

Draft – do not cite, share, quote etc.

REFORM AND STRUGGLES OVER LIFE, DEATH, AND
DEMOCRACY

*Amna A. Akbar**

(forthcoming *Yale Law Journal* 2023)

Table of Contents

<i>Introduction.....</i>	<i>2</i>
<i>I. Movements Against Racism and Capitalism.....</i>	<i>20</i>
<i>II. Reform and Revolution.....</i>	<i>38</i>
A. Reformism.....	42
B. Non-Reformist Reforms.....	48
1. Democratic Socialism.....	50
2. Prison Abolition.....	55
3. Communism and Queer Indigenous Feminism.....	58
<i>III. Reorientations.....</i>	<i>60</i>
A. Antagonistic and Conflictual.....	63
1. Material.....	65
2. Ideological.....	67
3. Strategies and Tactics.....	68
B. Time and place.....	69
1. Strength of the movement and organization.....	71
2. The balance of forces within the state and political economy	73
3. Particularities of Demands.....	77
C. Mass and democratic organization.....	78
D. Preparing to govern.....	81
E. A note on the rights debate.....	81

* Author's note. Thanks to: Abbye Atkinson, Amy Cohen, Amy Kapczynski, Anna Roberts, Angela Harris, Asli Bali, Aziz Rana, César Cuauhtémoc García Hernández, Daria Roithmayr, Felix Chang, James Brandt, Jocelyn Simonson, K-Sue Park, Karen Tani, Niko Bowie, Ryan Doerfler, Sameer Ashar, Silky Shah, Veena Dubal, TKTK. Workshops: Yale Race, Care, Capitalism; Ohio State; USC. Library support Kaylie Vermillion and Natasha Landon TKTK. Research assistants TKTK. Special thanks to YLJ student editors.

IV. Actually Existing Sites of Struggle.....	86
A. Abolition.....	92
B. Decommodification and Decolonization.....	96
C. Democratization.....	109
Conclusion.....	113

INTRODUCTION

In the United States, law is idealized a product of tripartite government, an exercise of democratic process or popular will held in place by checks and balances. But whichever branch you examine—the courts, the legislatures, or the Executive—none have any clean claim to democratic process or popular will. The Supreme Court is composed of nine Justices with life tenure and the power to veto legislation and executive action; Congress is defined by corporate money and gerrymandered districts with two Senators per state regardless of population; and the route to the Presidency is carved out of the Electoral College.¹ Both parties have closer ties to the billionaires and millionaires and each other than the people they purport to represent. More than half of Congress is made up of millionaires, corporations are people, and money is speech.² With policing and incarceration a central engine of the state and law itself, the ground is altogether unfirm for any claim of democracy.³ Anti-democratic

¹ See generally Pamela Karlan, *The New Countermajoritarian Difficulty*, 109 CALIF. L. REV. 2323 (2021) (arguing that the Electoral College, along with the Senate, functions to disproportionately empower a numerical minority of white conservatives); Franita Tolson, *Countering the Real Countermajoritarian Difficulty*, 109 CALIF. L. REV. 2381 (2021) (raising a similar argument). See also Kevin A. Young, Tarun Banerjee, Michael Schwartz, *Levers of Power: How the 1% Rules and What the 99% Can Do About It* 187 (2020) (“The dominance of corporates . . . derives first and foremost from their control over investment of capital. This gives them enormous economic, political, and social power, since they can disrupt, threaten to disrupt, the functioning of the entire society by withholding capital.”).

² Karl Evers-Hillstrom, *Majority of Lawmakers in the 116th Congress Are Millionaires*, OPENSECRETS (Apr. 23, 2020, 9:14 AM), <https://www.opensecrets.org/news/2020/04/majority-of-lawmakers-millionaires> [https://perma.cc/FNR4-R8QZ]. See Nikolas Bowie, *Corporate Personhood vs. Corporate Statehood*, 132 Harv. L. Rev. 2009, 2013, 2025 (2019) (book review) (describing corporations as “governments,” and observing that “corporate statehood, not corporate personhood, has been the dominant metaphor underlying the Supreme Court’s corporate rights cases of the past two centuries”—that is, until fairly recently).

institutional features in our system of laws are rife.⁴

Under neoliberalism, law's aspiration cannot even be described as democratic or popular. Law has become an exercise in technocratic expertise aiming to hobble state function and funnel all manner of social problems for either the market or the prison to solve—privatizing and criminalizing like PacMan⁵—while courts effectuate evictions, debt

³ See, e.g., Joe Soss & Vesla Weaver, *Police Are Our Government: Politics, Political Science, and the Policing of Race-Class Subjugated Communities*, 20 ANN. REV. POL. SCI. 565 (2017) (police are the face and modality of the state in race-and-class subjugated communities); MICOL SIEGEL, *VIOLENCE WORK: STATE POWER AND THE LIMITS OF POLICE* (2018) (policing is a form of violence work); Jocelyn Simonson, *Police Reform through a Power Lens*, 130 YALE LAW JOURNAL 778 at 906 (“the criminal legal system is itself antidemocratic: by inflicting punishment and mass enforcement and surveillance, the criminal legal system takes away political power through a variety of simultaneous and complementary means (citing Janet Moore, *Democracy Enhancement in Criminal Law and Procedure*, 2014 UTAH L. REV. 543; Dorothy E. Roberts, *Democratizing Criminal Law as an Abolitionist Project*, 111 NW. U. L. REV. 1597 (2017))); Traci Burch, *Trading Democracy for Justice: Criminal Convictions and the Decline of Neighborhood Political Participation* 133 (2013) (“the criminal justice system has a demobilizing effect on disadvantaged communities”); AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL* 18-22 (2014) (theorizing the criminal law and carceral power as central to state function and as undermining democracy and citizenship of directly impacted people).

⁴ Nikolas Bowie, *Antidemocracy*, 135 HARV. L. REV. 160, 172-74 (2021) (arguing that antidemocracy is structured into the state and our laws, and it involves “the protection of property-based social hierarchies”); Aziz Rana, *It Would Be Great if the United States Were Actually a Democracy*, JACOBIN (Feb. 16, 2021), <https://www.jacobinmag.com/2021/02/us-constitution-interview-aziz-rana> [https://perma.cc/3PVY-M8K8] (“The central eighteenth-century architects of the federal constitution were deeply suspicious of mass democracy . . . [and] created a legal-political framework that placed massive roadblocks in the path of ordinary people using the vote to exercise majority rule” and simultaneously “conductive to capture by empowered elites—particularly corporations and forces of white supremacy”); Jacob M. Grumbach, *Laboratories against Democracy: How National Parties Transformed State Politics* 195 (2022) (arguing that the “nationalization of the parties has upended the role of states as ‘laboratories of democracy,’ that customize policy based on local conditions, converting Republican states in particular to laboratories *against* democracy.”). See also Jeremy Waldron, *The Core of the Case Against Judicial Review*, 115 YALE L.J. 1346, 1353 (2006) (“By privileging majority voting among a small number of unelected and unaccountable judges, [judicial review] disenfranchises ordinary citizens and brushes aside cherished principles of representation and political equality”).

⁵ Ursula Huws, *Decommodification in the twenty-first century*, Verso Books Blog (Feb. 18, 2021), <https://www.versobooks.com/blogs/5001-decommodification-in-the-twenty-first-century> (observing that one of the “crucial features” of the post-war welfare

collection, deportation, incarceration, and family separation.⁶ Neoliberalism has been quite successful on its own terms but produced other contradictions: Environmental and infrastructural catastrophe are a feature of life across the United States into its colonies and territories, as are depressed wages, widespread hunger, ballooning debt, reduced life expectancy, routine police violence, sprawling housing insecurity and gentrification, and a healthcare system that puts profit over people.⁷ No wonder public faith in the U.S. government is hovering near record lows.⁸

state was “massive decommodification” including the “introduction of universal services such as health and higher education, free at the point of use . . . [and] the nationalisation [sic.] of key industries such as road haulage, milk distribution, coal mining, and steel production, as well as infrastructure such as railways, energy and telecommunications”). Huws theorizes that neoliberalism required and produced a “global wave of recommodification.” *Id.*

⁶ There is a growing body of scholarship showcasing the wide array of courts and their social function. *See, e.g.,* Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964 (2021); Daniel Wilf-Townsend, *Assembly-Line Plaintiffs*, 135 HARV. L. REV. 1704 (2022); Shaun Ossei-Owusu, Response, *Kangaroo Courts*, 134 HARV. L. REV. F. 200 (2021); Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359 (2022); Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, Essay, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243 (2022); Lauren Sudeall & Daniel Pasciuiti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 COLUM. L. REV. 1365 (2021); Matthew Clair & Amanda Woog, *Courts and the Abolition Movement*, 110 CALIF. L. REV. 1 (2022); Angelica Chazaro, *Due Process Deportations*, NYU L. Rev. (forthcoming, draft on SSRN); Lina Foster, *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*, 11 U. Miami Race & Soc. Just. L. Rev. 1 (2020).

⁷ E.g., Centers for Disease Control and Prevention, Press Release, Life Expectancy in the U.S. Dropped for the Second Year in a Row in 2021, Aug. 31, 2022, https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/20220831.htm; Emily Baumgaertner, *As Hospitals Close Children’s Units, Where does that Leave Lachlan?*, NY Times (Oct. 11, 2022), <https://www.nytimes.com/2022/10/11/health/pediatric-closures-hospitals.html>; Noam Levy, *Some hospitals rake in high profits while their patients are loaded with medical debt*, NPR (Sept. 28, 2022), <https://www.npr.org/sections/health-shots/2022/09/28/1125176699/some-hospitals-rake-in-high-profits-while-their-patients-are-loaded-with-medical>. A recent survey showed 82% of the public believes the healthcare system prioritize profits over patient well-being. National Partnership for Healthcare and Hospice Innovation, *Views and Experiences of Aging and End-of-Life Care in the US* 14 (2022), <https://www.hospiceinnovations.org/wp-content/uploads/2022/11/NPHI-Survey-Views-and-Experiences-of-Aging-End-of-Life-Care-in-the-US.pdf>.

⁸ For discussions by legal scholars of the inequalities present in American democracy, the public’s faith in the political system, and ways to reform it, see, for example, Michael J. Klarman, *The Supreme Court, 2019 Term—Foreword: The Degradation of American Democracy—and the Court*, 134 HARV. L. REV. 1 (2020); and Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546 (2021).

For those of us who see the world around us on fire—as producing unnecessary cruelty, exploitation, and expropriation—the question is what is to be done. For the law professor, the lawyer, and even the law student, reform is the ever-present terrain.⁹ In the courtroom or the classroom, or within the law review, the circuitry of conversation moves from diagnosing a problem to suggesting a solution: a reform. Not long ago, it felt as if conversations about reform assumed the legitimacy of the prevailing political, economic, social, and juridical order: familiar tweaks of nodes of doctrine or, perhaps, policy; the audience our colleagues, the courts, agencies, bureaucrats, perhaps legislators.¹⁰ These debates often felt inflected by hopelessness: so narrow that I sometimes felt the political horizon was not much further than my nose. That a “reform” could be imagined as a “solution” itself suggested our discourse on reform telegraphed messy political, economic, social realities—questions of life and death itself—into the tiniest of “problems” to be solved by the expert and political classes.

In the almost two decades of my career as a lawyer and a law professor, the conversations about reform have shape-shifted.¹¹ In 2011, Mohamed

⁹ Advancing reforms is central to what legal scholars and legal scholarship do; it is what sets us apart from other disciplines. See, e.g., Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 414 (describing two approaches for understanding the relationship between legal scholarship and social change).

¹⁰ Across fields, “[t]he agent of law reform” has been conceived as “not the people but the technician: the judge, the economist, or bureaucrat who would calculate hypothetical consumer and producer surplus to order law and policy to serve the aims of wealth maximization.” Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1800 (2020). This has “obscured from view the kinds of political mobilization that are essential for engaging . . . fundamental questions” about the shape of the state, the economy, and the social. *Id.* at 1804-05.

¹¹ For examples of the increasingly critical orientation toward law, which in turn remakes questions of reform, see, e.g., Paul Butler, *The System Is Working the Way It Is Supposed To*, 104 GEO. L.J. 1419 (2016). The default vision of reform that has long characterized legal scholarship is now under great stress. As a result, we have seen a new wave of critical scholarship. See, e.g., Ryan Doerfler & Samuel Moyn, *Democratizing the Supreme Court*, 109 CALIF. L. REV. 1703 (2021); Diana S. Reddy, “*There Is No Such Thing as an Illegal Strike*”: *Reconceptualizing the Strike in Law and Political Economy*, 130 YALE L.J.F. 421 (2021); Shaun Ossei-Owusu, *Kangaroo Courts*, 134 HARV. L. REV. F. 200 (2021); Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778 (2021); Dorothy Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1 (2019); Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 U.C.L.A. L. REV. 1156; E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509 (2019); E. Tendayi Achiume & Devon W. Carbado, *Critical Race Theory Meets Third World Approaches to International Law*, 67

Bouazizi, a produce vendor in Tunisia, immolated himself in protest of unemployment, indebtedness, and police harassment.¹² This act sparked the Arab Spring, which, in turn, set off Occupy Wall Street.¹³ Since then, a drumbeat of protest has disrupted seemingly settled terms of law and policy.¹⁴ These popular protests cannot be read simply or linearly—they are undoubtedly uneven and filled with millions of contradictory impulses.¹⁵ But it is fair to say that mass protests of the sort the United States saw during the summer of 2020 in response to the police murder of George Floyd expressed a sense of both hope and futility by tens of millions of

U.C.L.A. L. REV. 1462 (2021); Subini Ancy Annamma & Jamelia Morgan, Youth Incarceration and Abolition, 45 N.Y.U. REV. L. & SOC. CHANGE 471 (2022); Chaz Arnett, *From Decarceration to E-carceration*, 41 CARDOZO L. REV. 641 (2019); Zohra Ahmed, *Bargaining for Abolition*, 90 FORDHAM L. REV. 1953 (2022); Jamelia Morgan, *Rethinking Disorderly Conduct*, 109 CALIF. L. REV. 1937 (2020); Taja-Nia Y. Henderson & Jamila Jefferson-Jones, *#LivingWhileBlack: Blackness as Nuisance*, 69 AM. U. L. REV. 864 (2020); Jasmine E. Harris, *Reckoning with Race and Disability*, 130 YALE L.J.F. 916 (2021); K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. 1062 (2022); Amy J. Cohen & Bronwen Morgan, *Prefigurative Legality*, L. & SOC. INQUIRY (forthcoming 2023); Fanna Gamal, <<>>; Abbye Atkinsin, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093 (2019); Veena B. Dubal, *The Drive to Precarity: A Political History of Work, Regulation, & Labor Advocacy in San Francisco's Taxi & Uber Economies*, 38 BERKELEY J. EMP. & LAB. L. 73 (2017); Veena B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 CAL. L. REV. 101 (2017); Karen M. Tani, *Welfare and Rights Before the Movement: Rights as a Language of the State*, 122 YALE L.J. 134 (2012); Noah Zatz, *Get to Work or Go to Jail: State Violence and the Racialized Production of Precarious Work*, 45 L. & SOC. INQUIRY 304 (2020); Khiara M. Bridges, *Race, Pregnancy, and the Opioid Epidemic: White Privilege and the Criminalization of Opioid Use During Pregnancy*, 133 HARV. L. REV. 770 (2020); Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097 (2022); Asli Bali & Aziz Rana, *Constitutionalism and the American Imperial Imagination*, 85 U. CHI. L. REV. 257 (2018); Aziz Rana, *Colonialism and Constitutional Memory*, U.C. IRVINE L. REV. 105 (2015).

¹² E.g., Thessa Lageman, *Remembering Mohamed Bouazizi: The man who sparked the Arab Spring*, Al Jazeera (Dec. 17, 2020), <https://www.aljazeera.com/features/2020/12/17/remembering-mohamed-bouazizi-his-death-triggered-the-arab>.

¹³ E.g., Michael Saba, *Wall Street Protestors inspired by Arab Spring movement*, CNN (Sept. 17, 2011, 11:19 AM EDT), <https://www.cnn.com/2011/09/16/tech/social-media/twitter-occupy-wall-street/index.html>.

¹⁴ See, e.g., Gianpaolo Baiocchi, *We, the Sovereign* (2018) (cataloguing contemporary left and anti-neoliberal movements and moments of protest around the world); Gary Younge, *Streets on fire: how a decade of protest shaped the world*, Guardian (Nov. 23, 2019); *The 2010s: A Decade of Protests Around the World*, NPR (Dec. 13, 2019), <https://www.npr.org/sections/pictureshow/2019/12/31/790256816/the-2010s-a-decade-of-protests-around-the-world>.

¹⁵ JACKIE WANG, *CARCERAL CAPITALISM* 277 (2018) (counseling against flattening narratives about protests). And of course there are right wing protests. E.g., Jennifer Smola

people.¹⁶ They meditated not on questions of efficiency or wealth maximization but on life and death, survival and exploitation.¹⁷ They embody popular revolts against the state, the status quo, and electoral democracy.¹⁸

This decade-plus of riot and social-movement activity is like nothing we have seen since the 1960s and 1970s.¹⁹ It is impossible to know when this period of heightened protest will die down—we may already be within its recesses. But that the struggles are popular, widespread, and iterative speaks to the systemic nature of the problems.²⁰ These movements acknowledge that the ruling elite effectively refuses to address material crises of inequality, state violence, expropriation, and exploitation that are not

Shaffer, *Drag storyline organizers, police offer different explanations amid Proud Boys protest*, Columbus Dispatch (Dec. 3, 2022, 2:43 p.m.), <https://www.dispatch.com/story/news/local/2022/12/03/royal-oak-school-drag-storytime-canceled-proud-boys-protest-columbus/69691753007/>.

¹⁶ Or that Nigeria saw that fall, also against police; that India saw that winter into the spring, with 250 million farmers, workers, and students protesting the deregulation and privatization of agriculture; that Brazil saw in 2013 in the face of public transit fare hikes; that France saw in 2018 against gas taxes. See, e.g., GIANPAOLO BAIOCCHI, *WE, THE SOVEREIGN* (2018); Veena Dubal & Navyug Gil, *Long Live Farmer-Laborer Unity: Contextualizing the Massive Resistance Going on in India*, LPE PROJECT (2020), <https://lpeproject.org/blog/long-live-farmer-laborer-unity-contextualizing-the-massive-resistance-going-on-in-india> [<https://perma.cc/27PG-4LCY>].

¹⁷ Robert Cover famously recognized the dynamic but not oft-named relationship between law and death. Robert Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986) (“Legal interpretation takes place in a field of pain and death.”).

¹⁸ Astra Taylor, *Democracy May Not Exist, but We’ll Miss It When It’s Gone* 9 (2019) (“The forces of oligarchy have been enabled, in part, by our tendency to accept a highly proscribed notion of democracy, one that limits popular power to the field of electoral politics, ignoring the other institutions and structures (workplaces, prisons, schools, hospitals, the environment, and the economy itself) that shape people’s lives.”)

¹⁹ Of course these are distinct moments in time. While it is outside my purview to mark the distinctions between prior moments and history and now, minimally its worth noting we are living within a crisis point for neoliberalism, a multipolar post-Cold War world of global finance capital. There are no major anticolonial movements, no Afro-Asia solidarity conferences like the one in Bandung, Indonesia in 1955. Instead there is a resurgence of white nationalist and revanchist politics with real influence at the polls at the highest level, with figures like Trump, Bolsonaro, Modi elected as heads of state. There is a carceral military state; destruction of the social and the welfare; environmental degradation and crisis; and democratic deficits. And of course there is a resurgence of protest and social movement activity on the left around the world as well, including in, through, and against. electoral politics.

²⁰ For a productive analysis of the George Floyd rebellion in particular, see Veryl Pow, *Grassroots Movement Lawyering: Insights from the George Floyd Rebellion*, 69 U.C.L.A. L. REV. 80 (2022).

resolvable through ordinary law and politics.²¹ Large majorities of the public support greater regulation of guns and the environment, easy access to abortion, some version of Medicare for All, a higher minimum wage, paid sick and parental leave, and greater taxation of millionaires and billionaires—and yet these preferences rarely take shape in enduring law and policy.²² It is curious the extent to which the political class has chastised grassroots demands like defunding the police or the Green New Deal for their unpopularity, when it is increasingly clear that the structures of the state and legal process fortress law and policy from public needs and demands.²³ To put it plainly: what does popularity have to do with law and policy these days anyway?

As far as the political class may go to lambast protest—to render it criminal, as the act of outsiders, or to erase it altogether from narratives about social change past and present—it is protest and organizing that gets the goods.²⁴ From suffrage and civil rights to the abolition of chattel slavery,

²¹ Jacob M. Grumbach, *Laboratories against Democracy: How National Parties Transformed State Politics* xix (2022) (arguing that in 2020, the pandemic, the George Floyd rebellions, and Trump’s attempts to delegitimize the election “revealed an American political system that lacked the capacity to solve fundamental challenges”).

²² See Klarman, *supra* note 4, at 208 (“[M]ajorities of the American public actually have little influence over the policies our government adopts.”); see also Jane Mayer, *State Legislatures Are Torching Democracy*, NEW YORKER (Aug. 6, 2022), <https://www.newyorker.com/magazine/2022/08/15/state-legislatures-are-torching-democracy> [<https://perma.cc/3NWB-322W>].

²³ Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 PERSPS. ON POL. 564, 577 (2014) (reporting the finding of a statistical model that economic elites and organized business groups have substantial independent impacts on American policymaking, while the general public has little to no impact); see also K. Sabeel Rahman & Kathleen Thelen, *The Role of the Law in the American Political Economy*, in *THE AMERICAN POLITICAL ECONOMY: POLITICS, MARKETS, AND POWER* 76, 94, 96 (Jacob S. Hacker, Alexander Hertel-Fernandez, Paul Pierson & Kathleen Thelen eds., 2021) (arguing that “business interests” have “leveraged legal doctrine to shift the balance of power between capital and labor through cases that undercut the countervailing power of workers and other groups to exercise political voice and to context the political interests of business” and “been remarkably successful in winning cases that establish limitations on the very capacities of government itself,” so as to “preclud[e] more far-reaching regulation or redistributive policies”).

²⁴ This was the central argument of FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (1977). Piven and Cloward contended that disruption is the primary and limited tool for the poor to wrest changes from the state and elected officials. They showed that, in the long civil rights struggle, protests that wrested concessions “conferred legitimacy on the goals of the struggle and gave reasons for hope that the goals should be reached”—in other words, fuel. *Id.* at 206; *id.* at 239 (acknowledging that the civil rights movement “contribut[ed] to the rising tide of anger in the ghettos”).

strategies and tactics of disruption have been productive for emancipatory social change.²⁵ (We can see this even as we notice protest, like any tool, from litigation to lobbying, is also a tool of revanchist forces.) We need not turn many pages in our history books to understand the productive power of protest. The protests and organizing of the last decade-plus have so fundamentally contested the “criminal justice system” that a whole crop of alternative phrases has emerged: for example, “criminal system,” the “criminal punishment system,” or the “criminal legal system.”²⁶ These substitutes do not roll off the tongue, and yet many prefer them to conflating criminal law with justice.

But discourse matters for its relation to life itself. The proliferation of terms for the criminal legal system emerge with the destabilization of its legitimacy, social function, and monstrous footprint. Consider some examples of how protests against the carceral state have produced metamorphoses. In the face of the rebellions of 2014, 2015, and 2020, the weapons-and-technology company Axon lobbied police chiefs, city councils, and Congress.²⁷ The crisis of legitimacy in policing was so deep, and the industry’s lobbying so effective, that body cameras became the new

²⁵ See generally DEVA R. WOODLY, *RECKONING: BLACK LIVES MATTER AND THE DEMOCRATIC NECESSITY OF SOCIAL MOVEMENTS* (2021) (exploring the Movement for Black Lives as a social movement with a political philosophy that has changed policy and public discourse); MANISHA SINHA, *THE SLAVE’S CAUSE: A HISTORY OF ABOLITION* (2017) (exploring the history of abolition and emancipation from the American Revolution to the Civil War); W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860-1880* (1935) (exploring the history of Reconstruction through the lens of Black and labor struggle). See also Kevin A. Young, Tarun Banerjee, Michael Schwartz, *Levers of Power: How the 1% Rules and What the 99% Can Do About It 188-89* (2020) (“The route to real progressive reform goes through the corporations and state agencies that exercise power over the politicians. In the absence of this kind of mass disruption, any progressive reforms to government policy will be weak and easily reversible, as the Obama era demonstrates.”).

²⁶ See, e.g., Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About “Criminal Justice Reform,”* 128 YALE L.J.F. 848 (2019) (using the phrase “punishment bureaucracy”); Alexandra Natapoff, *Criminal Municipal Courts*, 134 Harv. L. Rev. 964 (2021) (using “criminal legal” and “criminal justice”). Parallel shifts are taking place in discussion of whether the violence of policing is integral to or departure from policing function. See, e.g., Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479 (2016); Devon W. Carbado, *From Stop and Frisk to Shoot and Kill: Terry v. Ohio’s Pathway to Police Violence*, 64 UCLA L. REV. 1508 (2017); I. India Thusi, *Policing Is Not a Good*, 110 GEO. L.J. ONLINE 227 (2022); Aya Gruber, *Policing and “Bluelining,”* 58 HOUS. L. REV. 867 (2021).

²⁷ Axon is a weapons-and-technology company focused on law enforcement and military. It was originally called Taser. <https://www.reuters.com/article/us-usa-taser/taser-changes-name-to-axon-in-shift-to-software-services-idUSKBN177265>.

normal in police departments of all sizes.²⁸ In response to the proliferation of community bail funds and other tactics to challenge bail practices that target the poor and working-class Black and brown people, judges and prosecutors now rely on proprietary algorithms to decide whether to cage someone pretrial.²⁹ Successful grassroots campaigns to oust prosecutors who failed to indict the police who murdered Laquan McDonald in Chicago and Tamir Rice in Cleveland led to “progressive prosecutors” announcing themselves as paving the road forward.³⁰ In response to the 2020 uprisings, a Minneapolis jury took the unusual step of convicting a police officer in

²⁸ Akela Lacy, *Two Companies Fight to Corner the Police Body Camera Market*, INTERCEPT (Dec. 8, 2021, 1:26 PM ET), <https://theintercept.com/2021/12/08/police-reform-body-cameras-axon-motorola> [<https://perma.cc/3JF8-QDWY>] (estimating that Axon earned \$680 million in 2019 and that the “global industry” will “balloon to \$1.2 billion in 2020, with projected growth to \$7 billion by 2026”); Aparna Narayanan, *These Security Stocks Jump After Weekend Unrest, Police Violence*, Investor’s Bus. Daily (June 1, 2020, 4:06 PM ET), <https://www.investors.com/news/axon-stock-digital-ally-stock-jump-after-weekend-unrest-police-violence> [<https://perma.cc/U4VD-TPM2>]; Peter Herman & Rachel Weiner, *Issues over Police Shooting in Ferguson Lead Push for Officers and Body Cameras*, WASH. POST (Dec. 2, 2014), https://www.washingtonpost.com/local/crime/issues-over-police-shooting-in-ferguson-lead-push-for-officers-and-body-cameras/2014/12/02/dedcb2d8-7a58-11e4-84d4-7c896b90abdc_story.html [<https://perma.cc/D9MB-VYVD>]; Press Release, U.S. Dep’t of Justice, Justice Department Awards Over \$23 Million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States (Sept. 21, 2015), <https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law> [<https://perma.cc/4BV9-ACYE>]; Shelley S. Hyland, *Body-Worn Cameras in Law Enforcement Agencies*, 2016, U.S. DEP’T OF JUSTICE (Nov. 2018), <https://bjs.ojp.gov/content/pub/pdf/bwclea16.pdf> [<https://perma.cc/T76D-NL8U>]. See also Miranda Suarez, *Fort Worth Police Want New Body Cams, Stun Guns and Automatic License Plate Readers*, KERA NEWS (Apr. 20, 2022, 8:05 AM CDT), <https://www.keranews.org/government/2022-04-20/fort-worth-police-want-new-body-cams-stun-guns-and-automatic-license-plate-readers> [<https://perma.cc/F2UL-RPVT>].

²⁹ Jocelyn Simonson, *The Bail Fund Movement*, N+1 (June 22, 2020), <https://www.nplusonemag.com/online-only/online-only/the-bail-fund-moment> [<https://perma.cc/M5KE-9CT2>] (arguing that the “demand to end money bail can, in turn, lead to new laws that legitimize pretrial incarceration based on algorithmic determinations”); see also Sean Allan Hill II, *Bail Reform and the (False) Promise of Algorithmic Risk Assessment*, 68 U.C.L.A. L. REV. (forthcoming 2022); Jessica M. Eaglin, *Constructing Recidivism Risk*, 67 EMORY L.J. 59 (2017); Ngozi Okidegbe, *Discredited Data*, 107 CORNELL L. REV. (forthcoming 2022); Jia Tolentino, *Where Bail Funds Go from Here*, NEW YORKER (June 23, 2020), <https://www.newyorker.com/news/annals-of-activism/where-bail-funds-go-from-here> [<https://perma.cc/64SX-8PRB>]. See generally Jocelyn Simonson, *Bail Nullification*, 115 MICH. L. REV. 585 (2017) (theorizing the work of community bail funds as “bail nullification,” a form of community nullification of the criminal law akin to jury nullification).

³⁰ See Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. REV. 1544, 1567-77 (2022); Benjamin Levin, *Imagining the Progressive Prosecutor*, 105 MINN. L. REV. 1415, 1422-28 (2021). See also Rachel Foran,

the death of George Floyd.³¹ In Columbus, Ohio, the city council and mayor pushed for a civilian review board to monitor the police after they had resisted similar calls for decades.³² All over the country, municipalities are debating and enacting line items in their budgets for nonpolice responses to mental health and other crises.³³ A few cities have closed or are exploring closing jails, and the federal government is planning to close four immigrant detention facilities.³⁴

Mariame Kaba, & Katy Naples-Mitchell, *Abolitionist Principles for Prosecutor Organizing: Origins and Next Steps*, 16 Stanford J. C.R.C.L. 496 (2021),

³¹ John Eligon, Tim Arango, Shaila Dewan & Nicholas Bogel-Burroughs, *Derek Chauvin Verdict Brings a Rare Rebuke of Police Misconduct*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2021/04/20/us/george-floyd-chauvin-verdict.html> [<https://perma.cc/8GUZ-66ZP>]; see also Bill Chappell, *Police Expert Says 'Excessive' Force Against Floyd Wasn't the Only Option*, NPR (Apr. 7, 2021), <https://www.npr.org/sections/trial-over-killing-of-george-floyd/2021/04/07/985004569/watch-live-police-expert-testifying-against-chauvin-cites-use-of-excessive-force> [<https://perma.cc/9JGA-3RD7>] (describing the use of force against George Floyd by officer Derek Chauvin).

³² Emily Oliver, *Mayor Ginther Advances Legislation for City's First Civilian Police Review Board*, 10TV (June 7, 2021, 3:23 PM EDT), <https://www.10tv.com/article/news/local/columbus-mayor-advances-legislation-for-citys-first-civilian-police-review-board/530-1e8c3272-88ee-4089-b1bb-9ba1ab4c24e5> [<https://perma.cc/EA84-MY6Z>]; *Civilian Police Review Board Members Approved by Columbus City Council*, 10TV (Apr. 27, 2021, 12:57 AM EDT), <https://www.10tv.com/article/news/local/civilian-police-review-board-members-approved-by-columbus-city-council/530-4b7e1791-02d1-465d-b64c-57d3453b3475> [<https://perma.cc/H9TD-TVAJ>]; *Civilian Police Review Board Off to a Questionable Start*, COLUMBUS FREE PRESS (Jan. 11, 2022), <https://columbusfreepress.com/article/civilian-police-review-board-questionable-start> [<https://perma.cc/KR3D-D3TU>].

³³ E.g., <https://www.psychologytoday.com/us/blog/talking-about-trauma/202201/alternatives-police-involvement-in-mental-health-crises>; https://madison.com/news/local/govt-and-politics/madisons-crisis-response-program-plans-to-expand-response-for-mental-health-substance-abuse-calls/article_bcac7c24-a12c-5655-97a8-ab593605a855.html; <https://www.fox23.com/news/alternative-mental-health-transportation-model-marks-one-year-oklahoma/6KRVKQOD3RABLOUCFC6Z2DRTI/>. These line items do not automatically entail cutting of police budgets. See generally *Interrupting Criminalization, The Demand is Still Defund the Police: Lessons from 2020* 25-26 (2021) (making the related point in the context of various municipalities that moving money does not necessarily entail police budget cuts), <https://www.interruptingcriminalization.com/s/DefundThePoliceUpdate.pdf>. For a critical engagement with the left's embrace of local politics as a place to build power in the United States and around the world, see Erik Forman, *The Municipalist Moment*, *Dissent* (Winter 2020), <https://www.dissentmagazine.org/article/the-municipalist-moment>. Activists and organizers are also building community-based responses to mental health crises and more. E.g., *Interrupting Criminalization* and Project NIA, One Million

Organized and rebellious resistance propelled these developments.³⁵ These changes demonstrate the power of protest and organizing against the state, and the power of the state itself to adapt.³⁶ They represent some form of “interest convergence,” “preservation-through-transformation,” and “reform and retrenchment.”³⁷ And so the demands to defund and abolish have led to jail closures and the removal of police from schools³⁸ but also fueled a more conventional set of reforms, often the product of capital, guard labor, and the political class reconstituting itself against formidable

Experiments, Volume 1: Mental Health First (March 2021), https://static1.squarespace.com/static/5ee39ec764dbd7179cf1243c/t/62a3d1c4642f3b51274d97e2/1654903238754/Mental-Health-First_Zine-Pages.pdf.

³⁴ E.g., <https://www.11alive.com/article/news/local/atlanta-city-jail-fulton-lease-doctors-concerned/85-32be0cf6-0754-4810-8864-1ad0a98a8e40>; <https://www.kmov.com/2022/06/15/st-louis-workhouse-officially-closed-city-officials-tell-news-4/>; Ted Hesson & Mica Rosenberg, *U.S. to Close, Scale Back Four Immigrant Detention Centers*, REUTERS (Mar. 25, 2022, 2:36 PM EDT) <https://www.reuters.com/world/us/us-plans-close-scale-back-four-immigrant-detention-centers-document-shows-2022-03-25> [https://perma.cc/TKB6-FEWM].

³⁵ For a parallel argument, see Vivek Chibber, *Our Road to Power*, JACOBIN (Dec. 5, 2017), <https://www.jacobinmag.com/2017/12/our-road-to-power> [https://perma.cc/64X8-55H2], which asserts that “Liberal rights were all fought for and won by working-class movements, not by liberal capitalists. Any left worth its salt has to protect and deepen those rights, not throw them aside.”

³⁶ Winning reforms has always “required strategies and tactics of which organized reformism did not approve because these threatened their social position and interests—high levels of militant mass action, large-scale defiance of the law, and the forging of increasingly class-wide ties of active solidarity—between unionized and ununionized, employed and unemployed, and the like.” Robert Brenner, *The Problem of Reformism*, AGAINST THE CURRENT 42 (Mar.–Apr. 1993), <https://www.solidarity-us.org/pdfs/cadreschool/rbrenner.pdf> [https://perma.cc/HS5D-VRHG].

³⁷ See Derrick A. Bell, Jr., Commentary, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980) (exploring the principle of “interest convergence,” which provides that “[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites”); Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997) (describing the dynamic of “preservation-through-transformation,” by which “status-enforcing state action evolves in form as it is contested”); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1356, 1361 (1988) (arguing that scholars who focus on “forces that [lead] to retrenchment” in civil rights reforms fail to “incorporate racism into their analysis,” which “renders their critique of rights and their overall analysis of law in America incomplete”).

³⁸ In 2019, The Black Organizing Project released its People’s Plan for Police Free Schools, turning its decade-long call to end the school-to-prison pipeline into a campaign to

challenge.³⁹ These reforms certainly fall short of what many who participated in the rebellions and campaigns that fueled them are ultimately demanding. They even reproduce the very dynamics protestors contest. But there should be little doubt that it was the social agitation of protest, organizing, and radical demands that forced these adaptations. As limited as these individual shifts might be, together they constitute a sea change. Protest and organizing opened pathways and created constituencies for social change that did not exist before.

For decades, a familiar scholarly posture for the law professor has been to defend the legitimacy of formal law-and-politics, in both its forums and its processes: the vote, the lawsuit, notice-and-comment, and so on. This posture typically involves skepticism of protest as anarchy and lawlessness, and of radical demands as counter-productive.⁴⁰ Even if one

remove the police from Oakland's public schools. Black Organizing Project, The People's Plan for Police-Free Schools OUSD Implementation Proposal (2019), <https://blackorganizingproject.org/wp-content/uploads/2021/07/The-Peoples-Plan-2019-Online-Reduced-Size.pdf>. After ten days of direct action, in June 2020, the school board passed the George Floyd Resolution to Eliminate the Oakland School Police Department, aiming to redistribute \$2.5 million to student support and restorative justice efforts, and anti-racism trainings for teachers, staff, and the board. The resolution aimed to remove police by January 2021. As of spring 2021, the district was paying the OSPD, but OSPD is not in schools. Samuel Getachew, Oakland Eliminated its School Police Force—So What Happens Now?, KQED (Mar. 11, 2021), <https://www.kqed.org/arts/13893831/oakland-eliminated-its-school-police-force-so-what-happens-now>. Now, the School Board is considering how to proceed. KTVU Staff, *Proposal to move forward with police-free Oakland schools*, KTVU (Dec. 15, 2022 11:36AM), <https://www.ktvu.com/news/proposal-to-move-forward-with-police-free-oakland-schools>. See also Rachel Rise, *Detainees moved out of workhouse as the St. Louis jail closes*, St. Louis Today (June 17, 2021), https://www.stltoday.com/news/local/crime-and-courts/detainees-moved-out-of-workhouse-as-the-st-louis-jail-closes/article_dd5705dd-4e10-5b63-9ab8-cec1d702032a.html.

³⁹ For a discussion of this dynamic, including the example of the Chicago Police Department's creation of an Office of Restorative Justice Strategies, see ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, *ABOLITION. FEMINISM. NOW.* 162-64 (2022), which describes how "[s]uccessful organizing that mobilizes people and makes effective demands on the state is sometimes coopted and absorbed because of the carceral state's [power]."

⁴⁰ Consider the new wave of academic work critical of abolition and protest. See, e.g.,

takes issue with a particular but deep problem—the role of money in politics, for example—the overall posture of law faculty is one of trust, reliance, or deference to the processes and experts in place. To forestall radical critiques and horizons. Within legitimacy crises, law scholars have become central to the state’s procedures for righting the ship. There are whole bodies of scholarship oriented toward legitimating state power, even state violence.⁴¹ There are also scholarly traditions, and centers and clinics at law schools, which take seriously the power of protest, social movements, movement lawyering, radical demands, prefiguration, and critique.⁴²

But law faculty come in and out of government service, including judgeships, legislative offices, and executive offices, often at the highest echelons of state power. We advise corporations and the police.⁴³ We serve on commissions and working groups to study pressing problems raised by protests and riots—as with the case of criminal law and policing—and even

Tommie Shelby, *The Idea of Prison Abolition*; Rachel Barkow *Promise or Peril: The Political Path of Prison Abolition in America*, draft on SSRN.

⁴¹ The procedural justice scholarship focused on policing is one example. *See, e.g.*, Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 *Law & Society Rev.* 513, 537 (2003); Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 *Crime & Justice* 283, 350 (2003). For a powerful critique of procedural justice, see Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 *YALE L.J.* 2054 (2017) (using the lens of legal estrangement to call for deeper reforms of the police).

⁴² For a survey of much of this work, see Akbar et al *Movement Law 832-370*. *See also* Scott L. Cummings, *Movement Lawyering*, 2017 *University of Illinois L. Rev.* 1645 (2017); Jeena Shah, *Rebellious Lawyering in Big Case Clinics*, 23 *Clinical L. Rev.* 775 (2017); Alexi Nunn Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 *Clinical L. Rev.* 147 (2016); Renee Hatcher, *Solidarity Economy Lawyering*, 8 *Tenn. J. Race, Gender, & Social Justice* 1 (2019); Nicole Smith Futree, *The Practice and Pedagogy of Carceral Abolition in a Criminal Defense Clinic*, 45 *NYU J. L. & Soc. Change* 159 (2021); Sameer M. Ashar & Annie Lai, *Access to Power*, 148 *Daedalus* 82 (2019); Justin Hansford, *Demosprudence on Trial: Ethics for Movement Lawyers*, in *Ferguson and Beyond*, 85 *Fordham L. Rev.* 2057 (2017).

