> [https://perma.cc/3S7D-P7VT].
 20. Many prison abolitionists see their work as the unfinished work of abolishing slavery and building “abolition democracy.” W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA 1860–1880* 162 (First Free Press 1998) (1935); ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* 96 (2005); see also Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1617–20 (2019).
 21. See RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007).
 22. See CHARLENE CARRUTHERS, *UNAPOLOGETIC: A BLACK, QUEER AND FEMINIST MANDATE FOR RADICAL MOVEMENTS* (2018); BYP100, <https://www.byp100.org> [https://perma.cc/W6FE-M3C3] (last visited Feb. 14, 2022).
 23. Sidney Madden, Sam Leeds & Rodney Carmichael, *‘I Want Us to Dream a Little Bigger’: Noname and Mariam Kaba on Art and Abolition*, NPR MUSIC: LOUDER THAN A RIOT (Dec. 19,

both an end to our reliance on prisons, police, and surveillance, and a vision to build alternate modes of social provision and norms, collective self-governance, and fundamentally different economic relationships.²⁴

The transformation sought through radical reforms will depend both on the critique of the underlying conditions and the horizon that motivates the organizing efforts. In other words, both the object of critique and the vision for the future animate what makes a particular reform radical. As a result, a socialist field of critique and vision would be distinct from that of anarchist or abolitionist fields. Each field would have a distinct account of what transformative reform looks like. Organizations and individuals with socialist, anarchist, and abolitionist commitments might then formulate their frameworks for transformative reforms distinctly. Whereas the protagonist of socialist transformation is traditionally understood to be the working class, for example, abolitionist accounts tend to focus on directly impacted, incarcerated, and formerly incarcerated people, who are often poor, Black, and brown. More broadly, while there are overlaps among abolitionist, socialist, and anarchist frameworks, these frameworks draw on capacious intellectual and political traditions, with divergent modes of thought or focus, and distinct lines of debate. Each of these frameworks seeks to transform current political, economic and social systems and relations. Across these traditions, organizers are engaged in the terrain of reform and small experiments as strategies and tactics toward a more just society.

Reformist reforms are often used by elected and state officials to demobilize movement and relegitimize current power dynamics. Reformist reforms also tend to reflect a liberal rather than fundamental critique and conceive of our problems as discrete rather than structural. Our hope is that the analytical framework we offer below, and the examples we work through, assist in building clarity around

2020 8:00 AM), <https://www.npr.org/2020/12/19/948005131/i-want-us-to-dream-a-little-bigger-noname-and-mariame-kaba-on-art-and-abolition> [<https://perma.cc/5FKK-Q947>] (quoting Mariame Kaba, who attributes the phrase to Ruth Wilson Gilmore).

24. CRITICAL RESISTANCE, WHAT IS ABOLITION? (2012), <http://criticalresistance.org/wp-content/uploads/2012/06/What-is-Abolition.pdf> [<https://perma.cc/8XAK-56SB>] (“We take the name ‘abolitionist’ purposefully from those who called for the abolition of slavery in the 1800s.”). Abolition aims to build noncarceral modes of responding to political, economic, and social problems—for example, theft, unauthorized migration, interpersonal and intimate violence—now conventionally understood as “crime.” Angela Y. Davis & Dylan Rodriguez, *The Challenge of Prison Abolition: A Conversation*, 27 SOC. JUST. 212, 215 (2000) (“Prison abolition, like the abolition of slavery, is a long-range goal and the handbook argues that an abolitionist approach requires an analysis of ‘crime’ that links it with social structures, as opposed to individual pathology, as well as ‘anticrime’ strategies that focus on social resources.”); see also Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1161 (2015).

what demands will help us transform systems of harm versus those that may buttress them. But even with a radical framework, risks abound. The risk that a reform will be coopted is ever present with any reform effort.²⁵ Few reforms will even manage to fulfill all five elements laid out here.²⁶

II. THE FRAMEWORK

Drawing on contemporary abolitionist theorists and organizers and a long line of debate in socialist strategy, we lay out five elements for demands that seek radical political, economic, social change. The framework we offer is grounded in abolitionist organizing. Given the expansive and intersectional nature of the abolitionist vision, it may be of value to understanding the demands of various left social movements. We hope it will help answer the question whether a particular reform moves us toward transformational change.

A radical reform: (1) shrinks the system doing harm (for our purposes this includes the criminal legal system, and its intertwined and shadow apparatuses, such as the deportation or family policing infrastructure)²⁷; (2) relies on modes of political, economic, and social organization that contradict prevailing arrangements and gesture at new possibilities; (3) builds and shifts power into the hands of those directly impacted, who are often Black, brown, working class, and poor; (4) acknowledges and repairs past harm; and (5) improves, or at least does not harm, the material conditions of directly impacted people.

In articulating our framework for a radical reform, we draw on the abolitionist work of Critical Resistance, INCITE! Women, Gender Non-Conforming, and Trans People of Color Against Violence, Rachel Herzing, Mariame Kaba, and Dean Spade, and the work of 20th century French socialist André Gorz.²⁸ Whereas the abolitionist organizations and thinkers write about

25. See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

26. The Vision for Black Lives, for example, includes policies that “while less transformational, are necessary to address the current material conditions of our people and will better equip us to win the world we demand and deserve.” *The Preamble*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/the-preamble/> [https://perma.cc/ ARC5-TC45].

27. See Katherine Beckett & Naomi Murakawa, *Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment*, THEORETICAL CRIMINOLOGY (2012); Dorothy Roberts, *Abolish Family Policing, Too*, DISSENT (Summer 2021), <https://www.dissentmagazine.org/article/abolish-family-policing-too> [https://perma.cc/ 7KUX-NRAN].

28. See CRITICAL RESISTANCE, REFORMIST REFORMS VS. ABOLITIONIST STEPS IN POLICING (2020), https://static1.squarespace.com/static/59ead8f9692ebee25b72f17f/t/5b65cd58758d46d34254f22c/1533398363539/CR_NoCops_reform_vs_abolition_CRside.pdf [https:// perma.cc/C5C7-

“abolitionist steps” that would move us toward an abolitionist horizon—one that encompasses an anti-capitalist politic—Gorz focused on the non-reformist reforms that would lay groundwork for a socialist project.²⁹ Gorz explained that a non-reformist reform “is determined not in terms of what can be, but what should be.”³⁰ Similarly, Ash-Lee Henderson, Co-Executive Director of the Highlander Research and Education Center and an activist in the Movement for Black Lives often says, “We are demanding not what we will settle for but what we need to be free.”³¹

A. Does the Demand Aim to Shrink the System Creating Harm?

A radical reform seeks to shrink the system perpetuating harm, subordination, and exploitation. In the case of abolitionist organizing, that system is fundamentally the prison industrial complex: prisons, jails, police, and surveillance, and the broader systems of punitive regulation which give them shape.

Rachel Herzing explains that reformers “see the system as broken—something that can be fixed with some tweaks or some changes.”³² Their end goal is “criminal justice reform” because they “believe there is something worth improving there.”³³ In contrast, abolitionists see the system as working “in containing, controlling, killing, and disappearing the people that it is meant to.”³⁴ Recognizing that the criminal legal system is not broken but rotten, the abolitionist goal is not “improving a killing machine” but “to try

97D6]; see also Rachel Herzing, Opinion, *Big Dreams and Bold Steps Toward a Police-Free Future*, TRUTHOUT (Sept. 16, 2015), <http://www.truth-out.org/opinion/item/32813-big-dreams-and-bold-steps-toward-a-police-free-future> [https://perma.cc/H825-DA3B]; 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/KE8W-7X4T]; Morgan Bassichis, Alexander Lee & Dean Spade, *Building an Abolitionist Trans and Queer Movement With Everything We’ve Got*, in CAPTIVE GENDERS: TRANS EMBODIMENT AND THE PRISON INDUSTRIAL COMPLEX (Eric A. Stanley & Nat Smith eds., 2d ed. 2015); ANDRÉ GORZ, STRATEGY FOR LABOR: A RADICAL PROPOSAL (3d ed. 1971); GILMORE, *supra* note 21, at 242; THOMAS MATHIESEN, THE POLITICS OF ABOLITION REVISITED 231 (2015).

29. GORZ, *supra* note 28, at 6–8.

30. *Id.* at 8.

31. Ash-Lee Woodard Henderson, Activist, Black Movement Convergence Panel (Feb. 8, 2019).

32. True Leap Press, *supra* note 7, at 65.

33. *Id.*

34. *Id.*

and figure out how to take incremental steps—a screw here, a cog there—and make it so the system cannot continue—so it ceases to exist.”³⁵

With these delineations, Herzing makes three important moves. First, she defines the criminal legal system as repressive, with racial violence and subjugation at the core of its function. This definition renders the criminal legal system incapable of advancing progressive outcomes. Second, she insists the criminal legal system is not broken. It does not fail to meet some idealized goal; rather, it works as it is designed to work. We know this, she implies, because the system produces routine and predictable results. Third, she establishes political action to disrupt and delimit the prison industrial complex within the abolitionist purview. She undermines the moral imperative of the liberal reformer who aims to improve a deadly system. The abolitionist aims to shrink the footprint of the criminal legal system in service of its ultimate elimination. Reform is a strategy, not an end goal. In the interconnected anti-capitalist struggle, Robin D.G. Kelley notes that capitalism will only end after being weakened by “a thousand cracks.” Reform projects can create such cracks as part of a strategy to create more space for communities to co-create and experiment with transforming political, economic, and social relations.³⁶

Radical reforms against the prison industrial complex aim to reduce the criminal legal system’s budget, footprint, or power, limit its reach over people, and challenge its logic and legitimacy.³⁷ Akin to calls to defund the police, local campaigns against jail infrastructure exemplify how radical reforms in the abolitionist field aim to shrink the criminal legal system.³⁸ Campaigns against jail infrastructure are being run all over the country. Consider a few examples.

35. *Id.* There is a long history of writing including Michelle Alexander’s *The New Jim Crow* that tells the story of our rotten criminal legal system and exposes its roots in chattel slavery. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (connecting the history of enslavement with mass incarceration); DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK PEOPLE IN AMERICA FROM THE CIVIL WAR TO WORLD WAR II* (2009) (documenting how convict leasing perpetuated slavery and servitude after the Civil War); KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010) (historicizing the criminalization of Blackness).

36. *Black Salon Series: Anti-Capitalism Study Session*, BLACK FREEDOM PROJECT (Sept. 27, 2021), https://www.youtube.com/watch?v=imnHuHQ_JZE [https://perma.cc/D9Z3-GY8Y].

37. E.g., CRITICAL RESISTANCE, *supra* note 28.

38. For a discussion of New York City and Rikers, see Anakwa Dwamena, *Closing Rikers: Competing Vision for the Future of New York City’s Jails*, N.Y. REV. (Oct. 4, 2019), <https://www.nybooks.com/daily/2019/10/04/closing-rikers-competing-visions-for-the->

In California, the No New SF Jail Coalition came together in 2013 to fight a plan to build a jail that would cost upwards of \$200 million.³⁹ The Coalition was ultimately successful: The San Francisco Board of Supervisors refused an \$80 million grant from the State Public Works Board and voted against allocating funding for the jail.⁴⁰ Local officials committed to exploring funding for mental health and diversion services instead.⁴¹ In Los Angeles, in 2017, the JusticeLA Coalition emerged “to reduce the footprint of incarceration . . . and reinvest county dollars into alternatives to incarceration.”⁴² In 2019, the Coalition stopped the county’s \$3.5 billion jail expansion plan.⁴³

future-of-new-york-citys-jails [https://perma.cc/E3K7-8AUA]. For a discussion of such efforts in Detroit, see NO NEW JAILS DETROIT, <https://nonewjailsdetroit.wordpress.com> [https://perma.cc/X8EW-DT56] (last visited May 31, 2021).

