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#### The CJS is irredeemable and intrinsically anti-black -- only abolition can challenge racialized criminalization

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The United States stands out from all nations on Earth for its reliance on caging human beings.52 In the last forty years, the U.S. incarcerated population exploded from about 500,000 to more than two million.53 The U.S. federal and state governments lock up more people and at higher rates than do any other governments in the world, and they do so today more than they did at any other period in U.S. history.54

Most people sentenced to prison in the United States today are from politically marginalized groups — poor, black, and brown.55 Not only are black people five times as likely to be incarcerated as white people,56 but also the lifetime probability of incarceration for black boys born in 2001 is estimated to be thirty-two percent compared to six percent for white boys.57 The female incarceration rate has grown twice as quickly as the male incarceration rate over the past few decades, and black women are twice as likely as white women to be behind bars.58 This astounding amount of human confinement should not be seen as an unfortunate consequence of crime prevention policies or as an isolated blemish on America’s otherwise fair system of criminal justice.59 Rather, prisons are part of a larger system of carceral punishment that legitimizes state violence against the nation’s most disempowered people to maintain a racial capitalist order60 for the benefit of a wealthy white elite.61

The prison industrial complex emerged in the second half of the twentieth century from the merger of social welfare programs and crime control policies.62 As Professor Elizabeth Hinton documents in From the War on Poverty to the War on Crime, Democrats and Republicans in the 1960s and 1970s paired federal assistance to urban neighborhoods of color with surveillance, militarized policing, harsh sentencing laws, and prison expansion, based on shared assumptions of innate black criminality.63 Thus, “[t]he roots of mass incarceration had been firmly established by a bipartisan consensus of national policymakers in the two decades prior to Reagan’s War on Drugs in the 1980s.”64 The astronomical expansion of prisons in the last forty years occurred during a process of government restructuring that transferred services from the welfare state to the private realm of market, family, and individual. The United States set the global trend in cutting social programs while promoting free-market conditions conducive to capital accumulation, resulting in one of the slowest growth rates of spending on basic social needs.65 Beginning with “Reaganomics” — the Reagan Administration’s economic policy based on tax cuts, business deregulation, and reductions in federal spending — and extending to the Clinton Administration’s restructuring of welfare, the United States underwent a period of intensified privatization.66 Government policymakers coupled this neoliberal dismantling of the social safety net with intensified carceral intervention in poor communities of color.67 The consolidation of corporate power in recent decades depended not only on increased market-based privatization but also on increased punitive control of marginalized people who are excluded from the market economy because of racism.68

In sum, beginning in the 1960s, U.S. policymakers have supported elites by intensifying carceral measures in order to address the social problems and quell the unrest generated by racial capitalism.69 As Professor Dan Berger explains: “[C]arceral expansion is a form of political as well as economic repression aimed at managing worklessness among the Black and Brown (and increasingly white) working class for whom global capitalism has limited need.”70 Thus, the relationship between racial capitalism and carceral punishment extends far beyond extracting profits from prison labor and private prisons, which does not characterize most of the prison industrial complex’s operation.71 Rather, prisons are the state’s response to social crises produced by racial capitalism, such as unemployment and unhealthy segregated housing, and to the rebellions waged by marginalized people who suffer most from these conditions.72

The physical expansion of prisons is facilitated by criminalizing subordinated people so that caging them seems ordinary and natural. Indeed, Critical Resistance co-founder Provost Julia Chinyere Oparah identifies as a key “logic of incarceration”73 the “racialization of crime” so that crime is associated with dangerous and violent “black, indigenous, immigrant, or other minority populations.”74 Longstanding stereotypes of black criminality are marshalled to turn everyday black life into criminal activities.75 For example, order-maintenance policing relies on an association between the identification of lawless people and racist notions of criminality to legitimize routine police harassment and arrest of black people.76 Likewise, during the “crack epidemic” of the Reagan era, the longstanding devaluation of black motherhood was crucial to converting the “public health problem of drug use during pregnancy into a crime, addressed by [arresting and imprisoning] black women rather than providing them with needed health care.”77

Not only does the prison industrial complex serve as the state’s solution to economic and social problems, but carceral approaches to these problems are also ever more common beyond prisons. I described this carceral expansion in a recent issue of this law review: All institutions in the United States increasingly address social inequality by punishing the communities that are most marginalized by it. Systems that ostensibly exist to serve people’s needs — health care, education, and public housing, as well as public assistance and child welfare — have become behavior modification programs that regulate the people who rely on them, and these systems resort to a variety of punitive measures to enforce compliance.78

Public welfare programs are increasingly entangled with criminal law enforcement.79 People who receive Medicaid or Temporary Assistance to Needy Families are subjected to intense surveillance by government agents as a condition of obtaining aid — and if they refuse aid, they are further subjected to child protective services investigations.80 Homelessness, public school misbehavior, and health problems are all criminalized by calling police officers as the first responders to deal with problems that arise in these contexts.81 The prison, foster care, and welfare systems operate together to form a cohesive punitive apparatus that punishes black mothers in particular.82 At the same time, repressive fetal protection laws and abortion restrictions coalesce to criminalize pregnancy itself;83 immigration law makes entering the United States without documentation a crime;84 and militarized border security results in deportation, family separation, and detention in prisons and squalid concentration camps.85

As carceral logics take over ever-expanding aspects of our society, so does the cruelty that government agents visit on people who are the most vulnerable to state surveillance and confinement. Torture has been accepted as a technique of racialized carceral control.86 The nation’s public schools, prisons, detention centers, and hospitals serving poor people of color are marked not only by stark inequalities but also by dehumanizing bodily neglect and abuse committed by police officers and guards.87 Further, as Rodríguez explains, “incarceration as a logic and method of dominance is not reducible to the particular institutional form of jails, prisons, detention centers, and other such brick-and-mortar incarcerating facilities.”88 Although prison abolitionists work to end prisons, their ultimate aspiration is to end carceral society — a society that is governed by a logic of incarceration.

B. Abolition Praxis: Past, Present, Future

Prison abolition theory has past, present, and future aspects, each of which animates activism simultaneously.89 Prison abolitionists look back to history to trace the roots of today’s carceral state to the racial order established by slavery and look forward to imagine a society without carceral punishment.90 Both are critical motivations for abolishing the prison industrial complex. The case for abolition that is grounded in history and politics provides a compelling framework for understanding the need to eradicate the entire carceral punishment system as well as for identifying strategies to accomplish that goal. Indeed, we can see the extreme cruelty and degradation that characterize today’s penitentiaries, police forces, and executions as the inevitable result of a racially subordinating system.91

1. Slavery Origins. — Many prison abolitionists have found the roots of today’s criminal punishment system in the institution of chattel slavery.92 Even before I thought of myself as a prison abolitionist, my analysis of current criminal justice issues consistently led me to a discussion of slavery. Whether interrogating racism in the prosecution of black women for pregnancy-related crimes,93 the disproportionately high placement of black children in foster care,94 the high rates of incarceration in black neighborhoods,95 police torture of black suspects,96 or gang-loitering policing,97 I found it essential to understand these practices as originating in the enslavement of black people. That analysis helped me to see how these practices emanated from a carceral system that continues to perpetuate black people’s subjugated status and, ultimately, to conclude the carceral system cannot be fixed — it must be abolished.98

The pillars of the U.S. criminal punishment system — police, prisons, and capital punishment — all have roots in racialized chattel slavery.99 After Emancipation, criminal control functioned as a means of legally restricting the freedoms of black people and preserving whites’ dominant status.100 Through these institutions, law enforcement continued to implement the logic of slavery — which regarded black people as inherently enslaveable with no claim to legal rights101 — to keep them in their place in the racial capitalist hierarchy.102

(a) Police. — The first police forces in the United States were slave patrols.103 Beginning in the early 1700s, southern white men formed armed groups that entered slaveholding properties and roamed public roads to ensure that enslaved people did not escape or rebel against their enslavers.104 Slave patrols monitored enslaved people to prevent them from engaging in forbidden activities such as “harboring weapons or fugitives, conducting meetings, or learning to read or write.”105 They also used the threat of violence to intimidate enslaved workers into obedience to enslavers.106 Enslaved people who were caught planning resistance, running away, or defying the slave codes enacted to restrict them were subjected to violent punishments such as beatings, whippings, mutilation, and forced sale away from their families.107 Modern police forces are descendants of armed urban patrols like the Charleston City Guard and Watch, which was established as early as 1783 to constantly monitor and inspect both enslaved and free black residents to “minimize Negro fraternizing and, more especially, to prevent the growth of an organized colored community.”108

Enslaved people who worked on plantations and farms were under the “immediate control and discipline of their respective owners,” who were often aided by hired overseers.109 The overseers’ job was to enforce enslaved workers’ total subjugation to enslavers by violently reprimanding perceived disobedience and failures to meet productivity quotas.110 The violence overseers inflicted on enslaved workers reflected a fundamental aspect of carceral punishment that survives today: the purpose of punishing black people was to reinforce their subjugation to white domination. Hence, enslaved people were punished for committing offenses defined as insubordination to enslavers, but were also punished regardless of their culpability for an offense. The celebrated abolitionist Frederick Douglass, who escaped slavery in Maryland in 1838, 111 emphasizes this point in his portrayal of the overseers he encountered while in captivity. His description of Austin Gore, an overseer who served Colonel Edward Lloyd on a plantation where Douglass spent two years of his childhood, is especially illuminating.112 Gore was an ideal overseer because he “was one of those who could torture the slightest look, word, or gesture, on the part of the slave, into impudence, and would treat it accordingly.”113 Douglass elaborates: There must be no answering back to him; no explanation was allowed a slave, showing himself to have been wrongfully accused. Mr. Gore acted fully up to the maxim laid down by slaveholders, — “It is better that a dozen slaves suffer under the lash, than that the overseer should be convicted, in the presence of the slaves, of having been at fault.” No matter how innocent a slave might be — it availed him nothing, when accused by Mr. Gore of any misdemeanor. To be accused was to be convicted, and to be convicted was to be punished; the one always following the other with immutable certainty.114

An enslaved man named Demby learned the price of refusing to submit to Gore’s rule.115 When Demby plunged into a creek to escape being beaten, Gore shot him dead with a musket.116 Although slave law occasionally permitted the application of criminal homicide to convict slaveholders who killed their slaves, it exonerated those who killed slaves who resisted the slaveholders’ lawful authority.117 A “hostile attitude” or resistance to corporal punishment on the part of enslaved people like Demby provided legal justification for killing them.118