⁴³ There are whole host of relatively new university centers with police funding, at elite universities including at law schools. *See, e.g.*, Isabella Tapia, *Teach-in condemns NYU Law Policing Project*, *Wash. Sq. News* (April 25, 2002), <https://nyunews.com/news/2022/04/25/teach-in-nyu-law-policing-project/>; Letter from Students to Dean Trever Morrison re: NYU Policing Project’s Complicity in Perpetuating Harm (April 15, 2022), <https://docs.google.com/document/d/1qHWVP2gPqirTFQDXhd4schKiJU9EAYiKsQqOkmC1Vns/edit>; Angela Koenig, *UC Public Safety Research Center Established: New center is a resource hub for law enforcement, community, and elected officials* (Feb. 7, 2022), <https://www.uc.edu/news/articles/2022/02/uc-public-safety-research-center-opens-in-school-of-criminal-justice.html>.

elite concern, as with the Supreme Court.⁴⁴ We do this work often to the exclusion of directly impacted and working people, those who organized, protested, and sometimes risked or lost their lives for the state to take these issues seriously. We are essential parts of the state's arsenal to quell protest and to reassert the normalcy in which nothing much can change. The commissions to consider the reforms to consider the reforms are often advanced to preserve the legitimacy of the state, its institutions, and its power. To cut out the protestors and to quell the moment of protest.⁴⁵ To reestablish the authority of the bureaucrat, the expert, and by extension the ruling class.⁴⁶

In this Feature, I contend we should reconceive how we evaluate reforms and reshape our relationships to the popular struggles in which they are embedded.⁴⁷ To do so, I examine the reemergence of left social

⁴⁴ *Final Report of the President's Task Force on 21st Century Policing*, PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, at v. (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf [<https://perma.cc/FW3F-D873>]; *Final Report*, PRESIDENTIAL COMM'N ON THE SUP. CT. OF THE U.S. 2-4 (Dec. 8, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/SCOTUS-Report-Final-12.8.21-1.pdf> [<https://perma.cc/7RSY-M9P5>].

⁴⁵ See, e.g., ISAAC D. BALBUS, *THE DIALECTICS OF LEGAL REPRESSION: BLACK REBELS BEFORE THE AMERICAN CRIMINAL COURTS* 86-88 (1973) (describing a meeting convened in Los Angeles to address "ghetto revolts" following the assassination of Dr. Martin Luther King, Jr., where "no effort was made to include anyone who even in the vaguest sense could be called a representative of the ghetto" despite a recent commission's recommendations).

⁴⁶ Piven and Cloward identified this dynamic decades ago. PIVEN & CLOWARD, *supra* note 15, at xxi (arguing that protest movements have failed because "it is not possible to compel concessions from elites that can be used as resources to sustain oppositional organizations over time"). See Stanley Aronowitz, *How Class Works: Power and Social Movement* 94 (2003) ("The term ruling class signifies the power bloc that at any given historical period exercises economic and political dominance and ideological hegemony over the society as a whole and over the class within which it functions.").

⁴⁷ As articulated by Britton-Purdy, Grewal, Kapczynski, and Rahman, the LPE framework requires shifting from concerns with efficiency to power—which can be achieved by attending to the relationship between economic power and political power, deconstructing the idea that the market or the law is neutral, focusing legal analysis on "an ideal of equality . . . animated by a commitment to self-rule and sensitive to the importance of social subordination around intersectional lines," and rejecting antipolitics for democracy under the principle that "law's creation of economic order should be accountable to those who live in that order . . . [with] equal weight to all members in structuring our shared life." Britton-Purdy, Grewal, Kapczynski & Rahman, *supra* note 6, at 1818, 1823-24, 1827. They elaborate what it would take to "reorient legal institutions and thought toward an explicit pursuit of democracy" in three ways: "strengthening existing institutions of electoral democracy"; creating a "democratic political economy . . . answerable to its citizens' rule"; and "experiment[ing] with alternatives to the

movements contending jointly with racism and capitalism and their turn to “non-reformist reforms” as a framework for conceiving of reform struggles to build a more equal society: one where democracy extends to all realms of life well beyond the ballot box every two years.⁴⁸

In Part I, the Feature identifies the rise of a new commonsense on the growing left: that racism and capitalism are entangled and constitutive.⁴⁹ This turn toward materializing racism asserts the dynamic relationship of racism to economic processes—alongside ideological, social, and political ones.⁵⁰ It situates racism not as limited to racist ideation or even simple discrimination but as rooted in and reproducing uneven structures of organized exploitation (e.g., labor), expropriation (e.g., gentrification), and violence (e.g., incarceration). It has reconstituted the terrain of racial-justice discourse and organizing and attendant conversations on law and policy. Once racism and capitalism are understood as soldered together, it becomes clear that emancipatory projects cannot succeed by approaching law narrowly, with trust, or in isolation. Contending with racial capitalism requires rethinking the relationship between law and emancipation.

The shift towards understanding racism and capitalism as targets propels distinct theories and practices of social change to the fore.⁵¹ Racial capitalism disarticulates familiar conceptions of racial justice in the legal academy and law practice. Diversity and inclusion, access to justice, and

prevailing technologies of elite governance,” including “mericave[ing] regulatory bodies as sites of democratic contestation.” *Id.* at 1929-31.

⁴⁸ “Typically, democracy is considered to consist of one person, one vote, exercised in periodic elections; constitutional rights; and a market economy.” Astra Taylor, *Democracy May Not Exist, but We’ll Miss It When It’s Gone* 5-6 (2019)

⁴⁹ See, e.g., DONNA MURCH, ASSATA TAUGHT ME: STATE VIOLENCE, RACIAL CAPITALISM, AND THE MOVEMENT FOR BLACK LIVES <pincite> (2022); David McNally, *It’s Called Capitalism: Naming the System Behind Systemic Racism: An Interview with Keeanga-Yamahatta Taylor*, *Spectre Journal* (June 1, 2022), <https://spectrejournal.com/its-called-capitalism-naming-the-system-behind-systemic-racism/>.

⁵⁰ These conversations are not linear or teleological. Almost three decades ago, Angela Harris called for a “jurisprudence of reconstruction” that would have “some understanding of how [race,] material relations of production and consumption and discourse affect one another.” Angela P Harris, Foreword: The Jurisprudence of Reconstruction, 82 *calif. L. Rev.* 741, 777-78 (1994).

⁵¹ A concern with racial capitalism, for example, propels an understanding of racism in the way that Ruth Wilson Gilmore has articulated it—as the “state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.” RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 28 (2007).

even rights become insufficient to address racism, and even central to the legitimization of racial subordination. But as racial capitalism pushes fundamental critique, it is embedded within ambitious and hopeful horizons—abolition democracy, democratic socialism, and more—that remake old questions. As the horizons of racial justice shift, the strategies and tactics expand beyond formal legal process or even law itself. Reform and regulation can no longer be end goals; instead, they live among an array of contradictory strategies and tactics for emancipation.⁵²

In Part II, the Feature offers “non-reformist reforms” as an alternative and competing conceptual frame to the neoliberal or liberal reformism dominant in the legal academy. Rooted in the writings of Andre Gorz and retooled by Ruth Wilson Gilmore, the term is being creatively deployed in left activist and organizing spaces. Properly understood, non-reformist reforms are a response to the impasse of liberal reformism and traditional conceptions of armed revolution.⁵³ They offer another way of responding to the capture of law, politics, and the state. Non-reformist reforms upend the conversation about reform in legal scholarship: beyond top-down depoliticized solutions to narrow problems posed by experts, to a tool within political, economic, social struggles to disrupt and reshape the prevailing order and make new orders possible.

Law is essential as a partial terrain of mass politics; through policing, eviction, and much more it is the face of the state. Understanding law as such requires turning our disciplinary orientations inside out and proliferating our understanding of where law takes shape and plays out. Part III turns to some of those reorientations. Non-reformist reforms reorient conventional liberal and neoliberal approaches to reform in significant ways. Here, I outline four fundamental distinctions. Non-reformist reforms are about antagonism and conflict rather than depoliticization; they are conjunctural and strategic rather than abstract and out of time; they are about building mass organization; and they are about preparing to govern.

⁵² Beatrice Adler-Bolton & Artie Vierkant, *Health Communism* 19 [this page number is from my ebook] (2022) (“even as we fight within the US for policies like Medicare for All, the task at hand is much greater than one program could capture. It is the total reformation of the political economy of health, and in so doing, the total reformation of the political economy”).

⁵³ Ralph Miliband, *Socialism: For a Skeptical Age* 4 (1994) (observing the terms “revolution” and “revolutionary” are “ambiguous” but “are commonly understood to involve the overthrow of the existing state as well as the transformation of the social order”).

Contending with non-reformist reforms requires attending to actually existing sites of struggle: physically where and how protest and organizing are occurring around what issues and by whom. Parv IV identifies such sites: abolition; decolonization and decommodification; and democratization. While others may disagree with my characterizations of these directions, or my selection of campaigns, I offer the assessment to provoke thinking more broadly—and debate—about the sort of reform projects legal scholars may pursue in some rough alignment with the emancipatory organizing of our time. This work of “movement law”—thinking in conversation with emancipatory movements—provides a distinctive way of thinking about expertise, through more collaborative practices than the conventional, even critical, scholar may pursue.⁵⁴ To pursue projects not simply because they are within our area of expertise, but in alignment with openings, organizing, and disruption for social change.

Before proceeding, a few notes on my archive, vocabulary, and arguments. First, I am drawing on an archive focused on the Movement for Black Lives, the Democratic Socialists of America (DSA), the Red Nation, Sunrise Movement, Critical Resistance, and other organizations I name throughout the text and footnotes. I have examined interviews, podcasts, media coverage, campaign and political education materials, litigation and legislation. My account is necessarily incomplete and subjective. The social movement ecosystems I write about are sprawling, multifaceted and contradictory. This is especially true because I construe social movements broadly, for example, by including the DSA, which some may conceive of as an electoral organization, as well as labor organizing.⁵⁵ While detail is lost with breadth, my hope is that new possibilities become visible.

Second, a long-standing aspect of my interest in social movements is how they highlight the relationships between our understanding of the world around us (critique), the world we fight for (horizon), and the reforms, strategies, and tactics that might bridge the two (praxis/struggle). They embody and reflect distinct theories of social change absent or on the

⁵⁴ See generally Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821 (2021) (identifying four methodological moves in the work of scholars of movement law).

⁵⁵ See Catherine L. Fisk & Diana S. Reddy, *Protection by Law, Repression by Law: Bringing Labor Back into the Study of Law and Social Movements*, 70 EMORY L.J. 63, 138 (2020) (“By examining the ways in which one movement’s experience with law shapes other movements’ experience with law over time we are better able to generalize about law and social movements, *plural*.”).

margins of legal scholarship. I use vocabulary—like “the capitalist class”—uncommon in legal scholarship, precisely for how reconstituting the terms of debate might broaden and multiply roads of possibility.

There is an underlying argument within the Feature—I do not go to any real length to substantiate it—that protest and organizing put pressure on and transform law. This is not new in legal scholarship.⁵⁶ But the Feature attempts to avoid fetishizing law as the ultimate object of emancipatory projects that aim to change the many lifeworlds we inhabit. To the contrary, I go to great, sometimes unruly, lengths to decenter law and legalism, even as I focus on the question of reform, trying to understand it as a technology or language of change. This is in part a response to the centering of long-standing centrality of liberal legalism and its values—the rule of law and law and order, the emphasis on rights, reformism, courts, and the Constitution—even within the social movements and movement lawyering scholarship.

Law has a place, as do lawyers and legal experts, but to assert the roles as primary is to capitulate to a suggestion that power is top-down and centralized rather than everywhere and relational. To suggest the roles as primary in relation to left social movements is to erase long histories of radical visions and radical organizing. What does it mean to think about law in relation to emancipation and long freedom struggles?⁵⁷ To begin, it requires understanding law as a site of domination, exploitation, expropriation, and legitimation, where historical and contemporary struggles live and echo. It requires attending to the many faces of law,

⁵⁶ This is of course Lani Guinier and Gerald Torres’s argument as embodied in their concept of demosprudence. Lani Guinier & Gerald Torres, Essay, Changing the Wind: Notes Towards a Demosprudence of Law and Social Movements, 123 Yale L.J. 2740, 2749-50 (2014) (“[D]emosprudence focuses on the ways that ongoing collective action by ordinary people can permanently . . . chang[e] the people who make the law and the landscape in which that law is made.”). *see also* Bowie, Corporate Personhood vs. Corporate Statehood, *supra* note __, at 2032-40 (examining the mobilizing of the IWW and its 1912 strike in a textile mill on Lawrence, Massachusetts to argue “the Supreme Court isn’t the only place where corporate rights have been protected or taken away”); Douglas NeJaime & Reval Siegel, *Answering the Lochner Objection: Substantive Due Process and the Role of Courts in a Democracy*, 96 NYU L. Rev. 1902, 1922-33 (2021) (attending to “the [protest] practices of speaking out and coming out . . . innovated by groups facing conditions of overwhelming subordination . . . to appreciate the mobilizations out of which modern substantive due process decisions grew”).

⁵⁷ For an illuminated account rooted in the impasses of its time, see Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797 (1990).

legalism, and legal process.⁵⁸ Law and legal process do not exist in a vacuum: law is not above or below politics; not above or below reason; not the entire domain of politics or reason itself. Contending with law in relation to emancipatory projects requires understanding law as a partial and dynamic domain of political, economic, and social struggle, where questions of life and death are mediated. Like any other domain of struggle, the rules are not transparent or self-executing. Law and legal process are filled with contradictions and everyday legal fictions. To think of law as a site of struggle—as a place where power takes shape and is contested, where relations of class, race, gender, and ability are made and remade—builds on the insights of critical scholars past and present.⁵⁹ Law is not a discrete domain or a place; it is constitutive of broader sets of relations.⁶⁰ It is not one thing and those things are always changing. It is a tool, a strategy, a tactic, and a forum among many: and it shapes the terms of life, death, and democracy.

I. MOVEMENTS AGAINST RACISM AND CAPITALISM

The United States has witnessed extraordinary protest in the last fifteen years: Occupy Wall Street; the protests against the State of Georgia's execution of Troy Davis; immigrant organizing against #Not1More deportation; the rebellions against police violence in cities like Ferguson, Baltimore, and Minneapolis that caught on from coast to coast; the pipeline protests including the #NoDAPL encampment at Standing Rock; the Women's March and the protests against the Muslim Ban; the occupation of Nancy Pelosi's office announcing the arrival of the Green New Deal; the squatting of one vacant home by Moms 4 Housing in Oakland; and the solidarity protests with the Palestinian people of the east Jerusalem

⁵⁸ See generally Angela P Harris, Foreword: The Jurisprudence of Reconstruction, 82 *Calif. L. Rev.* 741, 746 (1994) ("the crits sought to show that legal doctrine is contradictory; that legal rules are indeterminate; and that the operation of legal institutions is systematically biased in favor of economically and socially privileged elites. Law, according to the crits, is an example of 'ideology': the belief that law is separate from and superior to 'politics' keeps legal actors from even noticing the hierarchies of power in which they are trapped.").

⁵⁹ For a sketch of this rootedness in various critical traditions in law, see Akbar et al *Movement Law*. See also Mari Matsuda *Looking to the Bottom; The Politics of Law: A Progressive Critique* (David Kairys ed., 1982)

⁶⁰ See NICOS POULANTZAS, *STATE, POWER, SOCIALISM* 146-47 (Patrick Camiller trans., 1978); STUART HALL, CHAS CRITCHER, TONY JEFFERSON, JOHN CLARKE & BRIAN ROBERTS, *POLICING THE CRISIS: MUGGING, THE STATE AND LAW AND ORDER* 183-84 (2d ed. 2013); BALBUS, *supra* note 32 at 256-57; John Whitlow, *If You Can Unmake It Here: Crisis, Contingency, and Law in the Making and Unmaking of Neoliberal New York*, 121 *S. ATL. Q.* 339, 340 (2022).

neighborhood of Sheikh Jarrah.⁶¹ These protests were profound for how individually and together they unsettled the legitimacy of the status quo and gestured at the possibilities building broad constituencies for radical change while recovering histories of long freedom struggles. Sustained organizing and mobilizing knitted together moments of eruption, including the countless others at the doorsteps of our homes and institutions.⁶² This work has been done by a broad ecosystem of formal organizations and ad hoc formations, from what is loosely referred to as “Black Lives Matter” or the Movement for Black Lives, to the DSA, to Boycott, Divestment, and Sanctions, and to myriad prison abolitionist, environmental and housing justice, indigenous, feminist, and communist collectives.⁶³ Some are long-standing, some new, some have already come and gone. Simultaneously, teachers, nurses, baristas, flight attendants, railroad workers, app-deployed drivers, and Amazon warehouse workers are striking, threatening to strike, and organizing drives to form unions and workers’ collectives in the face of oligarchic and undemocratic power.⁶⁴

⁶¹ See, e.g., NICK ESTES, *OUR HISTORY IS THE FUTURE: STANDING ROCK VERSUS THE DAKOTA ACCESS PIPELINE, AND THE LONG TRADITION OF INDIGENOUS RESISTANCE* 1–23 (2019); Occupy!: *Scenes from Occupied America* (Carla Blumenkranz et al. eds. 2011); Erin Baldassari & Molly Solomon, *How Moms 4 Housing Changed Laws and Inspired a Movement*, KQED (Oct. 19, 2020), <https://www.kqed.org/news/11842392/how-moms-4-housing-changed-laws-and-inspired-a-movement> [https://perma.cc/SB3B-PGE6]; *The History of the #Not1More Campaign*, #NOT1MORE, <http://www.notonemoredeportation.com/the-history-of-the-not1more-campaign/> [https://perma.cc/YFV6-KCBT]; Kathryn Abrams, *Contentious Citizenship: Undocumented Activism in the Not1More Deportation Campaign*, 26 *BERKELEY LA RAZA* L.J. 46, 47 (2016). Of course, there was organizing that preceded these moments, including, for example, the DREAMers. See, e.g., Daniel Altschuler, *The Dreamers’ Movement Comes of Age*, *DISSENT* (May 16, 2011), https://www.dissentmagazine.org/online_articles/the-dreamers-movement-comes-of-age [https://perma.cc/M8YP-6KRM]. For a further description of the campaigns that helped to organized anti-enforcement mobilization in the immigration arena between 2009 and 2012, see generally Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 *UCLA L. REV.* 1464 (2017).

⁶² Jane McAlevey has helpfully distinguished between advocacy, mobilizing and organizing. Jane M. McAlevey, *No Shortcuts: Organizing for Power in the New Gilded Age* 9–12 (2016).

⁶³ See, e.g., *STANDING WITH STANDING ROCK: VOICES FROM THE #NODAPL MOVEMENT* 235, 235 (Nick Estes & Jaskiran Dhillon eds., 2019); Raina Lisitz, *The Rise of a New Left: How Young Radicals are Shaping the Future of American Politics* (2022); Donna Murch, *Assata Taught Me: State Violence, Racial Capitalism, and the Movement for Black Lives* (2022); Yousef Munayyer, *BDS: Where it came from and where it is headed*, 106 *Geographical Rev.* 283 (2016).

⁶⁴ See, e.g., Thomas Kochan & Wilma Liebman, *America’s seeing a historic surge in worker organizing. Here’s how to sustain it.* WBUR (Sept. 5, 2022), <https://www.wbur.org/cognoscenti/2022/09/05/worker-organizing-labor-day-thomas-kochan-wilma-liebman>; Chris Brooks, *How Amazon and Starbucks Workers are Upending*

Like any sustained period of rebellion, an imperfect but observable learning or even radicalization has occurred with the cauldrons of discontent: the workplace and the jail, the riot and the protest, the union and the picket line, the mutual-aid network, the socialist organization, and the abolitionist collective.⁶⁵ The rebellions that have engulfed the country since the Great Recession feature ordinary people linking their inability to find work or to pay their bills with the fines and fees they owe the courts, the warrants out for their arrests, the student debt they owe their creditors and the skyrocketing rents they owe their landlords.⁶⁶ In the wake of the 2008 financial crisis and the attendant bailouts of banks and the auto industry, Occupy Wall Street re-seeded anti-capitalist critique after decades of dormancy. Occupy re-popularized class antagonism through encampments around the country deploying the pithy coinage of the one percent in local geographies of power.⁶⁷ It radicalized many young people who had voted for Barack Obama in their first election and who were now asking about the purpose of the state and to whom it was ultimately accountable.⁶⁸ Many of

the Organizing Rules, In These Times (May 31, 2022), <https://inthesetimes.com/article/amazon-starbucks-workers-organizing-unions-momentum-movement-moment>. See also Class Struggle and Racial Justice after the Union Drive at Amazon, A Roundtable, Spectre Journal (June 11, 2021), <https://spectrejournal.com/class-struggle-and-racial-justice-after-the-union-drive-at-amazon/>.

⁶⁵ See generally Daniel Aldana Cohen & David Bond, Toward a Theory of Climate Praxis: Confronting Climate Struggle in a World of Struggle in *Crisis Under Critique: How People Assess, Transform, and respond to Critical Situations* 271, 272 (Didier Fassin & Axel Honneth eds. 2022) (“protracted political struggle . . . will play the decisive role in shaping how people understand climate change’s interconnections with other issues and how they act on them”);

⁶⁶ In writing about the LA riots in 1992 after the police brutalization of Rodney King and the London riots in 2011 after the police murder of Mark Duggan, Jackie Wang argues that by picking a frame to make political sense of mass protest, we compress its “antisocial tendencies” and more purely disruptive elements. JACKIE WANG, *CARCERAL CAPITALISM* 277 (2018). To illustrate the point, she quotes a woman in London that explained “We’re not all gathering together for a cause, we’re running down Foot Locker.” *Id.*

⁶⁷ Amna A. Akbar, *This Could be Housing*, 121 S. ATL. Q. 261, 273-74 (2022); see Aziz Rana, *Goodbye Cold War*, 30 N+1 MAG. (Winter 2018), <https://www.nplusonemag.com/issue-30/politics/goodbye-cold-war> [https://perma.cc/R5HY-2STM]; Astra Taylor & Jonathan Smucker, *Occupy Wall Street Changed Everything: Ten Years Later, the Legacy of Zuccotti Park Has Never Been Clearer*, N.Y. MAG. (Sept. 21, 2021), <https://nymag.com/intelligencer/2021/09/occupy-wall-street-changed-everything.html> [https://perma.cc/KYE8-KWXJ]; KEEANGA-YAMAHATTA TAYLOR, *FROM #BLACK LIVES MATTER TO BLACK LIBERATION* 145 (2016).

⁶⁸ See Ruth Milkman, *A New Political Generation: Millennials and the Post-2008 Wave of Protest*, 82 AM. SOC. REVIEW 1, 15-19 (2017); Elizabeth Alexander, *The Trayvon Generation*, NEW YORKER (June 15, 2020), <https://www.newyorker.com/magazine/2020/06/22/the-trayvon-generation>

them were highly educated, riddled with debt, and downwardly mobile.⁶⁹ Young Black and brown people who participated in Occupy went on to create key formations in the racial justice left that took shape amidst Obama's presidency, including through George Zimmerman's brutal killing of Trayvon Martin in Florida, and his subsequent acquittal.⁷⁰ The 2014 and 2015 rebellions clarified the economic footprint of the carceral state: from role of fines and fees in the regressive municipal governance of Ferguson to how police facilitate segregation and gentrification in major cities like Baltimore.⁷¹ The co-constitutive relationship between state and market; public and private; violence and exploitation; and race, class, and economy became increasingly hard to deny.

In 2014, the resounding call at street protests was for an indictment of Wilson.⁷² By the time of the 2020 uprisings, prison abolitionist organizing had enough influence over racial-justice discourse that the loudest demand around the country was to defund the police—a demand for redistribution, to reshape the state—rather than for prosecution or conviction.⁷³ Now, at

[<https://perma.cc/YGR4-V4B9>]; see also CHARLENE A. CARRUTHER, UNAPOLOGETIC: A BLACK, QUEER, AND FEMINIST MANDATE FOR RADICAL MOVEMENTS <pincite> (2018).

⁶⁹ See Charlotte Alter, *How the Well-Educated and Downwardly Mobile Found Socialism*, LitHub (Feb. 19, 2020), <https://lithub.com/how-the-well-educated-and-downwardly-mobile-found-socialism/>; see also L. & Isaac KD, *Stuck in a Loop? A critical assessment of DSA's strategic orientation towards the fight for reforms*, Socialist Forum (Spring 2022), <https://socialistforum.dsaua.org/issues/spring-2022/stuck-in-a-loop/>.

⁷⁰ See, e.g., *Asia Pacific Forum: Phillip Agnew on #BlackLivesMatter: From Dreams Deferred to Dream Defenders* (WBAI radio broadcast Dec. 29, 2014), http://www.asiapacificforum.org/show-detail.php?show_id=375 (explaining founders of Dream Defenders came out of Occupy). See also Barbara Ransby, *The Class Politics of Black Lives Matter*, DISSENT (Fall 2015), <https://www.dissentmagazine.org/article/class-politics-black-lives-matter> [<https://perma.cc/PQ5V-CMRN>] (framing Black Lives Matter as concerned with class-politics, and central to any left project seeking transformative change); Siddhant Issar, *Listening to Black Lives Matter: Racial Capitalism and the Critique of Neoliberalism*, 20 CONTEMP. POL. THEORY 48, 49(2020) (reading Black Lives Matter and the Movement for Black Lives Policy Platform as “mobiliz[ing] the theory of racial capitalism”).

⁷¹ For a discussion see, Akbar, *Toward a Radical Imagination*, 416-421. See also Lester Spence, *Policing Class*, Jacobin (Aug. 16, 2016), <https://jacobin.com/2016/08/baltimore-police-department-of-justice-freddie-gray>.

⁷² For an earlier sketch of racial justice protest and the pressure it placed on scholarly and legal accounts of police and racism, see Amna A. Akbar, *Law's Exposure: The Movement and the Legal Academy*, 65 J. Legal Educ. 352 (2015).

⁷³ Amna A. Akbar, *How Defund and Disband Became the Demand*, NEW YORK REV. (Jun 15, 2020), <https://www.nybooks.com/online/2020/06/15/how-defund-and-disband-became-the-demands> [<https://perma.cc/VZ7N-TBWQ>]; Robin D.G. Kelley, *Insecure: Policing under Racial Capitalism*, Spectre Journal (Nov. 8, 2020), <https://spectrejournal.com/insecure-policing-under-racial-capitalism/>. See Amna A. Akbar,

and between the protests in meetings and on podcasts, people were reviving old debates about the relationship between racism and capitalism, the meaning of democracy, and the strategies and tactics of social change.⁷⁴ They told distinct stories about the nature of the problems around us, and sometimes, they advanced radical demands toward emancipatory horizons. In the process, popular horizons of conceiving justice and its possibilities were questioned, contested, and remade.⁷⁵ Through Bernie Sanders's two presidential runs and the rapid growth of the DSA even socialism and communism were back on the table—polls suggest an openness toward and support for socialism and socialist candidates among young people, and a

An Abolitionist Horizon for (Police) Reform, 108 Calif. L. Rev. 1781 (2020); Jessica M. Eaglin, *To “Defund” the Police*, 73 STAN. L. REV. ONLINE 120, 122 (2021); Anthony O’Rourke, Rick Su & Guyora Binder, *Disbanding Police Agencies*, 121 COLUM. L. REV. 1327, 1328-30 (2021); Rick Su, Anthony O’Rourke & Guyora Binder, *Defunding Police Agencies*, 71 EMORY L.J. 1197, 1198-1200 (2022).

⁷⁴ To a lesser extent, but in an important way, questions of gender, sexuality, and heteropatriarchy are also central—indeed many have remarked that one of the distinct features of this wave of left social movement activity is its grappling with and practices of intersectionality. See, e.g., BARBARA RANSBY, *MAKING ALL BLACK LIVES MATTER: REIMAGINING FREEDOM IN THE TWENTY-FIRST CENTURY* 3 (2018); DEVA R. WOODLY, *RECKONING: BLACK LIVES MATTER AND THE DEMOCRATIC NECESSITY OF SOCIAL MOVEMENTS* (2021); Amna A. Akbar, *Long and Variegated Struggles: On “Abolition. Feminism. Now.”*, LA REV. OF BOOKS (June 28, 2022), <https://lareviewofbooks.org/article/long-and-variegated-struggles-on-abolition-feminism-now> [<https://perma.cc/7URM-AVPT>]. On intersectionality, see generally, Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (discussing the experiences of women of color as the product of intersecting patterns of racism and sexism).

⁷⁵ See MICHELE MOODY-ADAMS, *MAKING SPACE FOR JUSTICE: SOCIAL MOVEMENTS, COLLECTIVE IMAGINATION, AND POLITICAL HOPE* 187-221 (2022).

skepticism about capitalism⁷⁶—even if at a great stretch.⁷⁷

The turn to defund was one mark among many of a larger shift, where the demands of racial-justice movements veered from what had become the conventional articulation of liberal aspiration: affirmative action, diversity and inclusion, or sensitivity trainings for police. Many of the demands became more material and transformative as to state, society, and economy.⁷⁸ To defund the police. To cancel student debt. To put an end to fossil fuels. These demands functioned in part as apertures toward bold horizons of remaking the social, political, economic fabric of the United States, broadly understood.⁷⁹ And many are broadly popular among the

⁷⁶ E.g., Charlotete Alter, *How the Well-Educated and Downwardly Mobile Found Socialism*, LitHub (Feb. 19, 2020), <https://lithub.com/how-the-well-educated-and-downwardly-mobile-found-socialism/>; Pew Research Center, Modest Declines in Positive Views of ‘Socialism’ and ‘Capitalism’ in the U.S. (Sept. 19, 2022), <https://www.pewresearch.org/politics/2022/09/19/modest-declines-in-positive-views-of-socialism-and-capitalism-in-u-s/>; Stef W. Kight, 70% of millennials say they’d vote for a socialist, Axios (Oct. 28, 2019), <https://www.axios.com/2019/10/28/millennials-vote-socialism-capitalism-decline>; Sam Sanders, *Why Do Young People Like Socialism More than Older People Do?*, NPR (Nov. 21, 2015 8:03 AM ET), <https://www.npr.org/2015/11/21/456676215/why-do-young-people-like-socialism-more-than-older-people>; Julia Manchester, *Majority of young adults in US hold negative view of capitalism: poll*, The Hill (June 28, 2019 9:18 AM ET), <https://thehill.com/homenews/campaign/560493-majority-of-young-adults-in-us-hold-negative-view-of-capitalism-poll/>; Samuel Gregg, *Young Americans Increasingly Prefer Socialism. Here’s How to Change Their Mind*, Heritage Foundation (July 13, 2021), <https://www.heritage.org/progressivism/commentary/young-americans-increasingly-prefer-socialism-heres-how-change-their-minds>; Jack Kelly, *Why Young Voters are Embracing Bernie Sanders and Democratic Socialism*, Forbes (Feb. 5, 2020), <https://www.forbes.com/sites/jackkelly/2020/02/05/the-reasons-why-young-voters-are-embracing-bernie-sanders-and-socialism/?sh=330c7aa22f17>.

⁷⁷ E.g., Raina Lipsitz, *The Rise of a New Left: How Young Radicals Are Shaping the Future of American Politics* 74 (2020) (158 (“the last several years have seen a resurgence of socialism” but “there have been a number of socialists in office (and, more broadly, a vibrant American left) in the United States at various points throughout our history”); Nate Holdren & Eric Tucker, *Marxist Theories of Law Past and Present: A meditation Occasioned by the 25th Anniversary of Law, Labor, and Ideology*, 45 Law & Soc. Inquiry 1142, 1142 (2020) (“In the past decade or so, socialism has been making headlines again”).

⁷⁸ Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 91 (2020). For an argument tying defunding police departments with taxing the rich illustrating this turn, see David Segal & Astra Taylor, *Police Budgets, Austerity, and Tax Cuts for the Rich are Colliding in Democratic States and Cities*, The Intercept (June 13, 2020, 6:00 a.m.), <https://theintercept.com/2020/06/13/defund-police-budget-austerity/>.

⁷⁹ For an argument that LPE scholars should adopt an expanded conception of the economy, including, for example, housework, caregiving, the carceral, see Angela P. Harris, Amy Kapczynski & Noah Zatz, *Where Is the Political Economy*, LPE BLOG (June 21, 2021), <https://lpeproject.org/blog/where-is-the-political-economy>

public, if not the political or donor classes.⁸⁰

By 2020, there was enough in shared relationships and analysis that the Sunrise Movement and the Afro Socialist caucus of the DSA joined prison-abolitionist and racial-justice organizations in mass trainings on defund the police. Reflecting long-standing relationships between labor contesting the economy and social-movement formations contesting the state, the International Longshore and Warehouse Union stopped work and shut down ports in solidarity with the street mobilizations against police violence in 2020.⁸¹ The Chicago Teachers Union and the United Teachers of Los Angeles endorsed demands to remove police from their school districts in 2020 and the Debt Collective's campaign to cancel student debt in 2022.⁸²

[<https://perma.cc/A4W8-3XD8>].

⁸⁰ Raina Lipsitz, *The Rise of a New Left: How Young Radicals Are Shaping the Future of American Politics* 75 (2022) (“That socialism is again in vogue is primarily a function of the issues—Medicare for All, cancellation of medical and student debt—that DSA and politicians like Sanders and Ocasio-Cortez are best known for championing and which feel especially urgent today.”). *See also* Bradley Jones, *Increasing share of Americans favor a single government program to provide health care coverage*, Pew Research Center (Sept. 29, 2020), <https://www.pewresearch.org/fact-tank/2020/09/29/increasing-share-of-americans-favor-a-single-government-program-to-provide-health-care-coverage/>; Gabby Galvin, *About 7 in 10 Voters Favor a Public Health Insurance Option. Medicare for All Remains Polarizing*, Morning Consult (Mar. 24, 2021 6:00 am ET), <https://morningconsult.com/2021/03/24/medicare-for-all-public-option-polling/>. [maybe this should come above the line:] Recent polling even shows a “majority of American voters support alternatives to policing.” Laura Goldstein et al., *HIT Strategies, Overall Findings from Messaging Research on Reimagining Public Safety* (Oct. 2022), https://hitstrat.com/wp-content/uploads/2022/10/Final_6TH-DRAFT_EXTERNAL-MEMO-1.pdf; Alec’s Copaganda Newsletter, *The News and Public Opinion about Police* (Oct. 8, 2022) (on file with author) (sharing the results of a poll that shows “63% of conservatives, 68% of moderates, and 76% of liberals support ‘reallocating parts of the LAPD’s budgets to social workers, mental healthcare, and other social services.’” (citing Loyola Marymount University StudyLA Data Brief—Police and Community Relations 2022, https://lmu.app.box.com/s/rxjxotx7uaxfs5cm0q07w6m8ignbla26?utm_source=substack&utm_medium=email).

⁸¹ Eric Blanc, “*The Most Effective Way to Stop Police Terror is Action at the Point of Production*” *An Interview with Clarence Thomas*, Jacobin (June 9, 2020), <https://jacobin.com/2020/06/george-floyd-ilwu-work-stoppage-antiracism>; *see also* Robin D.G. Kelley, *The Freedom Struggle Is a Labor Struggle, Then & Now*, INT’L VIEWPOINT (Jan. 9, 2021), <https://internationalviewpoint.org/spip.php?article6986> [<https://perma.cc/25PV-PG29>].

⁸² Ariel Parella-Aurelia, *Chicago Teachers Union Members March to Demand Chicago Public Schools Defund Police, Fund Restorative Practices in Schools*, WBBM (June 6, 2020 3:37 pm), <https://www.audacy.com/wbbm780/articles/chicago-teachers-union-marches-to-demand-cps-defund-cpd>; Carla Javier, *LA Teachers’ Union Endorses Calls to Defund School Police*, Laist (June 26, 2020), <https://laist.com/news/utla-teachers->

Now, many organizers and activists in racial and economic justice movements invoke both racism and capitalism as the target of their work.⁸³ From organizations in Movement for Black Lives (M4BL) to the DSA to tenants' and debtors' unions, people are grappling with the idea that capitalism and white supremacy are soldered to one another through a long and varied historical processes; that you cannot meaningfully take on, let alone surpass, racialized inequality or violence without taking on capitalist exploitation and the economy; and that you cannot defeat capitalist exploitation without taking on racialized inequality or violence and the state. They contend that racism and capitalism together give shape to the unequal world around us and that building a more just world requires their unmaking. The term "racial capitalism" is bandied around.⁸⁴ Sometimes, the

[union-laUSD-school-police-defund-vote](https://www.ctulocal1.org/posts/resolution-student-debt/); Chicago Teachers Union, Resolution for Student Debt Cancellation, March, 9, 2022, <https://www.ctulocal1.org/posts/resolution-student-debt/>; Chrissy Clark, *Los Angeles Teachers Union Wants Student Loans Forgiven for 'Teacher Appreciation Week,'* Daily Caller (May 4, 2022 3:09 PM ET), <https://dailycaller.com/2022/05/04/la-teachers-union-appreciation-week-student-loan-forgiveness/>.

⁸³ See, e.g., MURCH, *supra* note 35, at <pincite>.

⁸⁴ Legal scholarship is now catching on. The Journal of Law and Political Economy, for example, just dedicated a whole issue to racial capitalism. E.g., Carmen G. Gonzales & Athena D. Mutua, *Mapping Racial Capitalism: Implications for Law*, 2 J.L. & POL. ECON. 127 (2022); Saru M. Matambanadzo, *Gender, Expulsion, and Law Under Racial Capitalism*, 2 J.L. & POL. ECON. 202 (2022). K-Sue Park has written extensively on the topic. Her piece *Money, Mortgages, and the Conquest of America*, 41 LAW & SOC. INQUIRY 1006 (2016) is often cited by scholars across disciplines writing on racial capitalism. See, e.g., Jodi A. Byrd et al., *Predatory Value: Economies of Dispossession and Disturbed Relationships*, 36 SOC. TEXT, no. 2, June 2018, at [pincite/FN 24 is where she is mentioned]; see also K-Sue Park, *Race, Innovation, and Financial Growth: The Example of Foreclosure*, in HISTORIES OF RACIAL CAPITALISM 27 (Destin Jenkins & Justin Leroy eds., 2021) (discussing the relationship between race and economic growth in the context of foreclosure in early America); Angela P. Harris, *Foreword* to HISTORIES OF RACIAL CAPITALISM, *supra* at vii (arguing that law is a "key site for the development of new scholarship in racial capitalism"); Daria Roithmayr, *Racism Is at the Heart of the Platform Economy*, LPE BLOG (Nov. 16, 2018), <https://lpeproject.org/blog/racial-capitalism-redux-how-race-segments-the-new-labor-markets> [https://perma.cc/8NNA-2BZ8] ("This post argues that race and racism are segmenting the new "on demand" labor markets, in ways that facilitate the transition to this new sector of the economy."); Daria Roithmayr, *Uniting the Working Class Across Racial Lines*, LPE BLOG (Aug. 1, 2018), <https://lpeproject.org/blog/uniting-the-working-class-across-racial-lines> [https://perma.cc/D62S-MSY3] ("This post serves to . . . explore the argument that race segments the working class into less-free workers of color and more-free white labor . . . [and] strengthen the call to unite the old and new working classes across the race-class divide."); and Daria Roithmayr, *The New Majority: Uniting The Old and New Working Class*, LPE BLOG (Jan. 2, 2018), <https://lpeproject.org/blog/the-new-majority-uniting-the-old-and-new-working-class> [https://perma.cc/MY4V-E87Q] ("To end

evocation of the phrase is a simple gesture to capture white supremacy and capitalism's braided nature. Sometimes, the invocation is based on readings of the Marxist debates on primitive accumulation, the Black Radical Tradition and Cedric Robinson, and activists from the Black freedom struggles in the United States, the anti-apartheid struggle in South Africa, and anti-colonial struggles the world over.⁸⁵ Some criticize the term for stating a redundancy (there is no form of capitalism that does not draw on racism), creating another sectarian divide, or distracting from the class antagonism at the bottom of all exploitation.⁸⁶ Others insist the term is a necessary heuristic given the world has ever known a racialized capitalism.

Of course, debates about the relationship of race to class—or the primacy of one over the other—continue to haunt the left.⁸⁷ The DSA

inequality, and to defuse white working class backlash, progressives should work to unite both the old and new working class on issues that those two groups share . . .”).