39. JAYDEN DONAHUE & JESS HEANEY, CRITICAL RESISTANCE, THE PEOPLE’S REPORT: NO NEW JAIL IN SAN FRANCISCO (2015), http://criticalresistance.org/wp-content/uploads/2015/05/SFJF-CR_PeoplesReport_WEB.pdf [https://perma.cc/LWT4-KGZU].
40. Emily Green, *No New Jail After S.F. Supervisors Refuse to Allocate Funds*, SF GATE (Dec. 16, 2015, 6:57 AM), <https://www.sfgate.com/bayarea/article/No-new-jail-S-F-supervisors-refuse-to-6700835.php> [https://perma.cc/EBX8-89TF]; Bay City News Service, *San Francisco: Supervisors Vote Against Using State Funds to Build a New Jail*, MERCURY NEWS (Dec. 15, 2015 12:58 PM), <https://www.mercurynews.com/2015/12/15/san-francisco-supervisors-vote-against-using-state-funds-to-build-a-new-jail> [https://perma.cc/VA45-HKYC].
41. Now, over eighty organizations are mobilizing to shut down a county jail located at 850 Bryant Street. *Digital Day of Action to #ShutDown850*, NO NEW SF JAIL COAL., <https://nonewsforjail.org/storm> [https://perma.cc/L3M7-4Y8W] (last visited Feb. 14, 2022); *#ShutDown850*, NO NEW SF JAIL COAL., <https://nonewsforjail.org/shutdown850> [https://perma.cc/3L7U-MVTH] (last visited Feb. 14, 2022); *Organizational Letter to Close 850 Bryant*, NO NEW SF JAIL COAL. (July 23, 2019), <https://nonewsforjail.org/orgletter2019> [https://perma.cc/K6UZ-75Y9].
42. *The Justice LA Coalition: Who We Are*, JUSTICELA, <http://justicelanow.org/about> [https://perma.cc/K4R2-YTM6] (listing coalition partners); Justice LA Now, *We are #JusticeLANow*, YOUTUBE (Sept. 28, 2017), <https://www.youtube.com/channel/UCBwYfM2LMajpAkF0Dj5jldg> [https://perma.cc/2EA2-MNHV].
43. *The Justice LA Coalition: Who We Are*, *supra* note 42; see also Nina Agrawal, *Black Lives Matter, Other Activists Protest to Stop Jail Expansion*, L.A. TIMES (Sept. 26, 2017, 10:35 PM), <https://www.latimes.com/local/lanow/la-me-ln-black-lives-matter-protests-jail-expansion-20170926-story.html> [https://perma.cc/V9XW-LNNA]; Bianca Barragan, *County to Build Mental Health Center Downtown—Not a New Jail*, CURBED L.A. (Feb. 13, 2019, 10:11 AM), <https://la.curbed.com/2019/2/12/18221989/downtown-mens-jail-replacement-mental-health-vote> [https://perma.cc/NCZ8-MYTV]; City News Service, *L.A. County Scraps Women’s Jail in Lancaster*, ANTELOPE VALLEY TIMES (Feb. 12, 2019), <http://theavtimes.com/2019/02/12/l-a-county-scraps-womens-jail-in-lancaster> [https://perma.cc/JH59-TS7Y]; Bianca Barragan, *County Votes to Cancel \$1.7B Contract to Replace Men’s Central Jail*, CURBED L.A. (Aug. 13, 2019, 7:08 PM), <https://la.curbed.com/2019/8/13/20803756/mens-central-jail-los-angeles-contract-vote> [https://perma.cc/P3MD-SPXF].

Since 2012, Seattle’s No New Youth Jail coalition has been organizing relentlessly against the building of a \$210 million new youth jail, calling on the city to invest “in human needs, not more cages.”⁴⁴ The campaign has used a variety of strategies and tactics, from sign-on letters and public participation at city council meetings, to protest and direct action, to public records requests and land use litigation and report writing.⁴⁵ In 2015, the campaign pushed Seattle City Council to enact a resolution committing to ending youth detention.⁴⁶ In 2018, the growing coalition shifted its central demand into one for a moratorium on ongoing construction of the new jail.⁴⁷ In 2019, the youth jail opened. But then amidst the

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44. *About #NoNewYouthJail*, NO NEW YOUTH JAIL, <https://nonewyouthjail.com/about/> [https://perma.cc/Y2FJ-NFCM] (last visited May 31, 2021); *Points of Unity From 2012–13*, NO NEW YOUTH JAIL, <https://nonewyouthjail.com/2012-2/points-of-unity> [https://perma.cc/2XQ4-TNRL] (last visited May 31, 2021); DJ Martinez, *No New Youth Jail Coalition Demands Moratorium on Construction During Week of Action*, S. SEATTLE EMERALD (Mar. 30, 2018), <https://southseattleemerald.com/2018/03/30/perspective-no-new-youth-jail-coalition-demands-moratorium-on-construction-during-week-of-action> [https://perma.cc/M28L-YYBX]; TeamChild, Columbia Legal Servs., Legal Couns. For Youth & Child., Pub. Def. Ass’n, Northwest Immigrant Rts. Proj., Incarcerated Mothers Advoc. Proj., Street Youth Legal Advoc. of Washington, Fred T. Korematsu Ctr. for L. & Equality, Access to Just. Inst., *Op-Ed: A Shared Vision to End Youth Incarceration*, S. SEATTLE EMERALD (Jan. 4, 2016) <https://southseattleemerald.com/2016/01/04/op-ed-a-shared-vision-to-end-youth-incarceration> [https://perma.cc/74BE-N438]; *No New Youth Jail Seattle*, FACEBOOK, <https://www.facebook.com/NoNewYouthJailSeattle> [https://perma.cc/BQ6T-F9U2].
45. NO NEW YOUTH JAIL, KING COUNTY EXPOSED: THE COUNTY’S EFFORTS TO GUARANTEE YOUTH INCARCERATION (2018), <https://nonewyouthjail.files.wordpress.com/2018/08/king-county-exposed-final-pdf-with-cover.pdf> [https://perma.cc/9RVE-NHT5]; *King County Exposed: New Report on County’s Misconduct Revealed Through Public Records Requests*, NO NEW YOUTH JAIL (Aug. 20, 2018), <https://nonewyouthjail.com/2018/08/20/king-county-exposed-new-report-on-countys-misconduct-revealed-through-public-records-requests> [https://perma.cc/U2N6-B53D]; Sarah Anne Lloyd, *Youth Jail Opponents Will Have a Chance to Appeal Master-Use Permit After All*, CURBED: SEATTLE (May 31, 2017, 9:42 AM), <https://seattle.curbed.com/2017/5/31/15719622/youth-jail-permit-appeal-ordinance> [https://perma.cc/V7LY-3JRN]; Taylor Winkel, *New County Ordinance a Check on Free Speech?*, S. SEATTLE EMERALD (May 6, 2015), <https://southseattleemerald.com/2015/05/06/new-county-ordinance-a-check-on-free-speech> [https://perma.cc/JE3Q-VCDJ]; Marcus Harrison Green, *King County Moves Forward With New Youth Jail Amid Protest*, SEATTLE GLOBALIST (Feb. 10, 2015) <https://www.seattleglobalist.com/2015/02/10/king-county-approves-new-youth-jail-contract-amid-protest/33615> [https://perma.cc/R3FE-NKG6]; *Land Use Petition and Complaint, End the Prison Indus. Complex v. City of Seattle*, No. 17-2-09822-1 SEA (Sup. Ct. King Cnty Apr. 14, 2017).
46. Seattle City Council Res. 31614 (Wash. 2015), <https://seattle.legistar.com/LegislationDetail.aspx?ID=2458519&GUID=93E5F1D7-42A7-4899-BB78-03150F043416> [https://perma.cc/763E-TBE5].
47. Martinez, *supra* note 44; No New Youth Jail Coalition, *Letter to Dow Constantine* (Mar. 19, 2018), <https://docs.google.com/document/d/1BzujwEkLbsKaBgZTvwzLCOb7BNYRZc2FeLu3S4aCNhc/edit> [https://perma.cc/AH7C-7GJD].

2020 uprisings against anti-Black police violence, and ongoing organizing, the county reconsidered. In July 2020, the county announced it would close the youth jail by 2025.⁴⁸

B. Does the Demand Reflect the Possibilities of Different Modes of Political, Economic, or Social Organization?

The carceral state has monopolized public funding to respond to a range of political, economic, and social issues, from mental health to poverty.⁴⁹ The prison industrial complex has also monopolized many of our imaginations about how to deal with harm. So radical reforms in this context aim to displace cages and punishment as responses to social problems, and instead work to build processes and systems to address the needs and health of people. Radical reforms work to discredit carceral understandings of safety and punishment, and experiment with new systems, narratives, and logics for responding to social, economic, and political problems. They point to or embody distinct modes of accountability and organizing collective life. Often, they provide people an opportunity to imagine different ways of being in relationship with each other and of dealing with harm. Radical reforms open up new possibilities and break us out of old habits. They give us new horizons, new infrastructure and new skills for thinking about accountability and social provision.

The Vision for Black Lives, for example, simultaneously calls for “investments in the education, health and safety of Black people” and divestments from the “criminalizing, caging, and harming of Black people.”⁵⁰ Invest-divest campaigns capture the powerful abolitionist commitment to chip away at the power and breadth of the criminal legal system. They seek to shift resources into alternatives: to push the state to shift investments from prisons and police to education, health care, and other forms of what should be a social wage—an expanded social welfare net or decommodified access to entitlements like education, health care, and housing. The structure of the invest-divest demands reflects how police, prisons, and the criminal legal system not only fail to address

48. “VICTORY: Less Than a Year After Opening, County Announces Plans to CLOSE the Jail!!!”, NO NEW YOUTH JAIL (July 21, 2020), <https://nonewyouthjail.com/2020/07/21/victory-less-than-a-year-after-opening-county-announces-plans-to-close-the-jail> [https://perma.cc/X7KS-9545].

49. CTR. FOR POPULAR DEMOCRACY, LAW FOR BLACK LIVES, BLACK YOUTH PROJ. 100, FREEDOM TO THRIVE: REIMAGINING SAFETY & SECURITY IN OUR COMMUNITIES (2017).

50. *Invest-Divest*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/invest-divest> [https://perma.cc/SNU3-4TWK] (last visited June 1, 2021).

the harm they purport to solve, but create additional violence and distract from attainable alternatives.⁵¹ Invest-divest demands gesture toward a world where police and prisons are not primary modes of managing social problems.