The status of enslaved Africans as the property of their white enslavers meant that, from the enslavers’ perspective, black people were a perpetual threat to white people’s property — a threat seen as so great it necessitated employing armed forces to maintain order among the enslaved.119 In the aftermath of Emancipation, when slaveholders’ human property was no longer protected by slave law, “a new set of innovations and regulation[s] had to emerge, again under the rubric of policing.”120 Like overseers and slave patrols, Jim Crow police and private citizens who abetted them used terror primarily to enforce racial subjugation, not to apprehend people culpable for crimes.121 Take, for example, coercive interrogation techniques, now known as “the third degree,” that have become a staple of modern policing.122 The first stage of lynching, typically carried out with the participation or sanction of the police, was often “extract[ing] a confession by whipping or burning the accused.”123 Prior to Miranda v. Arizona, 124 which barred the admissibility of presumptively coerced confessions, southern police routinely used torture to force blacks to confess to crimes.125 For example, in Brown v. Mississippi, 126 three black tenant farmers were convicted for murdering a white planter; the sole evidence before the jury consisted of their confessions.127 Those confessions were obtained through police torture, including the repeated hanging and whipping of one of the defendants until he confessed to a dictated statement.128 The other two defendants’ confessions were similarly coerced and tailored.129 When overturning the convictions, the Supreme Court observed that “the signs of the rope on [one defendant’s] neck were plainly visible during the so-called trial.”130

Even after the civil rights movement, “[p]olice torture of suspects continues to be a tolerated means of confirming the presumed criminality of blacks.”131 For example, from the 1970s to the 1990s, white police officers in Chicago engaged in systematic torture of black residents.132 Under the command of Lieutenant Jon Burge, police coerced dozens of confessions from suspects by beating them, burning them with radiators and cigarettes, putting guns in their mouths, placing plastic bags over their heads, and delivering electric shocks to their ears, noses, fingers, and genitals.133 Burge’s reign of torture was known and condoned by police officers, the State’s Attorney’s office, judges, and doctors at Cook County Hospital.134 Racialized terror that bridged slave patrols, lynchings, and police whippings remained a feature of policing in the post– Civil Rights Era criminal punishment system.135

Police also serve as an arm of the racial capitalist state by controlling black and other marginalized communities through everyday physical intimidation and by funneling those they arrest into jails, prisons, and detention centers.136 Numerous studies conducted throughout the nation demonstrate that police engage in rampant racial profiling.137 The increasing militarization of police forces accentuates their role as an occupying force in communities of color and on Indian reservations.138 Police harassment and violence against residents in poor, nonwhite neighborhoods is routine.139 Police “brutality” is a misnomer because it suggests police violence is exceptional. Mariame Kaba, the founding director of Project NIA,140 explains she “retired the term ‘police brutality’” because “[i]t is meaningless, as violence is inherent to policing.”141 Similarly, Professor Micol Seigel calls policing “violence work.”142 Police normally treat residents in communities of color in an aggressive fashion — shouting commands, handcuffing even children, throwing people to the ground, and tasing, beating, and kicking them.143 For young men of color, the risk of being killed by the police is shockingly high and police use of force is among the leading causes of death.144 Black women, women of color, and queer women are especially vulnerable to gendered forms of sexual violence at the hands of police.145 These violent tactics are not in response to violent crime. Indeed, police officers actually spend a small fraction of time stopping violent offenders.146 Most of the time, officers are engaged in patrolling ordinary people who are simply going about their everyday activities, generating high-volume arrests for petty infractions.147

Like the Black Codes and the slave codes before them, order maintenance policies give police wide discretion to control black people’s presence on public streets.148 Law enforcement continues to enforce the logic of slave patrols, to view black people as a threat to the security of propertied whites, and to contain the possibility of black rebellion.149 To Professor Fred Moten, police officers killed Michael Brown and Eric Garner because these black men represented “insurgent black life,” which “constituted a threat to the order that [police] represent[] and . . . [are] sworn to protect.”150 There are numerous examples of state officials dispatching police to silence black protest, including the assassination of Black Panther Party leader Fred Hampton by the Chicago Police Department and the military-style assault on protesters in Ferguson, Missouri, after the killing of Michael Brown.151 The recent spate of “BBQ Beckys” — white residents who call 911 on black men, women, and children engaged in harmless public activities like barbequing in a park or selling bottled water on a sidewalk152 — spotlights the role of police to keep black people in their place for the benefit of white citizens.153

Abolitionists also include state surveillance — another descendant of the slave patrol154 — as a major component of carceral punishment.155 Today’s computerized predictive policing is a high-tech version of vague loitering and vagrancy laws, which historically gave “‘license to police officers to arrest people purely on the basis of race-based suspicion’ [by] categorically identifying black people as lawless apart from their criminal conduct.”156 I previously described the situation in this law review as follows: Law enforcement agencies nationwide collect and store vast amounts of data about past crimes, analyze these data using mathematical algorithms to predict future criminal activity, and incorporate these forecasts in their strategies for policing individuals, groups, and neighborhoods. Judges use big-data predictive analytics to inform their decisions about pretrial detention, bail, sentencing, and parole. Automated risk assessments help to determine whether or not defendants go to prison, the type of facility to which they are assigned, how long they are incarcerated, and the conditions of their release.157

Some proponents of artificial intelligence claim these technologies help people make more objective decisions that are not tainted by human biases.158 However, predictive algorithms have been revealed to “disproportionately identify African Americans as likely to commit crimes in the future.”159 This is because “[c]rime data collection reflects discriminatory policing. . . . [P]olice routinely bias data collection against black residents by patrolling their neighborhoods with far greater intensity than white neighborhoods.”160 Risk assessment models that import institutionally biased data become a “self-fulfilling feedback loop” where the prediction ensures future detection.161 The rise of computerized risk assessments in the carceral punishment system reinforces the detachment of punishment from culpability and furthers the criminalization of whole communities. Computerized predictions identify people for government agencies to regulate from the moment of birth, without any regard to their actual responsibility for causing social harm: police gang databases have included toddlers.162 Thus, the state uses artificial intelligence and predictive technologies to reproduce existing inequalities while creating new modes of carceral control and foreclosing imagination of a more democratic future.163

(b) Prisons. — During the slavery era, prison populations were composed almost exclusively of white people.164 When slavery was abolished, the demographics of prisons shifted dramatically.165 Southern law enforcement began to charge formerly enslaved African Americans with crimes and incarcerate them in growing numbers.166 Imprisonment and the convict leasing system maintained black people’s status as a disenfranchised and involuntary labor force for whites.167 In its 1871 decision Ruffin v. Commonwealth, 168 the Virginia Supreme Court of Appeals affirmed the similar status of slave and prisoner when it ruled that an incarcerated convict was “for the time being the slave of the State. He is civiliter mortuus; and his estate, if he has any, is administered like that of a dead man.”169 Likewise, black people convicted of petty offenses were “sold as punishment for crime” at public auctions as if they were still enslaved.170

A key assertion of prison abolition theory is that criminalization of black people following Emancipation served to maintain the racial capitalist system that had been built on slavery.171 In an interview published in 2005, Professor Angela Y. Davis explained her ideas on the link between slavery and prison abolition:

Now I am trying to think about the ways that the prison reproduces forms of racism based on the traces of slavery that can still be discovered within the contemporary criminal justice system. There is, I believe, a clear relationship between the rise of the prison-industrial-complex in the era of global capitalism and the persistence of structures in the punishment system that originated with slavery.172

In other words, the criminalization and imprisonment of black people following the Civil War are a critical link in the historical chain that ties the prison industrial complex to slavery.

Criminal punishment was a chief way the southern states nullified the Reconstruction Amendments, reinstated the white power regime, and made free blacks vulnerable to labor exploitation and disenfranchisement. Following the formal abolition of slavery, southern states targeted black men, women, and children for imprisonment by passing criminal laws known as Black Codes, modeled after the slave codes, which prohibited their freedom of movement, contract, and family life.173 Between 1865 and 1866, legislatures “enacted harsh vagrancy laws, apprenticeship laws, criminal penalties for breach of contract, and extreme punishments for blacks, all in an effort to control black labor.”174 Black people who were out of work or simply present in public without adequate reason were routinely arrested for vagrancy, giving white officials license to jail them.175 Blacks were also arrested and given long sentences for petty offenses that whites engaged in without consequence. Writing in 1893, journalist and activist Ida B. Wells gave the example of twelve black men who were imprisoned in South Carolina “on no other finding but a misdemeanor commonly atoned for by a fine of a few dollars, and which thousands of the state’s inhabitants [white] are constantly committing with impunity — the carrying of concealed weapons.”176

As the Court’s Timbs v. Indiana177 decision last Term discussed, Black Codes also employed economic sanctions to consign blacks to a form of debt slavery that coerced them into onerous involuntary labor.178 In the decades after Reconstruction, fines kept many formerly enslaved people in forced servitude to white landowners.179 Activist Mary Church Terrell warned in 1907 that the peonage system kept black people perpetually enslaved. “[T]here are scores, hundreds perhaps, of coloured men in the South to-day who are vainly trying to repay fines and sentences imposed upon them five, six, or even ten years ago,” she wrote.180 By compelling emancipated blacks to work for whites in payment of debts on threat of incarceration, the law substituted the unconstitutional system of chattel slavery with a legal system of peonage.181

Also adjoined to these forms of legally enforced servitude was the practice of systematically forcing black prisoners to toil on chain gangs and leasing black convicts as labor to planters and companies. By making free black people criminals, white authorities could compel them to work against their will in a system that not only constituted “slavery by another name,”182 but also was so violent that it was “worse than slavery.”183 Between 1865 and 1880, every former Confederate state except Virginia established a system of leasing large numbers of black prisoners to railroads, coal mines, and other industries that were rebuilding infrastructures devastated by the Civil War.184 Private lessees had complete custody and control of prisoners and were motivated to maximize their profits by extracting as much labor as possible with little incentive to preserve prisoners’ welfare or lives.185 The result was rampant punishment, torture, and killing of prisoners with complete impunity.186