⁸⁵ The term “racial capitalism” has roots in the South African anti-apartheid movement. As put by the activists credited with coining the phrase, in South Africa “the prevailing social antagonism did not appear to be owners of industrial capital arrayed against an industrial waged workforce but a white minority ruling over a black majority.” Arun Kundnani, *What Is Racial Capitalism?*, KUNDNANI ORG. (Oct. 23, 2020), <https://www.kundnani.org/what-is-racial-capitalism> [<https://perma.cc/HPE3-HXVS>]. Cedric Robinson, in turn, insisted that these dynamics were not particular to South Africa but took shape “wherever capitalism prevailed.” *Id.*; CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 71-167 (2000); *see also* Robin D.G. Kelley, *Introduction to RACE, CAPITALISM, JUSTICE* 5 (Deborah Chasman & Joshua Cohen eds., 2017) (discussing Cedric Robinson’s work on racial capitalism). Capitalism relied not on simple straightforward homogenization or proletarianization of the working class that certain Marxist accounts suggested, but instead on differentiation—including, centrally, through racialization on a global stage. *See* Arun Kundnani, *What Is Racial Capitalism?*, KUNDNANI ORG. (Oct. 23, 2020), <https://www.kundnani.org/what-is-racial-capitalism> [<https://perma.cc/HPE3-HXVS>] (“Racism is the means by which this differentiation is coded and managed, the terms upon which capitalism narrates its own failure to universalize.”); *see also* GARGI BHATTACHARYYA, *RETHINKING RACIAL CAPITALISM: QUESTIONS OF REPRODUCTION AND SURVIVAL* 11 (2018) (“This central claim that the tendency of capitalism has been ‘not to homogenize but to differentiate’ lies at the very heart of the conceptualization of racial capitalism.”). The term seems to have been introduced in legal scholarship by Nancy Leong, though her concern was with a narrower phenomenon. *See* Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2152, 2157 (2013) (defining racial capitalism as “the process of deriving social and economic value from the racial identity of another person,” analyzing that process in the context of affirmative action and college admissions, and suggesting “decommodification of racial identity”).

⁸⁶ E.g., Michael Walzer, *A Note on Racial Capitalism, Dissent* (July 29, 2020), https://www.dissentmagazine.org/online_articles/a-note-on-racial-capitalism. *See also* Olufemi O. Táíwò & Liam Kofi Bright, *A Response to Michael Walzer, Dissent* (Aug. 7, 2020), https://www.dissentmagazine.org/online_articles/a-response-to-michael-walzer.

⁸⁷ *Compare* Adaner Usmani & David Zachariah, *The Class Path to Racial Liberation*,

continues to be largely white in its membership.⁸⁸ The DSA's big-tent approach means that in chapters and across the pages of the allied periodicals *Jacobin* and *Catalyst*, there are debates about race and class, socialism and prison abolition.⁸⁹ There have been defenses and criticisms of racial justice organizing and the demands of the street protests of the last several years: in particular the accusation that demands to defund the police cohere with politics of austerity that the left should disavow.⁹⁰ The M4BL ecosystem marshaled the energy of successive rebellions in Black cities into organized power (and large philanthropic donations) across the country. Organizers built community bail funds, bailed people out of jail, and ousted

Catalyst (Fall 2021), <https://catalyst-journal.com/2021/12/the-class-path-to-racial-liberation> with Robin D.G. Kelley, *Insecure: Policing under Racial Capitalism*, Spectre Journal (Nov. 8, 2020), <https://spectrejournal.com/insecure-policing-under-racial-capitalism/>.

⁸⁸ See, e.g., Jeff Stein, *9 Questions of the Democratic Socialists of America You Were Too Embarrassed to Ask*, VOX (Aug. 5, 2017 8:40 AM EDT), <https://www.vox.com/policy-and-politics/2017/8/5/15930786/dsa-socialists-convention-national> [<https://perma.cc/BGA8-3GXP>].

⁸⁹ On the big tent, Raina Lipsitz, *The Rise of a New Left: How Young Radicals Are Shaping the Future of American Politics* 19 (2022) ("the organization, so often characterized as an ultra-woke organ of the "far left," is actually a big tent. Most DSA members support certain policies but have a wide range of attitudes toward voting, the Democratic Party, and overall political strategy. Some are Marxists; some are anarchists; others are committed to reforming the Democratic Party."). On the debates, see, e.g., John Clegg & Adaner Usmani, *The Economic Origins of Mass incarceration*, 3 CATALYST (Fall 2019), <https://catalyst-journal.com/2019/12/the-economic-origins-of-mass-incarceration> [<https://perma.cc/3DK3-532B>]; Jack Norton & David Stein, *Materializing Race: On Capitalism and Mass Incarceration*, SPECTRE J. (Oct. 22, 2020), <https://spectrejournal.com/materializing-race> [<https://perma.cc/FMT3-2KW4>]; Adaner Usmani & David Zachariah, *The Class Path to Racial Liberation*, 5 CATALYST (Fall 2021), <https://catalyst-journal.com/2021/12/the-class-path-to-racial-liberation> [<https://perma.cc/Z8CC-PJQ8>]. For an excellent engagement with these questions, see Asad Haider, *Mistaken Identity: Race and Class in the Age of Trump* (2018).

⁹⁰ E.g., The Jacobin Show, *Debating the "Defund the Police" Language*, YOUTUBE (Dec. 11, 2020), <https://www.youtube.com/watch?v=qBR3wmKavng&feature=youtu.be> [<https://perma.cc/HGF7-LUG9>]; Dustin Guastella, *To End Police Violence Fund Public Goods and Raise Wages*, Nonsite.org (July 9, 2020), <https://nonsite.org/policing-symposium/>; cf. Robin D.G. Kelley, *Insecure: Policing under Racial Capitalism*, Spectre Journal (Nov. 8, 2020), <https://spectrejournal.com/insecure-policing-under-racial-capitalism/> ("the current push to 'defund' or abolish the police grew from a decade of organizing by radical movements that are frequently relegated to the margins of the left or dismissed as 'identity movements'—namely, anticarceral feminists, Black, Latinx, and Indigenous radicals, community and youth-based mobilizations against police violence"); *The Best Way to "Reform" the Police Is to Defund the Police: An Interview with Alex S. Vitale*, JACOBIN (June 3, 2020), <https://jacobin.com/2020/06/defund-police-reform-alex-vitale> [<https://perma.cc/6FF4-JGGB>]; Peter Ikeler, *To End Police Violence, End Racial Capitalism*, Spectre Journal (July 20, 2020), <https://spectrejournal.com/to-end-police-violence-end-racial-capitalism/>.

calloused prosecutors.⁹¹ They facilitated the making of race, anti-Blackness, and the history of enslavement as open wounds in need of urgent attention in U.S. politics. But M4BL is charged by some on the socialist left with identity politics and not taking class, class antagonism, or anticapitalism seriously. Increasingly, there are criticisms that the Movement for Black Lives has become encased within the nonprofit industrial complex, with no real base.⁹² Simultaneously, Black-led organizations and allied intellectuals charge the DSA with being out of touch with what is happening within Black and brown communities and for positioning themselves as above purportedly bourgeois politics when the DSA has been unable to mobilize anywhere near as many people to the streets as the racial justice protests of the last decade.⁹³ In its various periodicals, DSA membership openly frets about its division from the traditional working class, and debates strategies for how to build a socialist left in close relation to working-class organization.⁹⁴

But the DSA and the M4BL are large formations with sprawling and diverse arms, and considerable overlap.⁹⁵ There are many members that hold both a Marxist, socialist, or communist politic, alongside abolitionist commitments.⁹⁶ The Dream Defenders and the Red Nation are

⁹¹ E.g., Jocelyn Simonson, *The Bail Fund Movement*, N+1 MAG. (June 22, 2020), <https://www.nplusonemag.com/online-only/online-only/the-bail-fund-moment> [<https://perma.cc/2RYM-BD7A>]; Stahly-Butts & Akbar, *supra* note 20, at 1567-77.

⁹² E.g., Tamar Wilson, Movement at a Crossroads, *Socialist Alternative* (Mar. 1, 2022), <https://www.socialistalternative.org/2022/03/01/movement-at-a-crossroads-what-comes-next-blm/>.

⁹³ See, e.g., Tatiana Cozzarelli, *Class Reductionism is Real, and It's Coming from the Jacobin Wing of the DSA*, *Left Voice* (June 16, 2020), <https://www.leftvoice.org/class-reductionism-is-real-and-its-coming-from-the-jacobin-wing-of-the-dsa/>.

⁹⁴ E.g., Lipsitz, *supra* note __, at 201 (“Forging a party that truly and consistently represents the interests of working people is a longstanding goal of the American left that has never been fully realized.”). See also Viewpoint Magazine, *The Democratic Socialists of America: A Political Inquiry* (2021).

⁹⁵ See, e.g., Robin D.G. Kelley, *Insecure: Policing under Racial Capitalism*, *Spectre Journal* (Nov. 8, 2020), <https://spectrejournal.com/insecure-policing-under-racial-capitalism/> (“the Black left’s protracted struggle to dismantle the US police state has for too long remained at the margins of Marxist thought and praxis”); Michael C. Dawson, *Blacks In and Out of the Left* 16-17 (2013) (“the general history of progressive and labor movements, including specifically the history of Marxism in the United States and the history of what is called the New Left, has been until recently whitewashed”).

⁹⁶ *Id.* For resources developing such line of thought, see, e.g., Jeremy Schahill, *Scholar Robin D..G. Kelley on How Today’s Abolitionist Movement Can Fundamentally Change the Country*, *The Intercepted Podcast* (June 27, 2020), <https://theintercept.com/2020/06/27/robin-dg-kelley-intercepted/>; Peter Bloom, *Abolitionist Socialism: The Revolutionary Struggle for our Commons Existence*, *Spectre*

organizational examples.⁹⁷ Moreover, organizations work together in coalitional campaigns and formations: for example, the #StopCopCity campaign in Atlanta.⁹⁸ Within them and a larger ecosystem of left-leaning organizations are people, formations, and chapters that are developing an integrated critique of race and capitalism; an understanding, as the Trinidadian-American sociologist Oliver Cromwell Cox put it in 1948, that “[r]acial antagonism is part and parcel of class struggle.”⁹⁹

However deep, tentative, or conflictual the analysis may be, there are few that would argue that dismissing either racism or capitalism—fighting one without the other—makes any strategic sense. The centrality of these debates is itself remarkable.¹⁰⁰ They mark the radicalization, a reemergence,

Journal (Sept. 4, 2020), <https://spectrejournal.com/abolitionist-socialism/>; Wilson Sherwin, *Working for Abolition Means Abolishing Work*, Spectre Journal (June 1, 2022), <https://spectrejournal.com/working-for-abolition-means-abolishing-work/>.

⁹⁷ Raina Lipsitz, *The Rise of a New Left: How Young Radicals Are Shaping the Future of American Politics* 132-38 (2020) (describing Dream Defenders as an organization with members that identify as both abolitionists, socialists, and internationalists). Rachel Gilmore, the Dream Defenders’ co-executive director, describes that she thought of socialism as a white political project until she went to Brazil and met with the members of the Landless Workers Movement: “Meeting fellow Black people in another part of the world who ‘saw themselves very clearly as part of a socialist political tradition,’ she said, helped her to see the bigger picture, one often obscured by US blindness to other countries and perspectives.” *Id.*

⁹⁸ See *infra* Part IV.A.

⁹⁹ HISTORIES OF RACIAL CAPITALISM, *supra* note 54, at 7 (citing OLIVER CROMWELL COX, *CASTE, CLASS, AND RACE: A STUDY IN SOCIAL DYNAMICS*, at xxx (1948)). Ida B. Wells wrote about how “lynching was in fact directed toward upwardly mobile black people.” *Id.* at 8. Manning Marable explained that “Capitalist development has occurred . . . because of the brutal exploitation of Blacks as workers and consumers.” *Id.*; see also Michael C. Dawson, *Hidden in Plain Sight: A Note on Legitimation Crises and the Racial Order*, 3 CRITICAL HIST. STUD. 143 (Spring 2016) (arguing that understanding current and historical nature of race and capitalism is essential to understanding the United States’s deep crisis). Debates have taken place along the lines of the relationship between race and class, or, alternatively, the relationship between enslavement and colonialism and the emergence of capitalism. See ANDY CLARNO, *NEOLIBERAL APARTHEID* 8-9 (2017) (drawing on Du Bois, C.L.R. James, and Eric Williams, and labeling them as “early scholars” who “stand out for demonstrating that industrial capitalism was built on a foundation of colonialism and slavery”). Barbara Fields criticized “historians who wrote about slavery ‘as primarily a system of race relations—as though the chief business of slavery were the production of white supremacy rather than the production of cotton, sugar, rice, and tobacco.’” HISTORIES OF RACIAL CAPITALISM, *supra* note 54, at 8. Similarly, Eric Williams “insisted that the origin of chattel slavery was ‘economic, not racial.’” *Id.* at 7.

¹⁰⁰ For another example, see Enzo Rossi & Olúfemi O. Táíwò, *What’s New About Woke Racial Capitalism (and What Isn’t)*, Spectre Journal (Dec. 18, 2020), <https://spectrejournal.com/whats-new-about-woke-racial-capitalism-and-what-isnt/>.

or a growth, of a left flank of racial-justice organizing, and of a socialist left contending with questions of racism and colonialism. The turn to racial capitalism—if not the phrase, the proposition that racism and capitalism are partners—is central to the radicalization of theories and practices of social change. It is central to why people on the left do not believe in law, the state, or the market as neutral vessels, and central to why they adopt horizons beyond the state, and strategies and tactics beyond what formal law and politics offer. They aim to remake politics and the economy, rather than simply reform it. The turn to racial capitalism, then, is propelling distinct theories and practices of social change. As the South African activists credited with the phrase explained: “Capitalism was not the solution to racism but the soil upon which it grew.”¹⁰¹

As political scientist Michael C. Dawson puts it: “[T]he ontological distinction between superior and inferior human beings—codified as race” was required “for slavery, colonialism, the theft of lands in the Americas, and genocide,”¹⁰² and continues to underwrite differentiation between “possessors and dispossessed, between citizens endowed with liberal rights and the unfree, between productive humanity and disposable humanity.”¹⁰³

¹⁰¹ Kundnani, *supra* note 65 (citing MARTIN LEGASSICK & DAVID HEMSON, FOREIGN INVESTMENT AND THE REPRODUCTION OF RACIAL CAPITALISM IN SOUTH AFRICA (1976), a pamphlet written by South African Marxists who participated in the anti-apartheid movement in the 1970s); *see also* Jodi Melamed, Racial Capitalism, 1 CRITICAL ETHNIC STUD. 76, 77 (2015) (“Capital . . . can only accumulate by producing and moving through relations of severe inequality among human groups—capitalists with the means of production/workers without the means of production/workers without the means of subsistence, creditors/debtors, conquerors of land made property/the dispossessed and removed. These antinomies of accumulation require loss, disposability and the unequal differentiation of human value, and racism enshrines the inequalities that capitalism requires.”). Neville Alexander who was incarcerated with Nelson Mandela and cofounded the leftist National Forum included the term “racial capitalism” in a 1983 manifesto. JENKINS & LEROY, *supra* note 63, at 4.

¹⁰² Dawson, *supra* note 63, at 147.

¹⁰³ Arun Kundnani, *What is Racial Capitalism*, ARUN KUNDANI ON RACE, CULTURE, AND EMPIRE (Oct. 23, 2020), <https://www.kundnani.org/what-is-racial-capitalism> [<https://perma.cc/CL5A-7DAN>]; *see also* JENKINS & LEROY, *supra* note 63, at 3-4 (“[T]he violent dispossessions inherent to capital accumulation [require] leveraging, intensifying, and creating racial distinctions.” In turn, “race serves as a tool for naturalizing the inequalities produced by capitalism, and this racialized process of naturalization serves to rationalize the unequal distribution of resources, social power, rights, and privileges”); NIKHIL PAL SINGH, RACE AND AMERICA’S LONG WAR ix (2017) (“The United States developed its forms of democratic politics and capitalist economics from processes of imperial expansion, colonial dispossession, and racial domination.”); AZIZ RANA, TWO FACES OF AMERICAN FREEDOM 3 (2010) (“Many settlers believed that the preservation and enhancement of their own democratic institutions required Indian dispossession and the

In other words, racialization is necessary and at the core of capitalism's mechanics for exploitation. The Indigenous organization the Red Nation explains:

The US built its ruling capitalist class through the genocide and theft of land stolen from the Indigenous inhabitants of this continent, and by exploiting the enslaved labor of African people. This country was founded on the class war of the rich upon the basis of racism, conducted, enabled and safeguarded by the state apparatus. The US created white supremacy to uphold this class war, constructing an empire of capitalist domination through westward expansion and colonization in the 1800s, and US imperialist subjugation of Black and Brown peoples across the Global South in the twentieth and twenty-first centuries.¹⁰⁴

But understanding the precise workings of racism and racialization is required to understand how to thwart them. Transhistorical accounts are insufficient.¹⁰⁵ British sociologist and cultural theorist Stuart Hall

coercive use of dependent groups, most prominently slaves, in order to ensure that they themselves had access to property.”). Parallel arguments have been made by socialist feminists about gender as another mode of differentiation, the creation of the unwaged labor of social production on which capitalism depends. On why socialist feminism was lost within feminist legal theory, see Cynthia Grant Bowman, *Recovering Socialism for Feminist Legal Theory in the 21st Century*, 49 CONN. L. REV. 117 (2016). For foundational texts in the conversation on social reproduction, see MARIAROSA DALLA COSTA & SELMA JAMES, *THE POWER OF WOMEN AND THE SUBVERSION OF THE COMMUNITY* (1972); SYLVIA FEDERICI, *WAGES AGAINST HOUSEWORK* (1975), *reprinted in* REVOLUTION AT POINT ZERO: HOUSEWORK, REPRODUCTION, AND FEMINIST STRUGGLE 11 (2d ed. 2020); ANGELA Y. DAVIS, *The Approaching Obsolescence of Housework: A Working-Class Perspective*, in *WOMEN, RACE, AND CLASS* 222 (Women's Press Ltd. 2001). With both racism and heteropatriarchy, there are arguments about whether these hierarchical relations are “constantly regenerated through changing relations of production” or whether they live “in a separate history understood as the transmission of cultural norms.” Kundnani, *supra*. Jackie Wang makes the related argument in *Carceral Capitalism* that anti-Blackness cannot simply be understood as a product of capitalism. JACKIE WANG, *CARCERAL CAPITALISM* (2018).

¹⁰⁴ RED NATION, COMMUNISM IS THE HORIZON, QUEER INDIGENOUS FEMINISM IS THE WAY 15-16 (n.d.).

¹⁰⁵ In his recent memoir, for example, Adolph L. Reed Jr. argues that Jim Crow is a more productive reference point for today's movements than enslavement because it is nearer in time, and it was Jim Crow's dismantling that produces our current order. Moreover, “discussions of the relation between race and life chances in the contemporary United States gravitate so easily toward allusion to the explicit racial hierarchies that defined the Jim Crow era as an alternative to deep examination fo the discrete processes that gorund and preroduce inequality in the present.” Adolph L. Reed Jr., *The South: Jim*

advocated, required historical, material specificity—what Marxists call conjunctural analysis¹⁰⁶: “[O]ne must deal with the historical specificity of race” and its “link[ages] with economic processes.”¹⁰⁷

The “promise” of the racial-capitalism frame lies in how it opens sites of struggle and solidarity in order to understand the inequality and exploitation of the capitalist economy in relation to the state and its violence.¹⁰⁸ The frame of racial capitalism braids racial-justice with economic-justice struggles.¹⁰⁹ It creates pathways to build larger blocs of organized insurgency. The term “focuses our attention on the broader forms of social organization that are constitutive of social life under capitalism, beyond how it organizes work and production.”¹¹⁰ It allows for an understanding of social change that centers not simply the “working class” and the shop floor, but a broader range of dominated and exploited classes in a diverse range of social, political, and economic settings.¹¹¹ The frame of racial

Crow and its Afterlives 110 (2022).

¹⁰⁶ Kundnani, *supra* note 65 (citing STUART HALL, RACE, ARTICULATION, AND SOCIETIES STRUCTURED IN DOMINANCE (1980), *reprinted in* 1 ESSENTIAL ESSAYS: FOUNDATIONS OF CULTURAL STUDIES 172 (David Morley ed., 2018); HALL ET. AL., *supra* note 39. In contrast, Afro-pessimist-inflected writings sometimes adopt a trans-historical account of racism. Jesse McCarthy, *On Afropessimism*, LA Rev. Books (July 20, 2020), <https://lareviewofbooks.org/article/on-afropessimism/>. Derrick Bell’s canonical writings reflect Afro-pessimistic thinking. *See, e.g.*, Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992); DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

¹⁰⁷ Kundnani, *supra* note 65; *see also* CLARNO, *supra* note 63, at 9 (“[R]acialization and capital accumulation are mutually constitutive processes that combine in dynamic, context-specific formations.”).

¹⁰⁸ Kundnani, *supra* note 65.

¹⁰⁹ Jeremy Schahill, *Scholar Robin D.G. Kelley on How Today’s Abolitionist Movement Can Fundamentally Change the Country*, The Intercepted Podcast (June 27, 2020), <https://theintercept.com/2020/06/27/robin-dg-kelley-intercepted/> (“if you think of capitalism as racial capitalism, then the outcome is you cannot eliminate capitalism, overthrow it, without the complete destruction of white supremacy, of the racial regime on which it’s built”).

¹¹⁰ Olúfemi O. Táíwò & Liam Kofi Bright, *A Response to Michael Walzer*, DISSENT (Aug. 7, 2020), https://www.dissentmagazine.org/online_articles/a-response-to-michael-walzer [<https://perma.cc/J4AQ-T25Q>]; *see also* Robin D.G. Kelly, *Freedom Struggle a Labor Struggle, Then & Now*, AGAINST THE CURRENT (Jan./Feb. 2021), <https://againstthecurrent.org/atc210/the-freedom-struggle-is-a-labor-struggle-then-now> [<https://perma.cc/V6K2-A57P>] (“Spatial segregation explains so much that a workplace focus cannot – hidden costs of living, food deserts, limits on mobility to access decent jobs, home/property values and impact on intergenerational wealth, school funding, and services like access to sanitation, fire fights, and libraries.”).

¹¹¹ Nancy Fraser & Rahel Jaeggi, *Capitalism: A Conversation in Critical Theory* 165 (2018) (“By conceiving capitalism as something larger than an economic system, it renders

capitalism allows for a much-needed focus on racialized political economy and the relationships and modes of life that it creates. It breaks movements and organizations out of issue-specific struggles that are doomed to fail if their goal is to remake the state and society, politics, and the economy. As historians Destin Jenkins and Justin Leroy explain, “[R]acial justice cannot be achieved . . . under a generalized call for economic justice,” and “capitalism cannot be rehabilitated through inclusion of previously excluded groups,” or the extension of “political and legal rights” thereto.¹¹²

As a result, racial justice is being disarticulated from its most familiar recent forms.¹¹³ Diversity and inclusion, the ascendancy of the first Black president and representational politics in both parties, have provided opportunity for a select few but have not put food, jobs, housing, or

visible, and intelligible, a broader spectrum of social contestation than orthodox paradigms do.”)

¹¹² JENKINS & LEROY, *supra* note 63, at 13; *see also* Jodi Melamed & Chandan Reddy, *Using Liberal Rights to Enforce Racial Capitalism*, ITEMS (July 30, 2019), <https://items.ssrc.org/race-capitalism/using-liberal-rights-to-enforce-racial-capitalism> [<https://perma.cc/S7BL-CVQ5>] (explaining that in liberal accounts “[r]acism is primarily construed as rights-denial, and political and economic participation and cultural belonging are seen as stymied or entirely foreclosed by racist barriers to full rights,” whereas “from a racist capitalist perspective, . . . the concept of rights is not automatically antagonistic to racism.”); Mark Golub, *Racial Capitalism and the Rule of Law*, ITEMS (Feb. 19, 2019), <https://items.ssrc.org/race-capitalism/racial-capitalism-and-the-rule-of-law> [<https://perma.cc/Y9UZ-2F3S>] (“[R]acial violence is typically framed as a breakdown or violation of the rule of law. . . . [B]eneath such iconic images of illegal racist violence lies a system of rights and legalities upon which white supremacist social order more fundamentally depends.”).

¹¹³ Distinct conceptions of injustice advance distinct “conceptions of the collectives that suffer injustice” and “propose different sorts of remedies.” NANCY FRASER & AXEL HONNETH, *REDISTRIBUTION OR RECOGNITION?: A POLITICAL-PHILOSOPHICAL EXCHANGE* 13-14 (2003). For a riff on the same idea, *see generally* Akbar, *supra* note 5 (comparing the Obama DOJ’s reports on the Ferguson and Baltimore police with the Vision for Black Lives). *See also* Amna A. Akbar, *Our Reckoning with Race*, N.Y. REV. BOOKS (Oct. 31, 2020), <https://www.nybooks.com/online/2020/10/31/our-reckoning-with-race> [<https://perma.cc/W6LG-JEK7>] (describing today’s movements goal of building grassroots majorities around antiracist agendas). The implication of taking racial capitalism seriously is to understand: “black and white labor are divided materially as well as ideologically. Their respective relations to the means of production are of a quite different character. There is therefore no prospect that black and white might become conscious of their true, shared interests and, as in the old slogan, ‘unite and fight.’ Rather there would have to be an autonomous black struggle against racial capitalism.” Kundnani, *supra* note 55; *see also* Destin Jenkins & Justin Leroy, *Introduction: The Old History of Capitalism*, in *HISTORIES OF RACIAL CAPITALISM*, *supra* note 54, at 10 (“[T]he analytic of racial capitalism also suggests a future-oriented political analysis that cautions against either a ‘race first’ or a ‘class first’ approach toward social justice.”).

opportunity on the table for the majority of Black and brown people, let alone working class and poor people broadly.¹¹⁴ Voting rights and affirmative action have been fought back by conservative lawmakers and judges amid listless defenses have been mounted by the Democrats.¹¹⁵ Access to justice and criminal-procedure rights—let alone diversification of major police departments—have been part and parcel of the expansion of the carceral state.¹¹⁶

In the last several decades, reform projects have reflected neoliberal reasoning, encasing markets from popular input, delegitimizing the state, elevating experts, and narrowing in on the individual to the exclusion of the social.¹¹⁷ Private-law scholarship and policy have focused on “overcom[ing] inefficiencies and press[ing] toward wealth-maximizing outcomes” while public law has focused on “narrowly defined differential treatment of individuals, especially by the state.”¹¹⁸ Across domains, concern for economic power or distribution dissipated, making structural coercion impossible to see or redress.¹¹⁹ Faith in markets has been paired with a deep “pessimism about the possibilities of politics and the effectiveness of the state,” making collective action the task of fools. In turn, “neoliberal critiques of ‘big government’ push back most aggressively against programs perceived as racially redistributive, such as affirmative action, reparations, or indigenous land claims.”¹²⁰ The same logic works to undercut the modes of protest and rebellion that emerge in response to neoliberal austerity and

¹¹⁴ CLARNO, *supra* note 63, at 10, 14-15. [add US focused source]

¹¹⁵ See, e.g., Klarman, *supra* note 4, at 4, 111.

¹¹⁶ See, e.g., Paul Butler, *The System Is Working the Way It Is Supposed To*, 104 GEO. L.J. 1419 (2016).

¹¹⁷ Britton-Purdy, Grewal, Kapczynski & Rahman, *supra* note 6, at 1807, 1812, 1817, 1828. Neoliberal law and politics have pushed a “‘color-blind’ mantra of individual achievement and meritocracy” combined with “the liberal multicultural politics of ‘recognition,’” a “‘formal commitment to legal equality,’” and the relegation of racism as the “‘outcome[] of ‘individual choices’ exercised through the market.” CLARNO, *supra* note 63, at 12.

¹¹⁸ Britton-Purdy, Grewal, Kapczynski & Rahman, *supra* note 6, at 1790, 1806; see also Ganesh Sitaraman, *The Puzzling Absence of Economic Power in Constitutional Theory*, 101 CORNELL L. REV. 1445 (2016) (arguing that constitutional theory must overcome or mitigate the influence of economic power). See generally JOSEPH FISHKIN & WILLIAM E. FORBATH, *THE ANTI-OLIGARCHY CONSTITUTION: RECONSTRUCTING THE ECONOMIC FOUNDATIONS OF AMERICAN DEMOCRACY* (2022) (theorizing that the Constitution imposes a duty on government to fight oligarchy).

¹¹⁹ Britton-Purdy, Grewal, Kapczynski & Rahman, *supra* note 6, at 1793-94.

¹²⁰ *Id.* at 1791; CLARNO, *supra* note 63, at 11-12.

criminalization.¹²¹

With the rise of neoliberalism, the politics and demands for recognition—for “a difference-friendly world, where assimilation to majority or dominant cultural norms is no longer the price of equal respect”—had taken precedence over claims for redistribution.¹²² Now, we are in a moment of entangled demands for redistribution and even gestures toward control over production.¹²³ Today’s movement organizations and their ecosystems extend their radical critique to radical horizons for social change. Activists and organizers talk of horizons like prison abolition, democratic socialism, communism, and Indigenous feminism, and even that of a less revolutionary but robust social democracy. They call for decommodification and democratization. Such questions were being asked by the New Left and the Black Power Movement in the 1960s and 1970s before they were infiltrated, crushed, and ran out of fuel. They reflect a turn toward affirmative politics, away from the politics of critique. Equally important, they reflect a bid for power and social space, rather than a quietude that characterized much of the aughts.

With the radicalization of critiques and horizons came the radicalization of strategies and tactics. Social-movement formations are embracing a combination of “inside” and “outside” strategies.¹²⁴ Inside strategies are those that adhere to and abide by the rules of formal law and politics: lobbying, litigation, voting. Outside strategies rely instead of protest,

¹²¹ CLARNO, *supra* note 63, at 16 (The “life strategies and struggles against marginalization” of the “urban poor and the increasingly precarious working class are often disruptive and regularly produce political, economic, and social crises of varied intensity”); Arun Kundnani, *What Is Racial Capitalism?*, KUNDNANI.ORG (Oct. 23, 2020), <https://www.kundnani.org/what-is-racial-capitalism> [https://perma.cc/349C-NKPK] (“Political opposition to market systems mounted by movements of the global South or racialized populations in the North is then read by neoliberal ideology as no more than the acting out of cultures inherently lacking in the appropriate traits of individualism and entrepreneurial spirit. . . . The surplus dispossessed come to be represented through a series of racist figures—‘welfare queens,’ ‘Muslim extremists,’ ‘illegals,’ ‘narcos,’ ‘super-predators’ . . . distinctive to the neoliberal era.”).

¹²² FRASER & HONNETH, *supra* note 73, at 7, 90.

¹²³ Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 HARV. L. REV. F. 91, 113 (2020).

¹²⁴ Cornel West refers draws a distinction between parliamentary and extraparliamentary strategies. See West, *supra* note 37, at 1797. See also, e.g., Mark Engler & Paul Engler, *Climate of Change: What Does an Inside-Outside Strategy Mean?*, *Dissent* (Summer 2013), <https://www.dissentmagazine.org/article/climate-of-change-what-does-an-inside-outside-strategy-mean>.

disruption, strikes, even mutual-aid networks—the building and exercising of autonomous and unruly power. These strategies disrupt the rules and institutions of formal law and politics. There are attempts to disrupt legal process and relations: chains of people blockading a housing court’s ability to evict people; bail funds organizing money to free poor people from jail; abortion funds to facilitate people getting the abortions they need; nascent tenants unions withholding rent that is owed. In these places, people are not trying to change the law but change their relations to these institutions and the people within them: to disrupt the ability of the judge to work for the landlord and make good on his property claim; to disrupt the ability of the criminal court to keep someone behind bars due to their poverty; to create the conditions required for someone living in a state where abortion is criminal to receive an abortion.¹²⁵ Typically, inside-outside strategies travel side by side: for example, as with the Debt Collective organizing people to refuse to pay their debts, and for Biden to cancel student debt.

II. REFORM AND REVOLUTION

In April 2020, Harmony Goldberg and the Grassroots Power Project (GPP) published *Stepping into the Moment: The Corona-Crisis*.¹²⁶ The booklet explains that the global pandemic created interlinked crises of public health, the economy, and the state that intensified struggles over life and death.¹²⁷ In such moments, the “contemporary right and the super-rich” take advantage of instability to “reshape[] our economy, our government and our society” toward “super profits” and the consolidation of “[racial] capitalism, in its neoliberal form.”¹²⁸ The question for “left organizers” is

¹²⁵ E.g., Sarah Leonard, *The Next Abortion Strategy: While Pro-Choice Politics Collapsed, Organizers Took a Different Approach*, Lux Magazine (Issue 5, 2020), <https://lux-magazine.com/article/the-next-abortion-strategy/>.

¹²⁶ Harmony Goldberg, *Stepping into the Moment: The Corona-Crisis*, CONVERGENCE MAG. (Apr. 8, 2020), <https://convergencemag.com/articles/stepping-into-the-moment-the-corona-crisis> [<https://perma.cc/6GKC-J9CL>]. The organization recently changed its name from the Grassroots Policy Project. The pamphlet starts with the words of Milton Friedman, described as the “architect of the neoliberal project”: “Only a crisis—actual or perceived—produces real change. When that crisis occurs, the actions that are taken depend on the ideas that are lying around. That, I believe, is our basic function: to develop alternatives to existing policies, to keep them alive and available until the politically impossible becomes the politically inevitable.” *Id.*

¹²⁷ *Id.*; see Stuart Hall & Bill Schwarz, *State and Society 1880-1930*, in *THE HARD ROAD TO RENEWAL: THATCHERISM AND THE CRISIS OF THE LEFT* 95, 96 (Stuart Hall ed., 2021) (“Crises occur when the social formation can no longer be reproduced on the basis of the pre-existing system of social relations.”).

¹²⁸ Goldberg, *supra* note 86 (“Decades of [] neoliberal austerity have decimated our

how to formulate “demands for immediate relief as building blocks that can lay the foundation” so that “we will be strongly positioned to lead the rebuilding of our society and economy on new terms.”¹²⁹ Organizing for such change will require telling stories that “connect” how “people are experiencing the crisis” with “bold reforms.”¹³⁰ It will be necessary to deploy “organizing strategies to address the [disproportionate] impacts on Black, Latino and Native communities . . . low-wage service and care workers . . . undocumented . . . [and] incarcerated people.”¹³¹

Drawing from socialist feminist writings of the mid-twentieth century, Goldberg uses the phrase “stepping stone reforms” for demands that might bridge the crises that people are living through with the world her organization and others like it are hoping to build.¹³² Across the left today,

government’s social welfare programs . . . [and] the most effective tool we have to contain [the pandemic]: a functional state.”). The GPP invokes the frameworks of neoliberalism and racial capitalism in its materials. *See, e.g., Our Analysis of Society Today*, GRASSROOTS POWER PROJECT, <https://grassrootspowerproject.org/about/our-theory-of-power> [<https://perma.cc/T7Q7-STWR>]; *Training for Transportation: A Report on the First Strategy College*, GRASSROOTS POLICY PROJECT & PEOPLE’S ACTION INST. 4 (July 23, 2019), <https://grassrootspowerproject.org/wp-content/uploads/2021/11/GPP-Strategy-College.Full-Report-2019.pdf> [<https://perma.cc/79CX-GQR4>] (“We started our systems analysis through the lens of ‘racial capitalism’ . . .”). For another account of how powerful elites and corporations take advantage of moments of disruption to consolidate their power and advance their interests in the context of disaster, see Naomi Klein, *Disaster Capitalism: The New Economy of Catastrophe*, HARPER’S MAG. (Oct. 2007).

¹²⁹ Goldberg, *supra* note 86. GPP hopes to help “left organizers reorient” toward “building upon the necessary short-term work of survival . . . to make what has seemed ‘politically impossible’ into the ‘politically inevitable.’” *Id.* At the time of writing, organizers had started making “immediate relief to large-scale structural change,” including demands for Medicare for All, the Green New Deal, and Universal Basic Income. GPP cites The Center for Popular Democracy, People’s Action, Sunrise Movement, and Working Families Party as doing essential work pushing a “People’s Bailout” and thinking about “a transformative approach” to demands that “link[] immediate relief with long-term rebuilding.” *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* (“While the super-rich will be able to buy their way into quality healthcare, the reverberations of the coming failure of our medical infrastructure will be devastating to millions of poor, working and middle class people in cities, small towns and rural areas across the country.”)

¹³² *Id.*; *see also* JULIET MITCHELL, WOMAN’S ESTATE 73 (1971) (referring to “stepping-stones” as reforms that take women’s oppression seriously on the road to socialism). Katrina Forrester draws on the framework in her superb essay on demands, in particular wages for housework and the socialization of housework. Katrina Forrester, *Feminist Demands and the Problem of Housework*, AM. POL. SCI. REV. 1278, 1283-85 (2022) (first citing ANGELA Y. DAVIS, WOMEN, RACE & CLASS (1981); then citing MITCHELL, *supra*; and then citing Angela Davis, *Reflections on the Black Woman’s Role in*

such frameworks for thinking about reform toward abolitionist, democratic socialist, or more transformative ends have proliferated with the focus on neoliberalism, racial capitalism, and the carceral state. While a range of terms from the mid-twentieth century are being revived and redeployed—as are the larger debates about socialist strategy and theories of social change in which these terms are nested—most common is the “non-reformist reform.”¹³³

The term “non-reformist reforms” emerges out of debates on socialist strategy and Marxist literatures on reform and revolution—a product of anticapitalist politics and organizing.¹³⁴ There is an array of terms for demands that might make the ground ripe for transition to socialism or communism.¹³⁵ The range of terms reflect various conceptions of the horizon for social change, the agential classes for agitation and remaking, and the strategies, tactics, and modes of social organization such transformation will require. Non-reformist reform is typically associated with a democratic-socialist tradition, although it is being used in less sectarian ways now, including by prison abolitionists who typically embrace anti-capitalist politics, but who may or may not claim socialism.

The syntax of “non-reformist reform” poses a riddle at the heart of projects that seek fundamental transformation, emancipation, or liberation: is it possible to advance “reforms” that will not work to improve a particular system but will work to undermine it and make another one possible? Not to *reform* the system or set of relations but to somehow change their essential character? To cause or foment some social formations and grounds ripe for

the Community of Slaves, 13 MASS. REV. 81 (1972)).

¹³³ On questions of strategy, see, for example, *SOCIALIST STRATEGY AND ELECTORAL POLITICS: A REPORT* (Verso 2019); and *WE ORGANIZE TO CHANGE EVERYTHING: FIGHTING FOR ABORTION ACCESS AND REPRODUCTIVE JUSTICE* (Natalie Adler & Marian Jones eds., Verso Books 2022).

¹³⁴ E.g., Rosa Luxemburg, *Reform or Revolution and Other Writings* 3 (2006) (“Between social reforms and revolution there exists for the social democracy an indissoluble tie. The struggle for reforms is its means; the social revolution, its aim.”).

¹³⁵ For a helpful survey of the various terms, from Leon Trotsky’s “transitional demands,” adopted by the Fourth International, to Juliet Mitchell’s “stepping-stones,” see Forrester, *supra* note 92, at 1281, 1285-86 (2022). See also Leon Trotsky, *The Death Agony of Capitalism and the Tasks of the Fourth International: The Mobilization of the Masses Around Transitional Demands to Prepare the Conquest of Power* “The Transitional Program” (Dimitri Verstraeten trans., 2002) (1938), <https://www.marxists.org/archive/trotsky/1938/tp/transprogram.pdf> [<https://perma.cc/HFW5-VKCD>] (describing the “transitional program”); MITCHELL, *supra* note 92, at 73.

future revolution?

Non-reformist reform provides an alternative to neoliberal or liberal reformism dominant in the legal academy that emphasize the neutrality of the market or the state. It rejects what Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski, and K. Sabeel Rahman call “the Twentieth Century Synthesis.”¹³⁶ The framework even competes with the orientation of many critical scholars as it suggests reform is less about expertise or even solutions than drawing from popular insurgency and shifting the balance of power from the dominant to the dominated classes. It reorients conversations about reform around antagonism, militancy, and the building of independent organized power.¹³⁷ And it rejects an orientations focused on either rights and liberal legalism, or the market and the prison as a solution to all manner of problems. It considers the dual nature of reform as, on the one hand, inherently conciliatory and, on the other hand, an essential if but partial ground for mass struggle.

But the framework is not simply an alternative to liberal reformism: it is an alternative to armed revolution or insurrection. The turn to non-reformist reform is a rejection of a form of centralism and vanguardism,¹³⁸ an embrace of a democratic pathway to reconstituting power, the state, and the society. The turn to non-reformist reforms, then, is part of a larger return on the left toward mass politics and democratic domains. It is an attempt to rethink revolutionary or transformative process rather than through armed insurrection, but through disruption, repetition, and the building of new

¹³⁶ See Britton-Purdy, Grewal, Kapczynski & Rahman, *supra* note 6.