Invest-divest demands focus attention on the size and scale of the criminal system and then call for divestment from carceral control and imagination of alternative modes of response.⁵² Consider, for example, the school-based “counselors not cops” campaigns against the school-to-prison pipeline.⁵³ The Dignity in Schools Campaign (DSC) includes more than one hundred organizations.⁵⁴ The coalition “promotes alternatives to a culture of zero-tolerance, punishment, criminalization and the dismantling of public schools” and “fights for the human right of every young person to a quality education and to be treated with dignity.”⁵⁵ DSC’s framework puts criminalization and divestment from the public sphere in direct opposition to the human rights and dignity of young people, in particular Black and Latinx youth.⁵⁶ In this way, the

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51. There is no evidence that policing or incarceration reduce crime. See McLeod, *supra* note 24, at 1200.
 52. Many jail campaigns take the form of invest-divest demands. See, e.g., NO NEW JAILS DETROIT, *supra* note 38 (calling for divestment from incarceration and criminalization and investment in community programs).
 53. The Advancement Project, for example, wants police-free schools and divestment from “the criminalization infrastructure” and investment in “teaching, counseling, and student support services.” ADVANCEMENT PROJ., DIGNITY IN SCHS. CAMPAIGN, ALL. FOR EDUC. JUST. & NAACP LEGAL DEF. & EDUC. FUND, POLICE IN SCHOOLS ARE NOT THE ANSWER TO SCHOOL SHOOTINGS 5 (2018), <https://advancementproject.org/wp-content/uploads/2018/03/Police-In-Schools-2018-FINAL.pdf> [<https://perma.cc/S6WY-L2CD>] (calling specifically for “more psychologists, therapists, counselors, social workers, and nurses at every school”); *We Came to Learn: A Call to Action for Police-Free Schools*, ADVANCEMENT PROJ., <https://advancementproject.org/wecametolearn> [<https://perma.cc/F7TD-U5KK>] (last visited May 31, 2021).
 54. DIGNITY IN SCHS., COUNSELORS NOT COPS: ENDING THE REGULAR PRESENCE OF LAW ENFORCEMENT IN SCHOOLS 1 (2016), http://dignityinschools.org/wp-content/uploads/2017/10/DSC_Counselors_Not_Cops_Recommendations-1.pdf [<https://perma.cc/Y33C-KKJL>].
 55. *Id.*; see also *Draft Updated Since Retreat—DSC Theory of Change*, DIGNITY IN SCHS. (2017), <http://dignityinschools.org/wp-content/uploads/2017/10/UPDATED-Theory-of-Change.pdf> [<https://perma.cc/5RK2-SS2X>] (last visited June 1, 2021); *Counselors Not Cops*, DIGNITY IN SCHS., dignityinschools.org/take-action/counselors-not-cops [<https://perma.cc/6QZJ-9J5>] (last visited June 1, 2021); Angela Helm, *Counselors, Not Cops: New Yorkers Protest Millions Proposed for School Safety Budget, Saying Money Fuels School-to-Prison Pipeline*, ROOT (Mar. 21, 2019, 7:00 PM), <https://www.theroot.com/counselors-not-cops-new-yorkers-protest-millions-prop-1833464478> [<https://perma.cc/9CKJ-SYJA>].
 56. DSC materials are centrally concerned with the disproportionate impact on Black and Latinx students. See DIGNITY IN SCHS., *supra* note 54.

campaign calls attention to the size and scale of police in schools as an investment that divests from young people of color—and as a choice with alternatives.

The campaign's first two policy recommendations are to “end the regular presence of law enforcement in schools” and to “[c]reate [s]afe [s]chools through [p]ositive [s]afety and [d]iscipline [m]easures.”⁵⁷ Here, too, the campaign puts criminalization in opposition to the safety and needs of young people. DSC calls for removing police from schools. But it goes beyond simply saying what does not keep children safe, it goes on to imagine how to ensure that schools are actually safe places where our children can thrive. Toward these ends, it calls for investments in “community intervention workers, peacebuilders, behavior interventionists, transformative or restorative justice coordinators, school aides, counselors and other support staff.”⁵⁸ The call for alternate forms of staffing in schools concretizes what other forms of investment and labor—what care—might look like. As opposed to police, such staff would aim to “ensure a welcoming environment, respond to the root causes of conflict and disruptive behaviors, prevent and intervene to stop intergroup and interethnic tension, and address students' needs.”⁵⁹

C. Does the Demand Build or Shift Power?

The radical reform framework challenges conventional approaches to reform in its focus on shrinking the resources, power, and legitimacy of systems that harm people. But it reorients us toward yet additional questions, which we too often ignore: Where does the reform come from? To whom does it give power? And to whom is it accountable?

Radical reforms are focused on building and shifting power. They expand the space for democratic self-governance by directly impacted communities: poor, Black, and brown people who are subject to the most brutal aspects of the state's coercive power, and whose resources, power, and life chances are shaped by histories of dispossession, brutalization, exploitation, and domination. Radical reforms are about more than the demands themselves; it matters who articulated the demands, which organizing efforts and organizations pushed for them, and what ongoing space the demands create for collective learning and governance. Put simply, radical reforms are concerned not only with outcomes but with process. More ambitiously, organizers fighting to enact transformative change see

57. *Id.* at 2.

58. *Id.*

59. *Id.*

outcomes and process as fundamentally co-constitutive: who is making the ask matters, and from what context it emerges does too.

In *Strategy for Labor*, Gorz explained a non-reformist reform as “a reform implemented or controlled by those who demand it.”⁶⁰ He went on to elaborate that whether “in agriculture, the university, property relations, the region, the administration, the economy, etc.,” a non-reformist reform “*always* requires the creation of new centers of democratic power.”⁶¹ Demands for radical reforms, then, come out of campaigns, mass movements, and organizations that center and are run by people directly impacted by the criminal legal system. Indeed, directly impacted people must be the ones diagnosing problems, proposing and implementing solutions, and engaging in self-governance. Radical reforms recognize that those closest to the problem are experts in its solutions, so they expand space for directly impacted communities to govern in meaningful, ongoing ways. Even when people do not win their demands, the process expands the space for mass politics and for people disenfranchised by race, gender, and class to engage in collective democratic self-governance. In this way, radical reforms are central to and constituted by ongoing organizing—they are concerned with deepening and expanding democracy beyond powerful.

In a system plagued by profound power differentials between dominant and dominated classes, radical reforms cannot be top down: they must be bottom up. Top-down reforms that are generated from powerful insiders—and that retain power within the insider class—cannot meaningfully remedy the violence of the powerful carceral state or deprivation of free markets. Bottom-up change is transformative when it builds and redistributes power among those historically excluded from social, economic, and political power.

Organizations across the country are creating spaces for directly impacted people to envision, create, and implement transformative policy. Participatory budgeting campaigns, where communities come together to decide how specific dollars in their city budgets are allocated, are one such example. Groups like Nashville People’s Budget Coalition have been organizing around the city budget process to actualize invest-divest demands and build broad coalitions of individuals and community groups able to contest for power. The coalition is working to “build[] a Nashville where public safety includes communities with fully funded education, access to housing and health care, and freedom from policing and jails.”⁶² The coalition has brought together organizations working on

60. GORZ, *supra* note 28, at 8 n.3.

61. *Id.*

62. NASHVILLE PEOPLE’S BUDGET COAL., <https://www.workersdignity.org/npsc> [<https://perma.cc/9C3M-CGXQ>].

issues from workers' rights and housing to immigration and abolition. They have engaged in collective vision setting, conducted community surveys, trained community members on the budget process, and testified at (as well as disrupted) city budget hearings.

While participatory budgeting is not in itself transformative, when paired with broader organizing to democratize decisionmaking, there is great potential. The Nashville coalition aims not only to redefine safety and shift public investments away from policing, but also to demystify the budget process and give people a sense of their own power. In its aims to democratize local decisionmaking processes that are often inaccessible to directly impacted communities, the organizing effort is shifting power from elite technocrats to the grassroots.

D. Does the Demand Acknowledge and Aim to Repair Past Harm?

Radical reforms take seriously the histories of enslavement, settlement, conquest, and theft and their relationships to racialized, gendered, and class-based violence and inequality today. Radical reforms include elements that seek to understand and repair past and ongoing harms. The remaking of history is foundational to far-right and Neo-Nazi political movements across the globe,⁶³ including here in the United States. The current proxy battle on Critical Race Theory is a battle about the histories taught in public schools, over whether and how we will acknowledge and aim to repair the past. When the prevailing historic narrative erases the systemic horrors of enslavement and colonialism, it is easier to maintain current inequities and more difficult to see let alone address the root causes of those inequities.

Recasting history is not only a tactic of extreme right-wing movements. Sanitizing the past allows those in power to recast contemporary inequities as individual acts of racism as opposed to continuing manifestations of systemic inequality.⁶⁴ This approach staves off the need for transformation, and instead insists that only tweaking is required. It reasserts the legitimacy of current institutions. It obscures that the roots, not just the fruit, are rotten.

63. Emily Schultheis, *Teaching the Holocaust in Germany as a Resurgent Far Right Questions It*, ATLANTIC (Apr. 9, 2019), <https://www.theatlantic.com/international/archive/2019/04/germany-far-right-holocaust-education-survivors/586357> [<https://perma.cc/4QVQ-RFPZ>].

64. Crenshaw, *supra* note 25.

In contrast to reformist reforms, radical reforms take seriously the idea that in order to transform power relationships, policies and institutions in the present we must also look back. This process begins with an insistence on truth telling but it does not end there. Radical reforms embrace a reparations framework, which requires an acknowledgement of the past harms resulting from a particular policy and the creation of a path forward to repair those harms and to avoid their recreation.⁶⁵ There are many examples of repair being a key part of political transformation. For instance, the transition in Germany to an aspiring multiracial democracy included a remaking of its institutions, constitution, and laws. However, it also included a long-term reparatory project to address the harms of Naziism and the Holocaust. This project included compensation for survivors as well as the building of monuments and memorials, the repurposing of concentration camps as educational sites and the inclusion of the horrors of the Holocaust in public education Curriculums. Repair was also recognized as a necessary to transformation in South Africa, where the Truth and Reconciliation Commission (TRC) included a public airing of the atrocities of apartheid and a committee tasked with developing policy proposals and recommendations focused on healing and rehabilitation.⁶⁶ While there are many important critiques of South Africa's process,⁶⁷ South Africa took seriously that they could not move forward from racialized violence without at least telling the truth about the past in a public manner.

These examples provide lessons about how transformation requires reckoning with institutions and structures that perpetuated past harms, committing to redistribution and repair, and agitating for cultural shifts through

65. For law scholarship on reparations, see, e.g., Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 362–73 (1987); Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279 (2003); Eric A. Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689 (2003); Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L.J. 811 (2006); Eric K. Yamamoto, Sandra Hye Yun Kim & Abigail M. Holden, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1 (2007); Kaimipono David Wenger, *From Radical to Practical (and Back Again?): Reparations, Rhetoric, and Revolution*, 25 J. C.R. & ECON. DEV. 697 (2011).

66. *The Committees of the TRC*, TRUTH & RECONCILIATION COMM'N, <https://www.justice.gov.za/trc/trccom.html> [<https://perma.cc/W642-JGBK>].

67. Critiques include the individualization of apartheid victims. See Mahmood Mamdani, *Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)* 32 DIACRITICS 33 (2002). Critiques also included refusal to provide adequate compensation, and more generally the lack of political will to transform the economic systems undergirding apartheid. See James L. Gibson, *The Truth About Truth and Reconciliation in South Africa*, 26 INT'L POL. SCI. REV. 341 (2005).

public truth telling, education, and memorializing. While these examples highlight large-scale political shifts, attending to the past is essential for projects of radical reform. This could include symbolic elements like choosing to name racism and the impact of past practices in a piece of legislation's preamble or more substantive elements like the inclusion of retroactivity, compensation to those impacted, or other forms of reparations.

This commitment to repair is important for prison abolitionists, who understand the criminal legal system as a descendent of earlier systems of racial and economic exploitation such as chattel slavery and convict leasing.⁶⁸ Accounting for these longer histories shifts both the understanding of the problem and the solution. Reformist reforms attempt to disarticulate problems from their social and historical context. In articulating "fixes," they tend to ignore questions of repair. A refusal to acknowledge the past is centrally connected to the failures to understand—let alone redress—the violence and inequality of today.

E. Does the Demand Aim to Improve Material Conditions?

Radical reforms center material impacts on directly impacted people.⁶⁹ They aim to have an impact on Black, brown, poor, queer, and immigrant communities—those that are subject to routine and brutal policing, surveillance, and incarceration. This impact can be as straightforward as limiting the reach of the criminal legal system, and therefore removing people from within its reach—for example, by closing down a jail or lifting a gang injunction enforced by police.

Moreover, radical reforms aim not to harm anyone or worsen the conditions of those already oppressed or vulnerable.⁷⁰ Reforms that benefit some at the expense of others, such as laws that criminalize some immigrants because of past criminal records while advancing the legal status of others, are not radical reforms.