State exploitation of prison labor reinforced a gendered and sexualized form of white domination of black women.187 Black women were not protected by Victorian norms of femininity, which shielded most white women from the degradation of carceral violence and forced labor.188 To the contrary, black women were far more likely than white women to be arrested for violating racialized gender standards by engaging in behavior deemed to be masculine, like public quarreling.189 The wildly disparate treatment of white women and black women arrested for similar crimes is mind-boggling: for example, “[b]etween 1908 and 1938, only four white women were ever sentenced to the chain gang in Georgia, compared with almost two thousand Black women.”190

Recent investigations by Professors Sarah Haley and Talitha LeFlouria provide critical documentation of the previously unacknowledged extent of black women’s involvement in convict leasing, chain gangs, and forced domestic labor, dramatically expanding our understanding of antiblack violence and carceral control during the Jim Crow era.191 Haley frames the common practice of chain-gang overseers whipping black female convict laborers as “sexualized gender- and racespecific rituals of violence mark[ing] the convict camp as a pornographic site” and producing a spectacle of gendered racial terror.192 Newspapers also routinely vilified black women accused of crimes.193 Black women resisted in multiple ways, including as organized club women, blues lyricists, and incarcerated petitioners and saboteurs.194 Violence against enslaved and incarcerated black women was essential to preserving the racial capitalist state.195 This state, in turn, constructed an ideology of black female depravity and deviance,196 which undergirds black women’s higher rates of incarceration to this day.197

I have emphasized how during the slavery and Jim Crow eras, state agents meted out punishment to black people without regard to their guilt or innocence. Criminalizing black people entailed both defining crimes so as to make black people’s harmless, everyday activities legally punishable and punishing black people regardless of their culpability for crimes. Thus, for more than a century, vague vagrancy and antiloitering ordinances have given police officers license to arrest black people for standing in public streets — with no attention to whether or not their presence caused any harm to anyone.198 The purpose of carceral punishment was to maintain a racial capitalist order rather than to redress social harms — not to give black people what they deserved, but to keep them in their place. Today, the state still aims to control populations rather than judge individual guilt or innocence, to “manage socialinequalities” rather than remedy them.199 A large body of social scienceliterature explains criminal punishment as a form of social control of marginalized people.200 Professor Issa Kohler-Hausmann, for example, argues that New York City criminal courts that handle misdemeanors “have largely abandoned the adjudicative model of criminal law administration — concerned with deciding guilt and punishment in specific cases” — and instead follow a “managerial model — concerned with managing people through engagement with the criminal justice system over time.”201 By marking people for involvement in “misdemeanorland,” forcing them to engage in burdensome procedural hassles, and requiring them to engage in disciplinary activities,202 this gargantuan branch of the criminal punishment system exerts social control over the city’s black communities, with no real regard for residents’ culpability for crime.

The explosion in imprisonment of African Americans at the end of the twentieth century represents the continuation of trends that originated even before the century’s start. In describing the rise of convict leasing, W.E.B. Du Bois notes a fundamental feature of post-slavery carceral punishment: the disconnect between the rise of prisons and crime rates. “The whole criminal system came to be used as a method of keeping Negroes at work and intimidating them,” Du Bois writes in Black Reconstruction. 203 “Consequently there began to be a demand of jails and penitentiaries beyond the natural demand due to the rise in crime.”204 In a complement to Du Bois’s observations about the economic motivations for incarcerating black people, Professor Alex

Lichtenstein argues that social and political forces also produce higher incarceration rates: Stable incarceration rates appear in periods of white racial hegemony and a stable racial order, such as that secured by slavery in the first half of the 19th century or Jim Crow during the first half of the 20th. Correspondingly, sudden rises in incarceration, especially of minorities, tend to appear one generation after this racial hegemony has been cracked, as in the first and second Reconstructions of emancipation and civil rights.205

Thus, the skyrocketing prison population in the second half of the twentieth century cannot be explained solely as a response to increases in crime.206 Prison expansion instead reflects a response to the needs of rising neoliberal racial capitalism that addresses growing socioeconomic inequality with punitive measures.207

The disconnect between social harm and carceral punishment is evident not only in state regulation of marginalized people but also in the immunity granted to state agents who commit social harms.208 For reasons both legal and political, police,209 prosecutors,210 and corporate executives211 generally avoid criminal liability even for inflicting serious harm. As I have explored previously, “[c]urrent legal doctrine condones police violence and makes individual acts of abuse — even homicides — appear isolated, aberrational, and acceptable rather than part of a systematic pattern of official violence.”212 Prosecutors who have used unconstitutional methods for obtaining wrongful convictions have not been criminally prosecuted themselves.213 Few corporate executives have been charged with crimes for actions that caused billions of dollars in losses during the financial crisis of 2008. 214 Moreover, government officials responsible for devastating environmental harms, such as lead-poisoned water in Flint, Michigan, typically escape criminal prosecution.215 In sum, criminal law treats prisons as essential to prevent or redress crimes committed by economically and racially marginalized people but unnecessary to address even greater social harms inflicted by the wealthy and powerful.

The criminal punishment system extends its subordinating impact beyond prison walls by imposing collateral penalties that deny critical rights and resources to formerly incarcerated people.216 Felon disenfranchisement laws, for example, restrict incarcerated people’s ability to vote during their sentences and after they are released,217 and significantly dilute black political power.218 The stigma of conviction, imposition of fines and fees, and exclusion from public benefits inflict a nearly insurmountable burden on people caught in the carceral web.219 The association between slavery and prison makes these deprivations seem natural — despite the injustice of punishing people beyond the sentence they served and in a way that bears no relation to the crimes they committed. Just as it seemed unremarkable that enslaved people could not vote because they were not citizens, so today many people think: “Of course prisoners aren’t supposed to vote. They aren’t really citizens any more.”220 Thus, the inherent denial of citizenship rights to enslaved people is mirrored in the unquestioned denial of those rights to incarcerated people.

(c) Death Penalty. — Capital punishment, like police and prisons, has its roots in slavery and the preservation of white supremacy.221 State executions have persisted in the United States because they function similarly to the extreme punishments inflicted on enslaved people and the state-sanctioned lynchings that replaced these punishments after Emancipation.222 As Davis points out, “the institution of slavery served as a receptacle for those forms of punishment considered to be too uncivilized to be inflicted on white citizens within a democratic society.”223 Historically, race-based criminal codes imposed the death penalty on enslaved individuals for many more offenses than they did for whites.224 Blacks were “commonly hanged” for “rape, slave revolt, attempted murder, burglary, and arson.”225 Moreover, condemned slaves were subjected to extra cruelty through what Professor Stuart Banner calls “super-capital punishment” — burning them alive at the stake.226 Executions were also made especially degrading by displaying slaves’ severed heads on poles in front of the courthouse, or allowing their corpses to decompose in public view.227

After Emancipation, white southerners began ritualistically kidnapping and killing black people to publicly reinforce white supremacy.228 In 1893, Ida B. Wells observed that “the Convict Lease System and

Lynch Law are twin infamies which flourish hand in hand in many of the United States.”229 Public torture proclaimed white dominion overblack people, repudiated blacks’ citizenship status,230 and “literally reinstat[ed] black bodies as the property of whites that could be chopped to pieces for their entertainment.”231 Many lynchings were of black men accused of breaching racialized sexual boundaries by raping or disrespecting white women.232 However, the majority of terroristic murders between 1890 and 1920 were intended to facilitate white theft of black people’s property.233 As Frederick Douglass observed in 1893, displaying insolence was sufficient excuse for lethal victimization: The crime of insolence for which the Negro was formerly killed and for which his killing was justified, is as easily pleaded in excuse now, as it was in the old time and what is worse, it is sufficient to make the charge of insolence to provoke the knife or bullet. This done, it is only necessary to say in the newspapers, that this dead Negro was impudent and about to raise an insurrection and kill all the white people, or that a white woman was insulted by a Negro, to lull the conscience of the north into indifference and reconcile its people to such murder. No proof of guilt is required. It is enough to accuse, to condemn and punish the accused with death. 234

Here, Douglass links his childhood observations of overseers’ punishment of enslaved blacks to the lynchings of emancipated blacks occurring after the Civil War. The same logic of slavery that called for punishment of black insubordination to enforce white supremacy, regardless of culpability for a crime, was revived in lynching and persists in the modern prison industrial complex.

The hundreds of “public torture lynchings” that were a feature of southern society until almost 1940235 call into question the dominant narrative that as civilizations have evolved, punishments have become more humane.236 Instead, southern whites sent a message through medieval forms of punishment: [A]rchaic forms of execution involving torture, burning, and mutilation . . . show[ed] that “regular justice” was “too dignified” for black offenders. The public torture of blacks accused of offending the racial order demonstrated whites’ unlimited power and blacks’ utter worthlessness. This nation’s rights, liberties, and justice were meant for white people only; blacks meant nothing before the law.237

Lynchings were the terrorist counterpart to state-supported debt peonage, convict leasing, disenfranchisement, and segregation laws that kept blacks subject to white domination.238 Lynching black people was not an exception to the law; it was part of the administration of justice and the larger system of legally sanctioned racial control.239

In the mid-twentieth century, the practice of lynching black people was replaced by the practice of subjecting them to the death penalty.240 These legally sanctioned hangings, which deliberately resembled lynchings of the past,241 purported to punish black men for raping white women.242 New methods of execution were also implemented: in the 1950s in Mississippi, crowds of white onlookers gathered at southern courthouses to witness the electrocutions of black men in portable electric chairs that traveled from town to town.243 After one such killing in Mississippi in 1951, the crowd on the lawn outside the courthouse “burst into cheers, then crushed forward in an effort to glimpse the corpse as it was removed from the building.”244 There was a smooth transition from lynching to state execution because “[a] culture that carried out so much public unofficial capital punishment could hardly grow squeamish about the official variety.”245

Capital punishment continues to function as it did in the slavery and Jim Crow eras to reinforce the subordinated status of black people.246 Today, states primarily use lethal injection in an attempt to make capital punishment “more palatable,”247 on the logic that this method bears less resemblance to lynching than electrocution or hanging.248 The fact that lethal injection carries its own risks of inflicting pain249 has not undermined its constitutional status: last Term, in Bucklew v. Precythe, 250 a divided Court was unmoved by evidence that Missouri’s lethal injection protocol would inflict cruel and unusual punishment on a prisoner, reasoning that “the Eighth Amendment does not guarantee . . . a painless death.”251 Although Bucklew was white, the Court’s decision upheld lethal state violence that is disproportionately imposed on black men accused of killing white people.252 Like the torture rituals of lynching, the death penalty survives in modern America as an uncivilized form of punishment because it continues to represent white domination over black people.