¹³⁷ On accounts of power within legal scholarship, see, e.g., Bowie *Antidemocracy* 210-11: (“Because of [our social and relational] interdependence, ordinary people possess a latent form of power that they can activate by withholding their cooperation, as in strikes, boycotts, and other mass actions.” (citing Frances Fox Piven, *Challenging Authority: How ordinary people change merica*)); Jocelyn Simonson, *Police Reform through a Power Lens*, 130 *Yale Law Journal* 778 at 803-04 (the power lens “asks, as a preliminary matter, whether the governance or reform arrangements at issue change the balance of actual power in decisions about whether and how to police”). Simonson elaborates: “A focus on power in police reform asks whether directly impacted people have real influence on the scope and policies of policing in their neighborhoods, counties, cities, and states... the ability of a person, or a group of people, to influence policy outcomes (e.g., use of force policies) and control the distribution of state resources (e.g., funding for the police).”

¹³⁸ For an argument that the turn to democratic socialism is a rejection of both Leninism and social democratic politics, see Rafael Khachaturian & Stephen Maher, *Socialist Strategy and the Capitalist Democratic State*, VERSO (May 16, 2019), <https://www.versobooks.com/blogs/4320-socialist-strategy-and-the-capitalist-democratic-state> [<https://perma.cc/QJN9-ADWA>]; and Nicos Poulantzas, *Towards a Democratic Socialism*, in NICOS POULANTZAS, *supra* note 39, at 127.

democratic spaces that reconstitute power and the social.

A. Reformism

On the left, criticisms of reformism take a few forms.¹³⁹ The primary concern is that to focus on reformism is to orient action toward overthrowing rather than overthrowing or substituting, a fundamentally corrupt system, institution, or set of relations.¹⁴⁰ Reformism becomes a distraction from the real work, a palliative feature of a system that must be abolished and replaced.¹⁴¹ As Rosa Luxemburg explained in *Reform or Revolution*:

people who pronounce themselves in favor of legislative reform *in place of* and *in contradistinction to* the conquest of political power and social revolution do not choose a more tranquil, calmer, and slower road to the *same* goal, but a *different* goal. Instead of taking a stand for the establishment of a new society they take a stand for surface modification of the old society. . . . Our program becomes not the realization of *Socialism*, but the reform of *capitalism*; not the suppression of the system of wage labor, but the diminution of exploitation, that is the suppression of the abuses of capitalism instead

¹³⁹ They run parallel with concerns about electoralism, or engagement with electoral politics. For differing points of view within the DSA about whether the organization should endorse Sanders and prioritize electoral strategy, see *Introduction* to Jeremy Gong, Sarah Mason, Arielle Sallai, Magally Miranda Alcázar & René Christian Moya, *America's New Left*, 116-117 NEW LEFT REV. 119 (2019). For a survey of those concerns in a book that ultimately argues in favor of “class struggle campaigns,” see MEAGAN DAY & MICAH UETRICH, *BIGGER THAN BERNIE: HOW WE GO FROM THE SANDERS CAMPAIGN TO DEMOCRATIC SOCIALISM* (2020). For an argument to reclaim and reorient union organizing toward class struggle, see JOE BURNS, *CLASS STRUGGLE UNIONISM* 16-40 (2022).

¹⁴⁰ The dictionary definitions of “reform” emphasize that a reform is a mode of improving or amending what is wrong, corrupt, unsatisfactory. See, e.g., MERRIAM-WEBSTER’S DICTIONARY; Meagan Day, *Single-Payer Is a “Non-Reformist Reform,”* MEDIUM (Nov. 20, 2017), <https://medium.com/@meaganday/single-payer-is-a-non-reformist-reform-fe3751aa7f27> [<https://perma.cc/77H9-KGD3>] (“Reformism is when your mission is to tinker with the system to make people’s lives better, but not really alter the basic structure at the end of the day. And reformists prefer changes that give people a much-needed helping hand, but don’t really undermine capitalism.”); see also ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 40 (2003) (“[T]he prison itself was a product of concerted efforts by reformers to create a better system of punishment.”).

¹⁴¹ See Day, *supra* note 101 (critiquing reformism and articulating the concern that “reforms are always a deferral of revolution”).

of the suppression of capitalism itself.¹⁴²

Reformism becomes amelioration rather than attack—legitimization rather than delegitimization. If capitalism is the problem, reforming it should not be the goal, abolition should be. Parallel arguments are made for white supremacy, heteropatriarchy, ablism, or the prison industrial complex.¹⁴³ Reformism telegraphs to the public that the system, institution, or set of relations it seeks to tweak are fundamentally here to stay.¹⁴⁴ It insulates routine violence and exploitation as unremarkable. Reformism also indicates that the problem is not structural or symptomatic but stray. In form and substance, then, reformism shields the status quo and its protectorate from direct challenges necessary to contest their power and build another world.

There is a related concern of cooptation: that reformism is a strategy of the ruling class to reestablish its rule; to do as little as possible to quell further revolt that might demand deeper changes and foment ideas about self-rule.¹⁴⁵ Reformism does not try to remake power or politics, or to remake the direction of policy, but to engage with it as it is constituted. Even when what fuels the reform is street politics, rather than credit the protest and the disruption, the ruling elite will take ownership over the path forward. They will coopt the energy from the streets to reassert their own power and make excuses for or divert from their inability to act.¹⁴⁶

¹⁴² Rosa Luxemburg, *Reform or Revolution and Other Writings* 58 (2006).

¹⁴³ In the context of arguments about the provision of health and care, see Beatrice Adler-Bolton & Artie Vierkant, *Health Communism* 67 [this page number is from my ebook] (2022) (“Reformism—merely seeking alterations, tinkering around the edges—inherently preserves the violence of capitalism.”).

¹⁴⁴ In the canonical prison abolitionist text, *Are Prisons Obsolete?*, for example, Angela Y. Davis explains that “frameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond the prison.” DAVIS, *supra* note 101, at 20.

¹⁴⁵ For legal scholarly versions of this argument and dynamic, see Kimberlé Williams Crenshaw, *supra* note 27; see also Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997) (“Efforts to reform a status regime bring about changes in its rule structure and justificatory rhetoric—a dynamic I have elsewhere called ‘preservation-through-transformation.’”).

¹⁴⁶ Mathiesen talks about how reformism creates “external pressure” in two ways. First, reformism “give[s] ‘hope’ to groups in difficulty, by which the system receives new legitimacy even in their eyes, and the groups in difficulty . . . may thereby come to be defenders of the system.” THOMAS MATHIESEN, *THE POLITICS OF ABOLITION REVISITED* 225 (2015). Second, “the representatives of the system exert[] great pressure on [the public] in the direction of ‘being positive,’” rather than ongoing critique and disruption. *Id.*

Consider the Congressional Democrats' offering of the George Floyd Justice in Policing Act soon after the 2020 protests began.¹⁴⁷ The summerlong rebellions and protests came amidst the early days of the global pandemic and almost six years after the first contemporary rebellion against police violence took place in Ferguson. On June 8, Nancy Pelosi, Chuck Schumer, and members of the Congressional Black Caucus, donned kete cloth and kneeled in silence for eight minutes and forty-six seconds before announcing the potential legislation. The bill included a laundry list of police reforms, from delimiting qualified immunity that shields police from liability for brutality, banning chokeholds, no-knock warrants, and racial profiling, to promoting more widespread adoption of body cameras and establishing trainings on racial profiling and a national police-misconduct registry. At the press conference and beyond, Democrats criticized "defund the police" as naive, nonsensical, and unpopular. The Lawyers' Committee for Civil Rights Under Law, the NAACP LDF, the National Urban League, and the National Action Network endorsed the legislation. Police unions opposed it. Trump promised to veto it. The legislation would provide hundreds of millions of additional dollars for police. The bill passed the House within weeks and never made it out of the Senate.

By offering the Act, the Democrats attempted simultaneously to safeguard the legitimacy of the police (the institution the reform seeks to fix) along with their party and Congress more broadly (the authority of the institution promulgating the reform and its sovereignty over life and politics). They attempted to reseal a loop broken by the street protests, which by virtue of their scale, endurance, and disruptive quality called into question the ability of policing or the channels of representative democracy to serve the people at all. As the police cracked down on protestors, the Democrats reasserted their authority, legitimacy, and expertise to solve pressing social problems like police violence.¹⁴⁸ They attempted to provide an alternative to defund the police, in part by doubling down on conventional police reforms, and in part by offering, and then passing in the House of Representatives, the most robust police-reform bill that they had in decades.¹⁴⁹ And while the bill was far from, even contradictory with, the

¹⁴⁷ Add cites for this para.

¹⁴⁸ see Balbus, *supra* note __, at 12 (arguing that repression of mass protests by arrests and legal process attempts to "depoliticize collective violence and to militate against the growth of the consciousness and solidarity of participants.").

¹⁴⁹ *U.S. House Passes Most Ambitious Policing Reform Effort in Decades*, GUARDIAN (March 3, 2021), <https://www.theguardian.com/us-news/2021/mar/03/george-floyd-justice->

protest demand defund the police, it was the call for defund, and the millions of people who took to the streets all summer, that pushed Democrats to bring it forward at all. It was an effort to quell the protest that was shifting them to act, while loudly attempting to reassert their sincere responsiveness all along. As the host of Revolutionary Left Radio put it in an interview with Brooklyn Eviction Defense, “an autonomous union” of tenant organizations and tenants,¹⁵⁰ in the context of housing justice work in New York City punctuated by “mass tenant mobilization” and “direct action” explained: “[M]eaningful incremental reform [is] always . . . spearheaded by bottom-up mass movements and then if it gets passed as policy it’s the establishment Democrats and the liberals that try to take credit for that incrementalism and then weaponize it against more revolutionary forms of or theories of political change.”¹⁵¹

Reformism communicates a theory of state and social change that contrary to a growing body of research showing the state is by organized money and the very wealthy,¹⁵² “the state is an autonomous apparatus of power, in principle neutral, capable of being used by anyone.”¹⁵³ The liberal conception of the state implies that “[w]orking people and the oppressed can and should devote themselves primarily to winning elections so as to gain control of the state and thereby secure legislation to regulate capitalism and, on that basis, to improve their working conditions and living

in-policing-act-us-house-democrats [<https://perma.cc/Z8N2-JFQE>].

¹⁵⁰ *About*, BROOKLYN EVICTION DEF., <https://brooklynevictiondefense.org/en/about> [<https://perma.cc/AND3-37TJ>].

¹⁵¹ *Brooklyn Eviction Defense: Tenant Organizing for the People*, REVOLUTIONARY LEFT RADIO, at 10:05 (May 4, 2022), <https://revolutionarylefradio.libsyn.com/bed> [<https://perma.cc/FKX2-65EC>]. As a member of Brooklyn Eviction Defense put it: “[T]hese weren’t just somehow backroom deals that happened between . . . amicable . . . and . . . well-meaning politicians.”

¹⁵² See Kate Andrias, *Separations of Wealth: Inequality and the Erosion of Checks and Balances*, 18 U. PA. J. CONST. L. 419, 421 (2015) (“Organized wealth . . . [is] the key driving force in American politics.”); Gilens & Page, *supra* note 14, at 577 (“[M]ajorities of the American public actually have little influence over the policies our government adopts.”); K. Sabeel Rahman, *Democracy Against Domination: Contesting Economic Power in Progressive and Neorepublican Political Theory*, 16 CONTEMP. POL. THEORY 41, 54 (2017) (“[T]he modern state is generally more responsive to the economic elite, particularly on matters of economic policy.”); Bertrall L. Ross II, *A Constitutional Path to Fair Representation for the Poor*, 66 U. KAN. L. REV. 921, 923–24 (2018) (identifying a lack of political representation for the poor); Deva Woodly, Critical Exchange, *Theorizing Social Movements as Democratic Institutions on Political and Ethical Action in the Age of Trump*, 17 CONTEMP. POL. THEORY 331, 344 (2018) (“[O]ur regular electoral process routinely leaves some — usually white, upper-class men — on top, and others arrayed in an intersectional hierarchy that cascades below.”).

¹⁵³ Brenner, *supra* note 26, at 42.

standards.”¹⁵⁴ In other words, it encourages an embrace of formal law-and-politics as the primary terrain of struggle. As such, the “ideal society” is only “a certain number of discrete steps away” rather than requiring a fundamental restructuring of who governs and how.¹⁵⁵

Reformism attempts to channel people into formal politics and its sanctioned processes and frameworks for input: formal law and politics, and the conventional proposals of reformism to the exclusion of extra-parliamentary tactics and contesting the central terrain of the economy.¹⁵⁶ This requires people to focus on pleading with elected officials and “political methods (as well as theories to justify them) that end up preventing them from securing their own reform goals.”¹⁵⁷ To play by the very rules of the system that constrains the radical social change movements may seek:¹⁵⁸ It fosters continual reliance on the ruling class, rather than building autonomous and independent modes of political power and mass organization.

As a member of the DSA in Los Angeles, who also organizes with the L.A. Tenants’ Union, explains: “[T]he fate of [the DSA] depends on whether or not it is willing to struggle with the working class where they are . . . over the long haul.”¹⁵⁹ Such “arduous” and “time-consuming” “deep local organizing [work]” to build “sites of power independent of the political system, and of the existing infrastructure of progressivism” must be built “through direct and intentional engagement with worker and

¹⁵⁴ Brenner, *supra* note 26, at 42.

¹⁵⁵ Democratic Socialists of America, *State and Revolution(ary Reforms)*, YOUTUBE, at 28:51 (Mar. 21, 2022) <https://www.youtube.com/watch?v=GcHMGRKNobY> [<https://perma.cc/CU8S-895E>].

¹⁵⁶ See, e.g., Kevin A. Young, Tarun Banerjee, Michael Schwartz, *Levers of Power: How the 1% Rules and What the 99% Can Do About It* (2020).

¹⁵⁷ *Id.*

¹⁵⁸ E.g., Dylan Rodriguez, *Police Reform as Counterinsurgency*, in *ABOLITION FOR THE PEOPLE: THE MOVEMENT FOR A FUTURE WITHOUT POLICING & PRISONS* 154, 157 (Colin Kapernick, ed., 2021) (defining reform as “the ideological and political position that fixates on reforms as the primary if not exclusive engine of social change/justice,” a “soft form of counterinsurgency”). There are a growing number of books criticizing criminal legal reform and how it has contributed to the expansion and consolidation of the prison industrial complex. See, e.g., KAY WHITLOCK & NANCY A. HEITZEG, *CARCERAL CON: THE DECEPTIVE TERRAIN OF CRIMINAL JUSTICE REFORM* (2021); MAYA SCHENWAR & VICTORIA LAW, *PRISON BY ANY OTHER NAME: THE HARMFUL CONSEQUENCES OF POPULAR REFORMS* (2020).

¹⁵⁹ René Christian Moya, 5: *Risks of Co-Option*, in *DSA Members: America’s New Left*, 116/117 *NEW LEFT REV.* 118, 135 (Mar/June 2019).

community struggles.”¹⁶⁰ Thus, “an ephemeral” strategy focused on electoral politics or reform may distract from building “a mass base” past any election or campaign.¹⁶¹ The concern is that focusing on legislative or electoral battles focuses energy on short-term and limited victories that distract from the primary task of organizing people and building organizations that are independent from election cycles or legislative wins or losses.

There is also the concern that engaging in projects of reform will reconstitute the work in more moderate form—that it might force an incrementalism, at best, and, at worst, completely frustrate more transformative goals.¹⁶² Consider, for example, President Obama’s

¹⁶⁰ René Christian Moya, 5: *Risks of Co-Option*, in *DSA Members: America’s New Left*, 116/117 NEW LEFT REV. 118, 135 (Mar/June 2019).

¹⁶¹ René Christian Moya, 5: *Risks of Co-Option*, in *DSA Members: America’s New Left*, 116/117 NEW LEFT REV. 118, 135 (Mar/June 2019).

¹⁶² See, e.g., David Kotz, *Working for Reforms While Advancing Toward Socialism*, SOCIALIST F., Spring 2021, <https://socialistforum.dsausa.org/issues/spring-2021/working-for-reforms-while-advancing-toward-socialism> [<https://perma.cc/7CX4-A5X4>].

The idea that lawyers translating demands through litigation, lobbying, or legislation has an inherently conservatizing effect has been developed at some length in legal scholarship. One version of this critique has been in the context of rights and via the debate among critical legal scholars. See *supra* notes in Introduction; see also LIBBY ADLER, GAY PRIORI: A QUEER CRITICAL LEGAL STUDIES APPROACH TO LAW REFORM (2018) (examining LGBT rights); Wendy Brown & Janet Halley, *Introduction* to LEFT LEGALISM, LEFT CRITIQUE 5-16 (Wendy Brown & Janet Halley eds., 2002) (distinguishing left legalism and liberal legalism). For an approach rooted in left social movements, in particular with an abolitionist orientation, see Dean Spade, *Intersectional Resistance and Law Reform*, 38 SIGNS: J. WOMEN CULTURE & SOC’Y 1031, 1032-33 (2013). Another comes through the literature on law, lawyers, and social movements, and the role of courts therein. For a survey and rejoinder to the idea that courts are inefficacious and lawyers are unaccountable, see Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987, 1994 (2017). See also GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 24-25 (1991) (“[P]roponents of the Dynamic Court view assert that courts have the ability to act when other institutions won’t, because judges are electorally unaccountable and serve with life tenure.”); STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE 4 (1974) (“The specific aim of this book is to assess the part that lawyers and litigation can play in altering the course of public policy.”). See generally Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 472 (1976) (examining “the development of school desegregation litigation and the unique lawyer-client relationship that has evolved out of it”); MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004) (examining the social and political impact of the Supreme Court’s racial jurisprudence). Scott Cummings, however, has suggested that there is nothing necessarily more or less compromised with the terrain of law as any other terrain of organizing. E.g., Scott Cummings & Ingrid Eagly, *A*

invitation in 2016 to activists within the Black Lives Matter ecosystem to meet with him, elected officials, and police to discuss police violence and “community-police” relations: whereas some activists attended the meetings, others rejected it as a photo opportunity designed to forestall street protest and reconstitute the demands of the movement and frustrate its goals by providing access to a select few.¹⁶³

B. Non-Reformist Reforms

An implication of the foregoing criticism is that that because of the relationship between the state and the ruling class, pursuing reforms as a primary or exclusive strategy for any movement or party that seeks fundamental transformation is inherently concessionary.¹⁶⁴ But while working toward reforms risks “corruption or quenching of the work for the long-term goal” of transformation, renouncing reforms may be “paralysing to action.”¹⁶⁵ This widely held tension on the left leads to engagement with reform projects.

The basic formulation of non-reformist reforms is often articulated in a few elements. First, a non-reformist reform aims to undermine the target political, economic, and social system or set of relations as it gestures at a fundamentally distinct system or set of relations in relation or toward a particular ideological and material project of worldbuilding.¹⁶⁶ Second, a

Critical Reflection of Law and Organizing, 48 UCLA L. Rev. 443, 479-90 (2001). See also Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 Harv. L. Rev. 937 (2007).

¹⁶³ Aislinn Pulley, Opinion, *Black Struggle Is Not a Sound Bite: Why I Refused to Meet with President Obama*, TRUTHOUT (Feb. 18, 2016), <https://truthout.org/articles/black-struggle-is-not-a-sound-bite-why-i-refused-to-meet-with-president-obama> [<https://perma.cc/KH3Z-7LRA>]; Maya Rhodan, *Black Lives Matter Activist Says Obama Meeting Was Positive*, TIME (Feb. 18, 2016, 6:48 PM EST), <https://time.com/4229987/obama-black-lives-matter-meeting> [<https://perma.cc/L5LM-AHFE>].

¹⁶⁴ JAMES BOGGS, *RACISM AND THE CLASS STRUGGLE: FURTHER PAGES FROM A BLACK WORKER’S NOTEBOOK* 34 (1970) (“Any radical-revolutionist or militant, socialist or otherwise—who in modern-day society thinks of a revolution taking place through the democratic process is propagating myths and illusions and deluding himself and those he claims to lead.”).

¹⁶⁵ MATHIESEN, *supra* note 106, at 231.

¹⁶⁶ “A reformist reform,” André Gorz explains, comports with the “rationality and practicability of a given system and policy” to such an extent that it “rejects those objectives and demands—however deep the need for them—which are incompatible with

non-reformist reform is about drawing from and building the popular strength, consciousness, and organization of the revolutionary or agential class: most clearly, in doctrinaire Marxism, for example, the working class.¹⁶⁷ In other words, it is part of a democratic project.¹⁶⁸

Implied in the concept of “non-reformist reforms” is a theory of change: a diagnosis or critical description of the prevailing system or set of relations and how, where, and to whom it produces violence, exploitation, expropriation; a horizon for a distinct political, economic, social relations and society; and a theory-practice of how to put these ideas in competition but also how to enact changes combative with the status quo and in service of a radical worldmaking or remaking project. It is precisely because the question of what makes a reform non-reformist is embedded in broader theories, practices, and horizons for social change that it is embedded within a great number of debates, from the identity of the agential class for social change projects, to the proper theories and tactics to prioritize. Labor organizer and intellectual Jane McAlevey provides a non-sectarian illustration in her distinctions between advocacy, mobilizing, and organization in her book *No Shortcuts*: advocacy involves elites, e.g., “lawyers, pollsters, and communications firms”; mobilizing involves more people, primarily “dedicated activists who show up over and over at every

the preservation of the system.” ANDRÉ GORZ, *STRATEGY FOR LABOR: A RADICAL PROPOSAL* 7 (Martin A. Nicolaus & Victoria Ortiz trans., Beacon Press ed. 1967) (1964); *id.* at 6 (discussing “revolutionary reforms” that “advance toward a radical transformation of society”); *see also* Akbar, *supra* note 83, at 103-06 (describing three “hallmarks of non-reformist reform”); Stahly-Butts & Akbar, *supra* note 20, at 1553, 1560 (describing non-reformist reforms). *See also* Aziz Rana, *It Would Be Great if the United States Were Actually a Democracy*, JACOBIN (Feb. 16, 2021), <https://www.jacobinmag.com/2021/02/us-constitution-interview-aziz-rana> [https://perma.cc/3PVY-M8K8] (arguing that socialists should embrace reforms with “revolutionary implications”: those that “increase the practical power of marginalized groups and make it easier for those oppressed groups to assert influence going forward in political life. These reforms open up the system to greater and more radical potential changes in the future.”).

¹⁶⁷ Nancy Fraser & Rahel Jaeggi, *Capitalism: A Conversation in Critical Theory* 165 (2018) (“The traditional Marxists idea was that class struggle is the most characteristic and potentially emancipatory form of conflict in capitalist society.”). A common articulation on the racial justice left is that of directly impacted people or “The people closest to the problem are closest to the solution.” *See, e.g.*, Tara Raghuvier on hijacking Kansas City’s elections by being ruthless about basebuilding, *Craft of Campaigns Podcast* 12:20-25 (Nov. 22, 2022).

¹⁶⁸ *See* Ralph Miliband, *Socialism: For a Skeptical Age* 4 (1994) (defining “radical reform” as “measures of reform which are intended to make a serious indent into one or other aspect of the social order, again in democratic and egalitarian directions”).

meeting and rally for all good causes, but without the full mass of their coworkers or community behind them”; and organizing is focused on “a continually expanding base of ordinary people, a mass of people never previously involved,” and the “primary goal is to transfer power from the elite to the majority.”¹⁶⁹ Whereas advocacy and mobilizing are more sympatico with liberal legal conceptions of social change and reformism, organizing is aligned with left theories: where the goal is not simply to reform to transform the state and society, not simply as a matter of substance, but in terms of who holds power and who ultimately governs.¹⁷⁰

As a result, the frame does not just mean one thing: it provides a framework for thinking about the moment and possible strategies moving forward, in relation to a critical understanding of the structures of power and resistance in the world around us. Even at this level of abstraction, the framework facilitates broad strategic and tactical questions: it allows one to see a bold and radical horizon, and to identify strategic battles that might be waged to move us closer to that horizon. The framework has the potential to open up an array of reforms beyond what a liberal or neoliberal legal framework allows: precisely because it aims to break the hold of prevailing norms of discourse and legalism—what people expect from state, society, and each other—to put other frameworks and visions for the state and society in competition with the prevailing or hegemonic ones. It also centers productive contradictions between reform and revolution, street/inside and electoral/outside politics.

Here, I outline some prevailing conceptual approaches to non-reformist reforms.

1. Democratic Socialism

In a *Strategy for Labor*, André Gorz explained that capitalism has sufficiently brought up the standards of living so that it would not buckle of

¹⁶⁹ Jane M. McAlevey, No Shortcuts: Organizing for Power in the New Gilded Age 9-12 (2016).

¹⁷⁰ In practice, left movement formations often deploy some mix or all of these. In McAlevey’s view, there is no short cut for organizing, and overreliance on advocacy and mobilizing as “short cuts,” that she argues are ultimately ineffectual. *Id.*

its own contradictions or spontaneous revolt by the working class.¹⁷¹ The challenge for “the working class and socialist movement[s]” is to “link the struggle for socialism to the everyday demands of . . . workers”¹⁷²; to make manifest “what socialism can bring” and to establish “intermediate objectives by means of which socialism can be seen as possible.”¹⁷³ Was it “possible *from within* [capitalism] . . . to impose anti-capitalist solutions which will not immediately be incorporated into and subordinated to the system?”¹⁷⁴

“[S]ocialism can be no less than the hegemony of the working class, the public ownership of the means of production.”¹⁷⁵ As a result, the non-reformist reform must be democratic: “implemented or controlled by those who demand it.”¹⁷⁶ This “requires the creation of new centers of democratic power” and the “decentralization of the decision making power, a restriction on the powers of State or Capital, an extension of popular power, that is to say, a victory of democracy over the dictatorship of profit.”¹⁷⁷ He called for something both broader and deeper than democracy constrained by the vote, electoral politics, or even the state. The campaigning for non-reformist reforms ideally would pave the wave.

In denoting essential sites of struggles, he speaks of “agriculture, the university, property relations, the region, the administration, the economy . . . companies, schools, municipalities . . . [and] large enterprise.”¹⁷⁸ While he does not make the point outright, the implication is clear: the terrain and tools of the struggle are not limited to law and the state, but a broader more diverse set of arenas where political, economic, and social life are lived, made, and contested. The struggle for non-reformist reforms must engage the market, the economy, and the social head on. The character of democracy is popular power over realms of life and the political economy. His account of non-reformist reforms, then, has less to do with the law per se, than a more expansive account of what might be

¹⁷¹ GORZ, *supra* note 126, at 5-6.

¹⁷² *Id.* at 5.

¹⁷³ GORZ, *supra* note 126, at 4, 12. He seemed to use the term “non-reformist reforms” interchangeably with others, including revolutionary or structural reforms, and “anti-capitalist solutions.” *Id.* at 6.

¹⁷⁴ *Id.* at 6.

¹⁷⁵ GORZ, *supra* note 126, at 11.

¹⁷⁶ GORZ, *supra* note 126, at 8 n.3.

¹⁷⁷ *Id.* (emphasis omitted).

¹⁷⁸ *Id.* at 8 n.3 & 10.

required to facilitate a break with capitalism and the building of a new society.¹⁷⁹

To be truly popular, the power built must be “autonomous” or independent from, rather than “subordinate” to, capital and the state itself. Whereas subordinate power entails the “participation of workers in an economic policy,” autonomous power is “the power of the workers to challenge, in opposing the effects and the methods of implementation, the very premises of the management’s policy.”¹⁸⁰ Such power is disruptive and reproductive: it is “the generator and the indispensable relay station for the elaboration and pursuit of the integral objectives of a policy aimed at replacing capitalism . . . an indispensable element in the training and education of the masses . . . [and] the visible goal of a praxis already at work.”¹⁸¹ Such power requires “constant mobilization.”¹⁸² Organization prepares the movement “to assume the leadership of society . . . to control and to plan [its] development . . . and to establish certain limiting mechanisms which will restrict or dislocate the power of capital.”¹⁸³ This is a “a strategy of *progressive* conquest of power by the workers,” that does not “exclude the possibility or even the necessity for a revolutionary seizure of power at a later stage.”¹⁸⁴ Because non-reformist reforms are a tool of the working class to assert their power in a relation to a state beholden to the capitalist class, without autonomous, independent, and organized power, there is little possibility for non-reformist reforms.

Non-reformist reforms are central to a strategy focused on building

¹⁷⁹ For an argument that attends to how criminal law reform scholarship and discourse might attend to questions of power, see Simonson, *supra* note 7.

¹⁸⁰ *Id.* at 9. For Gorz, the union is central. *Id.* at 14.

¹⁸¹ *Id.* at 10. This is consistent with Mathiesen’s insistence on nondisciplined reforms. Disciplined reforms are “‘politely’ written or polite oral requests followed by equally ‘polite’ forms of refusals . . . which let the decision-makers fairly easily have their way.” MATHIESEN, *supra* note 106, at 26. Nondisciplined reforms are “insistent” and “persistent . . . hammering away in a maximum fashion again and again.” *Id.*

¹⁸² GORZ, *supra* note 126, at 10.

¹⁸³ *Id.* at 8.

¹⁸⁴ *Id.* at 10-11. Ralph Miliband, *Socialism: For a Skeptical Age* 4 (1994) (an orientation toward revolution “does not reject reform, but sees it as a preparation for a seizure of power based on an insurrectionary popular upheaval”). Mathiesen also suggested that an aspect of the process is opening up terrains of struggle: there will always be more to abolish. MATHIESEN, *supra* note 106, at 232. This echoes or refracts not simply Gorz’s progressive conquest concept but also Angela Davis’s concept of freedom as a constant struggle. ANGELA DAVIS, *FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT* (2016).

towards a society run by the working class, not simply where the working class provides greater input. As explained by members of the DSA, “the crucial factor in non-reformist reforms isn’t the ‘what’,” but “the ‘who’ and the ‘how’”¹⁸⁵: how non-reformist reforms foment “concrete changes in the balance of forces between the working class and the capitalist class.”¹⁸⁶ Democratic-socialist accounts tend to emphasize the central agent as the working class—sometimes denoted as multiracial—and the strategy as mass struggle.¹⁸⁷ The ultimate task is “to help foment and defend the advance of the working-class and other oppressed social sectors in a struggle for democratic socialism.”¹⁸⁸ The focus is on building working-class consciousness and organization: the development of “the autonomous power of workers and other structurally oppressed social sectors.”¹⁸⁹ The very goal, members of the Louisville DSA explain, is to build “sustainable organization that brings socialists together with the rest of the multiracial working class,” consisting of “tens of millions of working-class people.”¹⁹⁰

¹⁸⁵ James Cole, *A Profound Break*, MEDICARE FOR ALL (May 4, 2018), <https://medicareforall.dsausa.org/blog/a-profound-break> [https://perma.cc/TP23-JBJ6].

¹⁸⁶ Teresa Kalisz, *Rethinking Reforms*, REGENERATION MAG. (Apr. 19, 2019), <https://regenerationmag.org/rethinking-reforms> [https://perma.cc/WZ2Q-7BEU].

¹⁸⁷ Take for example an evaluative missive from the Louisville DSA reflecting that the summer 2020 protests “were not effective in establishing any policy or infrastructure that will meet the needs of the multiracial working class that are being neglected by the city.” Greta Smith & Robert Levertis Bell, *A Hierarchy of Socialist Political Objectives*, SOCIALIST CALL (Jan. 7, 2022), <https://socialistcall.com/2022/01/07/socialist-strategy-demands-peoples-budget-louisville/> [https://perma.cc/8HQT-Y994]. The Marxist concept of working class is distinct from liberal conceptions: for Marxists class is about the relationship to the means of production, whereas to liberals class is about levels of wealth, income, and lifestyle. See Matthew T. Huber, *Climate Change as Class War: Building Socialism on a Warming Planet* 19-21 (2022) (explaining for Marxists “class is an objective material relationship to production,” that “the classes who control production also possess oversized power over society as a whole”).

¹⁸⁸ Antje Dieterich, Daniel Gutiérrez & Victor Hertzfeld, *On Reforms and Revolutions*, NEW POL. (Sept. 27, 2017), <https://newpol.org/reforms-and-revolutions/> [https://perma.cc/WU4V-4YMA].

¹⁸⁹ *Id.*; see also Meagan Day, *supra* note 101 [https://perma.cc/8YGG-662Y] (“[N]on-reformist reform[s] . . . broaden[] the popular political imagination, and giv[e] shape and solidity to working-class institutions and political formations.”).

¹⁹⁰ Smith & Bell, *supra* note 144. Their chart places “non-reformist reforms” in the “hierarchy of socialist political objectives” between “ameliorative action” and “basic reforms” on the one hand, and “higher level of organizational sophistication” and “deepened ties between socialists and broader working class” on the other. *Id.*; cf. Vivek Chibber, *Our Road to Power*, JACOBIN (Dec. 5, 2017), <https://www.jacobinmag.com/2017/12/our-road-to-power> [https://perma.cc/G38Z-MJS2] (arguing that the Socialist left is “only tenuously connected to working-class communities”).

In a cowritten piece, Bhaskar Sunkara, the founder of *Jacobin* and a former vice-chair of the DSA national committee, explains that socialists see “workers [are] the central agents of winning change” because their “structural position in the economy” creates a latent power “to disrupt production and exchange” and an “interest in banding together and articulating collective demands.”¹⁹¹ As compared to “single-issue activists”—who presumably trust the underlying logic and mechanisms of the system—socialists attempt to achieve “democratic victories . . . followed by more democratic victories,” or else risk it all being “rolled back.”¹⁹² This is as much about a concept of progressive conquest by the working class with an emphasis on both the extension of broad and deep popular democratic power as it is about wresting cumulative wins to change the character of society more broadly. Writing about organizing for single-payer healthcare, he explains: “[S]ingle payer alone cannot deal with the cost spiral driven by for-profit hospital and pharmaceutical companies.”¹⁹³ If the struggle for single payer was won, “socialists would then fight for nationalization of the pharmaceutical industry.”¹⁹⁴ The point is less the next particular step but more that it is a progressive battle for democratic power over all aspects of the economic, social, and political—far greater than what liberal legal discourse reveals or even gestures at, and in sharp contradiction to the Twentieth Century Synthesis.¹⁹⁵ In very practical terms, the need to build “lasting democratic working class institutions” and expand “militant democratic rank-and-file working-class organizations” is to ensure that “reforms that are won are not rolled back shortly after the initial victory.”¹⁹⁶

¹⁹¹ Joseph M. Schwartz & Bhaskar Sunkara, *What Should Socialists Do*, JACOBIN, (Aug. 1, 2017), <https://jacobin.com/2017/08/socialist-left-democratic-socialists-america-dsa> [<https://perma.cc/GTH5-GTVR>]. See also Don McIntosh, *Talking Socialism: Interviewing Jacobin’s Bhaskar Sunkara*, Socialist Left (June 18, 2021), <https://www.dsaua.org/democratic-left/sunkara/>; Jennifer Schuessler, *A Young Publisher Takes Marx Into the Mainstream*, NY Times (Jan. 20, 2013), <https://www.nytimes.com/2013/01/21/books/bhaskar-sunkara-editor-of-jacobin-magazine.html>.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ See Jay Clayton, *Who’s Afraid of Public Ownership?*, LPE PROJECT (July 25, 2022), <https://lpeproject.org/blog/whos-afraid-of-public-ownership> [<https://perma.cc/8MPY-CPNG>]. Ralph Miliband, *Socialism: For a Skeptical Age* 100 (1994) (“there was a time when the extension of public ownership, to the point where it would encompass most of economic activity, was, at least in theory, part of a programmatic consensus on the left.”).

¹⁹⁶ Teresa Kalisz, *Rethinking Reforms*, REGENERATION (Apr. 19, 2019) <https://regenerationmag.org/rethinking-reforms/> [<https://perma.cc/NR4D-QQ9K>]; see also James Cole, *A Profound Break*, DEMOCRATIC SOCIALISTS FOR MEDICARE FOR ALL (May

The DSA's concept of the non-reformist reform is focused on building socialist and working-class power and organization. Ultimately, as members of the NYC-DSA explained, "the struggle for reforms must be subordinated to the class struggle (not vice versa)."¹⁹⁷ The DSA's concept is also largely focused on the state, which is consistent with their orientation toward electoral and legislative process.¹⁹⁸ But many DSA members see within their work the defense of existing experiments of prefiguration. Prefiguration is a strategy and tactic of "enacting a desired future in the present," popularized through Occupy Wall Street.¹⁹⁹ As some DSA members put it: workers councils, left union caucuses, neighborhood assemblies, and Cooperation Jackson²⁰⁰ are "prefigurative forms across the

4, 2018), <https://medicareforall.dsausa.org/blog/a-profound-break> [<https://perma.cc/FD46-7QPY>] ("[O]ur goal can't just be the mere passage of the reforms we're pushing for. . . . [W]e've also got to ask them to get involved with our campaign.").

¹⁹⁷ Jack L. & Isaac KD, *Stuck in a Loop? A critical assessment of DSA's strategic orientation towards the fight for reforms*, Socialist Forum (Spring 2022), <https://socialistforum.dsausa.org/issues/spring-2022/stuck-in-a-loop/> ("History also shows that socialists must aim to thoroughly *delegitimize* the bourgeois state while fighting for working class democracy in the economic and political spheres.")

¹⁹⁸ Many believe this orientation is born of the organization's resurgence during Bernie Sanders's two presidential campaigns. *e.g., id.* There are many debates about how to relate to the Democratic Party and whether to focus on building an independent workers party. *See, e.g.,* Charles Post, *What Happened to the "Dirty Break": The Evolution of a Socialist Electoral Strategy*, Spectre Journal (Sept. 17, 2021), <https://spectrejournal.com/what-happened-to-the-dirty-break/> (reporting that at the 2021 DSA national convention a motion to eventually form "an independent workers party was defeated 435 in favor and 569 opposed). *See also* Eric Blanc, *The Ballot and the Break*, Jacobin (Dec. 4, 2017), <https://jacobin.com/2017/12/democratic-party-minnesota-farmer-labor-floyd-olson>; Eric Blanc, *We Should Focus on Scaling Up Working-Class Power, Not Debating the Dirty Break*, Socialist Call (Aug. 6, 2021), <https://socialistcall.com/2021/08/06/dsa-dirty-break-electoral-strategy/>.

¹⁹⁹ Amy J. Cohen & Bronwen Morgan, *Prefigurative Legality*, L. & SOC. INQUIRY (forthcoming 2023), draft at 11. Rather than "litigation, legislation, and electoral politics," prefiguration is a method of social change that "does not entail a great rupture miraculously coordinated from above or a revolutionary ground swelling from below" but "the accumulation of millions of everyday practices that presuppose current socio-economic structures and yet call forth new social worlds. *Id.* at 3.

²⁰⁰ Cooperation Jackson is "a network of cooperatives and worker-owned, democratically self-managed enterprises," in Jackson, Mississippi. <https://cooperationjackson.org/>. *See also* Kali Akuno, *Build and Fight: The Program and Strategy of Cooperation Jackson*, in JACKSON RISING: THE STRUGGLE FOR ECONOMIC DEMOCRACY AND BLACK SELF-DETERMINATION IN JACKSON, MISSISSIPPI 3 (Kali Akuno & Ajamu Nangwaya eds., 2017) (detailing the ideological framework and program strategy behind Cooperation Jackson); Kali Akuno on Cooperation Jackson and Solidarity in Jackson, Mississippi and Beyond, <https://www.youtube.com/watch?v=36UcFcxCckM>. *See also* Bernard E. Harcourt, *Cooperation Jackson: History, Theory, Praxis*, Oct. 2, 2022,

terrain of social struggle.”²⁰¹ As such, the DSA must “find a way to weave them together into a common complex that prefigures tomorrow’s socialism today.”²⁰²

2. Prison Abolition

A Marxist and a co-founder of Critical Resistance, Ruth Wilson Gilmore centers the prison as a central site of contestation in the struggle against racial capitalism.²⁰³ In *Golden Gulag*, Gilmore called for non-reformist reforms in the context of prison abolitionist struggles.²⁰⁴ Gilmore defines non-reformist reforms as “changes that, at the end of the day, unravel rather than widen the net of social control through criminalization.”²⁰⁵ By using the word “changes,” she makes the case for a capacious view of reform and power, not simply focused on the state. The histories of revolutions “show how persistent small changes, and altogether unexpected consolidations, added up to enough weight, over time and space, to cause a break with the old order.”²⁰⁶ People must “develop[] capacities in organizations” but “combine[]” with other collective formations “toward ends greater than mission statements or other provisional limits,” so as to “shake the ground.”²⁰⁷ Gilmore’s conception is less concerned with the law as such, and is focused on coming together to build new possibilities, including centrally through organizing and in battles with and against the state.²⁰⁸ The task for movements is “to go deeply into

<https://blogs.law.columbia.edu/utopia1313/bernard-e-harcourt-cooperation-jackson-history-theory-praxis/>.