68. Charles Mills, the political philosopher, explains that ignorance and denial "of the extent of Native American and Black victimization" is central to the structure of white supremacy. Charles W. Mills, *White Ignorance*, in *RACE AND EPISTEMOLOGIES OF IGNORANCE* 31 (Shannon Sullivan & Nancy Tuana eds., 2007) ("The erasure of the history of Jim Crow makes it possible to represent the playing field as historically level, so that current Black poverty just proves [B]lack's unwillingness to work. As individual memory is assisted through a larger social memory, so individual amnesia is then assisted by a larger collective amnesia.").

69. Cf. Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, 38 *SOC. TEXT*, Mar. 2020, at 131, 131–33 (stating that mutual aid "is an often devalued iteration of radical collective care that provides a transformative alternative to the demobilizing frameworks" of reform).

70. This is inspired in part by intersectional and Black feminist analysis. See, e.g., Deva Woodly, *Black Feminist Visions and the Politics of Healing in the Movement for Black Lives*, in *WOMEN MOBILIZING MEMORY* 219 (Ayşe Gül Altınay, María José Contreras, Marianne Hirsch, Jean Howard, Banu Karaca & Alisa Solomon eds., 2019).

Such reformist reforms create divisions that take away from the power of movement and do not address the root causes of migration, criminalization or xenophobia. Similarly, criminal legal reforms that provide relief to those accused of “non-violent” offenses but leave those accused of violent offense to languish are problematic. Not only is violent an overbroad category, its definition varies across jurisdictions, with stable meaning. The expansiveness and vagary of “violent crime” legitimizes the criminal system in ways that obfuscate its workings.

III. APPLYING A RADICAL FRAMEWORK

In this Part we apply the five elements of a radical reform. The reforms we examine are borrowed from fights against the prison industrial complex: body cameras, “progressive prosecutors,” and reparations. There are two important points to make about the application of our framework. First, no reform perfectly fulfills each of the elements. We have organized the three reforms in order from the least radical reform to the reform with the most radical possibility. But even our last example, the reparations ordinance for police torture in Chicago, does not meet each of the five elements. This is in part due to the nature of any reform effort. No single reform can fundamentally change political, social, and economic conditions. The rubric is meant to contribute to analysis of whether, and how, a specific reform will assist in social transformation. But ultimately, we believe that transformation of social and economic systems are produced by organizing, social movements, and disruption from below. Second, the application of our rubric requires subjective and social engagement. What follows is a discussion rather than yes or no declarations. We hope the discussion provides some insights into how the framework can be used and struggled with in collective contexts.

A. Body Cameras

In response to the Ferguson and Baltimore rebellions of 2014 and 2015, cities and police departments across the country responded with investments in body cameras.⁷¹ By 2016, nearly half of police agencies had purchased body

71. Josh Sanburn, *The One Battle Michael Brown’s Family Will Win*, TIME (Nov. 25, 2014, 10:26 PM), <https://time.com/3606376/police-cameras-ferguson-evidence> [https://perma.cc/ZWT8-X83Q]; Ava Kofman, *We Don’t Even Know How Best to Use Body Cameras—Let Alone Regulate Them*, NATION (Sept. 23, 2015), <http://www.thenation.com/article/we-dont-even->

cameras.⁷² These efforts allowed police and elected officials to claim the mantle of reform. But body cameras do not require addressing the systemic and fundamental nature of racialized, classed, and gendered violence of police violence.⁷³

Consider the adoption of body cameras through the five-element rubric offered above. First, body camera programs do not shrink or divest from criminal systems. They invest more money and resources into policing. According to data from Axon (formerly Taser), the largest manufacturer of body cameras, sales almost quadrupled between 2014 and 2018, reportedly totaling \$192 million.⁷⁴ Second, body camera programs do not point to alternate possibilities for accountability or the organization of collective life. Instead, they suggest that the problem with police centers around individual officers, or that the problems can be remedied if caught on camera. The killing of Eric Garner in New York City and the lack of indictment against the police who killed him challenge these assumptions.

Third, the adoption of body cameras does not build or shift the power of impacted communities over police. By and large, the demand for body cameras did not come out of movements, organizing efforts, or directly impacted communities. In fact, police departments and localities adopted body camera programs with virtually no meaningful community input or accountability. These programs have been adopted by top-down decisionmaking bodies at the local level, often as responses to the crisis in public confidence protest and organizing creates. Fourth, body cameras do not account for or aim to repair past harms.

know-how-best-to-use-body-cameras-let-alone-regulate-them [https://perma.cc/J777-7S6Z].

72. SHELLEY S. HYLAND, U.S. DEP'T OF JUST., BODY-WORN CAMERAS IN LAW ENFORCEMENT AGENCIES, 2016 (2018); Mitch Smith, *Policing: What Changed (and Didn't) Since Michael Brown Died*, N.Y. TIMES (Aug. 7, 2019), <https://www.nytimes.com/2019/08/07/us/racism-ferguson.html> [https://perma.cc/EB9P-5ZUA].
73. On a recent Critical Resistance chart articulating a framework for abolitionist police reform, body cameras are "reformist reforms" because they require increased expenditures for police, provide additional technology for police to surveil the public, and reconstitute the police as accountable. See CRITICAL RESISTANCE, *supra* note 28; Meghan G. McDowell & Luis A. Fernandez, *'Disband, Disempower, and Disarm': Amplifying the Theory and Practice of Police Abolition*, 26 CRITICAL CRIMINOLOGY 373, 384 (2018); Kaba, *supra* note 28; Herzing, *supra* note 28; Rachel Herzing, *Let's Reduce, Not Reform, Policing in America*, OPEN SOC'Y FOUNDS. (Oct. 6, 2016), <https://www.opensocietyfoundations.org/voices/let-s-reduce-not-reform-policing-america> [https://perma.cc/P8KL-4JDS].
74. Smith, *supra* note 72. As of 2019, 22 of the 25 largest police departments in the country use Axon. Ben Miller, *Data Pinpoints the Moment When Police Body Cameras Took Off*, GOV'T TECH. (Jan. 4, 2019), <https://www.govtech.com/data/Data-Pinpoints-the-Moment-When-Police-Body-Cameras-Took-Off.html> [https://perma.cc/3SW B-GX6G].

Fifth, body cameras do not improve material conditions of directly impacted people. An eighteen-month study of more than 2000 officers found that body-worn cameras “seem[] to have no discernible impact on citizen complaints or officers’ use of force.”⁷⁵ Police killings have not slowed or declined since the police purchasing spree of body cameras.⁷⁶ Moreover, between January 2015 and early 2022, 991 people were shot by police wearing body cameras.⁷⁷ Even when police wear body cameras, they often do not turn them on, and interpretations of footage are subjective.⁷⁸ The footage can also be hard to come by: the New York Civilian Review Board, for example, has had a nearly impossible time getting body camera footage because the police department has ultimate control.⁷⁹

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75. Nell Greenfieldboyce, *Body Cam Study Shows No Effect on Police Use of Force or Citizen Complaints*, NPR (Oct. 20, 2017, 10:30 AM), <https://www.npr.org/sections/thetwo-way/2017/10/20/558832090/body-cam-study-shows-no-effect-on-police-use-of-force-or-citizen-complaints> [<https://perma.cc/U84Q-YTBF>]; Amanda Ripley & Timothy Williams, *Body Cameras Have Little Effect on Police Behavior, Study Says*, N.Y. TIMES (Oct. 20, 2017), <https://www.nytimes.com/2017/10/20/us/police-body-camera-study.html> [<https://perma.cc/5K2D-U5TW>]; see also Cynthia Lum, Megan Stoltz, Christopher S. Koper & J. Amber Scherer, *Research on Body-Worn Cameras: What We Know, What We Need to Know*, 18 CRIMINOLOGY & PUB. POL’Y 93, 93 (finding that body cameras “have not had statistically significant or consistent effects on most measures of officer and citizen behavior or citizens’ views of police”); Michael Maciag, *Police Body Cameras Aren’t Having the Effects Many Expected*, GOVERNING (Mar. 22, 2019), <https://www.governing.com/topics/public-justice-safety/gov-body-camera-effects-research-gmu-study.html> [<https://perma.cc/TW52-5GQL>]. For a series of largely supportive takes on body cameras with some caveats, see Iesha S. Nunes, Note, *“Hands Up, Don’t Shoot”: Police Misconduct and the Need for Body Cameras*, 67 FLA. L. REV. 1811 (2015); Ronald J. Bacigal, *Watching the Watchers*, 82 MISS. L.J. 821 (2013); Michael D. White & Henry F. Fradella, *The Intersection of Law, Policy, and Police Body-Worn Cameras: An Exploration of Critical Issues*, 96 N.C. L. REV. 1579 (2018); Anthony A. Braga, William H. Sousa, James R. Coldren, Jr. & Denise Rodriguez, *The Effects of Body-Worn Cameras on Police Activity and Police-Citizen Encounters: A Randomized Controlled Trial*, 108 J. CRIM. L. & CRIMINOLOGY 511 (2018); Howard M. Wasserman, *Moral Panics and Body Cameras*, 92 WASH. U. L. REV. 831 (2015); Roseanna Sommers, Note, *Will Putting Cameras on Police Reduce Polarization?*, 125 YALE L.J. 1304 (2016). For takes ultimately supportive of body cameras, see David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357, 371 (2010) (noting that technology will not “solve deep-seated problems of police abuse or misconduct”); Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. REV. 1363, 1423 (2018) (calling for “appropriate policies, procedures, training, and supervision” in implementing body cameras).
76. Smith, *supra* note 72; *Fatal Force Database*, WASH. POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database> [<https://perma.cc/826G-UHYB>].
77. *Fatal Force Database*, *supra* note 76.
78. Smith, *supra* note 72.
79. Eric Umansky, *The NYPD Isn’t Giving Critical Bodycam Footage to Officials Investigating Alleged Abuse*, PROPUBLICA (July 3, 2020, 1:38 PM), <https://www.propublica.org/article/the-nypd-isnt-giving-critical-bodycam-footage-to-officials-investigating-alleged-abuse>

Body cameras do not address the structural reasons for police impunity for corruption such as: the sheer power of police; the blue wall of silence; the complete lack of public oversight; the fact that there is a fundamental conflict of interest in asking the same prosecutors that work with the police departments every day to investigate the police; the systematic exclusion of Black people from juries and grand juries; the proliferation of laws criminalizing poverty and health crises; and the criminalizing narratives about Blackness through which body camera footage is viewed.⁸⁰ Body cameras do not automatically increase accountability—especially when they have been adopted, as is the case virtually everywhere, without meaningful consultation or oversight by directly impacted communities or the organizers working with them. Body cameras extend the power of the punitive state by expanding police budgets to purchase surveillance technologies from corporations that profit from criminalization.⁸¹ Body cameras are not a radical reform.

B. “The Progressive Prosecutor”

Next, consider the progressive prosecutor through our radical reform framework.⁸² While the term progressive prosecutor has no clear definition, it evokes the idea that prosecutors can be bulwarks against mass incarceration—that they can, in contrast to the mainstream or ordinary prosecutor, work on behalf of the public in progressive ways.⁸³ But the prosecutor’s primary function is to prosecute and incarcerate people for criminalized conduct. As a system insider, a prosecutor cannot and will not meaningfully and sustainably diminish their own power, reach, or resources.