2. Not a Malfunction. — A first step to demonstrating the political illegitimacy of today’s carceral punishment system is finding its origins in the institution of slavery. A second step is understanding that prisons, police, and the death penalty function to subordinate black people and maintain a racial capitalist regime. Efforts to fix the criminal punishment system to make it fairer or more inclusive are inadequate or even harmful because the system’s repressive outcomes don’t result from any systemic malfunction.253 Rather, the prison industrial complex works effectively to contain and control black communities as a result of its structural design. Therefore, reforms that correct problems perceived as aberrational flaws in the system only help to legitimize and strengthen its operation. Indeed, reforming prisons results in more prisons.254

3. A Society Without Prisons. — An essential component of prison abolitionist theory is the principle that eliminating current carceral practices must occur alongside creating a radically different society that has no need for them.255 Prison abolitionists frequently define their work as consisting of two simultaneous activities, one destructive and the other creative. “It’s the complete and utter dismantling of prisons, policing, and surveillance as they currently exist within our culture,” Kaba explains.256 “And it’s also the building up of new ways of . . . relating with each other.”257 This duality is essential to abolition both because prisons will only cease to exist when social, economic, and political conditions eliminate the need for them and because installing radical democracy is crucial to preventing another white backlash and reincarnation of slavery-like institutions in response to the abolition of current ones.258

Moreover, the success of nonpunitive approaches developed by abolitionists for addressing human needs and social problems can be a compelling reason to abandon current dehumanizing and ineffective practices.259 Above all, it is their vision of a world without prisons that gives abolitionists their lodestar. Abolitionists are working toward a society where prisons are inconceivable — a world where its inhabitants “would laugh off the outrageous idea of putting people into cages, thinking such actions as morally perverse and fatally counterproductive.”260 Because the current carceral system is rooted in the logic of slavery, abolitionists must look to a radically different logic of human relations to guide their activism.261 That guiding philosophy cannot be invented theoretically, but must emerge from the practice of collectively building communities that have no need for prisons. Citing Du Bois’s critique of the post-Emancipation period in Black Reconstruction, Davis attributes the rise of prisons to the failure to institute a revolutionary “abolition democracy” that incorporated freed African Americans into the social order.262 Slavery could not be truly and comprehensively abolished without economic redistribution, equal educational access, and voting rights. In Davis’s words, “DuBois . . . argues that a host of democratic institutions are needed to fully achieve abolition — thus abolition democracy.”263 Understanding that prisons are not primarily designed to protect people from crime, but rather to address human needs and social problems with punitive measures, opens the possibility that we can eradicate prisons by addressing these needs and problems in radically different ways.264

#### The Affirmative’s legal approach to reformism is part of the polictical imaginary that works to regulate and control gendered and racialized bodies for the production of more soverign will. The historical account of reform checks that the logic of reform as palliative for social justice has allowed for the transformation of repression and violence and the perfection the carceral state

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Despite a vast array of critiques that have elucidated the ways in which the U.S. state is deeply invested in maintaining social relations of racism, capitalism, and heteropatriarchy, it is still quite commonplace to assume that to remedy social injustices one must turn first to the law. The pursuit of legal equality is frequently understood as the most pragmatic approach and a necessary first step to any kind of broad scale social change. In practice, however, legal equality struggles have failed to deliver substantive social justice for many groups. Frequently written off as a sign of the incompleteness of legal change, these failures are often invoked as evidence of the need for further legal reform rather than prompting the serious consideration of the law’s actual capacity to effect change that perhaps they should. Even those critical of legal strategies frequently fall back on them, citing legal reform as a necessary evil, the best that can be achieved in the current political context, or the first step toward broader changes. In this way, the law maintains a fierce hold on the political imagination. In this essay, I argue for the importance of severing that hold. The assumptions that legal reform is a pragmatic and necessary first step to social justice is a reflection of the boundaries that circumscribe what is imagined as politically possible within dominant discourse rather than the essential truths they are often taken to be. To the extent that legal interventions will always simultaneously reinforce the legal authority of the U.S. state, legal reform is bound to reiterate rather than transform unequal distributions of power. Pinning political possibilities to the law circumscribes the boundaries of change in very narrow ways. Instead, movements for social justice must seek to open up possibilities for transformation and evaluate their engagements with the law in terms of the future possibilities those engagements might open or foreclose. In other words, rather than presume legal equality is the answer, it is necessary to engage with the more complex questions about what freedom should and could look like and locate legal interventions in relation to this broader vision. In order to illustrate these points, I turn first to the historical example of emancipation and the consequent conferral of citizenship to formerly enslaved people, a quintessential moment in the expansion of legal rights in U.S. history. I look to Reconstruction Era struggles over the meaning of citizenship specifically because they mark a particularly defining moment in the reconfiguration of racial violence through the construct of the liberal subject. Given the ways that U.S. citizenship had been defined against blackness, the Fourteenth Amendment’s extension of citizenship rights to freed people forced the nation to grapple with what racially inclusive citizenship in a nation forged through racial violence would look like. Therefore, considering the legacies of this historical period raises crucial issues for contemporary struggles for inclusion, equality and the extension of legal rights, particularly given the role emancipation has played as an important historical reference point for these struggles. Emancipation marked a moment of great possibility, and freed people held broad and diverse visions of freedom that included reparations, land ownership, freedom of mobility, and other self-defined mechanisms of individual and collective self-determination.1 However, as Saidiya Hartman shows, legal recognition as citizens worked to constrain and curtail these more expansive possibilities of freedom by locking freedom for black people into an idiom defined by obligation, indebtedness, and responsibility.2 Rather than mitigate the significance of racial difference in the national imagination, the conferral of citizenship rights collaborated in “the persistent production of blackness as abject, threatening, servile, dangerous, dependent, irrational, and infectious”3 and obliged freed people to shoulder the responsibilities and burdens of perpetually having to demonstrate their preparedness for and deservingness of citizenship in a context where their blackness marked them as otherwise.4 This was evident in the ways that state institutions prioritized enforcing labor and sexual discipline amongst freed people.5 As the Virginia Freedmen’s Bureau’s Assistant Commissioner Orlando Brown wrote, if freed people were to be citizens, it was necessary “to make the Freedmen into a self-supporting class of free laborers, who shall understand the necessity of steady employment and the responsibility of providing for themselves and [their] families.”6 As Hartman shows, anti-black racism fundamentally shaped recognition as a liberal subject.7 While for white male citizens liberal individualism had afforded a kind of entitlement and self-determination, for freed people, recognition as a liberal subject rendered one responsible and therefore blameworthy.8 This was particularly evident in the workings of contract. A key distinction between the free person and the slave was selfownership signified primarily through the capacity to enter into contract.9 The understanding of legal freedom as self-possession meant that there was no inherent contradiction between subordination and freedom as long as subordination was secured through a freely entered into contract, a phenomenon most clearly illustrated by the labor and marriage contracts.10 For freed people who had both been structurally denied access to other material resources through slavery and who were subject to vagrancy laws that criminalized the refusal to enter into long-term labor contracts, contracts were very much coerced.11 However, despite the fact that they functioned to limit black people’s mobility, secure the hyper-exploitation of black labor, and provided the ground for the development of carceral institutions directed at the punishment of black people,12 entering into the labor contract became discursively understood as the quintessential sign of freedom.13 In fact, freed people were called upon to demonstrate their independence and deservingness of freedom by fulfilling the terms of the labor contract.14 In this way, contract provided a rubric for reinventing relations of subordination by obscuring national responsibility for the injustices of slavery and instead displacing this responsibility onto the shoulders of the formerly enslaved.15 Freedom was rewritten as obligation and independence manifested as a burden.16 Liberal concepts of freedom also functioned as a mechanism of regulating gender and sexuality through the marriage contract. While marriages and other kinship ties were not legally recognized under slavery, one of the first rights freed people gained was marriage recognition.17 However, as Katherine Franke points out, the extension of marriage rights was grounded in the belief that marriage as an institution would help civilize freed people by instilling heteropatriarchal gender norms.18 A key element of the rationalization of slavery was the construction of black inferiority as marked by a lack of the gender differentiation that was seen as characteristic of civilization.19 As Matt Richardson describes, “early attempts to congeal racist taxonomies of difference through anatomical investigation and ethnographic observation produced the Black body as always already variant and Black people as the essence of gender aberrance, thereby defining the norm by making the Black its opposite.”20 While marriage recognition did provide some tangible protections to married freed people, the belief in marriage as a civilizing institution simultaneously reiterated and valorized white supremacist beliefs that black people’s inferiority was evidenced in their lack of appropriate gender and sexuality.21 Additionally, the extension of marriage rights provided the ground upon which alternative sexual arrangements were criminalized and rationalized state austerity toward black people by constructing the self-sufficient household as the means to economic security.22 As a result of the legal recognition of black marriages, many freed people faced convictions for adultery, fornication, cohabitation, and the failure to provide for their legal dependents. 23 In this way, much like the labor contract, the extension of rights in fact created new obligations and new grounds upon which black people might be punished. Michel Foucault argues that one of the distinguishing features of the modern state is the emergence of biopower.24 Unlike sovereign power that is expressed in the capacity to take life, biopower is invested in the production of knowledge about and regulation of populations, processes of normalization and regularization, and ultimately the capacity to “make live” in particular ways.25 However, Foucault also notes that sovereign power does not simply disappear but rather that the state continues to exercise sovereign power alongside biopower.26 This process is delimited by state racism, which “introduc[es] a break into the domain of life that is under power’s control: the break between what must live and what must die.”27 As biopower becomes concerned with regulating the life of the population, racism marks the bodies upon which sovereign power must still be exercised. 28 Killing the internal or external racial threat becomes understood as a necessary element to making the population stronger.29 Scholars such as Ann Stoler and Scott Morgensen have elaborated on Foucault’s rather scant discussion of racism showing the ways in which biopower in fact emerges in relation to and as a function of colonial violence.30 Hartman’s analysis of anti-black racism and the constitution of the liberal subject complicates Foucault’s analysis and adds to scholarship that highlights the central role of racial violence in the elaboration of state power.31 As Hartman shows, during Reconstruction, black people were simultaneously subject to the normalizing and violent powers of the state, or perhaps more accurately normalizing processes became yet another vehicle for state violence.32 On the one hand, freed people were subject to constant surveillance as their moral capacity for citizenship was always in question, and any failure to comply with labor or marriage contracts was read as evidence of this incapacity.33 On the other hand, contractual freedom provided a basis for the state’s total disinvestment in black life, thereby making it more or less impossible to live up to the ideals of citizenship.34 In this way, the seeming contradictions between racial inclusion and racial violence were effectively displaced by locating responsibility for state violence in those who suffered from its effects. The black subject was thus brought into the fold of citizenship but as a subject always in need of reform or punishment. This historical example powerfully illustrates the ways in which inclusion into citizenship rights can operate as a technique of domination and the role the construct of the liberal subject plays in maintaining state racism.35 Certainly, laws have changed a great deal since Reconstruction. However, the differentiated structure of citizenship grounded in anti-black racism that Hartman describes still operates.36 For example, contemporary political struggles over marriage reflect the processes by which marriage can secure entitlements for one social group while exacting social obligations from another. On the one hand, a mainstream, predominantly white gay and lesbian movement seeks access to a wide array of property and social rights through same-sex marriage recognition.37 On the other hand, marriage incentive programs and increasingly punitive welfare regulations cast marriage and the economic self-sufficiency that supposedly comes with it as an obligation for welfare recipients who are most frequently represented as black women.38 Another terrain upon which racially stratified constructions of citizenship are evident is in struggles for state protection from violence. Legislation that has increasingly criminalized violence against women and hate crimes against LGBT people holds out the promise of greater equality and freedom for some by expanding a system of mass incarceration that targets women of color and queer and transgender people of color.39 In fact, the increasingly punitive and austere orientation of the U.S. welfare state and the expansion of the prison industrial complex can be understood as the logical extension of the processes of liberal subjection that Hartman outlines.40 On the one hand, the state disinvests in black life.41 On the other hand, processes of criminalization hold individuals responsible for the effects of that disinvestment, displacing responsibility for state violence onto those who feel its effects most and punishing those bodies for their structural location.42