²⁰¹ Dieterich et al., *supra* note 145.

²⁰² Dieterich et al., *supra* note 145.

²⁰³ In *The Politics of Abolition Revisited*, Thomas Mathiesen drew on his experience working for prison abolition in the 1960s and 1970s in Sweden, Norway, and Denmark. MATHIESEN, *supra* note 106, at 5-11, 231-32. Mathiesen’s works are important to understanding reform struggles in the context of prison abolitionist commitments, but they appear to be less central to Gilmore’s work in the United States.

²⁰⁴ GILMORE, *supra* note 36, at 242; *see also* Ruth Wilson Gilmore & Craig Gilmore, *Restating the Obvious*, in INDEFENSIBLE SPACE 141, 141 (Michael Sorkin ed., 2008) (speaking of non-reformist reforms in terms of how to “change what the state is”).

²⁰⁵ GILMORE, *supra* note 36, at 242.

²⁰⁶ *Id.* (arguing we must understand “change as something both short of and longer than a single cataclysmic event”).

²⁰⁷ *Id.* at 248.

²⁰⁸ Gilmore often repeats the commandment to organize. In her presidential address to the American Studies Association, for example, Ruth Wilson Gilmore, *What Is To Be Done?* 63 Am. Q. 245, 258 (2011) (“Organize.”). *Id.* at 262 (“Organize.”),

the state in all its aspects—its legitimacy, the ideological apparatuses it wields to normalize the everyday horror of mass incarceration, its budget process, its inner contradictions, its intrastate antagonisms and frictions.”²⁰⁹ These are places where people are “struggling to piece together lives torn apart by poverty, illness, undereducation, war, long-distance migration, flight. Here, where we fight, is where the state is.”²¹⁰

Through decades of campaigns against carceral infrastructure, prison-abolitionist campaigns have produced rubrics demarcating an approach to reform focused on reducing the scale, power, tools, and legitimacy of the carceral state.²¹¹ Campaigns to defund the police are a product of this organizing. Through its popular education tools, Critical Resistance has differentiated between a “reformist reform[]” that “expand[s] the reach of policing” and an abolitionist step: mainstay reforms like training and body cameras or the purchasing of technology are reformist reforms. Proposals that dent the scale or legitimacy of the police, or the money, tools, and technology at their disposal, are abolitionist steps.²¹² Some of these take the shape of suspending or refusing to hire police who engage in excessive force, or limiting their jurisdiction—for example, removing police from schools and universities.²¹³ Others take the shape of social investments like in education, housing, and health. More recently, other organizations have extended the analysis: Detention Watch Network, a network of organizations organized around abolishing immigrant detention, released its own chart delineating abolitionist steps from reformist reforms in the project of ending immigrant detention.²¹⁴ Reformist reforms “maintain[] or

²⁰⁹ Gilmore & Gilmore, *supra* note 155, at 159.

²¹⁰ *Id.*

²¹¹ Rachel Herzing, *Let’s Reduce, Not Reform, Policing in America*, OPEN SOC’Y FOUNDS. (Oct. 6, 2016), <https://www.opensocietyfoundations.org/voices/let-s-reduce-not-reform-policing-america> [<https://perma.cc/76QD-JGT5>] (arguing that rather than improving policing we should focus our efforts on reducing policing); Mariame Kaba, Opinion, *Police “Reforms” You Should Always Oppose*, TRUTHOUT (Dec. 7, 2014), <https://truthout.org/articles/police-reforms-you-should-always-oppose/> [<https://perma.cc/R294-88YU>] (arguing against reforms that allocate more money to the police, reforms that advocate for more policing, or that “technology-focused”); Janaé Bonsu, *Beware of Police “Reforms” That Reinforce the Very System Killing Us*, IN THESE TIMES (June 12, 2020) <http://inthesetimes.com/article/22593/defund-police-reforms-abolition-black-lives-matter-racism> [<https://perma.cc/8EMH-UB2A>].

²¹² *Id.*

²¹³ See Fanna Gamal, *The Miseducation of Carceral Reform*, 69 UCLA L. Rev. 928 (2022) (analyzing demands to divest from incarceration and invest in public education from the perspective of public schools). [can’t seem to remove the highlight]

²¹⁴ See DET. WATCH NETWORK, ENDING IMMIGRATION DETENTION: ABOLITIONIST STEPS VS. REFORMIST REFORMS 1 (n.d.),

expand[] the reach of the system” while abolitionist steps “mov[e] us closer to liberation by chipping away at ICE enforcement and incarceration.”²¹⁵

These popular education materials delineate approaches to battles with state institutions like city councils and legislatures, as well as the police, sheriff’s offices, jails, and prisons.²¹⁶ While they reject a narrow conception of law or law reform—focusing on denting the budgets, infrastructure, and legitimacy of these institutions—they also are not as expansive as Gorz’s or Gilmore’s definitions of “non-reformist reform,” which define it so broadly as to collapse any distinction between legal terrains, strategies, and tactics, and non-legal ones. Prison, police, and deportation and detention abolition activists and organizers do engage with a more capacious set of social movement strategies—typically, not under the rubric of reform.²¹⁷

While Gilmore’s analysis is rooted in Marxism and the Black Radical Tradition—and there are some exceptions, like the Red Nation—abolitionist analysis and campaigns often take the prison, the jail, the detention center, and the police or immigration enforcement as the primary target, rather than capital or capitalism per se. Moreover, although these documents are authored by activist and organizing formations, there is more typically little direct emphasis on the centrality of organizing itself or building autonomous power to the practice of non-reformist reforms. Again, Gilmore’s writings and the Red Nation’s various pamphlets are exceptions.

3. Communism and Queer Indigenous Feminism

The Red Nation was formed in 2014 to redress the erasure of “Native struggles within mainstream social justice movements, and to speak out and

https://www.detentionwatchnetwork.org/sites/default/files/Abolitionist%20Steps%20vs%20Reformist%20Reforms_DWN_2022.pdf [<https://perma.cc/E4HN-R9JD>]. The Detention Watch Network “recogniz[es] that there are broader immigration laws and enforcement policies that must be dismantled to achieve liberation.” *Id.*

²¹⁵ *Id.* For an abolitionist critique of the right to counsel in deportation proceedings, see Angelica Chazaro, *Due Process Deportations*, NYU L. Rev. (forthcoming, draft on SSRN).

²¹⁶ See Aaron Littman, *Jails, Sheriffs, and Carceral Policymaking*, 74 VAND. L. REV. 861, 865-66 (2021).

²¹⁷ This may be out of a desire to differentiate between legal and non-legal strategies; it may also be a reflection of the strong anarchist currents within abolitionist formations. See, e.g., William C. Anderson, *Nation on No Map: Black Anarchism and Abolition* (2021).

fight against the ongoing destruction of Native life and land.”²¹⁸ The organization’s articulation of non-reformist reforms centers, without refusing to sacrifice, its multiple commitments to prison abolition, anti-capitalism, anti-colonialism, communism, and queer Indigenous feminism.²¹⁹ Their early ten-point program explained that “[p]olitical possibilities for Native liberation . . . can only emerge from directly challenging the capitalist-colonial system of power through collective struggle and resistance.”²²⁰ Reflecting an analysis of racial capitalism and colonialism, they center police, prisons, and corporations as targets. Their materials tacitly clarify that fighting prison and police are central, but insufficient as a proxy for the entire ideological and material battle with capitalism and colonialism.

The Red Nation rebukes reforms as “attempts to treat the symptoms of a crisis” and reformists as those who “compromise our future by aligning with the interests of the ruling class.”²²¹ But the organization refuses to “relinquish the power of state institutions” and “the sheer resources available to humanity” that the state has the potential to wield.²²² Thus, the Red Deal advocates a program of “non-reformist reform” that “has the abolition of capitalism via revolution as its central goal.”²²³ The non-reformist reform “fundamentally challenges the existing structure of power by prioritizing, organizing, and elevating the needs and demands of the masses.”²²⁴ The Red Nation explains: “We don’t want to improve the system by implementing policies from the top down, we want to destroy it—either by fire or a million small cuts—in order to replace it.”²²⁵ Here, they clarify an oppositional stance to the state, capitalism, and the ruling class, exemplifying an abiding distinction between liberal and left theories of social change and approaches to reformism.

The Red Deal explains that its “philosophy of reform” is substantively focused on “reallocat[ing] social wealth back to those who actually produce

²¹⁸ House Organ, *supra* note 166, at 2.

²¹⁹ RED NATION, COMMUNISM IS THE HORIZON, QUEER INDIGENOUS FEMINISM IS THE WAY 2 (n.d.); *see also* House Organ, *Native Liberation Struggles in North America: The Red Nation 10-Point Program*, 26 CAPITALISM NATURE SOCIALISM 1, 1 (2015). *See also* RED NATION, RED DEAL: INDIGENOUS ACTION TO SAVE THE EARTH (2021).

²²⁰ House Organ, *supra* note __, at 6.

²²¹ Common Notions, *supra* note 166, at 36-37. [Common Notions is a publisher not an author, I’m not sure why this is the short cite?]

²²² *Id.* at 40.

²²³ *Id.* at 21.

²²⁴ *Id.* at 37.

²²⁵ *Id.*

it: workers, the poor, Indigenous peoples, the Global South, women, migrants, caretakers of the land, and the land itself.”²²⁶ Here they articulate a broad conception of the agential class—extending far beyond any traditional Marxist conception of the working class. They emphasize that they will “fight[] for non-reformist reforms in and with our most vulnerable communities” as a way to “drain power and resources from state surveillance and harm” and “reinvest these resources in the well-being of all.”²²⁷ Those reforms include “the complete moratorium on oil, gas, and coal extraction; the restoration of Indigenous land, water, and air to a healthy state; and special protections for workers and the land.”²²⁸

The Red Nation, then, ties their demands for redistribution to a demand for owning the means of production. Simultaneously, they center prisons and police as blocks for their horizon that they must target and aim to whittle down. Here, they combine their commitments to communism and anti-colonial politics and articulate the prison as a central site of struggle therein. In their focus on budgets, land, and material infrastructure, movements are making demands on and for the commons to the collective. Centrally, they are an assertion that wealth belongs not to the elites, but to the labor and the land that has generated it. And so they assert a right for the people to have a say as they build capacity to exercise it.

III. REORIENTATIONS

Law is an incomplete and conflictual accounting of the rules by which we live. Whether one eats or goes hungry, is incarcerated or not, has access to adequate housing or wages or a gun—all of these things are at best partially defined or encompassed by law. The rules under which we live are more capacious and fickle than what courts, legislatures, executives, police, and so on do. There is the law of capital, there are the afterlives of slavery, there is the power of the patriarchy, the family, and the church.²²⁹ These political, economic, social, and historical forces do not simply act on us:

²²⁶ *Id.* at 37-38.

²²⁷ Red Nation, *The Red Deal: Indigenous Action to Save Our Earth. Part One: End the Occupation* 16 (2020), https://therednation.org/wp-content/uploads/2020/04/Red-Deal_Part-I_End-The-Occupation-1.pdf.

²²⁸ *Id.* at 11.

²²⁹ *See, e.g.*, Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (2019); SAIDIYA HARTMAN, *SCENES OF SUBJECTION. TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH CENTURY AMERICA* (1997); Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism* (2019). *See also* Avery Gordon, *Ghostly Matters: Haunting and the Sociological Imagination* (2008).

they act through us and mediate our relationships, alongside and constitutive of law in its various articulations—including how, why, where, and when we contest law. Courts and legislatures are partial forums where law takes shape—where its meaning and force is debated, legitimized, contested, and takes various paths.

We should proliferate our understanding of where law takes shape and in relation to what, who acts on it, who it acts on, who benefits, who loses, and who resists—and how resistance individual and collective reshapes law. Not simply to understand sociologically the life of the law in a thin sense—of where the law lives and how it works²³⁰—but to understand all the places where it can be undone and remade, alongside the relations that structure it.²³¹ The forums where law is made, interpreted, mobilized, enforced are places of contestation within an archipelago of structured relations and meaning.

Once one imagines this more elaborate picture, “law” becomes less linear and top down, and more like complex and variegated terrains of conflict. Michael Denning recently advanced the idea of the Italian Marxist Antonio Gramsci “everyone is a legislator.”²³² Everyone is a legislator because “everyone ‘contributes to modifying the social environment,’” everyone “tends to establish ‘norms,’ rules of living and behavior” as they partake in daily life “in the workplace, the neighborhood, the household, the police precinct, the schools, even the legislature.”²³³ We set them and we follow them.

Taking account of this fuller picture of law in action—law in relation—restores to each person a sense of power, even while at the same time it opens the view on what makes up the world all around us, how conflicts are worked out, and the tools available for challenging and reshaping. Contending with law in relation suggests a different theory of social change

²³⁰ For a generative critique of focusing on law on the books and law in action, see Christopher Tomlins, *How Autonomous is Law?* 3 Annu. Rev. Law Soc. Sci 45, 60, 61 (2007). See also Justin Desautels -Stein & Akbar Rasulov, *Deep Cuts: Four Critiques of Legal Ideology*, 31 Yale J. L. & Hum. 435, 509-514 (2022) (offering a generative critique of LPE scholarship in articulating some challenges to the contemporary critical legal project)

²³¹ Christopher Tomlins, *How Autonomous is Law*, 3 Annu. Rev. Law. Soc. Sci 45 (2007) (treating law as relational, exploring the rise in the 20th century of society as the primary relational other of study, and posing justice and memory as alternatives).

²³² Michael Denning on Gramsci *New left Review* 2021: 36–37, 44.

²³³ Michael Denning on Gramsci *New left Review* 2021: 36–37, 44.

than one of a closed universe limited to particular litigants with standing and their lawyers. Or a neutral forum of the state where competing interests are weighed and sorted in a fair enough way. Law becomes a forum, language, partial set of relations, always unstable and subject to contestation—and stitched through the economy, the social, the political, and the ideological.

A central problem with legalism and reformism is its attempt to relegate political, economic, social—collective and antagonistic struggles—onto depoliticized, expert, and technical processes, staffed and ruled by bureaucrats, technocrats, and elected officials in what is now increasingly seen as an undemocratic system. What does embracing non-reformist reformism do to our understanding of law and legal process; or how much we remake our understanding of law and legal process to accommodate some concept of non-reformist reformism as a strategy or tactic toward more radical change?

Grappling with non-reformist reforms forces some essential questions about the work and place of law in emancipatory struggle. Gorz talks about wage demands against capitalists—drawing labor struggle into the terrain of “reform.”²³⁴ Gilmore speaks of an even larger field of action when she explains that “we make places, things, and selves,” though not in conditions of our own making.²³⁵ Once you accept that reformism is not the horizon but a tool or tactic that one might use toward political, economic, social transformation and reconstitution, then one must understand the project as one *beyond legalism and legal process*. For if one fallacy of the law is that it is apolitical or somehow above politics, it is equally untrue to think law is all of politics, or that it sets the terms of politics. Part of our challenge today is to understand the law in context of the political, the economic, and the social. As a significant terrain, to evaluate its importance as a partial terrain of struggle. As constituent but not in a singular or overly important way.

Our conceptions of reform undoubtedly must attend to the functioning of law—how it works, and how it changes, the forces of retrenchment—and as such require a larger theory of social change. Our theories must attend to how formal law and legal process are entangled with powerful interests and

²³⁴ Gorz, *Strategy for Labor* 7-8.

²³⁵ GILMORE, *supra* note 36, at 242 (invoking Marx in arguing that we must understand “change as something both short of and longer than a single cataclysmic event”).

consolidated power—where politics and the economy meet—they must understand the need for disruption, delegitimation, and a fundamental remaking of politics, the economy, and the social. They must understand that you cannot mount any serious project of reform without dismantling and remaking so much of what is around us. And this is not simply a question of policy and formal lawmaking but instead of a growing and shifting power and consciousness, and these are values not simply of process but also of substantive commitments to redistributing and democratizing power, wealth, etc. It must take capitalism and its relationship to gender, race, and empire seriously—it must question the relationship of distribution and redistribution to the means of production, it must be fundamentally skeptical about the contradictory, ambivalent nature of the state and law therein. It must attend to the particular conjuncture rather than suggesting or encapsulating a transhistorical or utopian approach. Attending to what is happening in the world at the moment, what is possible, what is necessary.

Non-reformist reforms reorient conventional liberal and neoliberal approaches to reform in significant ways. Here, I outline four fundamental distinctions. Non-reformist reforms are about antagonism and conflict rather than depoliticization; they are conjunctural and strategic rather than abstract and out of time; they are about building mass organization; and they are about preparing to govern.

A. Antagonistic and Conflictual

First, non-reformist reforms are about antagonism and fomenting conflict: about struggles along the dimensions of class, race, and gender, and in terms of material reality, ideology, strategy, and tactics. This sets non-reformist-reform strategies apart from reformism. These distinct conceptions of reform telegraph distinct conceptions of state and society. Whereas liberal conceptions suggest the state as a neutral mediator among equally situated interests and classes, under Marxist conceptions, class struggle is inherent to capitalist social relations.²³⁶ Thus, reforms are a

²³⁶ See Hadas Thier, *A People's Guide to Capitalism: An Introduction to Marxist Economics* 7 (2020) (“At its core, capitalism was defined by Marx as a social relation of production. He meant that politics are not the result of good accounting or the inventive ideas of the superrich, but are instead the outcome an exploitative relationship between two classes of people: bosses and workers.”).

product of struggles over power.²³⁷ As such, organized sectors with well-paid lobbyists and litigators—or, in a parallel vein, police and prosecutors and their unions—are primed to shape lawmaking at every stage. But so are the people subordinated by and subject to such processes through how they participate, resist, and refuse to participate.²³⁸

A common Marxist conception of the state is as a tool of class domination, an instrument to blunt and manage class antagonism.²³⁹ Nicos Poulantzas explained the state under capitalism works to organize the dominant classes and to disorganize the dominated classes.²⁴⁰ But in contrast to the state as a thing, his conception proximates Gilmore's relational account: the state is "material condensation (apparatus) of force between classes and fractions of classes as they are expressed in a specific manner (the relative separation of the state and the economy giving way to the very institutions of the capitalist state) at the very heart of the state."²⁴¹ The state, then, is a set of variegated spaces, or even relations, in which

²³⁷ For a powerful push for contending with power, see, for example, Simonson, *supra* note 7. see also K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679 (2020); Sameer Ashar & Annie Lai, *Access to Power*, 148 DÆDALUS 82 (2019).

²³⁸ See John Whitlow, *If You Can Unmake It Here: Crisis, Contingency, and Law in the Making and Unmaking of Neoliberal New York*, 121 S. ATL. Q. 339, 346-50 (2022).

²³⁹ See, e.g., V.I. LENIN, STATE AND REVOLUTION: THE MARXIST TEACHING ON THE STATE AND THE TASKS OF THE PROLETARIAT IN THE REVOLUTION 9 (Int'l. Publishers Co. 4th ed. 1935) (1918) ("According to Marx, the state is an organ of class *domination*, an organ of *oppression* of one class by another; its aim is the creation of 'order' which legalizes and perpetuates this oppression by moderating the collisions between the classes."); see also V.I. LENIN, THE NEED FOR AN AGRICULTURAL LABOURERS' UNION IN RUSSIA, in 25 LENIN COLLECTED WORKS 126 (Stepan Apresyan & Jim Riordan, eds., Progress Publishers 2d ed. 1974) (1917) ("The state is an organisation of the ruling class.").

²⁴⁰ NICOS POULANTZAS, *supra* note **Error! Bookmark not defined.**, at 127 ("[T]he State's principal role is one of *organization*. It represents and organizes the dominant class or classes; or, more precisely, it represents and organizes the long-term political interest of a *power bloc*, which is composed of several bourgeois class fractions . . . [and other] dominant classes"); *id.* at 140 ("The state apparatuses organize-unify the power bloc by permanently disorganizing-dividing the dominated classes, polarizing them towards the power bloc, and short-circuiting their own political organizations.").

²⁴¹ Poulantzas State Power Socialism 54. Poulantzas "advanced a conception of the capitalist state as a constellation of social forces and powers, to which the class struggle was immanent." Rafael Khatchaturian, The State as Social Relation: Poulantzas on materiality and political strategy, in *Research Handbook in Law and Marxism* 173, 175-76 (Paul O'Connell & Umut Ozsu, eds. 2021) (arguing Poulantzas challenged the Leninist conception of the state as an object—a blunt instrument for class rule—with no autonomy as to the ruling class and the social democratic vision of the state as having absolute autonomy, "a neutral arbiter between contending classes," able to "incorporate working class interests into a pluralist consensus").

these struggles are waged.²⁴² So too is the law, as an extension and forum of the state itself—“absorb[ing]” popular struggles and “riven with social contradictions.”²⁴³

Rather than deferring to or pleading with representatives of the state, then, whether that be legislators or judges or even the police, a campaign for non-reformist reforms aims to fundamentally contest the power, expertise, and worldview of much of the political class, whether democratic or republican. It should “target[] the substance of elite power.”²⁴⁴ Campaigns for non-reformist reforms seek to create, illustrate, and highlight social conflict among and between classes of people in order to force people to pick a side.²⁴⁵ In other words, whereas reformism aims to depoliticize, the campaign for non-reformist reforms aims to turbocharge engagement with race, class, and gender struggles.²⁴⁶

²⁴² POULANTZAS, *supra* note 39, at 11-27. See also Ralph Miliband, *The State in Capitalist Society: An Analysis of the Western System of Power* 49-50 (1969) (differentiating between “the government” and “the state,” on the grounds that the former is part of a “state system,” and the latter per se does not exist: “What ‘the state’ stands for is a number of particular institutions, which, together, constitute its reality, and which interact as part of what may be called a state system.”); *id.* at 50-53 (enumerating that beyond the government, the state is composed of administrative and bureaucratic bodies, the military and the police, courts and judges, and “various units of sub-central government”).

²⁴³ Khatachurian at 181-83 “Poulantzas understood law (the state’s juridico-political structures) as a central element in the organization of hegemony and as a technique for the creation of cohesion and consensus, both within the power bloc and between the power bloc and the dominated classes.” *Id.* at 181. Poulantzas rejected reformism and emphasized “a transition to democratic socialism would be brought about by a ‘stage of real breaks, the climax of which—and there has to be one—is reached when the relationship of forces on the strategic terrain of the State swings over to the side of the popular masses.’” Khatachurian at 186 (citing Poulantzas, *State, Power, Socialism* at 258-59).

²⁴⁴ Kevin A. Young, Tarun Banerjee, Michael Schwartz, *Levers of Power: How the 1% Rules and What the 99% Can Do About It* 196 (2020).

²⁴⁵ Mathiesen explains campaigns must create “a dilemma; through the conscious experience of in fact having to choose between a continuation of the prevailing order (possibly with minor changes) and a transition to something which is unknown. Such a conscious experience is no sufficient condition for the inception of abolition . . . but it is certainly a necessary one.” Mathiesen, *supra* note __, at 59. See also Jocelyn Simonson, *Police Reform through a Power Lens*, 130 *Yale Law Journal* 778 at 844 (“Contestation is necessary for democracy,” including “political action that involves direct opposition to reigning laws, policies, or state practices,” and “from populations and communities that have historically had a reduced voice in generating reigning ideas about how to govern and provide security.”).

²⁴⁶ Interrupting Criminalization, Abolition and the State: A Discussion Tool 23 (2022), <https://www.interruptingcriminalization.com/abolition-and-the-state> (“We need to make demands on the state that will have maximal mobilizing effect and make more people into active participants who have the capacity to co-govern our lives and work.” (quoting

The conflict must have material and ideological components—and that conflict must also be expressed through the use of strategy and tactics.²⁴⁷ In other words, the campaign must put in competition both ideas about what state, market, and society might look like, show that distinct conceptions of political, economic, social order might produce tangible and concrete benefits, and engage in disruptive strategies and tactics. Consider how many campaigns for defunding the police are often accompanied by demands to fund communities or alternative state capacity—and are carried out through a combination of protest and engagement with legislative process.

1. Material

On the material, campaigns for non-reformist reforms must aim “to make people’s lives better.”²⁴⁸ The demands must provide or seek to provide something tangible, real, and meaningful in the quality of life. Consider, for example, Medicare for All in the form of the DSA’s demand for “a *single, universal* [healthcare] system with comprehensive coverage that is free at the point of service,” one that “prioritizes the health of working-class Americans over the profits of insurance companies and their billionaire executives.”²⁴⁹ It would be “free at the point of service” and “eliminate

Dean Spade)). For analysis of a set of reforms to deepen how “ordinary people can effectively participate in and influence politics which directly affect their lives,” by fostering “the commitment and capacities of ordinary people to make sensible decisions through reasoned deliberation and empowered because they attempt to tie action to discussion,” see Archon Fung & Erik Olin Wright, *Thinking about Empowered Participatory Governance*, in *Deepening Democracy: Institution Innovations in Empowered Participatory Governance* 3, 5 (Archon Fung & Erik Olin Wright, eds 2003).

²⁴⁷ Reforms must work to shrink the prison and work to “unveil whatever the system veils” about its “true nature.” Mathiesen, *supra* note __, at 229.

²⁴⁸ Democratic Socialists of America, *State and Revolution(ary Reforms)*, YOUTUBE (Mar. 21, 2022), <https://www.youtube.com/watch?v=GcHMGRKNobY> [<https://perma.cc/T4QV-YJPH>] (**statement of Meagan Day, speaker**); see also Cole, *supra* note 142 (stating that a revolutionary reform has “got to improve the lives of workers”); The Lit Review Podcast, *Angela Davis on Capital by Karl Marx*, at 01:09:19 (Apr. 11, 2022), <https://www.thelitreview.org/season4.html> [<https://perma.cc/M6PL-SG37>] (discussing non-reformist reforms as “reforms that really help human beings” and “give us a sense of our power”).

²⁴⁹ DEMOCRATIC SOCIALISTS FOR MEDICARE FOR ALL, <https://medicareforall.dsusa.org/> [<https://perma.cc/L8L9-XADV>] (*italics needed*); see also *Launching a Medicare for All Campaign: A DSA Organizing Guide*, DEMOCRATIC SOCIALISTS FOR MEDICARE FOR ALL, <https://medicareforall.dsusa.org/organizing-guide/launching-a-medicare-for-all-campaign> [<https://perma.cc/PET9-E2XJ>]. The DSA has contrasted the popularity of Medicare for All

private insurance.”²⁵⁰ The DSA’s campaign materials emphasize that single payer will “materially improve the lives of millions of people.”²⁵¹ That improvement, centrally, can “change the public’s thinking about capitalist social, political, and economic structures, enabling people to imagine and work toward an alternative to the capitalist structure,” even “provide a gateway to understanding and implementing socialism.”²⁵²

Single-payer healthcare also materially changes the balance of power between the working and capitalist classes. *Jacobin*’s Meagan Day explains that single payer “affirms the principle that there exist zones that are off-limits to capitalism” while “increas[ing] the[] ability [of working people] to intentionally act in conflict with the ruling class.”²⁵³ It reconstitutes health care as a basic entitlement or social good.²⁵⁴ Decommodifying health care raises the floor for labor, creating space for unions and other formations to agitate around other demands. And “[i]t takes control of a major system away from the private sector and places it in the hands of the public . . . embolden[ing] the working class to imagine new dimensions of political possibility.”²⁵⁵

2. Ideological

But it’s not enough to assume that a campaign for or enactment of single-payer health care would expand space for understanding the

with elected official’s lack of clarity on what Medicare for All might entail, and the range of proposals in Congress. DSA for Medicare for All, We want Medicare For All and Nothing Less, https://vimeo.com/372485809?embedded=true&source=video_title&owner=83328547. They view only Bernie Sanders and Pramila Jayapal’s bills as “true” Medicare for All bills. *Id.*

²⁵⁰ DSA for Medicare for All, We want Medicare For All and Nothing Less, https://vimeo.com/372485809?embedded=true&source=video_title&owner=83328547.

²⁵¹ Louise Parker & Anonymous, Essay on the Fight for a Single-Payer Universal Healthcare System, DSA BUILD, <https://dsabuild.org/m4apopularfront> [<https://perma.cc/8VXW-MXW9>]; see also Philly DSA Bulletin Team, *Bulletin: May Day Picnic This Saturday! Striking Stop & Shop Workers Get the Goods*, PHILLY DSA (Apr. 25, 2019), https://www.phillydsa.org/bulletin_4_25_19 [<https://perma.cc/QDW7-PY5F>]; Kalisz, *supra* note 143; Cole, *supra* note 142.

²⁵² Louise Parker & Anonymous, *supra* note 181.

²⁵³ Meagan Day, *supra* note 101.

²⁵⁴ See Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. Rev. 758 (2020).

²⁵⁵ Teresa Kalisz, *Rethinking Reforms*, REGENERATION MAG. (Apr. 19, 2019) <https://regenerationmag.org/rethinking-reforms> [<https://perma.cc/Z9F3-K2NL>].

problems with capitalism or implementing socialism. The contradiction, competition, and antagonism must be created and then sustained over time.²⁵⁶

Writing in 1975, the historian of the U.S. left James Weinstein reflected on the three times since 1900 that the U.S. left has “started anew and failed”: the Socialist Party of the early 1900s; the Communist Party from 1919 to 1956; and the New Left.²⁵⁷ He blames “political repression” and “political weakness” for these successive failures.²⁵⁸ On the latter, he argues all three movements accepted the idea that fighting for reforms at work or in society “would in itself lead people to a broader understanding of the need for a comprehensive revolutionary movement.”²⁵⁹ As a result, they “relegat[ed] the need for a socialist revolution to the back rooms of party headquarters and the private lives of movement organizers” rather than in public, in meetings and on the streets.²⁶⁰ This strategic decision was in part what allowed “class-conscious capitalists . . . to outmaneuver and defeat east successive socialist (or “radical”) movement.”²⁶¹

On the ideological, then, the non-reformist reform must put the prevailing order (however conceived, e.g., capitalism, racial capitalism, and/or the prison-industrial complex) and the horizon of a radically reconstituted world (say, socialism, communism, and/or abolition democracy) in competition. In other words, the formations fighting for non-reformist reforms must do more than simply advance a particular change or non-reformist reform: they must ground their campaigns and organizing in larger ideological commitments and horizons for the society and state reconstituted. As Jane McAlevey has argued, organizing is about changing expectations.²⁶² In this way, politics can be remade.²⁶³

²⁵⁶ Mathiesen writes of the need to create contradiction and competition. Mathiesen, *supra* note ___, at 47-48 (“The main problem, then, is that of obtaining the combination of *the contradicting and the competing*; the main problem is that of avoiding your contradiction becomes non-competing and that your competition becomes agreement. The main aim is that of attaining the competing contradiction”).

²⁵⁷ James Weinstein, *Ambiguous Legacy: The Left in American Politics* vii-viii (1975).

²⁵⁸ James Weinstein, *Ambiguous Legacy: The Left in American Politics* vii-viii (1975).

²⁵⁹ James Weinstein, *Ambiguous Legacy: The Left in American Politics* vii-vii (1975).

²⁶⁰ James Weinstein, *Ambiguous Legacy: The Left in American Politics* vii-vii (1975).

²⁶¹ James Weinstein, *Ambiguous Legacy: The Left in American Politics* vii-vii (1975).

²⁶² JANE MCALEVEY & BOB OSTERTAG, *RAISING EXPECTATIONS (AND RAISING HELL): MY DECADE FIGHTING FOR THE LABOR MOVEMENT* 12 (2012).

²⁶³ “Politics does not reflect majorities, it constructs them” Stuart Hall, ‘Blue Election, Election Blues 1987’, in *Selected Political Writings*, Sally Davison, David Featherstone,

Through campaigns and organizing, non-reformist tell a story of a different kind of world with distinct social, political, and economic relations. They leverage a fundamental critique of things as they are. As Sunkara explains, “We must combat the dominant ideology of market individualism with a compelling vision of democracy and freedom, and show how only in a society characterized by democratic decision-making and universal political, civil, and social rights can individuals truly flourish.”²⁶⁴

3. Strategies and Tactics

That conflictual, antagonistic, unruly element must define the set of strategies, and tactics those fighting for such reforms deploy. Campaigns for non-reformist reforms do not rely simply on politics or formal legal and political processes as they exist; organizers cannot and do not take these at face value. To contest the terrain of politics itself, campaigns for non-reformist reforms, then, must rely on “inside” and “outside” strategies, on a combination of sanctioned and extra-legal strategies and tactics;²⁶⁵ and a combination of engaging preexisting process and organization and building new organizations. As Cornel West explained in *The Role of Law in Progressive Politics*, without “significant extraparliamentary social motion [that] brings power and pressure to bear on the prevailing status quo,” only defensive--rather than affirmative, progressive, or positive—work is possible.²⁶⁶

Michael Rustin, and Bill Schwarz (eds) (2017) *Selected Political Writings*, Duke University Press, pp. 238–47. See also Alyssa Battistoni, *Spadework: On Political Organizing*, N+1 (Spring 2019). (“the comradely element of organizing can also open up space for building relationships with people beyond those boundaries. It’s not that class and race and gender disappear, transcended by the cause — but the need to work together to achieve a shared end provides a baseline of commonality that makes it possible to relate across difference and essential to figure out how.”); Paul Fryer & Jacob M. Grumbach, *Labor Unions and White Racial Politics*. *Am. J. Pol. Sc.* at 2 (2020) (participating in unions reduces racial resentment among whites and leads to greater support for “affirmative action and other policies designed to benefit African-Americans”).

²⁶⁴ Joseph M. Schwartz & Bhaskar Sunkara, *What Should Socialists Do?*, JACOBIN (Aug. 1, 2017), <https://jacobin.com/2017/08/socialist-left-democratic-socialists-america-dsa> [<https://perma.cc/64CU-ZUQS>].

²⁶⁵ Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797, 1797, 1800, 1805-06 (1990) (speaking of the need for “extraparliamentary social motion” to “bring[] power and pressure to bear on the prevailing status quo” in order to create affirmative possibilities for progressive projects).

²⁶⁶ Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797 (1990).

For a micro example of disruptive tactics, consider Brooklyn Eviction Defense and their efforts to forestall the eviction crisis during the pandemic by organizing tenants and tenants' unions to keep people in their homes. In addition to coalitional work to cancel rent and pause housing court processes through engaging landlords and legislation, organizers engaged in extralegal tactics, including changing the locks on a house after an eviction, and running an organized "stoop watch" to ensure the landlord did not throw out tenants who had been legally evicted but had nowhere to go.²⁶⁷

B. Time and place

Second, non-reformist reforms must be assessed, developed, fought for, only within an understanding of the conjuncture: the time and place, the balance of forces between the relevant classes, the strength of organized grassroots power, and the defining social struggles of the era.²⁶⁸ They seek to shift the balance of power or forces towards the working class, and away from the capitalist class. This implies not simply an understanding of the time and place, but also strategy aimed at wresting concrete battles and sustaining organized power. The very waging of a battle for non-reformist reforms, whether victorious or not, could lead to demobilization—which is counterproductive on a theory of social change that requires mobilized and organized blocs of people to contest the state and the capitalist class.²⁶⁹

²⁶⁷ See, e.g., Revolutionary Left Radio, *Brooklyn Eviction Defense: Tenant Organizing for the People*, at XX:XX (May 4, 2022), <https://revolutionaryleftradio.libsyn.com/bed> [<https://perma.cc/2T3A-98TM>].

²⁶⁸ See HALL ET AL., *supra* note 39, at xiv-xv ("‘Conjuncture’ is a concept developed by Gramsci and Althusser that designates a specific moment in the life of a social formation and refers to a period when the antagonisms and contradictions, which are always at work in society, begin to ‘fuse’ into a *ruptural unity*’. Conjunctural analysis deploys a type of periodisation based on a distinction between moments of relative stability and those of intensifying struggles and unrest, which may result in a more general social crisis. The concept covers the development of contradictions, their fusion into a crisis and its resolution So long as a period is dominated by roughly the same struggles and contradictions and the same efforts to resolve them, it can be said to constitute the same conjuncture."); see also Asad Haider, *A New Practice of Politics: Althusser and Marxist Philosophy*, VERSO (Mar. 28, 2018), <https://www.versobooks.com/blogs/3713-a-new-practice-of-politics-althusser-and-marxist-philosophy> [<https://perma.cc/4TG4-Y8SP>] (defining conjuncture as “the balance of forces and network of contradictions constituting a particular political situation”).

²⁶⁹ See Kalisz, *supra* note 143 (“After winning a reform, the working class could demobilize, leaving no permanent organization. Even worse, as a part of the compromise, provisions might be included that could end creating new avenues for the capitalist class or state to fight or prevent class struggle.”).

Non-reformist reforms must entail successive and cumulative organizing that engages and shifts the balance of power over time. They must “alter the terrain upon which later struggles will be waged . . . [and] they expand the set of feasible options for future reform. Over time their cumulative effect could be to transform the underlying structures that generate injustice.”²⁷⁰

This requires ongoing assessment. Something celebrated as a non-reformist reform at the time of its adoption sets a new floor for action for the future; a non-reformist reform on day one may not be a non-reformist reform on day 300. Angela Y. Davis recently spoke about workers’ struggles around the duration of the workday: at the outset, “there was a struggle for a 15 hour day,” and then twelve, ten, and eight.²⁷¹ This is a struggle for workers to have freedom over time. It does not end with establishing eight hours, she explains: “Somehow we have become fixated on this eight hour day,” but “that struggle should continue.”²⁷² Whereas any limit on the work day was a win for the working classes, a limit on the power of the capitalist class to extract time from the working class, now that struggle should have a new horizon.

Moreover, the same demand in one place may look very different in another place. For example, a no new jails campaign against a secondary jail that has already largely been emptied through efforts at revoking and relaxing criminal laws and enforcement or changing bail practices is not on the same footing as a campaign to shut down the only youth jail in a county within a campaign to end youth detention.²⁷³

²⁷⁰ *Id.* at 79-80.

²⁷¹ The Lit Review Podcast, *supra* note 179, at 1:03:00; see also MARTIN HÄGGLUND, THIS LIFE: SECULAR FAITH AND SPIRITUAL FREEDOM 24-25 (2019) (arguing that the struggle for freedom is a struggle to define what we do with our time, something that capitalism does not allow).

²⁷² The Lit Review Podcast, *supra* note 179, at 1:03:14.

²⁷³ This is a rough comparison between the campaign to shut down and repurpose a secondary jail in Atlanta to the campaign to shut down the youth jail in Seattle. See Lisa Hagen, *City Council to Mull Closing Atlanta’s City Jail*, WABE (Aug. 21, 2018), <https://www.wabe.org/city-council-to-mull-closing-atlantas-city-jail/>; Elizabeth Turnbull, *King County Unveils Plans to Shut Down CFJC Youth Detention Center and Seattle Jail by 2025 Activists Demand Closure Now*, South Seattle Emerald (July 21, 2020), <https://southseattleemerald.com/2020/07/21/king-county-unveils-plans-to-shut-down-cfjc-youth-detention-center-and-seattle-jail-by-2025-activists-demand-closure-now/>.

1. Strength of the movement and organization

Because non-reformist reforms are not about policy solutions or efficiency but centered in struggle, non-reformist reforms cannot and will not operate in the same way across time and context. Gorz's strategy "assume[d] a mature workers movement . . . with numerous shows of strength through things such as strikes."²⁷⁴ That there is no such workers movement or left party in the United States is of central importance to developing a coherent program of non-reformist reforms.²⁷⁵ One could imagine the project of non-reformist reforms as part of an effort to "facilitate the process of growth and strengthening of the working-class movement."²⁷⁶

Consider defund the police. Building on decades of prison abolitionist organizing, the demand was at the forefront of the 2020 rebellions in response to the police killings of George Floyd and Breonna Taylor. The moment in which it emerged explosively on the streets, amidst the state absence in responding to the pandemic and the state presence in deploying police everywhere, deepened the legitimacy crisis of the state and illustrated the tilt of its political economy toward carceral infrastructure and guard labor. When you consider the demand beyond its generalized, slogan-like form, the particulars matter. One might advocate a meager defunding of the police—say, one percent to a quarter of a police budget—not toward prison or police abolition, but instead to recalibrate the police's social role, in order to reestablish the legitimacy and hold of police on the state and imagination and to quell protest and disruption. Here the problem is scale or scope, or even a simple reestablishment of legitimacy and normalcy. Given the scale of policing and police budgets in the United States, such a cut could make a real impact in the lives of ordinary people. A long-standing abolitionist campaign in Los Angeles, for example, called for a five-percent cut of a multibillion dollar budget for the police and sheriff's offices and for the money to be reinvested in a range of youth programs, including a youth leadership board.²⁷⁷ But to the extent that billions of dollars continue to feed

²⁷⁴ *Id.*

²⁷⁵ Mathiesen's discussion of KROM, and its ultimate embrace of the "principle of immediacy," or immediate implementation, also spoke to a considerably mature movement and organization with considerable power. Mathiesen 26-28.