[<https://perma.cc/57FJ-Y2YF>]; Cindy Rodriguez, *When It Comes to Police Misconduct, Body-Worn Camera Videos Are Slow to Come*, WNYC (July 22, 2019), <https://www.wnyc.org/story/police-misconduct-body-worn-camera-videos-slow-come> [<https://perma.cc/8XMU-X6TW>]; Dean Meminger, *CCRB: 43 Percent of NYPD Body Cam Videos Are Partially Redacted*, SPECTRUM NEWS NY1 (Feb. 27, 2020, 6:00 AM), <https://www.ny1.com/nyc/all-boroughs/news/2020/02/27/ccrb-43-percent-of-nypd-body-camera-videos-it-gets-are-partially-blacked-out> [<https://perma.cc/RGW7-8GSD>].

80. See Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778 (2021); see also Kate Levine, *Who Shouldn’t Prosecute the Police*, 101 IOWA L. REV. 1447 (2016).

81. See Robinson Meyer, *The Big Money in Police Body Cameras*, ATLANTIC (Apr. 30, 2015), <http://www.theatlantic.com/technology/archive/2015/04/the-big-money-in-police-body-cameras/392009> [<https://perma.cc/3MNZ-J8KG>].

82. For another take, see Abbe Smith, *Good Person, Good Prosecutor in 2018*, 87 FORDHAM L. REV. ONLINE 3 (2018).

83. For a legal scholarly defense, see Angela J. Davis, *Reimagining Prosecution: A Growing Progressive Movement*, 3 UCLA CRIM. JUST. L. REV. 1 (2019).

Abolitionist organizations in 2019 composed a guide of principles and strategies to organize within and against prosecutors' races.⁸⁴ Authored by Survived and Punished NY, Project NIA, and others, the guide clarifies that prosecutors are targets for abolitionist organizing:

As abolitionists, our job does not end with the election of any prosecutor, no matter what they claim to represent. Therefore, we reject the tendency toward cults of personality. We focus on what policies a prosecuting office enacts and supports others in enacting, what decisions a prosecuting office makes to release people from the grips of mass criminalization, and how a prosecuting office relates to, impedes, or advances our movements' demands. Our organizing focuses on how a prosecuting office's policies and practices result in decriminalization, decarceration, and shrinking the resources and power of the office of the prosecutor. Elected prosecutors are not costrugglers, but targets we can push on the path to eliminating prosecution altogether.⁸⁵

The guide orients abolitionist organizing efforts in prosecutor races on de-resourcing and disempowering prosecutors' offices, including through campaigns for decriminalization.

Abolitionist organizing efforts against prosecutors do not aim to validate particular prosecutors as progressive, but demand a shift in power and resources—and pay careful attention to the prosecutor's concrete efforts, if any, in support of shrinking the carceral state. The guide is careful to point out that prosecutors “should not receive more resources to provide social services or survivor/victim support,” including “drug courts and other forms of diversion court[s]” that “use threat of punishment to force treatment or coerce services.”⁸⁶ “The best thing prosecutors can do . . . is get out of the way” or “advocate” to redistribute resources directly to communities and community organizations.⁸⁷

It is useful to step back and recall how the focus on prosecutors emerged in the wake of the Ferguson and Baltimore rebellions. Organizers in the M4BL ecosystem protested the role of prosecutors in caging Black and brown people at

84. CMTY. JUST. EXCH., COURTWATCH MA, FAMILIES FOR JUST. AS HEALING, PROJECT NIA & SURVIVED AND PUNISHED NY, ABOLITIONIST PRINCIPLES AND CAMPAIGN STRATEGIES FOR PROSECUTOR ORGANIZING (2019), https://static1.squarespace.com/static/5e1f966c45f53f254011b45a/t/5e46c2744feb170e01fc09f7/1581695604941/CJE_AbolitionistPrinciples_FINAL.pdf [<https://perma.cc/UB9L-TH7C>].

85. *Id.* at 1.

86. *Id.* at 2.

87. *Id.*

alarming rates and simultaneously refusing to convene grand juries, or indict and prosecute police responsible for killing Black people.⁸⁸ These organizing efforts forced a public reckoning with how to undo mass incarceration and ushered in the identification of the prosecutor as a centrally powerful, seemingly incontestable, figure in the criminal legal system.⁸⁹ In turn, movement organizations across the country waged campaigns against prosecutors who failed to hold police criminally responsible for killing Black people. These campaigns sometimes started as reactive campaigns for prosecutors to prosecute individual police officers. But with time, many organizers targeted individual prosecutors as a strategy to reduce incarceration and shift narratives about criminalization.

A series of successful racial justice campaigns demonstrated the importance of prosecutors as targets.⁹⁰ In Chicago, BYP100, Assata's Daughters, and more, organized the #ByeAnita campaign against Anita Alvarez for her handling of the Chicago Police Department's killing of seventeen-year-old Laquan McDonald.⁹¹ In Cleveland, Black Lives Matter Cleveland, Color of Change, and the Ohio Student Association ran the #McGintyMustGo campaign against Tim McGinty for his handling of the Cleveland Police Department's killing of twelve-year-old Tamir Rice.⁹² The next year, in 2017, the Philadelphia Coalition for a Just

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88. E.g., Gyasi Lake, *There's No Such Thing as a "Progressive Prosecutor" in a System Designed to Criminalize Blackness*, BLACK YOUTH PROJECT (July 10, 2019), <http://blackyouthproject.com/theres-no-such-thing-as-a-progressive-prosecutor-in-a-system-designed-to-criminalize-blackness> [https://perma.cc/VZ6C-BD4W]. See also Anna A. Akbar, *Law's Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352, 358 (2015).
89. See, e.g., Angela J. Davis, *The Progressive Prosecutor: An Imperative for Criminal Justice Reform*, 87 FORDHAM L. REV. ONLINE 8 (2018); David Alan Sklansky, *The Progressive Prosecutor's Handbook*, 50 U.C. DAVIS L. REV. ONLINE 25 (2017); Josie Duffy Rice & Clint Smith, *Justice in America Episode 7: The New Progressive Prosecutors?*, APPEAL (Sept. 5, 2018), <https://theappeal.org/justice-in-america-episode-7-the-new-progressive-prosecutors> [https://perma.cc/7KJP-XZ4Y].
90. Editorial Board, *Voters Tell Prosecutors, Black Lives Matter*, N.Y. TIMES (Mar. 18, 2016), <https://www.nytimes.com/2016/03/18/opinion/voters-tell-prosecutors-black-lives-matter.html> [https://perma.cc/TRC2-YVD9]; German Lopez, *A Ferguson City Council Member Is Challenging the Prosecutor Who Oversaw the Michael Brown Case*, VOX (Aug. 7, 2018, 1:30 PM), <https://www.vox.com/policy-and-politics/2018/8/7/17660438/bob-mcculloch-wesley-bell-michael-brown-st-louis> [https://perma.cc/2WXG-ASYZ].
91. Kenrya Rankin, *#ByeAnita: Chicago Voters Oust State's Attorney Anita Alvarez*, COLORLINES (Mar. 16, 2016, 11:45 AM), <https://www.colorlines.com/articles/byeanita-chicago-voters-oust-states-attorney-anita-alvarez> [https://perma.cc/D9FQ-GEBP]; BYP100, OUR IMPACT, <https://byp100.org/our-impact> [https://web.archive.org/web/20191104003528/https://byp100.org/our-impact/] (archived Nov. 4, 2019).
92. Malaya Davis, *Here's How Cleveland's Grassroots Gave Prosecutor Timothy McGinty the Boot*, COLORLINES (Mar. 17, 2016, 4:57 PM), <https://www.colorlines.com/articles/heres-how-clevelands-grassroots-gave-prosecutor-timothy-mcginty-boot> [https://perma.cc/P6HS-

District Attorney, made up of local and national organizations like Color of Change, the Abolition Law Center, and Media Mobilizing Project, supported the prosecutorial election of Larry Krasner, a former defense attorney who had represented BLM protestors in court to boot, and who ran on a promise to end mass incarceration.⁹³ In 2018, organizers from St. Louis Action Council and Organization for Black Struggle launched the #ByeBob campaign in St. Louis, ousted Bob McCulloch—the prosecutor who handled the investigation of Darren Wilson’s murder of Michael Brown—and elected Wesley Bell, who ran on a criminal law reform platform.⁹⁴ In many of these cases, the same organizers who deployed direct action and protest tactics in response to police killings successfully launched electoral challenges against sitting prosecutors.

Organizers’ aims varied; while the Chicago and Cleveland organizing campaigns emphasized ousting Alvarez and McGinty over electing their opponents, the St. Louis campaign focused both on ousting McCulloch and electing Bell, and the Philadelphia campaign aimed to elect Krasner. But whether organizers’ goals were to oust a particular candidate or elect another, these organizing campaigns upended prior dynamics of prosecutorial elections as races

BYK3]; Afi Scruggs, *Tamir Rice Protestors Picket House of Cleveland Prosecutor Timothy McGinty*, GUARDIAN (Jan. 1, 2016, 5:44 PM), <https://www.theguardian.com/us-news/2016/jan/01/tamir-rice-protest-cleveland-prosecutor-timothy-mcginty> [https://perma.cc/K9ML-UQ4B].

93. See #DecarcerateDA, *Community Leaders Congratulate Krasner on Historic Victory, Move to Implement #DecarcerateDA Promise*, PHILA. COAL. FOR A JUST DIST. ATT’Y (Apr. 2018), https://www.phillydaforthepeople.org/wp-content/uploads/2018/04/Community_Leaders_Congratulate_Krasner_on_Historic_Victory_Move_to_Implement_DecarcerateDA_Promise_2.pdf [https://perma.cc/T79Q-F8BA]; Ben Austen, *In Philadelphia, a Progressive D.A. Tests the Power—and Learns the Limits—of His Office*, N.Y. TIMES MAG. (Oct. 30, 2018), <https://www.nytimes.com/2018/10/30/magazine/larry-krasner-philadelphia-district-attorney-progressive.html> [https://perma.cc/BB9A-D72P]; Jennifer Gonnerman, *Larry Krasner’s Campaign to End Mass Incarceration*, NEW YORKER (Oct. 22, 2018), <https://www.newyorker.com/magazine/2018/10/29/larry-krasners-campaign-to-end-mass-incarceration> [https://perma.cc/2QZP-GRF6].

94. See Kayla Reed, *Kayla Reed on the Unseen Work of Ousting Robert #ByeBob McCulloch*, ST. LOUIS AM. (Aug. 16, 2018), https://www.stlamerican.com/news/political_eye/kayla-reed-on-the-unseen-work-of-ousting-robert-byebob-mcculloch/article_f8ef6524-a0fd-11e8-baf0-4f4b68704ee1.html [https://perma.cc/QE9P-WD7N]; Errin Haines Whack, *Ouster of St. Louis Prosecutor Is Latest Election Win for Black Lives Matter Movement*, CHI. TRIB. (Aug. 10, 2018, 8:12 PM), <https://www.chicagotribune.com/news/nationworld/ct-Black-lives-matter-election-results-20180810-story.html> [https://perma.cc/E2AR-5WPS]; German Lopez, *St. Louis Ousts Prosecutor Who Didn’t Get Charges Against Cop Who Killed Mike Brown*, VOX (Aug. 8, 2018, 9:25 AM), <https://www.vox.com/identities/2018/8/8/17663776/st-louis-county-prosecutor-election-results-mcculloch-wesley-bell> [https://perma.cc/T7AQ-MXXM].

which tended to reward the candidate that was “tough[est] on crime.”⁹⁵ For the organizers, these campaigns were about building power and changing narratives. In winning these campaigns, organizers mobilized the power of a growing movement against incarceration and its role in governing the lives of Black, brown, and poor people in the United States.⁹⁶

Consider the progressive prosecutor through a radical reform framework. The first element asks whether the reform shrinks the carceral state. On the one hand, a progressive prosecutor may make decisions that shrink carceral responses during their term in office. Take, for example, Krasner’s decision against prosecuting certain minor offenses (for example, marijuana possession or purchase), or against pursuing cash bail for low-level offenses.⁹⁷ But these are not system reforms—they are discretionary decisions that can easily be undone by the next prosecutor, or even by Krasner himself if the political winds change. These policy changes are better understood as temporary self-imposed limits. While they may produce some better outcomes, they are not transformative.