#### The impact is continual objectification and treating BIPOC as test sites for more perfected modes of violence that gets normalized in the echo-chamber of the prison-industrial-complex.

McLeod 15 (Allegra M. McLeod -- Georgetown University Law Center, “Prison Abolition & Grounded Justice”, https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2502&context=facpub, UCLA Law Review, Pgs. 1173-1184)

Prisons are places of intense brutality, violence, and dehumanization.70 In his seminal study of the New Jersey State Prison, The Society of Captives, sociologist Gresham M. Sykes carefully exposed how the fundamental structure of the modern U.S. prison degrades the inmate’s basic humanity and sense of selfworth.71 Caged or confined and stripped of his freedom, the prisoner is forced to submit to an existence without the ability to exercise the basic capacities that define personhood in a liberal society.72 The inmate’s movement is tightly controlled, sometimes by chains and shackles, and always by orders backed with the threat of force;73 his body is subject to invasive cavity searches on command;74 he is denied nearly all personal possessions; his routines of eating, sleeping, and bodily maintenance are minutely managed; he may communicate and interact with others only on limited terms strictly dictated by his jailers; and he is reduced to an identifying number, deprived of all that constitutes his individuality.75 Sykes’s account of “the pains of imprisonment”76 attends not only to the dehumanizing effects of this basic structure of imprisonment—which remains relatively unchanged from the New Jersey penitentiary of 1958 to the U.S. jails and prisons that abound today77—but also to its violent effects on the personhood of the prisoner: [H]owever painful these frustrations or deprivations may be in the immediate terms of thwarted goals, discomfort, boredom, and loneliness, they carry a more profound hurt as a set of threats or attacks which are directed against the very foundations of the prisoner’s being. The individual’s picture of himself as a person of value . . . begins to waver and grow dim.78

In addition to routines of minute bodily control, thousands of persons are increasingly subject to long-term and near-complete isolation in prison. The Bureau of Justice Statistics has estimated that 80,000 persons are caged in solitary confinement in the United States, many enduring isolation for years.79

Solitary confinement routinely entails being locked for twenty-three to twenty-four hours per day in a small cell, between forty-eight and eighty square feet, without natural light or control of the electric light, and no view outside the cell.80 Persons so confined may be able to spend one hour per day in a “concrete exercise pen,” which, although partially open to the outdoors, is typically still configured as a cage.81

Raymond Luc Levasseur, who was held in solitary confinement at the Federal Correctional Complex at Florence, Colorado, a prison devoted to solitary confinement (also called administrative segregation (ADX)), wrote of the first year of his isolation: Picture a cage where top, bottom, sides and back are concrete walls. The front is sliced by steel bars. . . . The term “boxcar” is derived from this configuration: a small, enclosed box that [does not] move. . . . The purpose of a boxcar cell is to gouge the prisoner’s senses by suppressing human sound, putting blinders about our eyes and forbidding touch. . . . It seems endless. Each morning I look at the same gray door and hear the same rumbles followed by long silences. It is endless. . . . I see forced feedings, cell extractions . . . . Airborne bags of shit and gobs of spit become the response of the caged. The minds of some prisoners are collapsing in on them. . . . One prisoner subjected to four-point restraints (chains, actually) as shock therapy had been chewing on his own flesh. Every seam and crack is sealed so that not a solitary weed will penetrate this desolation . . . . When they’re done with us, we become someone else’s problem.82

Following thirteen years of solitary confinement, Levasseur was released from prison in 2004.83 The images that follow are not primarily intended to render more vivid this exploration of incarceration and punitive policing, but instead are incorporated to illustrate an important part of this Article’s argument: We must look at what these practices actually entail, especially because so often the ideology of criminal regulation renders much of the criminal process and its violent consequences opaque or even invisible to us. By removing the violent results of these regulatory approaches from the center of our attention, and often removing them entirely from our view, this same ideology persuades us of the necessity and relative harmlessness of incarceration and punitive policing. An abolitionist ethic, however, requires us to confront what penal regulation actually involves rather than assuming that creating a certain spatial distance—by putting particular persons in cages, or controlling individuals and communities through prison-backed police surveillance—satisfactorily addresses the social and political problems of violence, mental illness, poverty or joblessness, among others, that those persons and communities have come to represent.

This photograph portrays prisoners who are suffering from mental illness and subject to solitary confinement in an Ohio State Prison, held in cages for a “group therapy”session:

These persons’ bodies are revealed in this image as objects locked in isolated small spaces, shackled, rendered plainly less than human.

Cages are also used for booking mentally ill inmates in California prisons, as reflected in the record addressed in the U.S. Supreme Court’s opinion in Brown v. Plata:

This is a suicide watch cell, also used for isolation, in a state prison in California, drawn from a related court record:

In these cells, feces may be smeared on the walls as those detained mentally decompensate, the odor of rot and acute despair palpable.87

As incarcerated populations have increased, solitary confinement has emerged as a primary mechanism for internal jail and prison discipline, such that the actual number of individuals confined to a small cell for twenty-three hours per day remains unknown and may be significantly in excess of 80,000.88 Some people are sentenced to “Super-Max” facilities that only contain solitary cells; other people are placed in solitary confinement as punishment for violating prison rules or for their own protection.

Stays in solitary confinement are often lengthy, even for relatively minor disciplinary rule violations, and may be indefinite. For example, one young prisoner caught with seventeen packs of Newport cigarettes was sentenced to fifteen days solitary confinement for each pack of cigarettes, totaling more than eight months of solitary confinement.89 Another prisoner in New Jersey spent eighteen years in solitary confinement. Although his solitary confinement status was subject to review every ninety days, this prisoner explained that he eventually stopped participating in the reviews as he felt they were “a sham, with no real investigation,” and lost hope that he would ever be able to leave.90

Solitary confinement has become a widely tolerated and “regular part of the rhythm of prison life,”91 yet this basic structure of prison discipline in the United States entails profound violence and dehumanization; indeed, solitary confinement produces effects similar to physical torture. Psychiatrist Stuart Grassian first introduced to the psychiatric and medical community in the early 1980s that prisoners living in isolation suffered a constellation of symptoms including overwhelming anxiety, confusion, hallucinations, and sudden violent and self destructive outbursts.92 This pattern of debilitating symptoms, sufficiently consistent among persons subject to solitary confinement (otherwise known as the Special Housing Unit (SHU)), gave rise to the designation of SHU Syndrome.93

Partly on this basis, the United Nations Special Rapporteur on Torture has found that certain U.S. practices of solitary confinement violate the U.N. Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment.94 Numerous psychiatric studies likewise corroborate that solitary confinement produces effects tantamount to torture.95 Bonnie Kerness, Associate Director of the American Friends Service Committee’s Prison Watch, testified before the Commission on Safety and Abuse in America’s Prisons that while visiting prisoners in solitary confinement, she spoke repeatedly “with people who begin to cut themselves, just so they can feel something.”96 Soldiers who are captured in war and subjected to solitary confinement and severe physical abuse also report the suffering of isolation to be as awful as, and even worse than, physical torture.97

But despite its more apparent horrors, solitary confinement is simply an extension of the logic and basic structure of prison-backed punishment—punitive isolation and surveillance—to the disciplinary regime of the prison itself. Solitary confinement’s justification and presumed efficacy flows from the assumed legitimacy of prison confinement in the first instance. Prison or jail confinement isolates the detained individual from the social world he inhabited previously, stripping that person of his capacity to move of his own volition, to interact with others, and to exercise control over the details of his own life. Once that initial form of confinement and deprivation of basic control over one’s own life is understood to be legitimate, solitary confinement merely applies the same approach to discipline within prison walls. But the basic physical isolation and confinement is already countenanced by the initial incarceration.

In addition to the dehumanization entailed by the regular and pervasive role of solitary confinement in U.S. jails, prisons, and other detention centers, the environment of prison itself is productive of further violence as prisoners seek to dominate and control each other to improve their relative social position through assault, sexual abuse, and rape. This feature of rampant violence, presaged by Sykes’s account, arises from the basic structure of prison society, from the fact that the threat of physical force imposed by prison guards cannot adequately ensure order in an environment in which persons are confined against their will, held captive, and feared by their custodians.98 Consequently, order is produced through an implicitly sanctioned regime of struggle and control between prisoners.99

Rape, in particular, is rampant in U.S. jails and prisons.100 According to a conservative estimate by the U.S. Department of Justice, 13 percent of prison inmates have been sexually assaulted in prison, with many suffering repeated sexual assaults.101 While noting that “the prevalence of sexual abuse in America’s inmate confinement facilities is a problem of substantial magnitude,” the Department of Justice acknowledged that “in all likelihood the institution-reported data significantly undercounts the number of actual sexual abuse victims in prison, due to the phenomenon of underreporting.”102 Although the Department had previously recorded 935 instances of confirmed sexual abuse for 2008, further analysis produced a figure of 216,000 victims that year (victims, not incidents).103 These figures suggest an endemic problem of sexual violence in U.S. prisons and jails produced by the structure of carceral confinement and the dynamics that inhere in prison settings.