²⁷⁶ Kalisz, *supra* note 143 ("Until the strength and organizational level of the working class is such that it creates these challenges to capitalists and the state, any major reform is going to be much more limited if enacted than the proponents of non-reformist reforms envision.").

²⁷⁷ Akbar, *supra* note 5, at 470.

a carceral apparatus, and the police can reestablish their central legitimacy in statecraft—not just in general but at scale—the demand only makes sense as a non-reformist reform if its imagined as part of an ongoing struggle.

The demand reshaped discourse and influenced reform debates, but in most places in the country there was insufficient organizational capacity to effectuate any major cut.²⁷⁸ Some places, police jurisdiction was limited (e.g., removed from schools) or movement energy fueled victories in related campaigns—say, against the building of a new jail.²⁷⁹ In places with organizing depth, history, and organizational fortitude, significant victories were beat back. In 2020, the Austin City Council voted to cut a third of the police budget and reallocate it to food programs and violence programs, before the state legislature and Governor Greg Abbott passed a law to punish localities for cutting police budgets.²⁸⁰ In Los Angeles that same fall, a ballot initiative to require the city to allot 10% of its unrestricted general funds invested in alternatives to police passed with 57% of the vote—only for a law enforcement union to bring suit and a judge to find it unconstitutional.²⁸¹ The following year, the county board of supervisors approved millions towards its care first, jails last vision, heeding aspects of the popular measure, but far short and less protected than the ballot measure required.²⁸²

²⁷⁸ Seattle is an exception. David Kroman, *Seattle cuts, but doesn't 'defund' the budget in 2021*, Crosscut (Nov. 19, 2020), <https://crosscut.com/news/2020/11/seattle-cuts-doesnt-defund-police-budget-2021>.

²⁷⁹ See *infra* introduction and Part I. see also News Release, Office of the Mayor, City and county of San Francisco, Mayor London Breed and Sheriff Paul Miyamoto Announce Closure of County Jail \$4 (Aug. 25, 2020), <https://sfmayor.org/article/mayor-london-breed-and-sheriff-paul-miyamoto-announce-closure-county-jail-4>.

²⁸⁰ Meena Venkataramanan, *Austin City Council cuts police department budget by one-third, mainly through reorganizing some duties out from law enforcement oversight*, The Texas Tribune (Aug. 13, 2020 6 PM CENTRAL), <https://www.texastribune.org/2020/08/13/austin-city-council-cut-police-budget-defund/>; Megan Munce, *Gov. Greg Abbott signs slate of legislation to increase criminal penalties for protestors, punish cities that reduce police budgets*, The Texas Tribune (June 1, 2021 3 PM CENTRAL), <https://www.texastribune.org/2021/06/01/texas-abbott-defund-police-protest/>.

²⁸¹ E.g., Jaclyn Cosgrove, *L.A. County voters approve Measure J providing new funding for social services*, LA Times (Nov. 3, 2020), <https://www.latimes.com/california/story/2020-11-03/2020-la-election-tracking-measure-j>; Sarah Holder, *L.A. County's Ambitious Policing Reform Agenda Hits a Roadblock*, Bloomberg (June 22, 2021 6:04 PM EDT), <https://www.bloomberg.com/news/articles/2021-06-22/l-a-measure-to-fund-police-alternatives-loses-in-court>.

²⁸² Celeste Fremon, *LA County Board of Supes Approves \$187.7 Million Spending Package to Advance the County's 'Care First, Jails Last' Vision*, Witness LA (Aug. 11,

It also led to an influx of money into bail funds and other movement organizations.²⁸³ Whereas some of that has led to concrete victories for ordinary people—for example, getting bailed out—the money has also institutionalized movement work in nonprofit structures in a way that has arguably undercut the building of autonomous or rebellious power.²⁸⁴ What we are seeing now all over the country are individual small-ticket line items, say for nonpolice mental health responders, without any cut from the police department:²⁸⁵ a way to metabolize the demand without really denting or shifting, though it is an opening that can be built on.

2. The balance of forces within the state and political economy

Beyond the state of any left or workers movements, it is important to account for the balance of forces of the state and political economy.²⁸⁶ The political theorist Nancy Fraser distinguishes between “affirmative” and “transformative” strategies, the latter a rough analog to non-reformist reforms.²⁸⁷ For Fraser, the “paradigmatic” affirmative strategy is the liberal welfare state, the transformative the socialist state.²⁸⁸ The affirmative strategy is to regulate capitalism and redistribute its spoils, whereas the transformative strategy is to achieve democratic control over the means of production.²⁸⁹ In the Fordist era, she notes some leftists viewed social

2021), <https://witnessla.com/la-county-board-of-super approves-187-7-million-spending-package-to-advance-the-countys-care-first-jails-last-vision/>.

²⁸³ E.g., Shane Goldmacher, *Racial Justice Groups Flooded with Millions in Donations in Wake of Floyd Death*, NY Times (June 14, 2020), <https://www.nytimes.com/2020/06/14/us/politics/black-lives-matter-racism-donations.html>.

²⁸⁴ E.g., Keeanga-Yamahtta Taylor, *Five Years Later, Do Black Lives Matter*, Jacobin (Sept. 30, 2019), <https://jacobin.com/2019/09/black-lives-matter-laquan-mcdonald-mike-brown-eric-garner>.

²⁸⁵ See *infra* note 33.

²⁸⁶ Mathiesen centered the “strength of welfarism and welfare state principles” in Norway in his analysis of effective abolitionist strategies. Mathiesen 26-28.

²⁸⁷ FRASER & HONNETH, *supra* note 73, at 74. Fraser explains, “Affirmative strategies . . . aim to correct inequitable outcomes . . . without disturbing the underlying social structures that generate them,” while “[t]ransformative strategies . . . aim to correct unjust outcomes precisely by restructuring the underlying generative framework.” *Id.* Fraser also distinguishes transformative and affirmative strategies for redistribution in another way: affirmative strategies target the poor, whereas transformative strategies make universal demands that encourage solidarity. *Id.* at 76-77.

²⁸⁸ *Id.* at 74.

²⁸⁹ *Id.* (“Far from simply altering the end-state distribution of consumption shares, [socialism] would change the division of labor, the forms of ownership, and other deep

democracy not only as a compromise but as a developmental stage toward a socialist state: intended “to institute an initial set of apparently affirmative redistributive reforms, including universal social-welfare entitlements, steeply progressive taxation, macroeconomic policies aimed at creating full employment, a large non-market public sector, and significant public and/or collective ownership.”²⁹⁰ These policies did not “alter[] the structure of the capitalist economy,” but, the idea was “together they would shift the balance of power from capital to labor,” seeding a long-term transformation.²⁹¹ The defeat of the New Left and the arrival of neoliberalism, however, forestalled that transformation.²⁹²

To consider these questions at a more proximate scale, consider proposals for universal basic income (UBI). UBI was featured in the Movement for Black Lives policy platform, popularized by Andrew Yang in the 2020 Democratic presidential primary, and being adopted in localities across the country.²⁹³ It also has a history in the New Left, as a demand of the Black Panther Party and the welfare rights movement.²⁹⁴ UBI “would

structures of the economic system.”).

²⁹⁰ *Id.* at 80.

²⁹¹ *Id.*

²⁹² *See id.* at 75 (noting that “Today, of course, economic transformation is out of fashion.”).

²⁹³ *See* Olufemi Taiwo, Universal Basic Income, Racial Justice, Climate Justice, LPE Blog (Feb. 15, 2021), <https://lpeproject.org/blog/universal-basic-income-racial-justice-climate-justice/>; Noah Zatz, Basic Income and the Freedom to Refuse, LPE Blog (Feb. 16, 2021), <https://lpeproject.org/blog/basic-income-and-the-freedom-to-refuse/>; Raul Carrillo, *Reconstructing the Algebra of Race and Rights*, LPE Blog (Feb. 18, 2021), <https://lpeproject.org/blog/rearranging-the-algebra-of-race-and-rights/>. The Black Panthers included guaranteed income in their Ten Point Platform. *See* The Undercommons, No Racial Justice Without Basic Income, Boston Review (May 3, 2017), <https://www.bostonreview.net/articles/undercommons-no-racial-justice-without-basic-income/>.

²⁹⁴ *See* The Undercommons, No Racial Justice Without Basic Income, Boston Review (May 3, 2017), <https://www.bostonreview.net/articles/undercommons-no-racial-justice-without-basic-income/>. Alyssa Battistoni, *The False Promise of Universal Basic Income*, DISSENT (2017), <https://www.dissentmagazine.org/article/false-promise-universal-basic-income-andy-stern-ruger-bregman> [<https://perma.cc/8PSG-F94U>] (“This UBI is the one that draws from the Marxist feminists who pointed out the unwaged labor of social reproduction in the 1970s, the working-class women of color who fought for the rights of welfare recipients in the 1960s, and the architects of the Freedom Budget who attempted to translate the gains of the civil rights movement into a program for economic justice. They wanted not just a basic income but a sufficient one—one adequate not merely to survive, but to live a decent life, and maybe even a good one.”). *See also* Ursula Huws, *Reinventing the Welfare State: Digital Platforms and Public Policies* 109-11 (2020) (framing UBI as a “feminist demand” given its roots in socialist feminist politics that is now “gaining support in recent years”).

guarantee a minimum standard of living to every citizen,” but it would “leav[e] intact the deep structure of capitalist property rights.”²⁹⁵ One could imagine a robust version of UBI as a non-reformist reform. Its character would depend on the amount, how it was struggled for, and the context in which it was fought.²⁹⁶ In a neoliberal context like that of the United States, the state might simply subsidize employers in paying workers paltry wages. In contrast, within a social democracy, “set high enough,” UBI could “alter the balance of power between capital and labor, creating a more favorable terrain on which to pursue further change.”²⁹⁷

3. Particularities of Demands

The particulars of demands must strategically chip away at the power and legitimacy of the prevailing order. Gorz emphasized that the importance of the particularity of demands and their implementation—how they intervene in the balance of class forces and how they interrupt or extend political, economic, or social relations capitalism enshrines.²⁹⁸ A demand for “the construction of 500,000 new housing units a year” could be reformist or non-reformist in nature.²⁹⁹ If the building entailed “subsidizing private enterprise with taxpayers’ money to guarantee its profits”—deferring to the ultimate logic of capital, profit, and a state committed to enrichment of private enterprise—it would lean reformist.³⁰⁰ If it entailed “the expropriation of those who own the required land, and [] the construction would be a socialized public service, thus destroying an important center of the accumulation of private capital,” it would take on a more non-reformist character.³⁰¹ One way to understand this is to consider that it is not simply the broad demand but also its particulars. Against whom does it leverage its power, toward whom does it redistribute power and resources, and who

²⁹⁵ FRASER & HONNETH, *supra* note 73, at 78 (working through UBI as a possible non-reformist reform).

²⁹⁶ See, e.g., Alyssa Battistoni, *The False Promise of Universal Basic Income*, DISSENT MAG. (Spring 2017), <https://www.dissentmagazine.org/article/false-promise-universal-basic-income-andy-stern-ruger-bregman> [<https://perma.cc/PMJ3-6RC3>].

²⁹⁷ *Id.* See also Erik Olin Wright, *Basic Income as a Socialist Project*, 2 Rutgers J. L. & Urban Pol. 196, 200 (2005) (“A generous basic income has the potential to contribute, in the long run, to strengthening the power of labor vis-à-vis capital”).

²⁹⁸ See GORZ, *supra* note 126, at 4-5; see also FRASER & HONNETH, *supra* note 73, at 78 (“Reforms that appear to be affirmative in the abstract can have transformative effects in some contexts . . .”).

²⁹⁹ GORZ, *supra* note 126, at 7 n.2.

³⁰⁰ *Id.*

³⁰¹ *Id.*

controls its implementation? Does it prioritize human need, or does it prioritize profit? Does it emphasize the use value of the housing units and the land on which it sits, or does it emphasize its exchange value?

Consider again UBI. Allyssa Battistoni explains that UBI “has to be genuinely universal and unconditional, provide enough income to actually live on, and supplement rather than replace the welfare state.”³⁰² It cannot simply be a program where “paltry lumps of cash replace public services and goods.”³⁰³

C. Mass and democratic organization

Third, non-reformist reforms are about collective, democratic, mass organization.³⁰⁴ They require building autonomous or independent organizations and formations—including independent political parties, unions, social-movement organizations, and more experimental forms.³⁰⁵ It is with the aim of augmenting organization that such campaigns must be developed, strategized, effectuated, and debated. Through these organizations and social formations that collective or class consciousness will be formed, maintained, and facilitated.

The writings of Thomas Mathiesen are useful here.³⁰⁶ A scholar and activist, Mathiesen’s writings draw from his experience starting and organizing with the Norwegian Association of Penal Reform (KROM), an organization which adopted an abolitionist posture.³⁰⁷ In writing about the fundamental need to keep an “open” relationship between “the so-called

³⁰² Allyssa Battistoni, *The False Promise of Universal Basic Income*, DISSENT (2017), <https://www.dissentmagazine.org/article/false-promise-universal-basic-income-andy-stern-ruger-bregman> [<https://perma.cc/8PSG-F94U>].

³⁰³ *Id.*

³⁰⁴ Gorz emphasized the need to build autonomous power. *See also, e.g.,* Gorz, *supra* note __, at 56-58. For a criticism about the limits of spontaneous mass protest to produce sustainable social change, see Andre Gorz, *The Way Forward*, *New Left Review* 47, 47-48 (1968); *see also*

³⁰⁵ *See* MICHAEL HARDT & ANTONIO NEGRI, *ASSEMBLY* 233 (2017) (“There is no political realism without organization—moreover, organization toward a definite goal.”); *id.* at 297-93 (“Democracy requires more not less focus on organization, especially because the adequate and effective forms of organization needed today have to be invented.”); RODRIGO NUNES, *NEITHER VERTICAL NOR HORIZONTAL: A THEORY OF POLITICAL ORGANIZATION* 17 (2021).

³⁰⁶ *See* MATHIESEN, *supra* note 106.

³⁰⁷ *Id.* at xiii-xvii.

‘revolutionary’ (long-term abolishing) and ‘the reformist’ elements” in its policies,” Mathiesen insisted a “parallel fighting organization” was necessary. KROM served as an “alternative public place in penal policy, where argumentation and principled thinking represent the dominant values,” independent from mass media, focused on the dignity of social movements, and “the feeling of responsibility on the part of intellectuals.”³⁰⁸ In other words, the organization allowed its members to maintain their commitment to counterhegemonic values and ideas.³⁰⁹ To sustain their commitment to the cause. Moreover, its regular meetings and conferences created “historical continuity and a sense of belonging.”³¹⁰ But the organization did something else: it gestated the necessary militancy and consciousness of transformative struggle.³¹¹

Non-reformist reforms help to mobilize and build new popular constituencies willing to contend for democratic power. There are two ways to think about this. First, demands for non-reformist reforms may reveal the possibilities of newly awakened constituencies.³¹² Consider debates among anticapitalist feminists in the midtwentieth century about competing

³⁰⁸ *Id.* at 28-29.

³⁰⁹ Gilmore also talks about this in her discussion of an organization of mothers with incarcerated sons called Mothers Reclaiming Our Children (ROC). She explains: the organization’s “frontline relation to the state was not that of petitioners for a share of the available social wages, but rather in opposition to the state’s form and purpose with respect to the life chances of the mothers’ family members and those like them.” Gilmore, *Golden Gulag*, *supra* note __, at 246-48.

³¹⁰ *Id.* at 33.

³¹¹ *See, e.g., id.* at 26..

³¹² This is a key work of movements. In a related vein, the Black Panther Party reconceived the “lumpenproletariat” as “the forgotten people at the bottom of society,” including in Marxist theory itself, “into the vanguard of the proletariat.” Eldridge Cleaver, *On the Ideology of the Black Panther Party Part I 2* (1969). In theorizing the un- and under-employed as central to revolutionary politics, the Party was centering Black struggle within Marxist theory, typically focused on the working class as the most consequential agential force to contend with and overthrow capitalism. *See* Laura Pulido, *Black, Brown, Yellow, and Left: Radical Activism in Los Angeles* 142-45 (2006) (“The hallmark of the BPP’s politics was its emphasis on the lumpen proletariat, or what today might be called the ‘underclass’.”). *See also* Joshua Anderson, *Huey P. Newton and the Radicalization of the Urban Poor*, in *Hidden Cities: Understanding Urban Popcultures* (2012); Garrett Epps, *Huey Newton Speaks at Boston College, Presents theory of ‘Intercommunalism,’* *The Harvard Crimson* (Nov. 19, 1970), <https://www.thecrimson.com/article/1970/11/19/huey-newton-speaks-at-boston-college/>. The Panthers drew their conception from Frantz Fanon. *See* Frantz Fanon, *The Wretched of the Earth* (1963) 129-130, 136-37 (“It is within this mass of humanity, this people of the shanty towns, at the core of the *lumpenproletariat*, that the rebellion will find its urban spearhead.”), https://monoskop.org/images/6/6b/Fanon_Frantz_The_Wretched_of_the_Earth_1963.pdf [fine to cite another version].

demands for wages for housework—that women’s domestic labor be waged—and the socialization of housework—that housework “be incorporated into the industrial economy.”³¹³ Political scientist Katrina Forrester has argued these demands and the surrounding debates created “a constituency for feminist class politics” and “allowed feminists to frame the home as a site of struggle” in order to “center housewives in revolutionary strategy.”³¹⁴ In particular, the demand for wages for housework recharacterized “domestic labor as productive,” thereby placing women “as workers in the revolutionary class.”³¹⁵ A primary function of the demand was “to reveal and create . . . the constituency of women workers among whom the campaign sought to build power.”³¹⁶

Or campaigns are waged not primarily to win but to build a base. Consider KC Tenants, the tenants union in Kansas City, Missouri. The goal of their first campaign was to “make housing . . . and tenants the center of the municipal election.”³¹⁷ Tara Raghuveer, the organization’s director, explains:

The intervention in the election was primarily to serve the first goal of building the base of our organization, not the other way around. . . . [Otherwise] . . . we might have gotten lost in the sauce of electoral politics too early instead we were very grounded all along in the type of long-term power organization we were trying to build.³¹⁸

Organizations that are not beholden to electoral politics, let alone the two parties, is essential to creating a force sufficiently powerful to upend political, economic, and social relations through daily, concrete, and cumulative action.³¹⁹ To shift the balance of power away from the capitalist

³¹³ Angela Davis, *Women, Race, and Class* 128 (1983) (“Teams of trained and well-paid workers, moving from dwelling to dwelling, engineering technologically advanced cleaning machinery, could swiftly and efficiently accomplish what the present-day housewife does so arduously and primitively.”), <https://legalform.files.wordpress.com/2017/08/davis-women-race-class.pdf> [fine to cite another version]; Forrester, *supra* note 92, at 1278-79.

³¹⁴ *Id.* at 1280.

³¹⁵ *Id.* at 1282.

³¹⁶ *Id.*

³¹⁷ Tara Raghuveer on hijacking Kansas City’s elections by being ruthless about basebuilding, *Craft of Campaigns* Podcast 14:20-15:23 (Nov. 22, 2022).

³¹⁸ Tara Raghuveer on hijacking Kansas City’s elections by being ruthless about basebuilding, *Craft of Campaigns* Podcast 14:20-15:23 (Nov. 22, 2022).

³¹⁹ Jed Purdy and Aziz Rana, *We need an insurgent Mass movement*, *Dissent* (Winter

class and the ruling elite. Mass democratic organizations are necessary to contest the state and its relationship to organized power and money. They have the possibility of creating necessarily collective consciousness and group feeling,³²⁰ and developing group capacity: “In the context of a disciplined campaign, even losses and setbacks develop organizers’ skills, build relationships, test strategies, and set up the next round. Each win in these local brawls, meanwhile, fortifies organizing elsewhere.”³²¹

D. Preparing to govern

Fourth, non-reformist reforms are not simply about transforming society so that there are a different set of ultimate rules, norms, expectations, and relations that govern and shape our every day. They are about fundamentally changing who has power. Non-reformist reforms prepare the left, the working-class, the people, to govern.³²² In this way, they are fundamentally different to reformism.

2020), <https://www.dissentmagazine.org/article/we-need-an-insurgent-mass-movement> (“the left needs a permanently mobilized set of parallel institutions that stand outside electoral life but continuously intervene within it.”). *see also* GORZ, *supra* note 126, at 10 (building democratic power for the working class requires “constant mobilization”). Khatachurian explains that Poulantzas’s conception of the state as a social relation had concrete implications for political strategy: “In very general terms . . . a tactical combination of organised electoral participation by a unified left on the terrain of the state, and—equally importantly—popular struggles outside the state apparatuses via new structures of direct democracy at the base exerting continuous pressure on existing state institutions.” Khatachurian at 184. [maybe bring some of this above the line]

³²⁰ Alyssa Battistoni, Spadework: On Political Organizing, N+1 (Spring 2019) (“the union was intensely democratic — we were, after all, seeking some amount of self-rule in our workplace and asking more people to take part in it. But democracy was more than aggregating our individual preferences or adhering to procedures; it was more like the attempt to find the general will. We were declaring ourselves a people, and that meant coming to see ourselves as part of a collective, not just a sample of rational actors.”). *see also* Vivian Gornick, *The Romance of American Communism* (2020).

³²¹ KATE ARANOFF, ALYSSA BATTISTONI, DANIEL ALDANA COHEN & THEA RIOFRANCOS, A PLANET TO WIN: WHY WE NEED A GREEN NEW DEAL 175-76 (2019) (In a dynamic and contentious view of how power operates “setbacks” are “premise, not punchline.”).

³²² Working-class organization and working-class rule are a key aspiration for socialists and communists. *see* Nikolas Bowie, *Corporate Personhood vs. Corporate Statehood*, 132 Harv. L. Rev. 2009, 2013, 2030-31 (2019) (book review) 2029-30 (discussing Bill Haywood of the IWW’s argument that for workers to “democratize . . . industrial government . . . ‘those who do the work’” must form “a democratic organization of workers that engaged in industry wide strikes, which in turn would force corporate executives to cede decisionmaking power to their employees.”).

E. A note on the rights debate

Consider the question of the long civil-rights struggle and its victories, traditionally thought of as the right to vote and the desegregation of public accommodation—some aspect of the formal political and economic rights of participation.³²³ These victories seeded a fault line between Critical Legal Studies (CLS) and Critical Race Theory (CRT)—one that reflected broader strategic debates about race and class, inside and outside politics, and the role of law in emancipatory struggle. CLS scholars argued that these rights individuated and depoliticized social conflict, reifying class structure.³²⁴ CRT scholars defended them as imperfect but essential tools won through struggles for emancipation: it was at “the bottom,” the people discriminated against and resisting, that legal scholars should focus and learn.³²⁵ But the debate largely focused on the what—the rights and rule of law legislated by Congress and adjudicated by federal courts—over the multiplicity and the how of the struggles. CLS ignored the struggles or the popular militancy that underlaid them and essentially denied that they had any wisdom.³²⁶

³²³ See, e.g., PIVEN & CLOWARD, *supra* note 15, at 181; DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY, 1930-1970*, at 1 (2d ed. 1982); JACK M. BLOOM, *CLASS, RACE, AND THE CIVIL RIGHTS MOVEMENT* (1987); MANNING MARABLE, *RACE REFORM, AND REBELLION: THE SECOND RECONSTRUCTION IN BLACK AMERICA, 1945-1990* (2d ed. 2007); CHARLES M. PAYNE, *I’VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE* (1995); and ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* (1984). Some have argued that the byproduct of political enfranchisement was a decrease in white vigilante violence. PIVEN & CLOWARD, *supra* note 15, at 181. See also Juliet Hooker, *Black Lives Matter and the Paradoxes of U.S. Black Politics: From Democratic Sacrifice to Democratic Repair*, 44 *POL. THEORY* 448, 456-57 (2016) (explaining the prevalence of “a romantic narrative of the civil rights movement of the 1960s that results in a teleological account of racial progress and the perfectibility of U.S. democracy”).

³²⁴ Mark Tushnet, *An Essay on Rights*, 62 *TEX. L. REV.* 1363, 1364 (1984); Alan D. Freeman, *Truth and Mystification in Legal Scholarship*, 90 *YALE L.J.* 1229, 1229 (1981). See also Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, 87 *MICH. L. REV.* 2320, 2322 (1989) (“[O]utsider jurisprudence—jurisprudence derived from considering stories from the bottom—will help resolve the seemingly irresolvable conflicts of value and doctrine that characterize liberal thought.”); Francisco Valdes, *Commentary, Identity Maneuvers in Law and Society: Vignettes of a Euro-American Heteropatriarchy*, 71 *UMKC. L. REV.* 377, 382 (2002) (describing the “continuing evolution of outsider jurisprudence”).

³²⁵ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 *HARV. C.R.S.-C.L.S. L. REV.* 323, 324 (1987); see also Bell, *supra* note 120, at 515-26; Crenshaw, *supra* note 44, at 1243-45.

³²⁶ See Deborah Dinner, *The Universal Childcare Debate: Rights, Mobilization,*

CRT defended the rights as a victory of these struggles but, arguably, did not attend to the range of more radical visions coming out of the long civil-rights movement through the Black Power and New Left era.³²⁷ Many of those who started CRT credited their experience growing up in and around such struggles with raising their expectations of what could be demanded from law schools and the legal academy. Many even participated in movement work.³²⁸ But on the page, the debate largely overlooked the militancy and variety of the struggles and organizations that effectively produced the rights in themselves.³²⁹

Revisit the debate now, with attention to the militancy of the long civil-rights struggle and the organization, militancy, and formations it birthed.³³⁰ The radical labor of so many people sufficiently shifted the balance of power in the country so as to topple Jim Crow segregation, the fundamental exclusion of Black people from the franchise that in turn coconstituted the denial of power at work.³³¹ The debate should be about more than the right

Social Policy, and the Development of Feminist Activism, 28 *Law & Hist. Rev.* 577, 580 (2010) (“Theoretical critiques arguing that rights de-radicalize social movements overlooked historical examples in which rights consciousness serves as an important vehicle for the formation of collective political identities”).

³²⁷ Angela Harris has argued that “CRT inherits from traditional civil rights scholarship a commitment to a vision of liberation from racism through right reason. Despite the difficulty of separating legal reasoning and institutions from their racist roots, CRT’s ultimate vision is redemptive, not deconstructive. . . . CRT seems confident that crafting the correct theory of race and racism can help lead to enlightenment, empowerment, and finally to emancipation: that, indeed, the truth shall set you free. Angela P Harris, Foreword: The Jurisprudence of Reconstruction, 82 *calif. L. Rev.* 741, 743 (1994).

³²⁸ See Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back To Move Forward*, 43 *CONN. L. REV.* 1253, 1260 (2011); see also Amna Akbar & Mari J. Matsuda, *Politics in, of, and Through the Legal Academy: Akbar Interviews Matsuda, Part 1*, LPE PROJ. (Jan. 18, 2021), <https://lpeproject.org/blog/politics-in-of-and-through-the-legal-academy-akbar-interviews-matsuda-part-1/> [https://perma.cc/UXM3-BE3D]; and Amna Akbar & Mari J. Matsuda, *Politics in, of, and Through the Legal Academy: Akbar Interviews Matsuda, Part 2*, LPE PROJ. (Jan. 19, 2021), <https://lpeproject.org/blog/politics-in-of-and-through-the-legal-academy-akbar-interviews-matsuda-part-2/> [https://perma.cc/98AS-YAK4].

³²⁹ Tomiko Brown-Nagin has attended to more of these formations. TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* (2011). See also Karen M. Tani, *Welfare and Rights Before the Movement: Rights as a Language of the State*, 122 *YALE L.J.* 314, 314 (2012); Scott Cummings & Ingrid Eagly, *A Critical Reflection of Law and Organizing*, 48 *UCLA L. Rev.* 443, 462-63 (2001).

³³⁰ This insight stems from conversations with Rachel Herzing.

³³¹ JACK M. BLOOM, *CLASS, RACE, AND THE CIVIL RIGHTS MOVEMENT* 27 (1987) (“White supremacy was directed primarily toward removing blacks from political power. Without political power, blacks could more easily be forced into economic subservience

to vote itself. It should attend to the organizing that the Southern Christian Leadership Counsel (SCLC), SNCC, Congress for Racial Equality (CORE), and others did in the South that led to desegregation and voting-rights legislation. To ignore that organizing is to ignore the radical, democratic potential of that struggle, and its hope. The organizing sparked a sense of possibility among Black people in the South and led to the building of new organizations and the radicalization of young people across the country. What limited the power of that struggle was less that the achieved right to vote memorialized it and more that a combination of burnout, repression, incorporation, and backlash forestalled the struggle.³³² In other words, it was not any necessary reformism implied in the demand itself or how people organized and agitated for it but rather that the movement was stalled, fought against, and effectively crushed to continue that rendered it unable to build on its monumental wins.

Organizations were built, moments of antagonistic conflict fomented. Consider the student wing of the civil-rights movement. The bus boycott “made it clear to blacks, to their immediate opposition, and to societal elites that masses of people could force social change by participating in organized disruptive protest activities.”³³³ The student sit-ins gave rise to the 1960 birth of SNCC and, in turn, increased the power of older organizations like the SCLC, NAACP, and CORE.³³⁴ By the early 1960s, there were

and become the controlled labor force that the merchant-landlord class felt it needed.”).

³³² PIVEN & CLOWARD, *supra* note 15, at 252–55 (“[T]he society overtook the movement, depleting its strength by incorporating its cadres and by organizing blacks for bureaucratic and electoral politics.”); KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 51–73 (2016); ADOLPH REED JR., STIRRINGS IN THE JUG: BLACK POLITICS IN THE POST-SEGREGATION ERA 117–59 (1999).

³³³ MORRIS, *supra* note 239, at 229. Morris charts the “movement centers” and “movement halfway houses” that gave the movement its reach, strategy, and staying power.

Id. at 40 (defining a “local movement center” as “a social organization within the community

of a subordinate group, which mobilizes, organizes, and coordinates collective action aimed

at attaining the common ends”); *id.* at 139, 140 (defining a “movement halfway house” as “an established group or organization that is only partially integrated into the larger society because its participants are actively involved in efforts to bring about a desired change in society” that “develop[s] a battery of social change resources such as skilled activists, tactical knowledge, media contacts, workshops, knowledge of past movements, and a vision

of a future society”). His account is an alternative to that provided by Cloward and Piven, who suggest the power of “poor people’s movements” emerge from unplanned disruption and militancy. *Id.* at 74.

³³⁴ MORRIS, *supra* note 239, at 229.

boycotts, sit-ins, marches, mass demonstrations, freedom rides, and all sorts of popular direct action against “segregated buses, libraries, bowling alleys, restaurants, swimming pools, and other facilities” all over the South.³³⁵ By the end of 1962 and 1963, “the southern struggle” had become “the largest mass movement for racial reform and civil rights in the twentieth century.”³³⁶

The youth movement, led by the SNCC, became the larger movement’s most militant front, ready “to confront the Southern power structure.”³³⁷ SNCC and the student movement distinguished itself by its commitment to mobilizing poor and working-class Black people.³³⁸ As Manning Marable explains in *Race, Reform, and Rebellion*, SNCC’s thinking was that

[i]f equality was impossible within the political economy of American capitalism, that system which perpetuated black exploitation would have to be overturned. No more compromises; no more betrayals by Negro moderates. Rebellion would supplant reform.³³⁹

Many in SNCC saw the creation of the Mississippi Freedom Democratic Party (MFDP) and its attempt to displace the Democratic Party at the 1964 convention as “the first step in dismantling the power of the Southern bloc and in opening the gates to redistribute wealth and power within the nation.”³⁴⁰ The youth movement exerted leftward pressure on the movement, as did the “increasingly wide layers of the black population . . . mobilized by all of these confrontations.”³⁴¹ SNCC and the MFDP called “for the redistribution of wealth, reparations, and workers’ power.”³⁴² In

³³⁵ MORRIS, *supra* note 239, at 241;

³³⁶ MARABLE, *supra* note 239, at 67 (“Between autumn 1961 and spring 1963, 20,000 men, women and children had been arrested. In 1963 alone another 15,000 were imprisoned; 1,000 desegregation protests occurred across the region, in more than 100 cities.”); PIVEN & CLOWARD, *supra* note 15, at 237 (Albany “represented a permanent turn from the lunch counter and the bus terminal to the streets, from hit-and-run attacks by students and professional civil rights activists to populist rebellion by lower-class Negroes” (quoting HOWARD ZINN, SNCC: THE NEW ABOLITIONISTS 123 (1964))).

³³⁷ BLOOM, *supra* note 239, at 230.

³³⁸ MARABLE, *supra* note 239, at 66.

³³⁹ *Id.* at 85; *id.* at 69 (“Increasingly, [James] Forman urged SNCC leaders to engage in the study of socialist texts, and to learn more about the Cuban revolution and the concurrent African liberation struggles.”).

³⁴⁰ BLOOM, *supra* note 239, at 248. *But see* PIVEN, *supra* note 15, at 247 (stating that the Mississippi Freedom Democratic Party “met no success” in these efforts).

³⁴¹ McAdam, *supra* note 239, at 230.

³⁴² Robin D.G. Kelly, *Freedom Struggle a Labor Struggle, Then & Now*, AGAINST THE CURRENT no. 210 (Jan.-Feb. 2021) <https://againstthecurrent.org/atc210/the-freedom-struggle-is-a-labor-struggle-then-now> [<https://perma.cc/5FB6-FD8D>].

1965, SNCC organized agricultural workers in a short-lived union of 350 workers that went on strike.³⁴³ In 1968, the MFDP announced its “Program” that included demands for a Guaranteed Annual Income, guaranteed housing and public transport for the poor, guaranteed health care for all, and expanded low-cost or free childcare for the children of working mothers.³⁴⁴

In addition to securing the right to vote and desegregation,³⁴⁵ the civil-rights movement “altered and expanded American politics by providing other oppressed groups with organizational and tactical models,” demonstrating that “organized nontraditional politics was a viable method of social change, capable of bringing about the desired results far faster than traditional methods.”³⁴⁶ By 1964, the civil-rights movement’s activity led to Black riots and rebellions in cities all over the country. These rebellions were the byproduct of “the growth of unfulfilled ‘rising expectations’ among many blacks,” the product of both postwar boom and the movement itself.³⁴⁷ They also shifted the locus of protest activity more squarely to the poor and working class, “rais[ing] the specter of class upheaval and seem[ing] to demand the redistribution of wealth and power.”³⁴⁸ This led to an intensified police response, as well as increasingly small base of support.³⁴⁹ But the civil rights movement seeded the larger New Left, from the antiwar movement, to the women’s and gay-and-lesbian liberation movements, to the Chicano, Black, and Red Power, and Asian American movements.³⁵⁰ Revolutionary union movements (RUMs) took shape among Black workers aspiring to create a “political party or revolutionary movement” aiming to create “freedom for all workers” and “the end of capitalism.”³⁵¹

In other words, the civil-rights struggle cannot be understood without attending to the terrains of struggle it traversed, the modes of organization it

³⁴³ *See id.*

³⁴⁴ *Id.*; *Program of the Mississippi Freedom Democratic Party*, CIV. RTS MOVEMENT ARCHIVE (1968), https://www.crmvet.org/docs/mfdp_program.pdf [<https://perma.cc/FVM9-DERX>].

³⁴⁵ *See* BLOOM, *supra* note 239, at 251 (“[W]ithin just three years after the passage of the [Voting Rights Act], black registration in Mississippi increased from 7 percent to 54 percent.”).

³⁴⁶ MORRIS, *supra* note 239, at 286-88.

³⁴⁷ MARABLE, *supra* note 239, at 93.

³⁴⁸ BLOOM, *supra* note 239, at 257.

³⁴⁹ *See id.* at 283-87.

³⁵⁰ *See id.* at 310.

³⁵¹ Kelly, *supra* note 264.

built and inspired, and how it shifted power and popular consciousness in significant ways. The non-reformist reform lens, then, suggests its less the focus on rights per se and more the death of momentum that limited the victories of the movement.

IV. ACTUALLY EXISTING SITES OF STRUGGLE

Contending with non-reformist reforms requires attending to actually existing sites of struggle: physically where and how protest and organizing are occurring around what issues and by whom. This is not a fetishization of protest. But it is an orientation toward the structuring presence of conflict and struggle in social, political, economic life, rather than the erasure that is common in legal scholarship and liberal or even neoliberal conceptions of the state and market. The state and market under racial and gendered capitalism are neither neutral, nor democratically accountable to the people in any robust way. Struggle over race, gender, and class—over the chances of life and death—are ever-present, including in and through law and legal institutions. Heeding organic sites of social militancy is necessary, then, for any project of mass politics, and building democratic majorities toward emancipatory horizons.³⁵²

It is in the places where people experience conflicts over dignity and resources, power and distribution, where mass insurgency of the sort required for political, economic, social transformation must grow. In this Part, I identify the prevailing winds of contemporary protest and organizing on the left—larger sets of issues or programs of reform that law faculty, lawyers, legal workers, and students might engage and contend with. I look at campaigns across the country and identify three prevailing winds within campaigns that aim to disrupt aspects of our juridical order and its fealties to the prison and the market: areas around which you see many campaigns and at the local, state, and federal level; with broad appeal in the public and across domains of social moment activity. The three areas are (1) abolition; (2) decommodification and decolonization; and (3) democratization.³⁵³ I

³⁵² See Britton-Purdy, Grewal, Kapczynski & Rahman, *supra* note 6, at 1804 (referring to “the kinds of mobilization that are essential for engaging [] fundamental questions”). See also Bowie, Antidemocracy, *supra* note __, at 212-17 (speaking to the power of today’s movements as a “democratic revival”).

³⁵³ See generally Afterword by Robin DG Kelley, Robyn Maynard & Leanne Betasamosake Simpson, *Rehearsals for Living* 269 (2022) ((noting that abolition and decolonization have become “popular, irresistible slogans”); *id.* at 229 (Robyn Maynard & Leanne Betasamosake Simpson, *Rehearsals for Living* 229 (2022) (“In an anti-Black

offer the assessment to provoke thinking and debate about the sort of reform projects legal scholars may pursue in rough alignment with the emancipatory movements of our time. It is not and cannot be conclusive, not least because, as the early months of the pandemic illustrated, the world can change dramatically—and in response to changing conditions, the types of protests and demands that emerge will also change, and look differently from place to place. The areas I highlight however are long-standing areas of concern for emancipatory struggles.

With regard to abolition, campaigns across the country are taking on mass criminalization as antithetical to human flourishing and a just and equal society: for example, campaigns for no new jails, for defunding the police, or against family and immigrant policing. These campaigns often make calls for investments in communities and non-carceral state capacity. As to decommodification and decolonization, these campaigns speak to meeting the needs of people and planet over profit, for the state to suspend its loyalty to the market in favor of popular need. Consider for example the campaigns to cancel student debt and cancel rent; the growth of tenants unions and the aspiration for debtors unions; the campaigns against the building of extractive pipelines through indigenous lands. These campaigns are also for things—for free college, housing, Medicare for All, the Green New Deal, and the Red Deal. Democratization campaigns speak to how the neoliberal turn has aimed to break social bonds and worker organization and to put the state in service of the market and the prison, further insulating it from popular input and widespread need. Worker organizing embodies the work of expanding democracy over domains of life, as do demands for participatory budgeting, and organizing to break the contours of stale policy conversations dominated by elites and technocratic expertise.