The progressive prosecutor does not in himself take power or legitimacy away from the office of the prosecutor. Arguably “progressive prosecutors” legitimize the the prosecutorial function by suggesting that the problem is with bad prosecutors rather than the office itself. From an abolitionist perspective, the prosecutor’s power comes from her ability to leverage the carceral state against individuals, neighborhoods, and communities. The prosecutor’s power is the carceral state’s power. That is why the prosecutor is properly considered a target rather than a partner in the project to end incarceration.

95. Rice & Smith, *supra* note 89 at 2:38 (“Exactly and traditionally prosecutors have just all run on a tough on crime platform, like the best way to win a prosecutor’s race until just a few years ago has been to be the meanest, most aggressive prosecutor you can be.”).

96. The strategy of focusing on prosecutor elections is one embraced by liberal philanthropists. E.g., Matt Ferner, *George Soros, Progressive Groups to Spend Millions to Elect Reformist Prosecutors*, HUFFPOST (May 12, 2018, 7:00 AM), https://www.huffpost.com/entry/george-soros-prosecutors-reform_n_5af2100ae4b0a0d601e76f06 [https://perma.cc/G5X4-6UEV]. For concerns about such funding of movement work, see generally Andrea Smith, *Introduction*, in *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT PRISON INDUSTRIAL COMPLEX 1–18* (INCITE! ed., 2007); Megan Ming Francis, *The Price of Civil Rights: Black Lives, White Funding, and Movement Capture*, 53 L. & SOC’Y REV. 275 (2019).

97. Memorandum from Larry Krasner to Philadelphia Dist. Att’y’s Office at 1, (Feb. 15, 2018), <https://www.documentcloud.org/documents/4415817-Philadelphia-DA-Larry-Krasner-s-Revolutionary-Memo.html> [https://perma.cc/8T3E-FX4Y]; Philip Jackson, *Krasner Ends Cash Bail for Certain Crimes*, PHILA. TRIB. (Feb. 21, 2018), http://www.phillytrib.com/news/state_and_region/krasner-ends-cash-bail-for-certain-crimes/article_7f374d26-3365-5a57-9bb9-a50c5b8a1d28.html [https://perma.cc/3Zv8-5AC3].

There have been some concrete, if temporary, wins in terms of prosecutorial policy changes that limit the reach of the criminal system. In Philadelphia, Krasner pushed for police accountability (fired 31 prosecutors and released a list of 29 officers who could not be trusted to serve as reliable witnesses on a “do-not-call list”), reduced usage of cash bail, and prioritized lighter sentencing recommendations and reduced terms of probation.⁹⁸ In Cook County, Foxx’s policies reduced the number of people incarcerated and held in jail by 4000⁹⁹ and lowered prison admissions for Black and Latinx people.¹⁰⁰ These changes are attributed in part to her policies, which include a presumption of no incarceration for drug possession and a shift to drop cases or charge them as misdemeanors.¹⁰¹ Elected in late 2019, San Francisco District Attorney Chesa Boudin has ended cash bail; he has opted for a risk assessment system to request the judge hold people without bail in certain felony cases.¹⁰² Joe Gonzales, the Bexar

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98. Shaun King, *Philadelphia DA Larry Krasner Promised a Criminal Justice Revolution. He’s Exceeding Expectations.*, INTERCEPT (Mar. 20, 2018 12:59 PM), <https://theintercept.com/2018/03/20/larry-krasner-philadelphia-da> [<https://perma.cc/M93A-9GCJ>].
99. Del Quentin Wilber, *Once Tough-on-Crime Prosecutors Now Push Progressive Reforms*, L.A. TIMES (Aug. 5, 2019, 4:00 AM), <https://www.latimes.com/politics/story/2019-08-02/once-tough-on-crime-prosecutors-now-push-progressive-reforms> [<https://perma.cc/VV4H-L27B>].
100. Sam Charles, *Criminal Justice Advocates Praise Kim Foxx for Fewer Drug, Theft Prosecutions*, CHI. SUN TIMES (Feb. 12, 2020, 2:32 PM), <https://chicago.suntimes.com/crime/2020/2/12/21135204/criminal-justice-advocates-kim-foxx-fewer-drug-theft-prosecutions> [<https://perma.cc/5Qy5-NAPM>]; see also Kira Lerner, *In Chicago, Rethinking the Link between Crime and Incarceration*, APPEAL (Aug. 5, 2019), <https://theappeal.org/in-chicago-rethinking-the-link-between-crime-and-incarceration> [<https://perma.cc/44AQ-8JCH>].
101. See Matt Daniels, *The Kim Foxx Effect: How Prosecutions Have Changed in Cook County*, MARSHALL PROJECT (Oct. 24, 2019, 6:00 AM), https://www.themarshallproject.org/2019/10/24/the-kim-foxx-effect-how-prosecutions-have-changed-in-cook-county?utm_source=The+Appeal&utm_campaign=b36e753dea-EMAIL_CAMPAIGN_2018_06_22_03_58_COPY_01&utm_medium=email&utm_term=0_72df992d84-b36e753dea-58414191 [<https://perma.cc/V2JW-QHJB>]; Erica Demarest, *Shoplifting Under \$1,000 Will No Longer Be a Felony, Kim Foxx Says*, DNAINFO (Dec. 15, 2016, 12:30 PM), <https://www.dnainfo.com/chicago/2016/12/15/little-village/kim-foxx-raises-bar-for-retail-theft-felonies> [<https://perma.cc/R2YL-8A4Q>]; Matt Masterson, *Kim Foxx Vacates 1,000 Pot Convictions as Clock Ticks Toward Legalization*, WTTW (Dec. 11, 2019, 2:50 PM), <https://news.wttw.com/2019/12/11/kim-foxx-vacates-1000-pot-convictions-clock-ticks-toward-legalization> [<https://perma.cc/F74P-URDY>]; Daniel Nichanian, *Prosecutors Announce New Marijuana Policy in Illinois, Maryland, and Missouri*, APPEAL (Feb. 7, 2019), <https://theappeal.org/politicalreport/prosecutors-announce-new-marijuana-policy-in-illinois-maryland-and-missouri> [<https://perma.cc/F4TF-YKC2>].
102. Michael Barba, *DA Boudin Orders Prosecutors to Stop Seeking Cash Bail*, S.F. EXAMINER (Jan. 22, 2020, 4:30 PM) <https://www.sfexaminer.com/news/da-boudin-moves-to-eliminate-use-of-cash-bail> [<https://perma.cc/DFH3-BDMM>].

County District Attorney in San Antonio, claims “around 1400 people who would have been arrested before have been directed to other facilities.”¹⁰³ In Durham, Satana Deberry adopted policies to reduce arrests for failure to appear in court and to narrow the use of cash bail only for uses in rare circumstances. The monthly jail population dropped from 420 in January 2019 to 356 in May 2019.¹⁰⁴

However, the distinction between a discretionary relinquishing of a particular power or decision to change a specific practice versus that power being stripped or practice being abolished is fundamental.¹⁰⁵ The reality is that the “progressive prosecutors” who have taken office have not made any serious attempt to lessen the power of their office or the resources at their disposal; as far as we can tell, none of the so-called progressive prosecutors have asked for less money for their offices or used their substantial legislative influence to push for decriminalization. In fact, many are asking for more power and money by requesting additional funds and looking to expand their duties to include the provision of social services.¹⁰⁶ Krasner, as a prime example, requested an additional \$3 million in funding for his office for the fiscal year of 2020.¹⁰⁷

The second element of the radical reform framework asks whether the reform points to alternate modes of accountability or organizing collective life. Through specific policy proposals or enforcement decisions, a prosecutor might generate distinct ideas about the purpose of the criminal legal system and raise

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103. Marco della Cava, *New, More Progressive Prosecutors Are Angering Police, Who Warn Approach Will Lead to Chaos*, USA TODAY (Feb. 8, 2020, 11:26 AM), <https://www.usatoday.com/story/news/nation/2020/02/08/criminal-justice-police-progressive-prosecutors-battle-over-reform/4660796002> [<https://perma.cc/BM8P-AUAV>].
104. Daniel Nychanian, *The Prosecutorial Chronicles, May 2019: Durham DA Rolls Out New Policies to Reduce Pretrial Detention*, APPEAL (May 31, 2019), <https://theappeal.org/politicalreport/durham-da-rolls-out-new-policies-to-reduce-pretrial-incarceration> [<https://perma.cc/UK9D-ZBY8>]. See generally SUFFOLK CNTY. DIST. ATT’Y, THE RACHAEL ROLLINS POLICY MEMO (Mar. 2019), <http://files.suffolkdistrictattorney.com/The-Rachael-Rollins-Policy-Memo.pdf> [<https://perma.cc/6YG5-GAYV>] (referring to policies to release people unable to post bail, declining to prosecute fifteen listed offenses, and dismissal of marijuana cases).
105. See generally Note, *The Paradox of “Progressive Prosecution,”* 132 HARV. L. REV. 748, 761–62 (2018) (arguing that progressive prosecutors are incapable of delivering “transformative reforms” due to the prosecutor’s positionality as an actor in a fundamentally flawed system).
106. See, e.g., Adam Foss, Aramis Ayala, Wesley Bell, Aisha Braveboy & Mabre Stahly-Butts, *Promoting Progress: Opportunities and Obstacles to Prosecutor Led Reform*, Panel Discussion at Am. Const. Soc’y 2019 Nat’l Convention (June 25, 2019), <https://www.acslaw.org/video/promoting-progress-opportunities-and-obstacles-to-prosecutor-led-reform> [<https://perma.cc/FJR8-SDWA>].
107. Chris Palmer, *Five Takeaways From Philly DA Larry Krasner’s 2019 Budget Hearing*, PHILA. INQUIRER (Apr. 24, 2019), <https://www.inquirer.com/news/larry-krasner-city-council-budget-hearing-mass-incarceration-20190424.html> [<https://perma.cc/XJX5-HD6J>].

questions about how it is now functioning. In her bid to become the Queens District Attorney, for example, Tiffany Cabán promised to prosecute landlords and employers rather than the poor, and to support social service rather than carceral responses to drug use.¹⁰⁸ But from an abolitionist perspective, there are limits to even Cabán's proposals, as they rely on carceral punishment to address structural social problems. Prosecutors retain the discretion and the power to decide who deserves what. The focus on criminalization as a response to housing precarity and wage theft distracts from structural antecedents to the problem and the possibility of transformative solutions.

The third element asks whether the reform reflects efforts to build and shift power away from the carceral state toward directly impacted communities. Prosecutors themselves cannot do this. But we should not evaluate campaigns to oust one prosecutor or elect another without understanding the movements, organizations, and campaigns from which they emerge. Movement organizations working to oust one prosecutor or elect another in the context of a larger strategy have successfully used the tactic to build power.

Across the country, engaging in prosecutorial races has been a small part of a larger set of movement strategies and tactics. Evaluating tactical engagement with prosecutorial elections requires an evaluation of the larger health of the organizing effort and its strategy. Whether the tactic of ousting a particular prosecutor or electing another is reformist or radical is dependent on who is wielding the tactic and how. Organizers' goals matter too. Is ousting the prosecutor or electing another simply an attempt to tweak the criminal legal system or is it an attempt to shrink the prosecutor's power?