In one notable case that makes vivid these underlying dynamics, Roderick Johnson sued seven Texas prison officials for failing to protect him from victimization by prison gang members who raped him hundreds of times and sold him between rival gangs for sex over the course of eighteen months.104 Johnson, a gay man who had struggled with drug addiction, was incarcerated for probation violations following a burglary conviction.105 Rape was so prevalent in the facility where Johnson was incarcerated that it had a relatively fixed price: A former prisoner witness explained to the judge and jury at the trial that a purchased rape in that prison cost between $3 and $7.106 When Johnson sought protection from prison officials, he was told he would have to “fight or fuck.”107

Seeking to avoid liability at trial, one of the prison official defendants, Jimmy Bowman, explained that prison officials were not responsible for failing to protect Johnson because “an inmate has to defend himself.”108 Richard E. Wathen, the assistant warden, conceded that “[p]rison . . . is a violent place,” but he testified that prison officials ought not to be held accountable under the Eighth Amendment for repeated gang rapes of prisoners if there was little officials could have done to prevent the abuse: “I believe that we did the right thing then, and I would make the same decision today. . . . There has to be some extreme threat before we put an offender in safekeeping.”109

In any event, safekeeping in many detention settings only amounts to solitary confinement. And though prisoners are less likely to be subject to rape if they are held in relative isolation for their own protection, they are likely to suffer other substantial psychological harm, as previously noted.110 Ultimately, Johnson lost his civil case as the jury found for the prison officials.111 After his trial, Johnson relapsed in his addiction recovery, reoffended by attempting to steal money (presumably to buy drugs), and returned to serve out a further nineteen-year prison sentence.112

These horrific experiences of incarceration are not simply outlier forms of dehumanization and violence, but are produced by the structure of U.S. imprisonment—by the basic manner in which caging or confining human beings strips individuals of their personhood and humanity, and sets in motion dynamics of domination and subordination. In research widely known as the Stanford Prison Experiment, psychologists Philip Zimbardo and Craig Haney further elucidated these structural dynamics.113 Notwithstanding subsequent criticism, their experiment revealed how the basic structure of the prison in the United States tends toward dehumanization and violence.114 At the outset of their now famous (or infamous) experiment, Zimbardo and Haney placed a group of typical college students into a simulated prison environment on Stanford University’s campus.115 Zimbardo and Haney randomly designated certain of the students as mock-prisoners and others as mock-guards.116 What happened in the course of the six days that followed shocked the researchers, professional colleagues, and the general public.117 Zimbardo and Haney found that their“‘institution’ rapidly developed sufficient power to bind and twist human behavior . . . .”118 Mock-guards engaged with prisoners in a manner that was “negative, hostile, affrontive, and dehumanizing,” despite the fact that the “guards and prisoners were essentially free to engage in any form of interaction.”119 “[V]erbal interactions were pervaded by threats, insults and deindividuating references . . . . The negative, anti-social reactions observed were not the product of an environment created by combining a collection of deviant personalities, but rather the result of an intrinsically pathological situation which could distort and rechannel the behavior of essentially normal individuals.”120

The Stanford Prison Study has been criticized for methodological, ethical, and other shortcomings, but, despite its limitations, it attests to the dehumanizing dynamics that routinely surface in carceral settings.121 According to some critics, for instance, the Stanford Prison Study reflects the participants’ obedience and conformity to stereotypic behavior associated with prisoners and guards, rather than an effect produced exclusively and directly by the institutional environment of prisons.122 But even if the study’s critics are correct, it remains true that these same features of conformity and behavioral expectations obtain in actual prison environments. Therefore, whether the Stanford Prison Study measures institutional effects or the tendency of people in such institutional settings to conform to widely understood behavioral expectations associated with such settings, it is still the case that these settings will tend to reproduce powerful dynamics of dominance, subordination, dehumanization, and violence.

Of separate though equal concern, the violence and dehumanization of incarceration not only shapes those who are incarcerated, but produces destructive consequences for entire communities.123 People leaving prison are marked by the experience of incarceration in ways that makes the world outside prison more violent and insecure; it becomes harder to find employment and to engage in collective social life because of the stigma of criminal conviction.124 Further, incarcerating individuals has harmful effects on their families. The children, parents, and neighbors of prisoners suffer while their mothers, fathers, children, and community members are confined.125 Coming of age with a parent incarcerated generally has a substantial and negative impact on the life chances of young people.126

It is insufficient to simply seek to reform the most egregious instances of violence and abuse that occur in prison while retaining a commitment to prison backed criminal law enforcement as a primary social regulatory framework. Of course, less violence in these places would undoubtedly render prisons more habitable, but the degradation associated with incarceration in the United States is at the heart of the structure of imprisonment elucidated decades ago by Sykes: Imprisonment in its basic structure entails caging or imposed physical constriction, minute control of prisoners’ bodies and most intimate experiences, profound depersonalization, and institutional dynamics that tend strongly toward violence. These dehumanizing aspects of incarceration are unlikely to be meaningfully eliminated in the U.S., following decades of failed efforts to that end, while retaining a commitment to the practice of imprisonment. This is especially so in the United States for reasons related to the specific historical and racially subordinating legacies of American incarceration and punitive policing. Two hundred and forty years of slavery and ninety years of legalized segregation, enforced in large measure through criminal law administration, render U.S. carceral and punitive policing practices less amenable to the reforms undertaken, for example, in Scandinavian countries, which have more substantially humanized their prisons.127

#### Maintaining the prison system inevitabilizes racialized violence, this outweighs any attempt of a reform that the affirmative attempts to enact because they are embedded in the logic of carcereality.

McLeod 15 (Allegra M. McLeod -- Georgetown University Law Center, “Prison Abolition & Grounded Justice”, https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=2502&context=facpub, UCLA Law Review, Pgs. 1185-1199)

Alongside imprisonment’s general structural brutality, abolition merits further consideration as an ethical framework because of the racial subordination inherent in both historical and contemporary practices of incarceration and punitive policing. Michelle Alexander’s The New Jim Crow popularized a critique of incarceration as a means of racialized social control in the United States, but Alexander’s account was preceded and accompanied by earlier historical, psychological, literary, and sociological studies focused on how maintaining social order through incarceration emerged as a way to preserve the power relationships inherent in slavery and Jim Crow; these studies further demonstrate how punitive policing and imprisonment continue to be haunted at their very core by a dehumanizing inheritance of racialized violence.128 These various accounts elucidate how in the immediate aftermath of the Civil War the ascription of criminal status—leading to the classification and separation of citizens and the curtailment of their rights of citizenship—served as an instance of the process Reva Siegel has called “preservation through transformation,” defined as the evolution of a mode of status-enforcing state action in response to contestation of the status’ earlier manifestations (in this case, chattel slavery and later de jure racial segregation).129 Because this history of slavery and Jim Crow’s afterlife in criminal punishment practices is already addressed elsewhere, here I will only briefly examine the racially subordinating structure of punitive policing and imprisonment insofar asit isrelevant to an abolitionist framework and ethic.130

The significance of this material from an abolitionist standpoint is that it further underscores the constitutive role of degradation in core U.S. incarceration and punitive policing structures, as they fail to treat targeted persons as fully human and thus deserving of equal dignity and regard. Understanding practices of punitive policing and imprisonment as a legal and political technology developed, in large part, both through and for degradation and racial subordination calls for greater scrutiny of these techniques. In particular, critical analysis must attend to whether the purported ambitions of these techniques are meaningfully achieved and separable so as to disconnect the present applications of punitive policing and incarceration from their brutal racialized pasts. In this Subpart, I argue that the racial legacies of incarceration and punitive policing infect these practices to their core by shaping the tolerated range of violence in criminal law enforcement contexts, as well as by coloring basic perceptions of and ideas about criminality and threat.

The racialized dimensions of punitive policing and incarceration are not, of course, merely historical; they are vividly present in, among other places, the continued killings of African American men by white police officers.131 As recently as the 1990s, some Los Angeles police officers referred to cases involving young African American men as “N.H.I.” cases, standing for “no humans involved.”132 In 2003, after a Las Vegas police officer shot and killed a black man named Orlando Barlow, who was on his knees, unarmed, and attempting to surrender, an investigative series by the Las Vegas Review-Journal revealed that the officers in the unit celebrated the shooting by ordering t-shirts portraying the officer’s gun “and the initials B.D.R.T. (Baby’s Daddy Removal Team)—a racially charged term and reference to Barlow, who was watching his girlfriend’s children before he was shot.”133 The acronym B.D.R.T. continues to circulate in police culture, as do the associated racially subordinating associations directed at African American men. For example, online stores that sell police-themed clothing continue to market B.D.R.T. t-shirts, and, in 2011, officers with the Panama City, Florida, Police Department adopted the acronym for their kickball police league team.134 Whereas Alexander argues the legacy and persistence of these dynamics require a social movement to markedly reduce incarceration and disproportionate minority confinement, my analysis entails in addition (or instead) that the structural character of these racial legacies requires a movement committed to the thoroughgoing replacement (and elimination) of these imprisonment and punitive policing practices with other social regulatory frameworks, along with a critique and rejection of many of criminal law administration’s ideological entailments.135

The racialized constitution of imprisonment and punitive policing began in the South even before the Civil War, though in the pre–Civil War period the relatively small population of Southern prison inmates were primarily white, as most African Americans were held in slavery.136 Although the legal institution of slavery was abolished with the end of the Civil War, the work necessary to incorporate former slaves as political, economic, and social equals was neglected, and in many instances actively resisted.137 In particular, criminal law enforcement functioned as the primary mechanism for the continued subordination of African Americans for profit.138 During Reconstruction, Southern legislatures sought to maintain control of freed slaves by passing criminal laws directed exclusively at African Americans.139 These laws treated petty crimes as serious offenses and criminalized certain previously permissible activities, but only for the “free negro.”140 Specific criminalized offenses included “mischief,” “insulting gestures,” “cruel treatment to animals,” “cohabitating with whites,” “keeping firearms,” and the “vending of spirituous or intoxicating liquors.”141