By offering a scheme I do not mean to suggest false divides. These campaigns intersect and overlap. Rather than a bug, this is a feature of the growing left social movement ecosystem. While there is conflict and non-

colony like Canada, it's not possible to talk about decolonization without simultaneously supporting abolition and the total annihilation of the enduring legacy of slavery in all state institutions"). Attending to actually existing sites of struggle may also highlight linkages not otherwise obvious: Daniel Aldana Cohen & David Bond, *Toward a Theory of Climate Praxis: Confronting Climate Struggle in a World of Struggle in Crisis Under Critique: How People Assess, Transform, and respond to Critical Situations* 271, 280, 288 (Didier Fassin & Axel Honneth eds. 2022) (identifying how in post-Sandy New York, local residents tied climate crisis to housing: "Housing precarity was as existential a threat as climate extremes—and the two had just merged").

alignment of various sorts, there is also a great deal of convergence: in analysis, in demands, in organization, and even in people. Whereas I identify housing a key front for decommodification battles below, for example, it is also often a demand within abolitionist struggles. In the Seattle campaign against a new youth jail, activists have protested at the site with signs suggesting the same building “Could Be Housing.”³⁵⁴

Attending to these prevailing winds of social movement activity reveals a larger concern with building a state, market, and/or society responsive to the needs and desire of ordinary people. If that is the non-sectarian horizon, each of these three areas can be understood as component pieces of a larger strategy attempting to chip away at pillars of the state under racial capitalism: captured by the capitalist class and prison industrial complex, rather than popular input and human need.³⁵⁵ They also do the important work of refusing the division between politics and the economy in liberal conceptions of state and law—and the elevation of the economy over politics in neoliberal conceptions—that are both quite common and increasingly hard to reconcile with any vision of emancipatory politics.³⁵⁶

To be clear, the campaigns I discuss may or may not be non-reformist reforms. As I have tried to outline in the preceding parts, the determination of whether something is a non-reformist reform is contingent—about place, time, strategy, and strength for example—rather than fixed. Such

³⁵⁴ See Akbar, This Could be Housing at 261-62.

³⁵⁵ See generally Andrea J. Ritchie, *The Demand is Still Defund the Police*, The Abolitionist 1, 3 (Summer 2021) (“neoliberal policies gut the social safety net and loot the commons for private profit, causing widespread unemployment, poverty, and homelessness. The fallout of these economic policies is met with increased criminalization, requiring more and more police and pushing more and more people into jails and prisons.”), https://abolitionistpaper.files.wordpress.com/2021/12/abby_issue_35_english-web-1.pdf.

³⁵⁶ Aziz Rana, It Would Be Great if the United States Were Actually a Democracy, Jacobin (Feb. 16, 2021), <https://www.jacobinmag.com/2021/02/us-constitution-interview-aziz-rana> [https://perma.cc/3PVY-M8K8] (“Socialists [of the early twentieth-century Socialist Party] understood all the elements of their agenda as critically about power building. How do you create a society in which those most oppressed have the material and political capacity to impose their interests and gain equal and effective freedom? For this reason, they didn’t necessarily separate between economic demands and constitution demands. An eight-hour day and strong protections for unionizing and the right to strike all increased the bargaining power of workers at the point of production. Similarly, democratic alternations to the constitutional system, like simplifying the amendment process or abolishing the Senate, also enhanced the bargaining power of workers, but in the political system. Each reform shifted the basic distribution of power in the society and made it harder for business and racial elites to dominate either economic or legal-political life.”).

assessments are best made within collective social movement formations rather than by individual academics writing in the *Yale Law Journal*.³⁵⁷ The assessments depend on holding a particular horizon in view, and theories whetted against ongoing practices of social change. Moreover, the lines between reformist and non-reformist efforts are sometimes blurry. The same demand may look non-reformist from one point of view or when proposed, and reformist from another or when enacted, or ten years down the line. This is in part about who is making the assessment of the demand and the conjuncture, as much it is about the ongoing conflict and struggle in which the world takes shape.

Moreover, while it seems clear that much of the left social ecosystem is engaged in reform projects of one sort or another, whether and how any formation embraces reform or non-reformist reform as a strategy to build power depends on any number of ideological, political, strategic, and tactical questions. These campaigns often include organizations juggling various frames of analysis and theories of social change—racial justice, anti-capitalism, anti-racial capitalism, anti-neoliberalism, gender justice. They encompass multiple political tendencies including anarchist, communist, and more state-oriented socialist projects,³⁵⁸ and engage multiple grammars of struggle.³⁵⁹ The Red Nation’s view of the necessity of engaging the state in some way—“Our communities face state violence daily, a violence that holds us hostage, forcing us to engage with it”—is widely shared. But the nature of the engagement varies.³⁶⁰

I have heard organizers that embrace anarchism for example explain that they will only engage in reform battles against the reach of the state—demanding the state release an incarcerated person, for example, or to defund the police—but they hesitate to make affirmative demands—like to

³⁵⁷ The work of political, economic, social transformation is “a project for an emerging counterhegemonic bloc of social movements.” FRASER & HONNETH, *supra* note 73, at 86; see also GILMORE, *supra* note 36, 247-48, on the need to combine activist experiments and formations as a way of building power and achieving scale.

³⁵⁸ Interrupting Criminalization, Abolition and the State: A Discussion Tool 5 (2022), <https://www.interruptingcriminalization.com/abolition-and-the-state> (“there is a diversity of perspectives about which forms of governance and what relationship(s) to state power, state institutions, and levels of state government get us closer to the world we want”).

³⁵⁹ “Multiple Grammars of Struggle”: To Defend the Atlanta Forest and Stop Cop City, Millennials are Killing Capitalism (Oct. 7, 2022), <https://millennialsarekillingcapitalism.libsyn.com/multiple-grammars-of-struggle-to-defend-the-atlanta-forest-and-stop-cop-city>.

³⁶⁰ RED NATION, COMMUNISM IS THE HORIZON, QUEER INDIGENOUS FEMINISM IS THE WAY 15 (n.d.).

fund communities. Borrowing from Chilean movements The Latinx and Chinanx movement hub Mijente distinguishes between organizing within, against, and without the state:³⁶¹ “contesting for power within the state,” “defending our communities against the state,” and “dreaming beyond the state . . . to imagine new forms of governance that bring us closer to abolitionist futures . . . and to build the skills, relationships, and infrastructure needed to increase our collective chances of survival and well being.”³⁶² To illustrate the distinction with regard to housing: contesting power within the state might include campaigns to cancel rent, establish tenant protections, and guarantee homes; against the state might include physical blockades and occupations of housing court, rendering it unable to continue with eviction proceedings; beyond the state might include occupying abandoned homes or land, or building mutual aid networks.³⁶³

There’s also the question of priority among strategies and tactics. Anarchists, for example, see mutual aid and prefigurative projects as constitutive of the work toward their long horizon of building a horizontal society.³⁶⁴ But state-oriented socialists and communists tend to be more skeptical and therefore often deprioritize or decentralize mutual aid and prefigurative projects.³⁶⁵ As Jacqueline Wang explains: “The anarchist part of me believes that mutual aid is necessary for building collective social bonds, for experimenting with new forms of life, and modes of being together, modeled on community and care. The pragmatist replies that not everything can be solved with mutual aid, given the level of investment required to address environmental racism and upgrade our crumbling toxic infrastructure.”³⁶⁶ There are also debates about what priority should be

³⁶¹ Mijente, Building Sin, Contra y Desde El Estado, <https://www.youtube.com/watch?v=N0N57mNL2Y8>. . See also MICHAEL HARTD & ANTONIO NEGRI, ASSEMBLY 234 (2017) (theorizing the requirement for left social movement and party organizations for “being *inside*, that is, effectively immersed in social reality, and being *against* capitalist reality and the forms of command that block the potential of the multitude”).

³⁶² Interrupting Criminalization, Abolition and the State: A Discussion Tool 24 (2022), <https://www.interruptingcriminalization.com/abolition-and-the-state> (citing Mijente, <https://mijente.net/2020/03/sin-el-que/> and Mijente, Building Sin, Contra y Desde El Estado, <https://www.youtube.com/watch?v=N0N57mNL2Y8>).

³⁶³ For more examples, see Mijente, Building Sin, Contra y Desde El Estado, <https://www.youtube.com/watch?v=N0N57mNL2Y8>

³⁶⁴ For a powerful treatment of mutual aid, see Dean Spade, Mutual Aid: Building Solidarity During Crisis (2020).

³⁶⁵ For a helpful explication of the centrality of prefiguration within Occupy Wall Street, and a criticism of the overreliance on prefiguration, see Jonathan Matthew Smucker, Hegemony How-To: A Roadmap for Radicals (insert page numbers for the chapter called The prefigurative and the political) (2017)

³⁶⁶ Quoted in Interrupting Criminalization, Abolition and the State: A Discussion Tool

given to engage with the state as it is rather than building worker and other form of collectives to harness greater power in the long run: within the DSA, for example, about whether to work with the Democratic Party or attempt to establish an independent workers party.³⁶⁷

Recall that the Red Nation explains that its approach to non-reformist reforms—its substantive vision—is focused on “reallocate[ing] social wealth back to those who actually produce it.”³⁶⁸ They go on to explain their non-reformist reforms will take “many forms.”³⁶⁹ They enumerate examples of those forms to include “grassroots Indigenous seed bank networks where thousands of sustainable farmers, share, trade, and feed their communities,” “successful runs for city council elections where left candidates implement a people’s platforms for climate and social justice at city and municipal levels,” and “land back camps or tribal council resolutions that reject colonial water settlements by banding with other Indigenous nations to blockade all government and corporate efforts to commodify water.”³⁷⁰ Here, they make clear that their understanding of non-reformist reforms encompasses a broader array of actions than making demands on the state.

The Red Nation gestures at an expansive understanding of reformism and political action: one beyond legislation, executive orders, and court orders. Where non-reformist reforms, in essence, include any strategy or tactic that aims to undermine the prevailing order, build a new one, contribute to the organization of the oppressed classes, and remake political, economic, social relations. Minimally, this view suggests a theory of social change that understands the legal process and legalism as one tactical domain of action. It counsels against fetishizing or reifying the legal

15 (2022), <https://www.interruptingcriminalization.com/abolition-and-the-state>. She goes on: “Part of me believes the state will always be repressive and should be overthrown . . . part of me thinks that if we are stuck with the state, we should demand Medicare for all, social housing, free college, the cancellation of student debt, and so forth. The anarchist part of me thinks we should abolish the family. The pragmatist thinks that cash payments to families could go a long way in ending child poverty. The pragmatist thinks a federal-jobs guarantee could help a lot of people, the anarchist retorts that we should abolish work itself.” *Id.*

³⁶⁷ See *infra* note 238 [the one citing Eric Blanc].

³⁶⁸ RED NATION, *supra* note 168, at 37-38.

³⁶⁹ *Id.* at 40-41.

³⁷⁰ *Id.* Robyn Maynard & Leanne Betasamosake Simposon, Rehearsals for Living 229 (2022) (“In an anti-Black colony like Canada, it’s not possible to talk about decolonization without simultaneously supporting abolition and the total annihilation of the enduring legacy of slavery in all state institutions”).

process, legalism, or the state as worthy of distinct or primary concern. Maximally, it threatens to dissolve any particularly important idea of law or the legal process apart from one domain of contradictory struggle. While it is beyond my purview here to explore the role, meaning, limits, and possibilities of law and legalism in these struggles, it is essential to understand this partial view of law.

A. Abolition

Prison-abolitionist organizing is a major center of gravity for social movement campaigns all over the country. Such campaigns make demands to defund the police, to remove the police from school and university campuses, and to shut down jails and prisons old and new.³⁷¹ Heuristics like “invest-divest” or “defund police, fund communities” have been featured in policy platforms, local campaigns, and protest signage all over the country.³⁷²

Consider the grassroots campaign against the Atlanta Police Foundation’s (APF) efforts in the wake of the 2020 uprisings to build a police training facility in DeKalb County, a predominantly Black and low-income community.³⁷³ The proposed facility will include a firing range, a shoot house, a burn building, a SWAT Facility, and areas to deploy explosives.³⁷⁴ The Foundation says the center will redress low morale among the police, “reimagine law enforcement training” and “community engagement” to decrease crime in the city, speed up police response times, and reduce fatal police interactions.³⁷⁵ The foundation aims to finance privately two thirds of the costs, with the city covering the remaining one-third with public money.³⁷⁶ In June 2021, city council member Joyce

³⁷¹ Interrupting Criminalization, The Demand is Still Defund the Police: Lessons from 2020 (2021), <https://www.interruptingcriminalization.com/s/DefundThePoliceUpdate.pdf>.

³⁷² Akbar, Toward a Radical Imagination; Akbar, An Abolitionist Horizon.

³⁷³ Boryga, *supra* note 1.

³⁷⁴ Atlanta Police Foundation, <https://atlantapolicefoundation.org/wp-content/uploads/2017/09/VISION-SAFE-ATL-Infrastructure.pdf>.

³⁷⁵ *A Guide to Understanding the Proposed Atlanta Public Safety Training Center, a.k.a. “Cop City”* [UPDATE: IT PASSED], <https://butteratl.com/a-guide-to-understanding-the-proposed-atlanta-public-safety-training-center-a-k-a-cop-city> [https://perma.cc/GP3F-FHSJ].

³⁷⁶ Anoa Changa, *Atlanta City Council Expected to Vote on Proposed ‘Cop City’ Day After Labor Day*, NEWSONE (Sept. 27, 2021), <https://newsone.com/4201522/atlanta-cop-city> [https://perma.cc/BKZ7-3V27].

Sheperd introduced an ordinance to lease land to the foundation for building a \$90 million facility on 381 acres of public forested lands, at the subsidized rate of \$10 per year for up to fifty years.³⁷⁷

The #StopCopCity campaign emerged in response to these efforts, which are backed by an array of locally-based multinational corporate sponsors including Verizon, Delta, and Coca Cola.³⁷⁸ The campaign brings together a range of activists, organizers, and community members, including the Black-led Community Movement Builders, the Atlanta DSA's "Defunding APD, Refunding Communities" (DARC) working group, and environmental groups like Defend the Atlanta Forest and the local Sunrise Movement.³⁷⁹

Campaign materials invoke the history of the land "stolen from

³⁷⁷ Aja Arnold, *Atlanta Poised to Approve Massive Police Training Facility Despite Public Opposition*, INTERCEPT (Aug. 11, 2021, 5:02 PM), <https://theintercept.com/2021/08/11/atlanta-police-training-center> [<https://perma.cc/5LHL-9G5X>]; J.D. Capelouto & Anjali Huynh, *Council Delays Vote on New Atlanta Police Training Center as Opposition Grows*, ATLANTA JOURNAL-CONSTITUTION (June 17, 2021), <https://www.ajc.com/news/atlanta-news/council-delays-vote-on-new-atlanta-police-training-center-as-opposition-grows/TU2SACV475E35FE2EHUA4DHYQM> [<https://perma.cc/DLF4-G4V6>]; see also ATLANTA, GA., Ordinance 21-O-0367 (Sept. 8, 2021), https://atlantacityga.igm2.com/Citizens/Detail_Legifile.aspx?ID=24221&highlightTerms=policy%20foundation [<https://perma.cc/8B5Q-AMZP>]; Andrew Boryga, *Atlanta's 'Cop City' Will Become a Reality, Despite Pushback*, DAILY BEAST (Sept. 9, 2021), <https://www.thedailybeast.com/atlantas-cop-city-will-become-a-reality-despite-pushback> [<https://perma.cc/G4NN-KF5G>].

³⁷⁸ *Crime is Toast Award Show & Breakfast*, ATLANTA POLICE FOUND., <https://web.archive.org/web/20220314230423/https://atlantapolicefoundation.org/annual-event-list/crimeistoast2019/> [<https://perma.cc/6NUR-XC8P>]; Aja Arnold, *Atlanta Poised to Approve Massive Police Training Facility Despite Public Opposition*, INTERCEPT (Aug. 11, 2021, 5:02 PM) <https://theintercept.com/2021/08/11/atlanta-police-training-center/> [<https://perma.cc/Y92R-F6UV>]; Leticia McCadden, *Atlanta Committee for Progress to Support Mayor Bottoms' Plan to Address Violent Crime*, ACP (Apr. 1, 2021), http://www.atlprogress.org/_pdf/ACP_Public_Safety_Release_04-01-21.pdf [<https://perma.cc/P3TP-V2HT>] (endorsement from Atlanta Committee for Progress, a business roundtable). See also <https://aas.princeton.edu/news/cop-city-and-prison-industrial-complex-atlanta>.

³⁷⁹ Charles Bethea, *The New Fight Over an Old Forest in Atlanta*, *New Yorker* (Aug. 3, 2022), <https://www.newyorker.com/news/letter-from-the-south/the-new-fight-over-an-old-forest-in-atlanta>; "Multiple Grammars of Struggle": *To Defend the Atlanta Forest and Stop Cop City*, *Millennials are Killing Capitalism* (Oct. 7, 2022), <https://millennialsarekillingcapitalism.libsyn.com/multiple-grammars-of-struggle-to-defend-the-atlanta-forest-and-stop-cop-city>.

Muscogee Creek peoples”³⁸⁰ and then turned into the Atlanta Prison Farm where “incarcerated Black laborers were sold into indentured servitude.”³⁸¹ This project, the campaign maintains, embodies “continuation of the racist practices the state has used to criminalize, capture, and exploit Black people for free labor throughout history.”³⁸² The campaign’s core concerns are that the process by which the City and APF agreed to build the training facility is undemocratic; the project is unpopular and exploitative of land and nearby communities—taking public moneys for unpopular carceral use; and the facility poses environmental and health hazards, in particular to nearby low-income Black communities.³⁸³ Rather than a police training facility, the campaign has demanded that the land be accessible as a public park and as a place to build housing for those who are houseless and housing insecure.³⁸⁴

In August 2021, over 160 residents provided four hours of public comment—most of it strongly opposed to the city’s deal with the foundation—within a City Council finance committee hearing.³⁸⁵ The city tabled the resolution until September and then, with the police foundation, hosted public input sessions where the police made presentations and answered prescreened questions.³⁸⁶ In response, the campaign held a town hall for the public to voice their concerns. In September, the Council passed the resolution after sixteen hours of public comment, with seventy percent of resident callers against the lease.³⁸⁷ On September 7, 2021 the City Council voted 10-4 to approve the plan for the new cop training facility.³⁸⁸

³⁸⁰ “No Cop City”: Police and a Movie Studio Want to Bulldoze a Forest In Atlanta, but Locals Have Other Ideas, IT’S GOING DOWN (May 19, 2021), <https://itsgoingdown.org/no-cop-city-atl> [<https://perma.cc/FPL2-RB7U>].

³⁸¹ Atlanta DSA, Tell City Council to Stop Cop City!, <https://actionnetwork.org/petitions/defend-the-forest-stop-cop-city/>.

³⁸² *Refund Our Communities! Stop Cop City!*, DEFUND APD, REFUND COMMUNITIES (DARC) [hereinafter *DARC Flyer*], <https://atlds.org/wp-content/uploads/2021/07/DARC-Canvass-Flyer-71721.pdf> [<https://perma.cc/FJW3-33XA>].

³⁸³ See Arnold, *supra* note 281.

³⁸⁴ *Id.*; Changa, *supra* note 280.

³⁸⁵ Capelouto & Huynh, *supra* note 281; Doug Richards, *Proposed Police Academy Gets City Council, Public Scrutiny*, 11 ALIVE (Aug. 16, 2021, 7:14 PM EDT), <https://www.11alive.com/article/news/politics/police-academy-gets-city-council-public-scrutiny/85-72b2aa6b-e2fe-4eb7-82b4-a87f03f26648> [<https://perma.cc/9WPQ-KE8A>].

³⁸⁶ Arnold, *supra* note 281.

³⁸⁷ *Stop Cop City!*, ATLANTA DSA, <https://atlds.org/stopcopicity> [<https://perma.cc/TD5C-YEHY>].

³⁸⁸ Boryga, *supra* note 281.

The Foundation's proposal requires significant deforestation and destruction of wetlands within the city's "largest remaining green space."³⁸⁹ Local community and environmental-justice activists have protested that the deforestation will harm air quality, hasten local climate change, and lead to increased flooding in the surrounding communities—many of which are poor and working-class Black and brown communities.³⁹⁰ Residents have expressed concerns about increased risks of flooding, the environmental and health hazards of gun ranges, and the use of explosive and toxic weapons of various sorts.³⁹¹ A community survey showed overwhelming support for the "building of more green space" and that the area should be maintained for public use "should be developed for parks and recreation."³⁹²

B. *Decommodification and Decolonization*

Demands for decommodification and decolonization have proliferated across organizations since the historic Standing Rock encampment against the Dakota Access Pipeline in 2016.³⁹³ These have straddled areas of life,

³⁸⁹ *DARC Flyer*; Arnold, *supra* note 281; Sam Worley, *Next Stop, Cop City? What's Happening with the Controversial Plan for a New Police and Fire Training Center in DeKalb*, ATLANTA (Sept. 13, 2021), <https://www.atlantamagazine.com/news-culture-articles/next-stop-cop-city-whats-happening-with-the-controversial-plan-for-a-new-police-and-fire-training-center-in-dekalb> [<https://perma.cc/K9JN-4255>].

³⁹⁰ *DARC Flyer*; Arnold, *supra* note 281.

³⁹¹ Dianne Mathiowetz, *No Cop City! Battle for the Atlanta Forest Not Over*, WORKERS WORLD (Sept. 21, 2021), <https://www.workers.org/2021/09/59085> [<https://perma.cc/2TKR-JA53>]; Worley, *supra* note 287.

³⁹² [add cite]

³⁹³ There is a longer, history, of course. *E.g.*, Deborah Dinner, *The Universal Childcare Debate: Rights, Mobilization, Social Policy, and the Development of Feminist Activism*, 28 Law & Hist. Rev. 577, 604 (2010) ("By defining childcare as a right not a commodity, activists hoped not simply to dissolve the boundaries separating public from private institutions but rather to demarcate these boundaries anew so as to prevent the commodification of childrearing and the exploitation of female workers"); Note, Price and Sovereignty, 135 Harv. L. Rev. 755, 756, 776 (2021) (drawing on the history of price controls in the United States to argue that price controls "represent an unusual challenge to neoliberalism's central economic and political premises" and as a policy "would remind Americans that even the most sacred signals of the market are well within their collective control"). For legal scholarship engaging decommodification, see, e.g., Aditi Bagchi, Lowering the Stakes of the Employment Contract, 102 B.U. L. Rev. 1185, 1188 (2022); Michael Pappas & Victor B. Flatt, Climate Changes Property: Disasters, Decommodification, and Retreat, 82 Ohio St. L.J. 331 (2021); Brishen Rogers, Capitalist Development, Labor Law, and the New Working Class: The Next Shift: The Fall of Industry and the Rise of Health Care in Rust Belt America, by Gabriel Winant, Harvard University Press, 2021, 131 Yale L.J. 1842 (2022); Nate Ela, Urban Commons As Property Experiment: Mapping Chicago's Farms and Gardens, 43 Fordham Urb. L.J. 247 (2016);

law, and policy—including, centrally, demands for indigenous sovereignty in the form of land back, respect for treaty rights over extractive pipeline and mining projects, and the protection of forms of human and non-human life.³⁹⁴ They have also included demands for entitlements to basic human necessities like housing.³⁹⁵ Together, these campaigns speak to meeting the needs of people and planet over profit and for the state to suspend its loyalty to the market in favor of popular need: in some sense to roll back or counteract decades—even centuries—of privatization of land, housing, health care and so much else.³⁹⁶

Faith Meixell, *Housing for the People: A Tenant Opportunity to Purchase Act for New York City*, 48 *Fordham Urb. L.J.* 255, 275 (2020). The LPE Blog has also featured a number of posts: Laura Wolf-Powers, <https://lpeproject.org/blog/property-commodification-as-a-municipal-strategy-property-tax-reform-as-an-imperative/>; Sheila Foster, <https://lpeproject.org/blog/from-vacancy-to-decommodification-co-cities-and-the-enabling-state/>; Jacob Udell et al., <https://lpeproject.org/blog/social-housing-and-housing-justice-pathways-to-housing-decommodification/>; Molly Cordon & Ann Sarnak, <https://lpeproject.org/blog/taking-the-market-off-land-symposium-on-decommodifying-urban-property/>.

³⁹⁴ The Red Nation defines decolonization as: “dismantling the police forces and prison-industrial complex, state surveillance and repressive apparatus, and the US military ... the mass return of all land stolen from Indigenous peoples and the right to self-determination for Indigenous nations [and] self-determination for Black relatives and their right to live on the land.” RED NATION, COMMUNISM IS THE HORIZON, QUEER INDIGENOUS FEMINISM IS THE WAY 16 (n.d.). *See also* The LEAP Manifesto: A Call for a Canada Based on Caring for the Earth and One Another, <https://leapmanifesto.org/en/the-leap-manifesto/>; Nick Estes & Jaskiran Dhillon, *The Black Snake, #NoDAPL, and the Rise of a People’s Movement in STANDING WITH STANDING ROCK: VOICES FROM THE #NODAPL MOVEMENT 1, 2-5* (Nick Estes & Jaskiran Dhillon eds., 2019); On decolonization as not a metaphor but as requiring “incommensurability,” or a change in the order of the world . . . to break the relentless structuring of the triad [of “settler-native-slave],” including “repatriating land to sovereign Native tribes and nations, abolition of slavery in its contemporary forms, and the dismantling of the imperial metropole.” Eve Tuck & K. Wayne Yang, *Decolonization is not a metaphor*, 1 *Decolonization: Indigeneity, Education & Society* 1, 31 (2012).

³⁹⁵ Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 *Yale Law & Policy Review* 281, 284 (2016) (observing the language of the commons is being used to resist “privatization and/or commodification...to lay claim to, and protect against the threat of ‘enclosure’ by economic elites, a host of urban resources and goods which might otherwise be more widely shared by a broader class of city inhabitants”).

³⁹⁶ Matthew Lawrence, *Owning the Future*, *Tribune Mag.* (May 26, 2019), <https://tribunemag.co.uk/2019/04/owning-the-future> (“Privatisation was at the heart of organised capital’s revolt from the late 1970s onwards, enshrining the world of shareholder primacy, financialisation, and inequality,” and so “[a]ny transformation of our economy” will likely require “similarly deep shifts in property relations and ownership. It will also require the creation of durable coalitions capable of demanding and embedding change, something that new ownership models – by expanding the constituencies that have a stake and a say in a transformed economic model – can help create.”). *see also* Sheila R. Foster

Recall the Grassroots Power Project booklet issued early in the pandemic. Central among their stepping-stone demands include decommodification and public control: “to take aspects of life out of the private market and putting them in public hands.”³⁹⁷ The identification of such demands as “strategic pathways”³⁹⁸ stemmed not simply from commitments against racial capitalism, to place life over profit, but also from actually brewing struggles: centrally over housing. The long-standing housing crisis has been stoked by the ongoing commodification and financialization of housing and housing debt—treating housing as a wealth-generating asset rather than a human need, right, or entitlement—leading to increasingly unaffordable housing.³⁹⁹ Early in the pandemic, demands for canceling rent, pausing debt payments and foreclosures, proliferated all over the country as over 40 million people faced possible eviction with the loss of work.⁴⁰⁰ Not only were these demands popular and speaking to

& Christian Iaione, *The City as a Commons*, 34 *Yale Law & Policy Review* 281, 283 (2016) (“public officials in cities around the world . . . are commodifying and selling to the highest bidders the collective resources of the city”).

³⁹⁷ Harmony Goldberg & Grassroots Power Project, *Stepping into the Moment: The Coronavirus Crisis as an Opening for Transformative Change*, GRASSROOTS POWER PROJECT, April 23, 2020, at 7-8.

³⁹⁸ Harmony Goldberg & Grassroots Power Project, *Stepping into the Moment: The Coronavirus Crisis as an Opening for Transformative Change*, GRASSROOTS POWER PROJECT, April 23, 2020, at 7-8.

³⁹⁹ Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right of non-discrimination in this context, (Jan. 18, 2017) (“the ‘financialization of housing’ refers to structural changes in housing and financial markets and global investment whereby housing is treated as a commodity, a means of accumulating wealth and often as security for financial instruments that are traded and sold on global markets”), https://digitallibrary.un.org/record/861179/files/A_HRC_34_51-EN.pdf?ln=en; Conor Dougherty, *The Rent Revolution is Coming*, *NY Times* (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html>. See also Ingrid Leijten & Kaisa de Bel, *Facing Financialization in the Housing Sector: A Human right to adequate housing for all*, 38 *Netherlands Quarterly for Human Rights* 94 (2020). Jaime Jover, *A Global Right-to-Housing Movement versus Financialization*, *MetroPolitics* (June 23, 2021), <https://metropolitics.org/A-Global-Right-to-Housing-Movement-Versus-Financialization.html>. On the larger context of housing, housing precarity, race, class, and the economy, see MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016) and Keeanga-Yamahtta Taylor, *Race for Profit: How the Banks and Real Estate Industry Undermined Black Home Ownership* (2019).

⁴⁰⁰ See Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at risk* (Aug. 7, 2020), https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf; Abigail Higgins & Olufemi Taiwo (insert accents on latter name), *Enforcing Eviction*, *Nation* (Aug. 19, 2020),

widespread need all over the country, they made real headway.⁴⁰¹

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act included a four-month eviction moratorium for a subset of properties with ties to federal housing programs or federally backed mortgages starting in late March 2020.⁴⁰² After that moratorium elapsed, the Center for Disease Control (CDC) enacted a broader set of eviction protections for nonpayment of rent in September 2020.⁴⁰³ The order was extended legislatively once and by CDC three times.⁴⁰⁴ Realtor associations and rental property managers brought suit complaining “the CDC shifted the pandemic’s financial burdens” from renters to landlords and challenging the CDC’s power to issue the moratorium.⁴⁰⁵ In an August 2021 per curiam decision, the Supreme Court found in favor of landlords that the CDC had no such power.⁴⁰⁶

It was at the local level that the resistance took shape. Tenants unions,

<https://www.thenation.com/article/society/police-eviction-housing/>; Jonah E. Bromwich, *The Evictions are Coming. Housing Activists are Ready*, NY Times (Dec. 23, 2020), <https://www.nytimes.com/2020/12/23/style/rent-evictions-new-york.html>.

⁴⁰¹ Rent strikes have a long history in the U.S. and around the world. *E.g.*, Joel Schwartz, *The New York City Rent Strikes of 1963–64*, 57 Soc. Serv. Rev. 545, 549 (1983); Jewish Women’s Archive, *Pauline Newman Organizes Influential New York Rent Strike*, <https://jwa.org/thisweek/dec/26/1907/pauline-newman>; Lucas Poy, *A Tale of Two Cities: The Tenants’ Strikes of 1907–08 in Buenos Aires and New York*, 3(1) Radical Hous. J. 131, 137 (2021); Gil Cornfield et al., *The Chicago Freedom Movement’s Quest for Economic Justice*, Chi. Rep. (Jan. 15, 2018), <https://www.chicagoreporter.com/the-chicago-freedom-movements-quest-for-economic-justice/>. See also Keeanga-Yamahatta Taylor, *The Housing Struggle Then and Now*, Socialist Worker (March 19, 2020), <https://socialistworker.org/2010/03/19/housing-struggle-then-and-now>.

⁴⁰² Public Law No: 116-136 (<https://www.congress.gov/bill/116th-congress/house-bill/748/text> OR <https://www.congress.gov/bill/116th-congress/house-bill/748/text/enr?q=%7B%22search%22%3A%5B%22cite%3A%22%5D%7D&r=1#H0308874BF630488099FC588C4D00D4C0>). For a criticism of the CARES Act and an argument for an approach that focuses on mitigating housing instability more broadly, see Michelle D. Layser, et al, *Mitigating Housing Instability During a Pandemic*, 99 Oregon L. Rev. 445 (2021).

⁴⁰³ 85 Fed. Reg. 55292 (2020).

⁴⁰⁴ Congressional Research Service, *the CDC’s Federal Eviction Moratorium*, <https://crsreports.congress.gov/product/pdf/IN/IN11673>.

⁴⁰⁵ Alabama Association of Realtors Emergency Application for Vacatur at p. 1, https://www.supremecourt.gov/DocketPDF/20/20A169/180893/20210603170521964_SCOTUS%20Application%20to%20Vacate%20Stay.pdf.

⁴⁰⁶ *Alabama Association of Realtors v. Department of Health and Human Services*, 594 U.S. ____ (2021). See also Congressional Research Service, *Litigation of the CDC’s Eviction Moratorium*, <https://crsreports.congress.gov/product/pdf/LSB/LSB10632>.

rent strikes, anti-eviction, and mutual aid efforts multiplied in municipalities across the country in the first two years of the pandemic.⁴⁰⁷ The DSA played a central role in such work in many places all over the country.⁴⁰⁸ But there were also many independent efforts at building tenant organization.

Consider KC Tenants, founded in 2019 in Kansas City, Missouri, one of many tenants' unions that have taken shape in the last several years as housing has become increasingly commodified and rents skyrocketed.⁴⁰⁹ Now with 4300 members, KC Tenants describes itself as a "citywide tenant union . . . led by a multigenerational, multiracial, anti-racist base of poor and working class tenants in Kansas City."⁴¹⁰ After an early victory of pushing a tenants' bill of rights through the city council—including the right to organize and bargain—in December 2019, KC tenants established a tenants' hotline and then a rapid response team with a focus on building

⁴⁰⁷ See Adam Gabbatt, *Thousands of Americans to take part in the biggest rent strike in decades*, Guardian (May 1, 2020, 05:00 EDT), <https://www.theguardian.com/world/2020/may/01/coronavirus-america-rent-strike-protest>; Michelle Conlin, *'This is not justice.' Tenant activists upend U.S. eviction courts*, Reuters (Feb. 8, 2021, 6:04 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112>; *Rent Strike in Action: Rent Withholding Wins Repairs in Milwaukee* (Apr. 30, 2021), <https://www.rentstrike2020.org/post/rent-strike-in-action-rent-withholding-wins-repairs-in-milwaukee/>. There are many toolkits, manuals, and organizing guides available online. E.g., Housing Justice League, *Eviction Defense Manual: DeKalb County Edition For Private Market Renters* (2020), <https://drive.google.com/file/d/1YapYIb42xgcu9p8Wvbko0-bkjHTiIWu9/view>.

⁴⁰⁸ E.g., Democratic Socialists of Am., *No Job, No Rent: Ten Months of Organizing the Tenant Struggle* (last visited June 16, 2021), <https://www.stompoutslumlords.org/wp-content/uploads/2021/02/No-Job-No-Rent-Stomp-Out-Slumlords-Feb-2021-Report-1.pdf>; Connor Morris, *Trying to prevent evictions, one door knock at a time*, Cleveland.com (Oct. 20, 2020, 11:56 a.m.), <https://www.cleveland.com/news/2020/10/trying-to-prevent-evictions-one-door-knock-at-a-time.html>; Lupe Zapata, *Knowledge is Power with Eviction Notices*, Spectrum Local News San Antonio (Oct. 23, 2020, 3:03 PM CT), <https://spectrumlocalnews.com/tx/san-antonio/news/2020/10/23/knowledge-is-power-with-eviction-notices-->.

⁴⁰⁹ Member, Citywide Tenant Union, <https://kctenants.org/member>. See also KC Tenants, *The State of Missouri Tenants: Listening to Tenants in America's Heartland* (2022),

https://kctenants.org/assets/uploads/kct_listening_final_4-29-compressed.pdf; For a discussion of New York City, see John Whitlow, *Gentrification and Countermovement: The*

Right to Counsel and New York City's Affordable Housing Crisis, 46 FORDHAM URB. L.J. 1081, 1082-87 (2019).

⁴¹⁰ About, KC Tenants, <https://kctenants.org/about>; Conor Dougherty, *The Rent Revolution is Coming*, NY Times (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html>. See also KC Tenants, *COVID Organizing Toolkit*, https://docs.google.com/document/d/1Ex-KZYIihZ0-yB1RNA8_VJWzJP8OiiF2rXFe6PNltR0/edit.

relationships and organizing tenants.⁴¹¹ By spring 2020 within the pandemic, KC tenants was physically blockading courthouse doors and sitting in in court rooms to prevent eviction proceedings from taking place, and protesting judges at home and landlords online.⁴¹² In October 2020 and January 2021, the organization disrupted virtual and in-person eviction proceedings in a local housing courts by chaining themselves to doors and in the oneline hearings with statements like “This is not justice. This is violence.” and “Judge Grate, you are making people homeless! You are killing people!”⁴¹³ Their disruptions delayed 854 eviction proceedings in the

⁴¹¹ Courtlynn Stark, *What are your rights as a renter in Kansas City? Here's what you should know*, The Kansas City Star (Sept. 21, 2021 1:31 PM), <https://www.kansascity.com/news/local/article252921773.html>; Resolution no. 190934, <https://htv-prod-media.s3.amazonaws.com/files/kc-tenants-bill-of-rights-resolution-1573697486.pdf> (there may be a better cite to the bill as it passed). Like many recent bill of rights passed around the country, the rights are not enforceable in the sense that the bill of rights provides no private right of enforcement. The efforts among domestic laborers are a leading example. See, e.g., Lauren Hilgers, *Out of the Shadows: Nannies and housecleaners have some of the hardest, least secure jobs in the nation. Now they're organizing to change that*, NY Times (Feb. 21, 2019), <https://www.nytimes.com/interactive/2019/02/21/magazine/national-domestic-workers-alliance.html>; Ai-jen Poo, *A Twenty-First Century Organizing Model: Lessons from the New York Domestic Workers Bill of Rights Campaign*, NEW LABOR FORUM (Feb. 1, 2011), <https://newlaborforum.cuny.edu/2011/01/03/a-twenty-first-century-organizing-model-lessons-from-the-new-york-domestic-workers-bill-of-rights-campaign/>; Domestic Workers United & DataCenter, *Home is Where the Work is: Inside New York's Domestic Work Industry* (2006), <https://www.datacenter.org/reports/homeiswheretheworkis.pdf>. On the role of lawyers and law school clinics in domestic worker organizing, see Hinah Shah, *Notes from the Field: The Role of the Lawyer in Grassroots Policy Advocacy*, 21 Clinical Law Review 393 (2015).

⁴¹² Michelle Conlin, *'This is not justice.' Tenant activists upend U.S. eviction courts*, Reuters (Feb. 8, 2021, 6:04 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112>; Matt Flener, *As Eviction blockades continue in KC, landlord group calls for rental assistance*, KMBC News (Jan. 5, 2021), <https://www.kmbc.com/article/as-eviction-blockades-continue-in-kc-landlord-groups-call-for-rental-assistance/35132890#>.

⁴¹³ Michelle Conlin, *'This is not justice.' Tenant activists upend U.S. eviction courts*, Reuters (Feb. 8, 2021, 6:04 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112>; Jodi Fortino, *Tenants' Group Chains Themselves to Jackson County Courthouse to Shutdown Evictions*, WCUR (Oct. 15, 2020), <https://www.kcur.org/news/2020-10-15/tenants-group-chains-themselves-to-jackson-county-courthouse-to-shutdown-evictions>; KC Tenants, Facebook post (Oct. 16, 2020), <https://www.facebook.com/kctenants/posts/the-people-have-closed-court-yesterday-kc-tenants-leaders-surrounded-by-more-tha/635097903820791/> (those disrupting the October session read from a statement that demanded “End evictions, people are dying.”). In September 2020, the organization also sued a county circuit judge who allowed eviction proceedings to continue in the face of the federal eviction moratorium. Complaint, *KC Tenants vs. Byrn*, <https://www.aclu.org/kc-tenants-v-david-m-byrn-complaint>; Dan

county and a two-week closure of eviction proceedings.⁴¹⁴ The organization's director Tara Raghuveer explained: "We take direct action to intervene in a violent system that exists to protect private profits at the expense of human lives."⁴¹⁵

In December 2021, the organization won a campaign for a legislated right to counsel in eviction proceedings.⁴¹⁶ In December 2022, KC Tenants and the People's Action Homes Guarantee campaign and others travelled to DC to demand Joe Biden take executive action for rent control.⁴¹⁷

Margolies, *Tenant Group calls Evictions An 'Act of Violence' and Sues Presiding Jackson County Judge*, KCUR (Sept. 30, 2020), <https://www.kcur.org/news/2020-09-30/tenants-group-calls-evictions-an-act-of-violence-and-sues-presiding-jackson-county-judge>; Dan Margolies, *Federal Judge Declines Tenants' Request to Halt Eviction Lawsuits*, KCUR (Nov. 24, 2020), <https://www.kcur.org/news/2020-11-24/federal-judge-declines-tenants-request-to-halt-eviction-lawsuits>. See also Tasbeeh Herwees, *Insecure. Decades of discrimination set the state for a catastrophic eviction crisis in the wake of the pandemic. ACLU client-activists in Kansas City, Missouri, are taking matters into their own hands to secure safe and fair housing for Black residents*, ACLU Magazine 17-23 (Winter 2021), https://www.aclu.org/sites/default/files/field_document/aclu_winter21_spreads-compressed.pdf.

⁴¹⁴ Michelle Conlin, *'This is not justice.' Tenant activists upend U.S. eviction courts*, Reuters (Feb. 8, 2021, 6:04 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-nsi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112>.