In Philadelphia, dozens of groups supported Krasner as an electoral tactic in a larger strategy that started with a focus on closing a local jail. Organizers in coalitions like #No215Jail Coalition worked for years before Krasner's election to divest from the jails and police and invest in stabilizing and supportive services for local communities.¹⁰⁹ They organized Mass Bail Outs, held community meetings,

108. Joey Fox & Ben Max, *20 Things Tiffany Cabán Promised to Do as Queens District Attorney*, GOTHAM GAZETTE (June 26, 2019), <https://www.gothamgazette.com/city/8641-25-things-tiffany-caban-has-promised-to-do-as-queens-district-attorney> [<https://perma.cc/D9QD-NYJE>].

109. See *#No215Jail Campaign Delays Jail Expansion*, DECARCERATE PA (2015), <https://decarceratepa.info/content/no215jail-campaign-delays-jail-expansion> [<https://perma.cc/JQF4-2H6V>] (explaining the activism performed by #No215Jail Campaign members during 2015 to avoid the passage of Councilman Bobby Henon's Bill #150406, providing for the imminent purchase of land for the construction of a jail); *#No215Jail Coalition Marks Major Step Towards Justice in Mayoral Announcement of Plan to Close House of Correction*, DECARCERATE PA (Apr. 18, 2018), https://decarceratepa.info/press_release/no215jail.

and advocated for post-conviction relief.¹¹⁰ Coalitions like Philadelphia Coalition for a Just District Attorney have built a relationship with Krasner and exercise some influence over the office's direction.¹¹¹

Organizers such as those in Philadelphia recognize that prosecutors and prosecutorial elections are not self-actualizing engines of transformation or ending incarceration. But the demand on prosecutors to shrink their power, reach, and resources presents an important opportunity to undermine the legitimacy of prosecutorial power and to provide concrete relief to individuals who may otherwise be under a local prosecutor's thumb. It also provides an opportunity to challenge the idea that putting more people in cages is the solution to any social, economic, or political problem.

While the organizing efforts for progressive prosecutors can be viewed as a kind of victory for activists, these are short-term gains. Prosecutors themselves remain central to the functioning and legitimacy of the carceral state. Mariame Kaba was involved in Chicago's #ByeAnita campaign during Kim Foxx's first bid for State's Attorney.¹¹² She explained that the campaign's purpose was not to install a "progressive prosecutor": "[W]e're going to be protesting [the new prosecutor] the next day. It's the role. This person is the chief incarcerator."¹¹³ Instead, the campaign's focus was building the power of the collective to negotiate with the new prosecutor and the long-term battle to shift power away from prosecutors.¹¹⁴

coalition-marks-major-step-towards-justice-mayoral-announcement-plan-close
[<https://perma.cc/K8X4-QD4E>].

110. See *Press Room*, DECARCERATE PA, https://decarceratepa.info/press_room [<https://perma.cc/K6PE-84VT>] (detailing calls to participate in car caravans, mass letter writings, capitol building sit-ins and marches among other organizing activities); *About Us*, PHILA. CMTY BAIL FUND, <https://www.phillybailout.org/about-us.html> [<https://perma.cc/TD8M-CFSS>].
111. Austen, *supra* note 93 (documenting the Coalition for a Just District Attorney and the monthly meetings between Krasner's staff and local activists); see also Adeshina Emmanuel, *Electing Progressive Prosecutors Isn't Enough. Now, Activists Are Holding Them Accountable*, IN THESE TIMES (Mar. 26, 2018), http://inthesetimes.com/article/21014/kim_foxx_larry_krasner_chicago_philadelphia_prosecutors_progressive [<https://perma.cc/ALB6-WUZ2>] (analyzing the same phenomenon in Chicago).
112. For information on Foxx's more recent 2020 primary, where she faced a candidate backed by a billionaire and endorsed by the police union, see Taylor Moore, *In Chicago, a Billionaire-Backed Candidate and Police Are Trying to Oust a Progressive Prosecutor*, IN THESE TIMES (Mar. 16, 2020), <http://inthesetimes.com/article/22384/chicago-kim-foxx-bill-conway-states-attorney-carlyle-group> [<https://perma.cc/L49A-DJM4>].
113. *Mariame Kaba: Interview*, CHI. DISPATCH (May 2016) [<https://web.archive.org/web/20160710143155/http://www.thechidispach.com/mariame-kaba-interview>] [hereinafter *Kaba Interview*] (archived July 10, 2016).
114. *Id.*; Jenn M. Jackson, *A Discussion with Mariame Kaba on the #ByeAnita Campaign and Grassroots Organizing*, BLACK YOUTH PROJECT (Nov. 29, 2016), <http://>

In other words, the organizing effort to replace Alvarez with Kim Foxx was about power. It was meant as a rebuke of Alvarez's use of her discretion, and a reflection of the growing power of organizers, rather than an endorsement of Foxx or a celebration of her progressive bona fides.¹¹⁵

As far as we know, the prosecutors themselves have done nothing to shift power in sustainable nondiscretionary ways. None have tried to create checks on prosecutorial power through community oversight or other forms of accountability. None that we know of have advocated at the state or county level to decrease their power or budgets. Our hope lies not in prosecutors, but in the power of movements and organizers to create campaigns to pressure government officials to diminish carceral control, to transform narratives around safety, and to undermine the legitimacy of policing, surveilling, and caging people at all.

The fourth element of the radical reform framework asks whether the reform accounts for and redresses past harms. A few prosecutors have paid lip service to prosecution integrity units that examine past unjust convictions.¹¹⁶ The Manhattan District Attorney's office made small steps to vacate low-level marijuana convictions in light of the likely reality of decriminalization.¹¹⁷ But no progressive prosecutor has made any serious effort to address, let alone repair, the scope and scale of the devastation their office has wrought on individuals, families, and communities. Few have held line prosecutors or their police colleagues accountable for obvious miscarriages of justice.¹¹⁸ Most progressive prosecutors have not addressed either the most blatant cases of past injustice or the more routine indignities that the criminal legal system inflicts daily on communities—from the violence of jailing and incarceration, to the exploitative fines and fees they levy, to the families separated, to the jobs lost because someone has to sit in court sometimes dozens of times before their case is resolved. No office to our knowledge has opened up a conversation about the harm their office has created

Blackyouthproject.com/a-discussion-with-mariame-kaba-on-the-byeanita-campaign-and-grassroots-organizing [https://perma.cc/4G62-ZBCH].

115. #ByeAnita and #Justice4Laquan, PRISON CULTURE (Mar. 15, 2016), <http://www.usprisonculture.com/blog/2016/03/15/byeanita-and-justice4laquan> [https://perma.cc/86WD-GWEK].

116. Note, *The Paradox of "Progressive Prosecution,"* *supra* note 105, at 755–56.

117. Mark Morales, *Manhattan DA to Dismiss More Than 3,000 Marijuana Cases*, CNN (Sept. 12, 2018, 12:57 PM), <https://www.cnn.com/2018/09/12/us/marijuana-cases-dismissed/index.html> [https://perma.cc/R847-R5F6].

118. *E.g.*, Gonnerman, *supra* note 93; Wil S. Hylton, *Baltimore vs. Marilyn Mosby*, N.Y. TIMES MAG. (Sept. 28, 2016), <https://www.nytimes.com/2016/10/02/magazine/marilyn-mosby-freddie-gray-baltimore.html> [https://perma.cc/EAM2-L9HM] (discussing Mosby's failure to hold police officers responsible for Freddie Gray's death accountable and the reticence of Mosby's staff to pursue claims against the police).

for local families and communities, or seriously tried to redress past and ongoing harms.

The fifth element of a radical reform centers material impacts. The sustainability and meaningfulness of the impact matters, as does the number of people it touches. There is also the question whether the reform will deteriorate conditions for those left out of its four corners: Does the reform entrench hierarchies of deserving versus undeserving people stuck within the criminal legal system? Certainly, prosecutors can have a huge and immediate material impact on whether they cage people, whom they cage, for what, and for how long. This power is precisely why prosecutors have become targets of abolitionist organizing efforts to begin with. In some jurisdictions, progressive prosecutors have taken steps to reduce the overall jail population. However, the specifics matter a great deal. Decisions against pursuing bail, for example, could have profound material impact on some people if they create a permanent class of people held with no legal recourse pretrial.

In applying the five-element framework we explored ways that organizing efforts seeking radical change may deploy electoral strategies, including organizing around ousting or electing specific prosecutors. These efforts may help organizers build momentum, challenge narratives about safety and exercise collective power. If successful, campaigns focused on prosecutors can result in temporarily reductions in the size of the carceral state and may improve material conditions for individuals by delimiting the prosecutors' approach to particular crimes. But the lionizing of individual prosecutors or their discretionary actions perpetuates the myth that the problem with the criminal legal system is individual bad actors not systemic violence. Prosecutors cannot be radical solutions to the harms of the carceral state. The job of a prosecutor is to execute the violence of the carceral system by sending people to jail and prisons.

C. Reparations

While reparations are often thought of in terms of money, scholar-activist Robin D.G. Kelley reminds us that reparations demands were, "never entirely or even primarily about money . . . [they were] about social justice, reconciliation, reconstructing the internal life of Black America, and eliminating institutional racism."¹¹⁹ The United Nations definition of reparations echoes this multitactical approach to transformation and repair. According to the United Nations, reparations include five prongs: (1) a guarantee of nonrepetition, (2) a

119. ROBIN D. G. KELLEY, *FREEDOM DREAMS* 114 (2002).

commitment to reestablish the condition people were in before the harm was committed, (3) satisfaction for emotional, mental, reputational and other suffering, which may include apologies and memorials, (4) compensation, and (5) rehabilitation for medical, legal, and psychological harms.¹²⁰ The reparations framework presents an opportunity to assess the systemic failures that create and perpetuate ongoing harms and engage in the necessary cultural, institutional, and political shifts to ensure the harms are not continued.

The Movement for Black Lives has called for reparations not only for slavery but also for histories of cultural appropriation, educational violence, and the war on drugs.¹²¹ They maintain that “reparations are key to any transformation of the current economic, political, social and legal system... Without remedy the accumulated impact of past harms, we are destined to perpetuate them.”¹²² M4BL advances the reparations framework used under international law and supports campaigns at the local and national level that advance various components of it.¹²³

Demands for repair and reparations pose deep challenges to prevailing approaches to criminal law reform, which often fail to explicitly acknowledge—let alone correct—harms. Courts have repeatedly reiterated their prioritization of finality over their commitment to deliver justice for past wrongs. Courts are especially avoidant of admitting or addressing any systemic wrongs. In the infamous *McCleskey v. Kemp*¹²⁴ the Supreme Court did not dispute claims of racial bias in the application of the death penalty. Instead, the Court held that overruling *McCleskey*’s death sentence on the grounds of systemic bias would open a floodgate of racial bias claims and call into “question the principles that underlie our entire criminal justice system.” The Court decided that protecting that system was more important than saving the life of *McCleskey* and countless others.

The fear of “too much justice” as Justice Brennan wrote in his dissent, is just one example of how our legal system prioritizes finality over justice. As a result, innocent people languish in prison and racial bias flourishes throughout our

120. See generally G.A. Res. 60/147 (Dec. 16, 2005). (“Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”).

121. *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms> [<https://perma.cc/Y9KJ-D979>].

122. Andrea Ritchie, Deirdre Smith, Janetta Johnson, Jumoke Ifetayo, Marbre Stahly-Butts, Mariame Kaba, Montague Simmons, Nkechi Taifa, Rachel Herzing, Richard Wallace & Taliba Obuya, MOVEMENT FOR BLACK LIVES, REPARATIONS NOW TOOLKIT 51 (2019), <https://m4bl.org/wp-content/uploads/2020/05/Reparations-Now-Toolkit-FINAL.pdf> [<https://perma.cc/4XZT-U93W>] [hereinafter REPARATIONS NOW TOOLKIT].