These “Black Codes” were adopted by legislatures in Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Texas.142 These laws quickly expanded Southern inmate populations and transformed them from predominantly white to predominately African American.143 Convict leasing was exempted from the Thirteenth Amendment’s prohibition on slavery, which outlawed involuntary servitude except in the case of those “duly convicted.”144 Criminal law enforcement was then used to return African Americans to the same plantations on which they had labored as slaves, as well as to condemn thousands to convict leasing operations, chain gangs, and prison plantations.145

Even before the Civil War, penitentiaries in the North contained a disproportionate number of African Americans, many of them former slaves.146 New York legislated the emancipation of slaves and the founding of the state’s first prison on the same date in 1796.147 In Alexis de Tocqueville’s and Gustave de Beaumont’s classic 1883 account, On the Penitentiary System in the United States and Its Application in France, the two wrote: “[I]n those [Northern] states in which there exists one Negro to thirty whites, the prisons contain one Negro to four white persons.”148

There are many similarities in form between slavery and the early Northern penitentiaries. Both subordinated their subjects to the will of others, and Southern slaves and inmates alike followed a daily routine dictated by white superiors.149 Both forced theirsubjects to rely on whitesfor the fulfillment of their basic needs for food, water, and shelter. Both isolated them in a surveilled environment. The two institutions also frequently forced their subjects to work for longer hours and less compensation than free laborers.150 Although the basic structure of Northern prisons that purported to rehabilitate through a routine of solitude and discipline may seem at first blush quite removed from the dehumanizing and violent dynamics that characterized the Southern convict experience, one dehumanizing feature remained markedly constant: Even in rehabilitative contexts in the North, the penitentiary aimed to strip and degrade the inmate of his former self so as to reconstitute his being according to the institution’s preferred terms. And as commentators, such as Charles Dickens, noted at the time, the “slow and daily tampering with the mysteries of the brain” entailed by this form of incarceration could be “immeasurably worse than any torture of the body.”151

In the Reconstruction era South, whether sentences were short or long, convicted persons, especially African Americans, were routinely conscripted into vicious conditions of forced labor.152 For example, although the sentence for the crime of intermarriage in Mississippi was confinement in the state penitentiary for life, convictions were often punishable by a fine not in excess of fifty dollars.153 If a person was unable to pay, that person could be hired out to any white man willing to pay the fine.154 Preference was given to the convict’s former master, who was permitted to withhold the amount used to pay the fine from the convict’s wages.155 This common practice resulted in situations where freedmen would spend years, even entire lifetimes, working off their debt for a small criminal fine.156

By contrast to this sort of peonage and criminal surety operation, the convict lease operated through a bidding system wherein companies would offer a set amount of money per day per convict, and the highest bidder would win custody of the group of convicts and be entitled to their labor.157 Leased convicts worked on farms, constructed levees, plowed fields, cleared swampland, and built train tracks across the South.158 They moved from work site to work site, usually in a rolling iron cage, which also served as their living quarters during jobs.159 Convict lessors justified their use of convict labor because they claimed free labor was prohibitively costly; but as bidding expanded, the daily price of a convict’s labor increased and free labor began to compete.160 Eventually, it was this trend toward parity in the cost of free and convict labor, more than any outrage at the brutal exploitation of the convict lease, which led to the abolition of the lease and its replacement by the chain gang.161 Chain gangs, unlike the convict lease, worked on maintaining public roads and performed other hard labor in the public rather than private sector.162

State prisons also directly used African Americans for their labor, working prisoners in the fields for profit and holding them at night in wagons that were guarded by white men with rifles and dogs.163 Some prisons were actually constructed on former plantations, and consisted of vast tracts of land used for farming; white prisoners were appointed to serve as guards or trusties, assistants to the regular prison administrators.164 The state prison plantations could even generate considerable profit. For instance, in 1917, Parchman Prison farm in Mississippi contributed approximately one million dollars to the state treasury through the sale of cotton and cotton seed, almost half of Mississippi’s entire budget for public education that year.165 By 1917, African Americans still represented some ninety percent of the prison population in Mississippi.166 The most dehumanizing abuses in these various settings were directed exclusively at African Americans.167 Southern states enacted statutes to prohibit the confinement of white and African American prisoners in shared quarters. In 1903, Arkansas, for example, passed a law declaring it“unlawful for any white prisoner to be handcuffed or otherwise chained or tied to a negro prisoner.”168 It is thus that the practices of U.S. criminal law administration were forged through the racial dehumanization of African American people.169

Whereas the connections between slavery and the Northern penitentiary were further removed, the penal state in the South preserved and expanded the African American captive labor force and maintained racial hierarchy through actual incarceration or threat of criminal sanctions, as well as through the conditions of confinement. As recently as 1970, in Holt v. Sarver, 170 a District Court in Arkansas upheld the brutal exploitation of working convicts (almost all of whom were African American), concluding that the “[Thirteenth] Amendment’s exemption manifested a Congressional intent not to reach such policies and practices.”171 The awful mistreatment directed at convicted persons under the convict lease, chain gang, and prison plantations of the South was in these ways inextricably tied to the afterlife of slavery and the failures of abolition as a positive program of the formW.E.B. Du Bois envisioned.

In the Northern and the Western United States, prisons were used for solitary work and sought to reform inmates with a strictly controlled routine of labor and bible study. Prisoners were still usually segregated by race; African Americans were often relegated to substandard locations.172 Leasing was applied almost exclusively to African Americans convicted of crimes, because the Leasing Acts set aside prison sentences for persons serving ten or more years, and white convicts generally received more significant sentences because the courts rarely punished whites for less serious crimes.173 Very few whites convicted for petty criminal offenses were sent to prison, and when such sentencing occurred, whites routinely received quick pardons from the governor.174

Beyond criminal punishment, criminal law administration was also entwined with practices of racial subordination through lynching. Even in the North, lynch mobs would gather by the thousands outside the jailhouse or courthouse and wait until African Americans were released from pretrial detention.175 In some cases, criminal law enforcement officials themselves actively participated in the lynch mobs.176

Further instances of the direct entwinement of criminal law administration and overt racial violence abound throughout the twentieth century. Notable examples include the Scottsboro Boys Cases of the 1930s.177 The Scottsboro Cases involved the hurried convictions of nine young African American men, all sentenced to death by white jurors.178 The limited procedural protections afforded to these young men—the mob-dominated atmosphere surrounding their convictions, the denial of the right to counsel until the eve of trial rendering any assistance necessarily ineffective, and the intentional exclusion of blacks from the grand and petit juries that first indicted and later convicted the young men179—and their challenges to the U.S. Supreme Court arguably mark the birth of constitutional criminal procedure.180

This entwinement of racialized violence and the criminal process runs from the 1930s through the end of the twentieth century. It is prominently illustrated by, among other similar episodes, the brutal torture perpetrated against countless African American men over two decades, from the 1970s to 1990s, by white Chicago police officer John Burge and his deputies, who used suffocation, racial insults, burning, and electric shocks to coerce confessions, ultimately leading then-Illinois Governor George Ryan to commute all death sentencesi n the state.181

These uses of criminal law administration as a central means of resisting the abolition of slavery, Reconstruction, and desegregation, continue to inform criminal processes and institutions to this day by enabling forms of brutality and disregard that would be unimaginable had they originated in other, more democratic, egalitarian, and racially integrated contexts. As W.E.B. Du Bois predicted, this legacy of managing abolition and reconstruction in large part by invoking criminal law in racially subordinating ways, contrasted sharply with a different abolitionist framework, one that would have incorporated freed-persons into a reconstituted democracy: “If the Reconstruction of the Southern states, from slavery to free labor, and from aristocracy to industrial democracy, had been conceived as a major national program of America, whose accomplishment at any price was well worth the effort, we should be living today in a different world.”182 Our historical inheritance and this legacy illuminates the connection between the abolitionist path not taken in the aftermath of slavery and what ought to be an abolitionist ethos in reference to practices of prison-backed criminal regulation today.

Instead, as the American economy underwent a shift from industrial to corporate capitalism in the 1970s, resulting in the erosion of manufacturing jobs occupied by poor and working class people in the inner cities, especially African Americans, a distinct underclass emerged, with few options for survival other than low wage work, welfare dependence, or criminal activity.183 This transformation in the U.S. economy contributed substantially to the emergence of a population that would be permanently unemployed or underemployed.184 In turn, federal, state, and local governments invested greater resources in coercive mechanisms of social control,185 prioritizing criminal law enforcement over other social projects, such as urban revitalization and expanded social welfare and education spending.186

In 1972, just before the National Advisory Commission on Criminal Justice Standards and Goals published the 1973 report noted at the beginning of this Article, there were 196,000 inmates in all state and federal prisons in the United States—a population housed in conditions that the Commission believed justified a ten year moratorium on prison construction.187 By 1997, however, the prison population had surged to 1,159,000188 and in 2002 there were a record 2,166,260 people housed in U.S. prisons and jails.189

This rapidly increasing population was characterized, as we now well know, by glaring racial asymmetries: As of 1989, one in four African American men were in criminal custody of some sort.190 In certain municipalities, the imprisonment rates for African Americans were even more striking. In 1991 in Washington D.C., 42.5 percent of young African American men were in correctional custody on any given day.191 In Baltimore during 1990, 56 percent of the city’s African American males between ages eighteen and thirty-five were either in criminal justice custody or wanted on warrants.192 By 2004, more than 12 percent of African American men nationally between the ages of twenty-five to twenty-nine were incarcerated in prison or jail.193 Although rates of incarceration and disproportionate minority confinement have declined very modestly in recent years because of fiscal crises at both the state and federal level, as well as a global decrease in crime, African American men remain subject to criminal confinement and arrest at ratest hat far exceed their representation in the population.194

Prisoners are generally no longer subjected to chain gangs or hard physical labor for profit, although these practices persisted in certain jurisdictions through the end of the twentieth century.195 Currently, another form of incarceration and punitive policing has emerged, one that effectuates the mass containment and exercises mass racial discipline, leading to the elimination of large numbers of poor and especially poor African American people from the realm of civil society. A felony conviction, disproportionately meted out to African Americans, Latinos, and indigent whites, results in a permanent loss of voting rights in most states, employment bars in numerous professions, and a lifetime ban on federal student aid, among other damaging consequences.196 These consequences further exacerbate the physically segregative effects of incarceration post-release, inhibiting opportunities for meaningful integration available to persons and communities most affected by incarceration.197 These consequences of conviction constitute a basic denial of equal citizenship, and, as such, conviction recreates the civil death associated with enslavement.

Further, the criminal process still operates on a for-profit model importantly distinct, but not entirely removed from, earlier systems of confinement for profit that were the direct outgrowth ofslavery.198 Prisoners’ labor does not itself directly provide a significant source of profit to a lessor or single business as it once did. Instead, large-scale incarceration—marked by prisoners’ suffering, dehumanization, and violence—generates a market for the construction of facilities to house approximately two million prisoners and jail inmates; the technology and mechanisms to maintain almost seven million persons under criminal supervision; and the employment of thousands of prison guards, prison staff, probation and parole officers, and other penal professionals.199 The large sums of money poured into prisons and criminal surveillance have drawn major firms and a variety of Wall Street financiers to prison construction.200 Underwriting prison construction through private finance and the sale of tax-exempt bonds has served as a lucrative undertaking in itself.201 Though only used to manage a small portion of detention facilities, private corrections corporations, such as Corrections Corporation of America and Wackenhutt, submit bids to governments to manage different detention systems, especially immigration detention, and guarantee to provide these services at a lower cost than the state is able to deliver.202 Additionally, vendors of everything from stand alone cells, hand and foot cuffs, razor wire, and shank proof vests make considerable profits from prisons.203 A single contract to provide prisoners in the state of Texas with a soy-based meat substitute, awarded to VitaPro Foods, went for $34 million per year.204 The profits for phone service inside prison walls make food contracts seem insignificant.205

Meanwhile, prisoners continue to serve as a captive labor force, working for approximately one dollar per hour, and often less.206 Numerous firms use prisoners as a component of their workforce in the United States, as do government entities that use prison labor to manufacture products that are then sold to other government agencies.207 Although prisoners are no longer forced to work by or for the state (as they were in the South well into the twentieth century), the perverse profit motive that spurred the convict lease system with all its horror might be understood in historical context as preserved yet transformed in these various other guises.

Criminal fines and fees generate substantial additional revenue for the criminal process itself and for certain municipalities and other jurisdictions.208 And the grossly disproportionate number of African Americans imprisoned, arrested, criminally fined, and stopped by police further accentuates the associations between earlier forms of racialized penal subordination for profit and the contemporary racial dynamics of criminal law administration.209

The deep, structural, and both conscious and unconscious entanglement of racial degradation and criminal law enforcement presents a strong case for aspiring to abandon criminal regulatory frameworks in favor of other social regulatory projects, rather than aiming for more modest criminal law reform. Multiple studies have confirmed the implicit, often immediate, and at times unconscious associations made between African Americans, criminality, and threat.210 These associations, borne of this history, continue to be reproduced by these structures and by the development of punitive policing and incarceration practices that treat certain people as not fully human. To provide but a few examples, psychologists Jennifer Eberhardt, Philip Atiba Goff, and their collaborators studied how individuals in various scenarios determine who “looks like a criminal.”211 Perhaps not surprisingly, controlling for other factors, the study’s subjects chose people who looked African American, particularly those who looked more “stereotypically” African American and those coded as having more “Afrocentric” features.212 In a similar study, psychologists Brian Lowery and Sandra Graham studied subjects’ responses to juvenile arrestees. When the study’s subjects were primed to understand the youth as African American, the juveniles were judged to be more blameworthy and deserving of harsher and more punitive treatment.213 Consciously expressed egalitarian racial beliefs did not significantly moderate the effects of implicit biasin these contexts.214

Conscious and unconscious biases on the part of police officers often have lethal outcomes. Shooter and weapons biases, for instance, are well-documented. In researching how subjects behave in simulated video game shooting settings, multiple studies have found that the likelihood of shooting a suspect who is armed or possesses a device other than a gun significantly increases when the suspect is African American and decreases when the suspect is white.215 This is true both for white and African American shooters.216 Similarly, psychologist Philip Atiba Goff and his colleagues, in a study examining archival material from actual death penalty cases in Pennsylvania, found that defendants depicted as implicitly “apelike” were more likely to be executed than those who were not; African Americans were more likely to be depicted as implicitly “apelike” than whites.217 Judges, jurors, and prosecutors in related studies likewise reflect considerable racial bias in their determinations at numerous criticalstages of the criminal process.218

The landscape of contemporary criminal law enforcement is thus, in significant and fundamental respects, part of the afterlife of slavery and Jim Crow, and this legacy is deeply implicated in criminal law’s persistent practices of racialized degradation. Perceptions of criminality, threat, and the prevalence of violence, informed by these racialized material histories and dehumanizing associations, operate at all levels of criminal law administration, often without the relevant actors’ awareness. This suggests something of how difficult it would be to remove racialized violence from prison-backed policing and imprisonment while retaining these practices as a primary mechanism of maintaining social order. The racialized degradation associated with criminal regulatory practices, then, compels an abolitionist ethical orientation on distinct and additional grounds apart from the general dehumanizing structural dynamics addressed in the preceding Subpart, particularly insofar as there are other available means of accomplishing crime-reductive objectives.

If we are indeed committed to democratic and egalitarian values, the need to scrutinize closely the other purported purposes of the criminal process presses with increasing urgency. So, too does the question of whether there are alternative regulatory frameworks and approaches that might achieve similar ends with less racially encumbered and violent consequences.

#### The Alternative is to BURN DOWN institutions of governance and reform—fantasies of civil participation fail to resist the violence executed by the state and accommodate its continuation through a belief that the system can be corrected. Abolition as an insurgent politics is a refusal to negotiate and seek recognition from the state in order to lead to change.

**Abraham’18** (Katherine Kelly Abraham Burn it Down: Abolition, Insurgent Political Praxis, and the Destruction of Decency,” Abolition: A Journal of Insurgent Politics 1, no. 2 April 2018)//JP

This journal calls for abolition, a call implicitly asserting that contemporary sociopolitical and economic institutions are inherently unfixable and beyond resuscitation, reform, or rescue. The fantasy of radically changing political structures from within is simply not a viable political option for those concerned with the ultimate destruction of the mechanisms of carnage that shape modern life and its attendant regimes of governance, such as: the global war machine, the prison industrial complex, transnational resource extraction, and the national sacrifice areas (Ortiz 1992) generated in the wake of these lethal socioeconomic configurations and expressions of empire.[[i]](https://abolitionjournal.org/burn-it-down/#_edn1) Rather than drawing from these regimes of death for social and legal recognition, power, and welfare—what we broadly refer to as the “state”—consider what it would mean to the modern ordering of life to utterly destroy the state, to refuse its seductions and ruses of power, to incinerate it until nothing remains but ash?Our imperative to “burn it down” draws from a rich tradition of scholarship that positions the state as a technique, practice, and effect of modern governance and its optimization, rationalization, and normalization. Following Timothy Mitchell, we define the state as a “network of institutional mechanisms through which a certain social and political order is maintained” (Mitchell 2006, 175). In the words of Michel Foucault, the state functions as “a schema of intelligibility for a whole set of already established institutions, a whole set of given realities” (Foucault 2004, 286). As a schematic and reality, we perceive the state as providing a legible matrix for the parameters of self-management and self-conduct: for social and political order. As Achille Mbembe insists, the adoption of state or sovereign power is “a twofold process of self-institution and self-limitation” (Mbembe 2003, 13). Attendant to the important critiques made by Fanon, we argue that this twofold process remains shaped by Euro-American colonial mores at the “objective as well as subjective level” of experience and perception (Fanon 2008, xv). That is to say, we understand state power as generative of inherently colonial relations of rule: relations that produce contemporary sociopolitical, juridical, and affective orientations, sensibilities, and subjectivities.[[ii]](https://abolitionjournal.org/burn-it-down/#_edn2) As Glen Sean Coulthard argues, “colonial relations of power are no longer reproduced primarily through overtly coercive means, but rather through the asymmetrical exchange of mediated forms of state recognition and accommodation” (Coulthard 2014, 15). We add that the state accomplishes this mediation vis-à-vis the internalized politics of decency: an argument to which we shortly return. The project of this piece is not to think about how to make life more livable under current regimes of power or to ponder building something new or altered in the state’s place. Rather, we imagine alternative worlds based in the total abolition of these regimes because of their astonishingly responsive capabilities, which render profound social transformation impossible. The state successfully incorporates its margins and continually extends its representation in order to further its grasp on the body politic (for instance, the inclusion of women in combat roles or the Supreme Court ruling on same sex marriage). Simultaneously, and without coincidence, the state manipulates its boundaries through violent forms of capital accumulation and proxy wars, marks borders with fences and deportations, and uses its streets as a costly theater for subjects that deviate from its aims. However, the fundamentally lethal interests of state power have not changed since the European invasion of the Americas. Instead, global technologies of communication and visibility have forced the state to pivot, creating the illusion of a more transparent, democratic, and equal society. Nonetheless, the state relies on fantasies of “individual” participation (civil rights, voting, recognition, and protest) as much as it relies on its authoritarian power to revoke those fantasies without notice or recourse. As the violences executed by the state continue to shape everyday life in this country, we believe that it is by no means extreme to posit that one solution to these ills is to destroy—to burn down—contemporary institutions of governance, policing, and comfort, to cooperatively dismantle the workings of the state. For us, a radical project of abolition and insurgent political praxis refuses to negotiate with the state, or seek recognition from any of its bureaucratic apparatuses, in order to secure the small-scale concessions that only colonize and quell resistance. Political projects of compromise with the state have proven insufficient—especially in addressing everyday violence, such as police brutality, that continues to erupt unchecked in the face of mainstream “social justice” organizing. Ultimately, this organizing and activism treats the state as a central means of stopping the very political violence that insures its core function, operation, and maintenance.

### 2

#### Interpretation: Workers is a generic bare plural. The aff may not defend a just democracy ought to recognize the unconditional right of a subset of workers to strike.

#### Violation: They do

#### Vote neg:

#### 1] Limits – you can pick any worker in any occupation– it explodes neg prep and leads to random worker of the week affs bc there’s more than a 1000 different occupations.