123. REPARATIONS NOW TOOLKIT, *supra* note 122, 25–26.

124. *McCleskey v. Kemp*, 481 U.S. 279 (1987).

systems.¹²⁵ Consider the rare instance when someone is freed from prison because of an acknowledged mistake by the court or misconduct by police. There is little compensation, accountability, or repair.¹²⁶ Apart from individual or class-action lawsuits—where there are many obstacles to success—U.S. law in general, and criminal law in particular, has no mechanisms in place to assess let alone repair the harm it has caused.

Consider current battles around marijuana legalization. For decades, marijuana arrests ravaged Black communities, with Black people nearly four times more likely to be arrested for marijuana possession than white people, despite smoking it at similar or lower rates.¹²⁷ Despite the disproportionate impact of criminalization on Black communities, most legalization efforts fail to account for the decades of injustice wrought by the war on drugs and some even refuse to enact statutes that apply retroactively. With the exception of legislation recently passed in New York, most decriminalization and legalization legislation limit the ability of those formerly incarcerated to profit from the new industry, continue to criminalize unauthorized sales by Black dealers, and do not involve reparations provisions or even automatic and comprehensive expungement of drug records. As Michelle Alexander and others have pointed out, the wave of legalization is creating space for white men to profit from the same drug that is simultaneously responsible for Black and Latinx communities languishing in jail.¹²⁸

125. *E.g.*, *McCleskey*, 481 U.S. at 339 (1987) (Brennan, J., dissenting) (critiquing the majority for rendering its decision on the grounds of “a fear of too much justice”); *Herrera v. Collins*, 506 U.S. 390, 417 (1993) (“[B]ecause of the very disruptive effect that entertaining claims of actual innocence would have on the need for finality in capital cases, and the enormous burden that having to retry cases based on often stale evidence would place on the States, the threshold showing for such an assumed right would necessarily be extraordinarily high.”).

126. *See generally* INNOCENCE PROJECT, COMPENSATION STATUTES: A NATIONAL OVERVIEW (2018), https://www.law.umich.edu/special/exoneration/Documents/CompensationByState_InnocenceProject.pdf [<https://perma.cc/W3NS-GJNJ>] (detailing the frequently strict eligibility criteria and modest maximum award amounts provided for in many states’ compensation statutes); Frederic Block, *Let’s Put an End to Prosecutorial Immunity*, MARSHALL PROJECT (Mar. 13, 2018, 10:00 PM), <https://www.themarshallproject.org/2018/03/13/let-s-put-an-end-to-prosecutorial-immunity> [<https://perma.cc/R4Y4B-HU9P>].

127. AM. C.L. UNION, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM 5 (2020), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform> [<https://perma.cc/UA29-8NSR>].

128. April M. Short, *Michelle Alexander: White Men Get Rich From Legal Pot, Black Men Stay in Prison*, ALTERNET (Mar. 16, 2014), <https://www.alternet.org/2014/03/michelle-alexander-white-men-get-rich-legal-pot-black-men-stay-prison> [<https://perma.cc/SF2L-6NQH>]; Rebecca Burns, *The Unbearable Whiteness of Legalization*, IN THESE TIMES (Feb. 19, 2014), <https://inthesetimes.com/article/the-unbearable-whiteness-of-legalization> [<https://perma.cc/YC23-YEXN>].

Addressing the historic harms of marijuana criminalization does not lay in providing a few Black and brown entrepreneurs access to the now legal market. There is nothing transformational about reparations without efforts to dismantle the structures and relations that create the underlying harms to begin with. As Robin D.G. Kelley reminds us, “without at least a rudimentary critique of the capitalist culture that consumes, even reparations can have disastrous consequences.”¹²⁹

The successful effort to enact a reparations ordinance for the victims of Chicago Police Department commander Jon Burge’s torture is a powerful example of how abolitionists are incorporating reparations into their campaigns.¹³⁰ Between 1971 and 1992, the Chicago police tortured 120 Black men and women. Many of these people were sent to prison, even death row, based on confessions that the police induced through torture. The reparations ordinance attempted to address past harms and protect against future harms.¹³¹

In 2015, after decades of organizing efforts by groups from Project NIA to the People’s Law Office, Chicago City Council allocated \$5.5 million in reparations for victims of police torture from the 1970s to the early 1990s.¹³² The package intentionally addressed each of the prongs of the United Nations definition of reparations, with the exception of the non-repetition element since it included no policy elements that guaranteed non-repetition. The package did include an attempt at addressing emotional and mental suffering through a mandated public

129. KELLEY, *supra* note 119, at 133.

130. See G. Flint Taylor, *The Long Path to Reparations for the Survivors of Chicago Police Torture*, 11 Nw. J.L. & SOC. POL’Y 330 (2016) (detailing the work of the People’s Law Office and its supporters to document and demand reparations for the history of abuse suffered primarily by Black people at the hands of Chicago police detectives).

131. CHI., ILL., REPARATIONS FOR BURGE TORTURE VICTIMS, S.R. 2015–256 (2015), https://www.chicago.gov/content/dam/city/depts/dol/supp_info/Burge-Reparations-Information-Center/ORDINANCE.pdf [<https://perma.cc/JC29-JHVV>]; Peter C. Baker, *In Chicago, Reparations Aren’t Just an Idea. They’re the Law*, GUARDIAN (Mar. 8, 2019), <https://www.theguardian.com/news/2019/mar/08/chicago-reparations-won-police-torture-school-curriculum> [<https://perma.cc/JVM8-SP7W>].

132. See Natalie Y. Moore, *Payback*, MARSHALL PROJECT (Oct. 30, 2018, 6:00 AM), <https://www.themarshallproject.org/2018/10/30/payback> [<https://perma.cc/H2R2-AJXR>]; Sandhya Somashekhar, *Why Chicago Used the Word ‘Reparations,’* WASH. POST (May 8, 2015, 11:29 AM), <https://www.washingtonpost.com/news/post-nation/wp/2015/05/08/why-chicago-used-the-word-reparations> [<https://perma.cc/2X8G-D5CX>]; see also *The Reparations Ordinance*, CHI. TORTURE JUST. MEM’LS, https://www.chicago-torture.org/?page_id=63 [<https://perma.cc/Z4MR-ZTX5>]; Noah Berlatsky, *Reimagining Justice: An Interview with Mariame Kaba*, URBAN FAITH, <https://urbanfaith.com/2015/03/reimagining-justice-an-interview-with-mariame-kaba.html> [<https://perma.cc/KWP2-NUNJ>]; Dan Sloan, *A World Without Prisons: A Conversation with Mariame Kaba*, LUMPEN MAG., Winter 2016, at 26–31, https://issuu.com/lumpenmagazine/docs/lumpen127_final [<https://perma.cc/A2SG-CFH7>].

acknowledgment of the torture, a formal apology by City Council, and a permanent memorial recognizing the victims and survivors. Additionally, the ordinance mandated the inclusion of the Burge case to the eighth grade and tenth grade history curriculum for Chicago Public Schools in order to ensure that future generations understand the horrors of police violence. It fulfilled the compensation element through the allocation of a \$5.5 million fund that provided direct compensation for those injured. Each victim was eligible for up to \$100,000 in reparations. The ordinance also included elements of rehabilitation by ensuring that victims and their families received assistance for college tuition, job training, mental health care, and counseling. The inclusion of people's children and families recognized the generational nature of the harm. It also included the establishment of a community and healing center on the South Side of Chicago.

When applying the five-element rubric of a radical reform the importance of organizing context becomes paramount. The policy in Chicago embodies many elements of a radical reform—not only because of what the campaign accomplished but also because who waged it and how.

Under the first prong, it is important to note that the Chicago ordinance did not in and of itself shrink the system that caused harm. However, the ordinance was a result of relationships built from more than 30 years of advocating and organizing. During these years, mothers, survivors, community members, lawyers and reporters developed relationships that helped build the power necessary to win reparations. The journey began with attempts to exonerate some of the survivors. After years, sometimes decades, of excruciating legal advocacy, twenty-one of the convictions were overturned. But many other cases were not successfully overturned.

Even in the cases where convictions were overturned there was no justice for survivors. Survivors often came home with serious mental and physical health issues as a result of the torture and years in prison. They did not receive any financial compensation, and many were unable to find jobs to support themselves or their families. Meanwhile their torturer, police officer Jon Burge, and those who worked with him, were never held accountable for their actions. Therefore, even cases where convictions were successfully overturned exposed the failures of the criminal legal system to get justice for victims, repair the harm inflicted on communities, or hold the Chicago Police department accountable. So while the policy itself did not shrink the system the campaign and the storytelling done by campaign organizers for reparations raised deep questions about the ability of the criminal legal system to provide justice or hold itself accountable.

Under the second prong, the Chicago ordinance locates healing not in the criminal legal system but instead in the Chicago Torture Justice Center that is

established in the very neighborhood plagued by state torture. The need for the ordinance is a testament to the failures of the criminal legal system to protect the Black residents of Chicago from police violence. It exemplifies the reality that survivors and their supporters are best equipped to protect, heal and support themselves through collective healing, counseling and community. In addition to the provision of new space to organize and heal, the campaign continually brought community members together to reimagine safety. The campaign's organizers put out a call for proposals and hosted events and exhibits throughout the city that highlighted visions of healing, justice and safety that did not involve the police. These exercises in collective visioning and cultural building provided opportunities to imagine healing outside of punishment and carceral solutions. As Mariame Kaba observes, the campaign created "an expansive potential vision of what justice could look like when people are harmed"¹³³ and "a precedent for other people to think about justice too in different and expansive ways."¹³⁴ By seeking justice outside the criminal legal system, it suggests a workable alternative to police indictments.

Under the third prong, the campaign helped build and shift power. The campaign was led by organizations representing survivors and their families, young people from the neighborhood where the torture occurred, and lawyers and advocates accountable to and in close relationship with survivors. In addition to building the power necessary to pass the legislation through protests, public rallies, door-knocking, sit-ins, art exhibits and demonstrations at City Hall, organizers also leveraged international pressure. In 2006 and 2014 organizers petitioned the United Nations Committee Against Torture, including sending a youth delegation from the organization We Charge Genocide. The campaign helped strengthen organizing relationships in Chicago and created new centers of political and cultural power.

Under the fourth prong, the ordinance was centrally concerned with repair and acknowledgement of the past. The ordinance embraced the United Nations definition of reparations and attempted to fulfill each of its components. It provided compensation, apologies, public memorializing and rehabilitation for survivors and their families.

Lastly, the ordinance improved the material condition of survivors. Improving material conditions is a key component of reparations. Under the

133. Berlatsky, *supra* note 132. See also Sloan, *supra* note 132.

134. Berlatsky, *supra* note 132. See also Rachel Herzing, Commentary, "Tweaking Armageddon": *The Potential and Limits of Conditions of Confinement Campaigns*, 41 SOC. JUST. 190, 193–94 (2014) (describing how abolitionist campaigns generate "the ability to make demands based on what is necessary rather than what is presented as possible").

ordinance, survivors and their families had access to financial compensation, job and educational opportunities and healing services.

The Chicago reparations ordinance is an example of a radical reform. While it does not perfectly fulfill each of the elements, when taken in context with the organizing efforts that birthed it and to which it contributed, it touches on each of them—it reduces reliance on the criminal legal system, creates new modes of dealing with harm, helps build community power, acknowledges past harms and improves the material conditions for survivors and their families.

CONCLUSION

In this Article, we have articulated a framework for thinking about radical reforms rooted in prison abolitionist organizing. For abolitionists, reform presents an inherently contradictory gambit that cannot be avoided due to the entanglement between carceral power, racial capitalism, and law. Abolitionist organizers are running bold campaigns for law reform. What makes these demands transformative are their ambitious commitment to dismantling systems of policing and incarceration, and their articulation by movement organizations committed to direct action, power building, and community organizing. On its own, radical reform will never be enough to achieve fundamental transformation. But as one strategy and tactic among many, it has a role to play.