⁴¹⁵ Michelle Conlin, *'This is not justice.' Tenant activists upend U.S. eviction courts*, Reuters (Feb. 8, 2021, 6:04 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-nsi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112>. Elsewhere she explained, "We're prioritizing private profits over people's lives. And in order to shift that, we have to guarantee housing as a public good." Herwees, *supra* note __, at 23. The LA Tenants Union and Stomp Out Slumlords project in DC echoed this orientation toward human need over commodity through their framing of rent strikes as a tactic toward "Food Not Rent." LA Tenants Union, <https://foodnotrent.org/>; Democratic Socialists of Am., *No Job, No Rent: Ten Months of Organizing the Tenant Struggle* 14-15, <https://www.stompoutslumlords.org/wp-content/uploads/2021/02/No-Job-No-Rent-Stomp-Out-Slumlords-Feb-2021-Report-1.pdf>.

⁴¹⁶ Bryant Maddrick, *KCMO City Council approves 'Tenants' Right to Counsel'*, KSHB (Dec. 9, 2021), <https://www.kshb.com/news/local-news/kcmo-city-council-approves-tenants-right-to-counsel>; Right to Legal Counsel for KC Tenants facing evictions begins June 1, <https://kclinc.org/news/2022/5/31/right-to-legal-counsel-for-tenants-in-kc-begins-june-1>.

⁴¹⁷ Fran Quigley, *Joe Biden Could Single Handedly Lower Rents for the Millions Crushed by Them*, Jacobin (Dec. 3, 2022), <https://jacobin.com/2022/12/biden-housing-crisis-rent-reduction-executive-order>; Brett Wilkins, *After Latest Fed Rate Hike, Housing Justice Activists Demand Biden Act to Fight Soaring Rents*, Common Dreams (Dec. 15, 2022), https://www.commondreams.org/news/2022/12/15/after-latest-fed-rate-hike-housing-justice-activists-demand-biden-act-fight-soaring?utm_term=Autofeed&utm_campaign=Echobox&utm_medium=Social&utm_source=Twitt

KC Tenants has birthed other formations, including the KC Homeless Union in January 2021 and KC Tenants Political Power in October 2022.⁴¹⁸ After the city council lessened requirements for developers to build affordable, the latter organization ran a successful local referendum campaign for \$50 million in bond funding for “affordable housing for very low to moderate-income households.”⁴¹⁹ The organization pushed for the housing trust fund to give tenants ultimate “power and oversight” to ensure “people come before profit.”⁴²⁰

[er#Echobox=1671153357](#). The draft executive order drafted by organizers is here: <https://peoplesaction.org/wp-content/uploads/2022/11/Executive-Order-to-Regulate-Rents-Sign-ons-.pdf> (“Soaring rents are a pressing racial justice issue.”). *see also* People’s Action, *The Rent is (still) too damn high*, Dec. 14, 2022, https://peoplesaction.org/wp-content/uploads/2022/12/Rent-Inflation-Memo_12-13a.pdf.

⁴¹⁸ Celisa Calacal, *The KC Homeless Union met with Mayor Q for four days straight. Here’s what they agreed on*, Kansas City Beacon (Apr. 12, 2021), <https://kcbeacon.org/stories/2021/04/12/kansas-city-homeless-union-solutions/>; Mili Mansaray, *KC Tenants announces sister organization focused on building political power*, KC Beacon (Oct. 14, 2022), <https://kcbeacon.org/stories/2022/10/14/kc-tenants-power/>.

⁴¹⁹ November 8 Ballot, <https://www.kcmo.gov/city-hall/departments/city-manager-s-office/city-communications-office/vote>; Leslie Delasbour, *Kansas City votes YES on Question 2, approving \$50 million to create deeply affordable housing*, KSHB (Nov. 9, 2022 8:21 pm), <https://www.kshb.com/news/local-news/kansas-city-votes-yes-on-question-2-approving-50-million-to-create-deeply-affordable-housing>; Mili Mansaray, *KC Tenants announces sister organization focused on building political power*, KC Beacon (Oct. 14, 2022), <https://kcbeacon.org/stories/2022/10/14/kc-tenants-power/>; David Medina, *KCMO City Council pushes housing ordinance despite pushback from KC Tenants*, KSHB (Aug. 18, 2022), <https://www.kshb.com/news/local-news/kcmo-city-council-passes-housing-ordinance-despite-pushback-from-kc-tenants>.

⁴²⁰ People’s Housing Trust Fund, <https://kctenants.org/htf>; KC Tenants, *A Vision for a People’s Housing Trust Fund for Kansas City* (June 2021), <https://drive.google.com/file/d/1LaxUMFqzeGXTToG0dIGaO9EWKsNlXkwL4/view>; Roshan Abraham, *Housing in Brief: KC Tenants Fighting for Community Control of Affordable Housing Funds*, Next City (Oct. 21, 2021), <https://nextcity.org/urbanist-news/kc-tenants-fighting-for-community-control-affordable-housing-funds>; Celisa Calacal, *Local housing group and mayor share differing visions on a housing trust fund for Kansas City*, Kansas City Beacon (Oct. 27, 2021), <https://www.kcur.org/politics-elections-and-government/2022-11-03/kansas-city-question-2-affordable-housing-election-2022-missouri>; Celisa Calacal, *‘We are the solution to the problem’: KC Tenants proposes \$30M fund for housing trust fund*, Kansas City Beacon (July 14, 2021), <https://kcbeacon.org/stories/2021/07/14/kc-tenants-housing-trust-fund/>; Josh Merchant, *FAQ: How Kansas City’s Question 2 ballot measure would fund ‘deeply affordable housing’*, KCUR (Nov. 3, 2022 4:00 AM CDT), <https://www.kcur.org/politics-elections-and-government/2022-11-03/kansas-city-question-2-affordable-housing-election-2022-missouri>. KC Tenant’s Draft Ordinance is here: <https://docs.google.com/document/d/1fEVQMRE0ZrgqyOq6PSJNFK1q938lpyIUzC4hFbeq0J4/edit>.

Raghuveer has explained the goal of KC Tenants is “social housing . . . a way of delivering housing outside the scope of the private market, not available for profit or speculation.”⁴²¹ They are organizing tenants as a class.⁴²² [flesh out]

The eviction and foreclosure moratoriums created openings for greater “calls for moratoriums” on the whole range of “monthly payments” like “rent, mortgage, and utility payments,” and even “debt forgiveness.”⁴²³ Momentarily shifting “the relationship between government and private property,”⁴²⁴ such moratoriums could “lay the groundwork for . . . policies like universal rent control, social housing, a homes guarantee, nationalization of utilities and more.” In terms of building pathways to public control, minimally, this might include “attaching strings to corporate bailouts” that require “paying workers a \$15 minimum wage or generous sick leave.”⁴²⁵ More maximally, it could entail a conversion of “[c]orporate debt . . . into [public] ownership stakes, which could be used to direct our economy towards meeting public needs.”⁴²⁶ Bailouts of “private landlords or mortgage-lending banks” could involve “rent control” or “full or partial government ownership of the banks,”⁴²⁷ whereas bailouts of “hospitals and private insurers” could pave the road toward “public hospitals” and “single-payer health care”⁴²⁸

The movement against student debt—estimated to affect over 40 million people and worth close to 2 trillion dollars⁴²⁹—provides another

⁴²¹ Ian Volner, Kansas City’s Tara Raghuveer Has a ‘North Star’ and Its True Social Housing, Dwell, <https://www.dwell.com/article/kansas-city-tara-raghuveer-kc-tenants-social-housing-dd403f87-aa8857bf>.

⁴²² Conor Dougherty, *The Rent Revolution is Coming*, NY Times (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html>

⁴²³ Goldberg & GPP at 7-8.

⁴²⁴ *Id.*

⁴²⁵ *Id.* at 8-9 (noting that this has happened “in the last bailout package”).

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.* (explaining that, similar to the 2008 financial crisis, the global pandemic created “an opening to nationalize significant aspects of the US economy, from fossil fuel corporations to the airline industry”).

⁴²⁹ See, e.g., <https://twitter.com/DebtCrisisOrg/status/1605911530884718600?s=20&t=NISNIQyEhJvB7Foq-bY5NA>; <https://www.forbes.com/sites/zackfriedman/2022/05/16/student-loan-debt-statistics-in-2022-a-record-17-trillion/?sh=6ee7554d5a6f>.

example.⁴³⁰ In the wake of Occupy Wall Street, in 2012 “a series of open assemblies” led to the birth of Strike Debt.⁴³¹ Strike Debt hosted debtors’ assemblies, published the *Debt Resisters’ Operations Manual*, planned direct actions to burn debt and shut down “predatory lenders,” and launched “the ‘Rolling Jubilee,’ a mutual-aid project,” whereby the organization bought student debt on the derivative market for pennies on the dollar in order to vanquish it.⁴³² In September 2014, Strike Debt launched The Debt Collective, akin “to a more traditional labor union,” with the goal of forming “a platform for organization, advocacy and resistance by debtors.”⁴³³ Since then, the Debt Collective has continued to experiment with strategies and tactics to take on student debt as part of a larger effort

⁴³⁰ Podcast, How we won on student debt, with Ann Larson and Eleni Schirmer of the Debt Collective, Time to Say Goodbye (Sept. 7, 2022).

⁴³¹ Rebecca Hiscott, *You Are Not a Loan: Strike Debt and the Challenge of the Rolling Jubilee*, OCCUPY.COM (May 28, 2013), <https://www.occupy.com/article/you-are-not-loan-strike-debt-and-challenge-rolling-jubilee#sthash.H0To8OOZ.dpbs> [https://perma.cc/G9J3-DUY5]; *see also* Libby A. Nelson, *Occupy Student Loans*, INSIDER HIGHER ED (Nov. 15, 2011), <https://www.insidehighered.com/news/2011/11/15/occupy-protests-focusing-increasingly-student-debt> [https://perma.cc/DB7W-MX8K]; Geraldine Baum, *Student Loans Add to Angst at Occupy Wall Street*, L.A. TIMES (Oct. 25, 2011), <https://articles.latimes.com/2011/oct/25/nation/la-na-occupy-student-loans-20111026> [https://perma.cc/TX96-YQ2J]. Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281 (2020); *see also* *Occupy Theory Assembly on May 13th*, TIDAL, <https://web.archive.org/web/20120508032646/http://occupytheory.org/> (archived May 8, 2012).

⁴³² *The Debt Resisters’ Operations Manual*, STRIKE DEBT & OCCUPY WALL ST. 105 (Sept. 2012), <https://strikedebt.org/The-Debt-Resisters-Operations-Manual.pdf> [https://perma.cc/5H8R-R57H]. *But see* Pamela Brown, *When Theory Meets the Heart: The Rolling Jubilee and Lessons of Occupying Debt*, 7 OCCASION, at 10 (2014) (“[T]he Rolling Jubilee was never able to grapple with the racial dimensions of debt. As a result, the goal of the project—to spark a debtors movement—did not materialize, and the organizers who remain attached to the campaign do not appear to have struggled to understand why.”); Nicholas Mirzoeff, *You Are Not a Loan: Debt and New Media*, in NEW MEDIA, OLD MEDIA: A HISTORY AND THEORY READER 365 (Wendy Hui Kyong Chun, Anna Watkins Fisher & Thomas Keenan eds., 2d ed. 2016) (“Strike Debt could not adjust its perspective to deal with the uneven, deeply racialized playing field of credit.”). For specifics on the types and amounts of debt Rolling Jubilee abolished, *see* *Debt Abolition*, DEBT COLLECTIVE, <https://debtcollective.org/what-we-do/debt-abolition> [https://perma.cc/JR3T-DCQY].

⁴³³ Kate Aronoff, *Rolling Jubilee Just Abolished Nearly \$4 Million of Student Debt*, WAGING NONVIOLENCE (Sept. 19, 2014), <https://wagingnonviolence.org/2014/09/rolling-jubilee-just-abolished-nearly-4-million-student-debt> [https://perma.cc/98WT-5EYH]; *see also* Thomas Gokey & Laura Hannah, *Debt as Power: From Shame to Possibility*, BLADE GRASS, <https://abladeofgrass.org/articles/debt-as-power> [https://perma.cc/YY2X-YJWQ] (discussing the formation of the Debt Collective); The Power Rep., *About*, DEBT COLLECTIVE, <https://powerreport.debtcollective.org/about> [https://perma.cc/L6MN-WKGT] (describing the purpose of a debt collective).

toward “a full cancellation of all debts.”⁴³⁴

Their prominent efforts include their debt strike and organizing with students from the for-profit Corinthian Colleges, Inc., after the Consumer Financial Protection Bureau sued Corinthian for illegal predatory lending.⁴³⁵ From there, the Collective “learned of a largely untested provision of the Higher Education Act called ‘borrower defense to repayment’ that entitles student borrowers to loan relief when their school breaks state law.”⁴³⁶ Organizers and lawyers “built a mobile-phone friendly website for people to easily submit claims.”⁴³⁷ In response to “the flood of borrower defense claims,” in 2016, the Department of Education (DOE) finalized regulations for “the conditions and processes” for borrower defenses against loan repayment.⁴³⁸ Since 2021, DOE has approved borrower defense claims for a growing number of institutions, and in June 2022, DOE discharged the

⁴³⁴ *The Debt Resisters’ Operations Manual*, *supra* note 306, at 105.

⁴³⁵ See Press Release, Consumer Fin. Prot. Bureau, CFPB Sues For-Profit Corinthian Colleges for Predatory Lending Scheme (Sept. 16, 2014), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-for-profit-corinthian-colleges-for-predatory-lending-scheme> [<https://perma.cc/YT4K-BR2C>]; Astra Taylor, *What the Corinthian Colleges Case Tells Us About Student Loan Relief*, WASH. POST (June 2, 2022, 6:00 AM EDT), <https://www.washingtonpost.com/opinions/2022/06/02/corinthian-colleges-loan-forgiveness-astra-taylor> [<https://perma.cc/CRR5-HAP4>]; Shahien Nasiripour, ‘*Corinthian 15*’ Becomes ‘*Corinthian 100*’ as Federal Student Debt Strike Grows, HUFFPOST (Mar. 30, 2015, 1:33 PM EDT), https://www.huffpost.com/entry/corinthian-100-debt-strike_n_6970284 [<https://perma.cc/W4GP-K8JD>]; Gregory Wallace, ‘*Corinthian 15*’ Launch ‘*Debt Strike*’ over Student Loans, CNN MONEY (Mar. 1, 2015, 2:49 PM ET), <https://money.cnn.com/2015/03/01/pf/college/student-loan-debt-strike/index.html> [<https://perma.cc/YNF2-Y8HR>].

⁴³⁶ Taylor, *supra* note 309.

⁴³⁷ *Id.* (over 12,000 claims were submitted).

⁴³⁸ Student Assistance General Provisions, 81 Fed. Reg. 75926, 75926 (Nov. 1, 2016) (to be codified at 34 C.F.R. pt. 30, 668, 674, 682, 685, 686). This would include the creation of the Department of Education’s own borrower application form. Douglas-Gabriel, *supra* note 25; see Fed. Student Aid, *Borrower Defense Loan Discharge*, U.S. DEP’T EDUC., <https://studentaid.gov/borrower-defense> [<https://perma.cc/2T3E-T5L2>]. Relief came slow, especially once Betsy DeVos became President Trump’s Secretary of Education in 2017. Douglas-Gabriel, *supra* note 25; Peter Greene, *Betsy DeVos Really Really Really Really Really Hates Loan Forgiveness*, FORBES (Oct. 28, 2020, 4:08 PM EDT), <https://www.forbes.com/sites/petergreene/2020/10/28/betsy-devos-really-really-really-really-really-hates-loan-forgiveness> [<https://perma.cc/3NQ9-ZETU>]. In 2018, the Department of Education finalized a regulation delaying the 2016 regulations concerning borrower defense claims until July 1, 2019. Student Assistance General Provisions, 83 Fed. Reg. 34047 (July 19, 2018) (to be codified at 34 C.F.R. pt. 685).

remaining \$5.8 billion in student loans for Corinthian attendees.⁴³⁹

In addition to eviction moratorium, the March 2020 CARES Act paused federal student-loan repayment. The pause was extended beyond its original September expiration several times by Presidents Trump and Biden. Amidst the 2020 election cycle, the Debt Collective campaigned and organized around the cancelation of student debt.⁴⁴⁰ On April 4, 2022, the Debt Collective held a day of action in Washington, D.C., “to say: Pick up the Pen, Joe. Cancel student debt for all 45 million Americans.”⁴⁴¹ On April 6, 2022, the Biden Administration extended the pause, which was set to expire at the end of the month, through August 31, 2022.⁴⁴² In May 2022, the Debt Collective joined over 500 labor and civil-rights organizations urging President Biden to “immediately cancel student loan debt via executive action.”⁴⁴³ In August 2022, President Biden announced that he would cancel up to \$20,000 of student debt for debtors earning less than \$125,000 a year.⁴⁴⁴ By early November 2022, close to 26 million borrowers had applied for relief.⁴⁴⁵ Conservative groups have challenged the

⁴³⁹ See Fed. Student Aid, *Borrower Defense Updates*, U.S. DEP’T. EDUC., <https://studentaid.gov/announcements-events/borrower-defense-update> [https://perma.cc/P82T-8X6A]; Press Release, U.S. Dep’t of Educ., *Education Department Approves \$5.8 Billion Group Discharge to Cancel All Remaining Loans for 560,000 Borrowers Who Attended Corinthian* (June 1, 2022), <https://www.ed.gov/news/press-releases/education-department-approves-58-billion-group-discharge-cancel-all-remaining-loans-560000-borrowers-who-attended-corinthian-colleges> [https://perma.cc/Z9FW-2FXG].

⁴⁴⁰ In September 2020, The Debt Collective published their manifesto. DEBT COLLECTIVE, CAN’T PAY, WON’T PAY: THE CASE FOR ECONOMIC DISOBEDIENCE AND DEBT ABOLITION (2020).

⁴⁴¹ See *PICK UP THE PEN, JOE: April 4th Day of Action for Student Debt Cancellation*, ACTION NETWORK (Apr. 4, 2022), <https://actionnetwork.org/events/pick-up-the-pen-joe-april-4th-day-of-action-for-student-debt-cancellation> [https://perma.cc/EA55-ZLTG].

⁴⁴² Press Release, U.S. Department of Education, *Biden-Harris Administration Extends Student Loan Pause Through August 31* (Apr. 6, 2022), <https://www.ed.gov/news/press-releases/biden-harris-administration-extends-student-loan-pause-through-august-31> [https://perma.cc/PRR9-M62M].

⁴⁴³ *550+ Organizations Tell President Biden to Cancel Student Debt Immediately*, STUDENT BORROWER PROT. CTR. (June 6, 2022), <https://protectborrowers.org/550-organizations-tell-president-biden-to-cancel-student-debt-immediately> [https://perma.cc/JYR4-4NKN].

⁴⁴⁴ One time federal student relief debt, <https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info>; The Biden-Harris Administration’s Student Debt relief plan explained, <https://studentaid.gov/debt-relief-announcement>.

⁴⁴⁵ Annie Nova, *26 million borrowers have applied for student loan forgiveness. But*

president's authority to cancel the debt through a range of lawsuits.⁴⁴⁶ The Biden Administration has extended the pause on student loan payments until at least mid-2023.⁴⁴⁷

The organizing around student debt also related to calls for free and public education and related campaigns to cancel other forms of debt, with a focus on student, housing, and carceral debt.⁴⁴⁸ In 2019, Bernie Sanders, Pramila Jayapal, and Ilhan Omar introduced the College for All Act, which would not only have eliminated all student loan debt—about \$1.6 trillion at that time—but would have also made public college free.⁴⁴⁹ Members of the Debt Collective spoke at the Act's press conference.⁴⁵⁰ In Bucks County, the

GOP challenges put plan at risk. CNBC (Nov. 3, 2022, 1);49 AM EDT), <https://www.cnbc.com/2022/11/03/close-to-26-million-americans-have-applied-for-student-loan-forgiveness.html>.

⁴⁴⁶ E.g., Juliana Kaplan, *A conservative group is suing to block Biden's student debt forgiveness, but it faces legal hurdles*, Business Insider (Sept. 27, 2022, 2:15 PM), <https://www.businessinsider.com/conservative-group-sues-block-student-debt-forgiveness-face-legal-hurdles-2022-9>; *Conservative advocacy group sues to block Biden's student-loan relief plan*, CBS News (Oct. 10, 2022 3:39 PM), <https://www.cbsnews.com/news/biden-student-loan-relief-plan-lawsuit-job-creators-network-foundation/>; Cory Tuner & Ayana Archie, *A federal judge call student relief unlawful, deepening limbo for borrowers*, NPR (Nov. 11, 2022, 9:23 AM ET), <https://www.npr.org/2022/11/10/1135940851/student-debt-relief-biden-blocked-texas-district-court>.

⁴⁴⁷ Biden Administration Extends Federal Student Loan Repayment Pause, Advocates Call for Pause to Continue Until Debt is canceled, <https://studentdebtcrisis.org/biden-extends-federal-student-loan-payment-pause/>.

⁴⁴⁸ See *Campaigns*, DEBT COLLECTIVE (2022), <https://debtcollective.org/what-we-do/campaigns> [https://perma.cc/RH2Q-3R5Z]; see also *Abolish Bail Debt: Press Conference*, ACTION NETWORK (Oct. 29, 2021, 11:00 AM), <https://actionnetwork.org/events/abolish-bail-debt-press-conference-rsvp> [https://perma.cc/AS34-RED9]; *Join Us on Friday to End Bail and Carceral Debt in California*, ACTION NETWORK (Oct. 29, 2021), <https://actionnetwork.org/events/join-us-on-friday-to-end-bail-and-criminal-debt-in-california>; *About the Bail Tool*, CANCEL BAIL DEBT (n.d.), <https://abolishbaildebt.org/about.html> [https://perma.cc/GN8A-SN9S]. In 2020, along with the LA Tenants Union and other organizations, the Debt Collective launched the Tenant Power Toolkit. See *About Us*, TENANT POWER TOOLKIT (2020), <https://tenantpowertoolkit.org/about.html> [https://perma.cc/4MR3-J6TP].

⁴⁴⁹ *Debt Collective Members Join Members of Congress in Washington to Endorse the College for All Act*, DEBT COLLECTIVE (June 25, 2019), <https://powerreport.debtcollective.org/reports/collegeforall/> [https://perma.cc/ZN78-9PNS]; S. 1947, 116th Cong. (2019). In the House, the Act was introduced in two bills: the College for All Act and the Student Debt Cancellation Act. H.R. 3448, 116th Cong. (2019); H.R. 3472, 116th Cong. (2019).

⁴⁵⁰ DEBT COLLECTIVE, *supra* note 318. In April 2021, Sanders and Jayapal introduced a revised College for All Act, which did not mention eliminating student loan debt. See H.R. 2730, 117th Cong. (2021); S. 1288, 117th Cong. (2021).

Pennsylvania Debt Collective, BuxMont Democratic Socialists of America, and Lower Bucks for Change formed the Bucks Cancel Lunch Debt Coalition to cancel lunch debt for secondary school lunches.⁴⁵¹ There are also campaigns in Texas against utility debt.⁴⁵²

Narratives of debt strikers call on the administration to “use their power for the good of the people”⁴⁵³ and toward “free public education for all.”⁴⁵⁴ There is also an emphasis that debt is distributed disproportionately within communities of color and women, and that debt relief is a racial justice and gender justice strategy.⁴⁵⁵

⁴⁵¹ Emily Rizzo, *Bucks School Lunch Debt Relief Set to Expire; Groups Work to Keep It Going*, WHYY (Feb. 25, 2022), <https://whyy.org/articles/bucks-school-lunch-debt-relief-set-to-expire-groups-work-to-keep-them-going> [https://perma.cc/4DSN-P7KG]; BuxMont DSA, *Bucks Cancel Lunch Debt Assembly*, YOUTUBE (Oct. 29, 2021), <https://www.youtube.com/watch?v=SIzqKzs3iFQ> [https://perma.cc/HU94-6GJV]; see also *Bucks Cancel Lunch Debt Coalition*, BUXMONT DSA (Feb. 21, 2022), <https://buxmontdsa.org/events/bucks-cancel-lunch-debt-coalition/2022/02> [https://perma.cc/XH7E-GYR5]; Abbye Atkinson, *Philando Castile, State Violence, And School Lunch Debt: A Meditation*, 96 N.Y.U. L. REV. ONLINE 68, 69-70 (2021).

⁴⁵² *Campaign Archive*, DEBT COLLECTIVE (2021), <https://us20.campaign-archive.com/?u=f9411e6e69ac46a2b197ad951&id=e473795a84> [https://perma.cc/AP4D-EVYC]; Umme, *Cancel Electricity Bills for Texans!*, DEBT COLLECTIVE (Feb. 2021), <https://community.debtcollective.org/t/cancel-electricity-bills-for-texans/4811> [https://perma.cc/GX27-8FUR]; The Debt Collective (@StrikeDebt), Twitter (Feb. 23, 2021, 5:15 PM), <https://mobile.twitter.com/StrikeDebt/status/1364338003628466176> [https://perma.cc/5KWR-X3AL]; *Cancel Electricity Bills and Put Our Electricity Back in the Power of People*, ACTION NETWORK (n.d.), <https://actionnetwork.org/letters/cancel-electricity-bills-and-put-our-electricity-back-in-the-power-of-people/> [https://perma.cc/JUN8-P8TN].

⁴⁵³ E.g., Talia Mole, *Why I’m Striking: Done with the Hamster Wheel of Student Debt*, In the Red 13 (2020), https://wordpress-cdn-prod.debtcollective.org/wp-content/uploads/2022/04/01121912/Inthered-Issue1-April2022.pdf?_gl=1*19jvfnl*_ga*NjI4MDUwNDMzLjE2NzE4NDIwODY.*_ga_3GJPHY9G8M*MTY3MTg0MjA4Ni4xLjEuMTY3MTg0MjEwNC4wLjAuMA..&_ga=2.173605283.1405354796.1671842089-628050433.1671842086.

⁴⁵⁴ E.g., Richelle Brooks, *Why I’m Striking: Student Loan Cancellation Will be Life Changing for Me*, In the Red 14-15 (2020), https://wordpress-cdn-prod.debtcollective.org/wp-content/uploads/2022/04/01121912/Inthered-Issue1-April2022.pdf?_gl=1*19jvfnl*_ga*NjI4MDUwNDMzLjE2NzE4NDIwODY.*_ga_3GJPHY9G8M*MTY3MTg0MjA4Ni4xLjEuMTY3MTg0MjEwNC4wLjAuMA..&_ga=2.173605283.1405354796.1671842089-628050433.1671842086; *id.* at 22 (“I demand student debt abolition because public funding for higher education has been inexorably gutted since Ronald Reagan came into power”)

⁴⁵⁵ *Id.* at 28-29.

C. *Democratization*

Democratization campaigns speak to how the neoliberal turn has aimed to break social bonds and organization—in particular of workers—and to put the state in service of the market and the prison—the few rather than the many. While many within the left social ecosystem champion the necessity of voting—and even engaged in voter turnout efforts to ensure Trump’s defeat in 2020⁴⁵⁶—what is captured by demands and campaigns is a much broader conception of democracy.⁴⁵⁷ As a starting point, democracy must extend beyond formal politics to the economy and a broader set of social institutions.⁴⁵⁸

⁴⁵⁶ *E.g.*, Lipsitz, *The Rise of a New Left* 137.

⁴⁵⁷ Bowie, *Antidemocracy*, *supra* note __, at 165 (“Even among theorists whose profession requires them to define democracy, there are competing definitions”). Bowie defines democracy as the pursuit of political equality and argues it requires “the elimination of economic and social inequalities,” *id.* at 167-69 (italics removed), and “a rigorous commitment to democracy everywhere—from our workplaces to our fundamental law—not just for some people on Election Day,” *id.* at 218-219. *See also* Traci Burch, *Trading Democracy for Justice: Criminal Convictions and the Decline of Neighborhood Political Participation* 15-16 (2013) (“The extent to which people feel acknowledged, respected, and included as equal members of the polity [by social, economic, and political institutions] is a key measure by which to judge the health of a democratic society”); Fraser & Honneth, *supra* note __, at 44 (“In the democratic perspective, justice is not an externally imposed requirement, determined over the heads of those whom it obligates . . . [but] it binds only insofar as its addressees can also rightly regard themselves as its authors.”); Ralph Miliband, *Socialism: For a Skeptical Age* 118 (1994) (“A social order in which basic needs are no longer subject to ability to pay would create conditions in which a sense of community, diffused through the whole of society, would be encouraged to flower and would enrich both individual and social life.”).

⁴⁵⁸ Astra Taylor, *Democracy May Not Exist, but We’ll Miss It When It’s Gone* (2019). 12: “Democracy cannot be reduced to a system of laws to abide, a set of ‘indicators’ to meet, or a ten-point proposal to enact but is instead something more emergent and experimental, a combination of order and flux rooted in both procedure and principle, modes of production (how we organize the creation of goods necessary for our survival) and popular sentiment.” Douglas NeJaime & Reval Siegel, *Answering the Lochner Objection: Substantive Due Process and the Role of Courts in a Democracy*, 96 NYU L. Rev. 1902, 1951 (2021) (“Many democratic theories highlight the inadequacy of equating democracy with voting.”); Jed Purdy and Aziz Rana, *We need an insurgent Mass movement*, *Dissent* (Winter 2020), <https://www.dissentmagazine.org/article/we-need-an-insurgent-mass-movement> (“The revival of a self-described socialist left and the broader turn of the Democratic Party’s progressive wing to “big, structural change” have brought back the understanding that robust democracy requires economic freedom as well as the political kind.”). Douglas NeJaime & Reval Siegel, *Answering the Lochner Objection: Substantive Due Process and the Role of Courts in a Democracy*, 96 NYU L. Rev. 1902, 1940-49 (2021) (arguing for an expanded understanding of democracy and democratic

A central place of contestation is at work—the place of “private government,” where “bosses govern workers” in extraordinary ways.⁴⁵⁹ Power at work requires democracy at work—but it also produces greater political power.⁴⁶⁰

These campaigns take the form of labor strikes and workers organizing unions in the face of behemoth corporations like Amazon and Starbucks, and in key areas of the economy, including health care and rail roads.⁴⁶¹ The powerful worker organizing happening on campuses and

participation to include a broader set of institutions beyond those of formal politics, including the family).

⁴⁵⁹ ELIZABETH ANDERSON, *PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON’T TALK ABOUT IT)* xxii, 41-47 (2017). *See also* Eileen Meiksins Wood, *Democracy Against capitalism: Renewing Historical Materialism* 290 (2016) (democracy requires not simply ‘economic democracy’ as a greater equality of distribution,” but “democracy as an economic regulator, the driving mechanism of the economy” (italics removed)); Bowie, *Antidemocracy*, at 181 (“Since the nineteenth century, waves of organizers have attempted to remedy the oppression most American workers face by democratizing the workplace.”). Bowie writes of the Industrial Workers of the World—often referred to as the Wobblies—of the early twentieth century as seeking “the democratic control of industry by labor and for labor, instead of private capitalists, as at present.” *Id.* (internal citation omitted)

⁴⁶⁰ *see* Nikolas Bowie, *Corporate Personhood vs. Corporate Statehood*, 132 Harv. L. Rev. 2009, 2013, 2029-30 (2019) (book review) 2029-30 (discussing Bill Haywood of the IWW’s argument that “if workers wanted power in political government, they first needed power in corporate government”—at work). *See also* Eileen Meiksins Wood, *Democracy Against capitalism: Renewing Historical Materialism* 213 (2016) (“Capitalism, then, made it possible to conceive of ‘formal democracy,’ a form of civic equality which could coexist with social inequality and leave economic relations between ‘elite’ and ‘laboring multitude’ in place.”).

⁴⁶¹ *E.g.*, John Logan, *America is in the middle of a labor mobilization moment—with self-organizers at Starbucks, Amazon, Trader Joe’s, and Chipotle behind the union drive*, *The Conversation* (Sept. 2, 2022, 8:18am EDT), <https://theconversation.com/america-is-in-the-middle-of-a-labor-mobilization-moment-with-self-organizers-at-starbucks-amazon-trader-joes-and-chipotle-behind-the-union-drive-189826>; John Cassidy, *The Averted National Rail Strike is a Parable of Contemporary American Capitalism*, *New Yorker* (Dec. 6, 2022), <https://www.newyorker.com/news/our-columnists/the-averted-national-rail-strike-is-a-parable-of-contemporary-american-capitalism>; Ross Grooters, *What Would it Take for Rail Workers to Win?*, *Labor Notes* (Dec. 2, 2022), <https://labornotes.org/2022/12/what-would-it-take-rail-workers-win>; Yocab Reyes, *Nurses across the U.S> strike against COVID working conditions*, *Axios* (Jan. 14, 2022), <https://www.axios.com/2022/01/14/nurses-united-states-protesting-coronavirus>; Colin

schools, at hospitals, in Amazon warehouses and Starbucks coffeehouses, speak to this desire for collective organization at work.⁴⁶² As does the recent push by unions and the DSA for Congress to push the Protect the Right to Organize Act.⁴⁶³ These campaigns attempt to build pathways for a countervailing force against oligarchic and corporate power—for shifting power away from the concentrated top toward the many. The strike is a key tool.⁴⁶⁴

Consider the DSA's twin campaigns for the socialist Green New Deal (GND) and the Protect the Right to Organize (PRO) Act.⁴⁶⁵ The DSA's principles for the socialist GND include the objectives of “[d]ecarboniz[ing] the economy fully by 2030,” “[d]emocratiz[ing] control over major energy systems and resources,” “[c]enter[ing] the working class in a just transition,” and “decommodify[ing] survival by guaranteeing living wages,

Lodewick, *15,000 nurses just walked out of work. Here's what you need to know about one of the largest strikes in the sector's history*, *Fortune* (Sept. 12, 2022, 4:58 PM EDT), <https://fortune.com/2022/09/12/minnesota-nurses-association-strike-organized-labor-union/>.

⁴⁶² *Id.* See also Shawn Hubler, *University of California Academic Workers Reach Deal to End Strike*, *NY Times* (Dec. 16, 2022), <https://www.nytimes.com/2022/12/16/us/university-of-california-strike-deal.html>; Tracy Rosenthal, *The University of California is also a Landlord*, *The New Republic* (Dec. 8, 2022), https://newrepublic.com/article/169363/university-california-also-landlord?utm_medium=social&utm_campaign=EB_TNR&utm_source=Twitter#Echobox=1670462977.

⁴⁶³ The PRO Act passed the House but stalled in the Senate. Don Gonyea, *House Democrats Pass Bill That Would Protect Worker Organizing Efforts*, *NPR* (Mar. 9, 2021 9:18 PM ET), <https://www.npr.org/2021/03/09/975259434/house-democrats-pass-bill-that-would-protect-worker-organizing-efforts>; Sam Mellins, *Socialists and Organized Labor are Untied to Change Pro-Boss Labor Laws*, *Jacobin* (Apr. 13, 2021), <https://jacobin.com/2021/04/dsa-pro-act-unions-organizing>; Celine McNicholas, et al., *Fact Sheet: Why workers need the Protecting the Right to Organize Act*, *Economic Policy Institute* (Feb. 9, 2021), <https://www.epi.org/publication/why-workers-need-the-pro-act-fact-sheet/>. The Chamber of Commerce fought the PRO Act. Chamber of Commerce, *Stop the PRO Act*, <https://www.uschamber.com/major-initiative/stop-the-pro-act>.

⁴⁶⁴ Again, Bowie on the Wobblies: “if workers could prevent employers from making money without their cooperation, they could force employers to respect workers as equals entitled to share in making decisions. Bowie, *Antidemocracy*, at 182.

⁴⁶⁵ See generally Akbar, *supra* note 97 (describing DSA's two campaigns); MATTHEW T. HUBER, *CLIMATE CHANGE AS CLASS WAR: BUILDING SOCIALISM ON A WARMING PLANET* 179-219 (2022) (describing the socialist GND movement); KATE ARANOFF, ALYSSA BATTISTONI, DANIEL ALDANA COHEN & THEA RIOFRANCOS, *A PLANET TO WIN: WHY WE NEED A GREEN NEW DEAL* (2019) (same); Thea Riofrancos, *Plan, Mood, Battlefield—Reflections on the Green New Deal*, *VIEWPOINT MAG.* (May 16, 2019), <https://viewpointmag.com/2019/05/16/plan-mood-battlefield-reflections-on-the-green-new-deal> [<https://perma.cc/VAC9-E3Z8>] (same).

healthcare, [and] childcare.”⁴⁶⁶ But rather than emphasizing reshaping the GND in Congress, the DSA embraced the PRO Act as its “highest national [legislative] priority.”⁴⁶⁷ The legislation was designed to ease workers’ abilities to organize, strike, and collectively bargain: to create more fertile ground for greater alignment between recent polling showing that 71% of people in the United States approve of unions—the highest approval rate since 1965—and only roughly 9-12% of U.S. workers being union members.⁴⁶⁸ In other words, to dent the fortress around business that labor law has allowed.⁴⁶⁹ In organizational materials, the DSA explains that “organiz[ing] the forces of labor to take on the bosses” is necessary to win “a bold transformative plan to avert the climate crisis.”⁴⁷⁰ And so, the PRO Act should create “the preconditions for massively expanding unionization,” and in turn seed climate strikes and labor strikes.⁴⁷¹ The idea being that “a reinvigorated labor movement has the power to reshape the economy and win a Green New Deal.”⁴⁷²

⁴⁶⁶ *DSA’s Green New Deal Principles*, DSA ECOSOCIALISTS (Feb. 28, 2019), <https://ecosocialists.dsausa.org/2019/02/28/gnd-principles> [<https://perma.cc/5G26-BF95>].

⁴⁶⁷ *Workers & the World Unite!*, DEMOCRATIC SOCIALISTS AM., <https://pro-act.dsausa.org> [<https://perma.cc/P5A6-9697>].

⁴⁶⁸ Justin McCarthy, *U.S. Approval of Labor Unions at Highest Point Since 1965*, GALLUP (Aug. 30, 2022), <https://news.gallup.com/poll/398303/approval-labor-unions-highest-point-1965.aspx> [<https://perma.cc/CX54-2ZFB>]; Press Release, Bureau of Labor Statistics, *Union Members—2021* (Jan. 20, 2022, 10:00 AM ET), <https://www.bls.gov/news.release/pdf/union2.pdf> [<https://perma.cc/RV2F-WG5J>]; Justin McCarthy, *What Percentage of U.S. Workers Are Union Members?*, GALLUP (Sept. 1, 2022), <https://news.gallup.com/poll/265958/percentage-workers-union-members.aspx> [<https://perma.cc/3E92-JN6A>].

⁴⁶⁹ E. Tammy Kim, *As Pro-Union Sentiment Reaches a Fifty-Year High, U.S. Law Remains Pro-Management*, New Yorker (Dec. 27, 2022), <https://www.newyorker.com/culture/2022-in-review/as-pro-union-sentiment-reaches-a-fifty-year-high-us-law-remains-pro-management>. See also Nikolas Bowie, *Corporate Personhood vs. Corporate Statehood*, 132 Harv. L. Rev. 2009, 2013 (2019) (book review) (“the current supreme court is often described as the most business-friendly in history” (citing Lee Epstein, William M. Landes & Richard A. Posner, *How Business Fares in the Supreme Court*, 97 M INN. L. R EV. 1431, 1431–32 (2013))).

⁴⁷⁰ *Workers & the World Unite!*, *supra* note 228; see *Path to a Green New Deal*, DEMOCRATIC SOCIALISTS AM., <https://pro-act.dsausa.org/greennewdeal> [<https://perma.cc/W6R2-2SNT>] (explaining the link between labor empowerment and climate action).

⁴⁷¹ Sydney Ghazarian & Ashik Siddique, *To Win a Green New Deal, Pass the PRO Act*, DISSENT (Mar. 11, 2021), https://www.dissentmagazine.org/online_articles/to-win-a-green-new-deal-pass-the-pro-act [<https://perma.cc/4EXC-ZH2Y>].

⁴⁷² *Path to a Green New Deal*, *supra* note 230. “The point of a radical Green New Deal is to build . . . a colorful democracy for all, to live through sun and storm.” KATE ARANOFF, ALYSSA BATTISTONI, DANIEL ALDANA COHEN & THEA RIOFRANCOS, *A PLANET TO WIN: WHY WE NEED A GREEN NEW DEAL* 191 (2019). For a powerful illustration of how environmental justice will require remaking the political economy, see

The #StopCopCity campaign speaks on questions of democracy. The campaign has objected that the city's lease with the police foundation was "largely formulated in closed-door meetings" and "eliminates any public discussion over alternative uses."⁴⁷³ The project to build a new police training facility is "being pushed by the Atlanta Committee for Progress, a committee of over 40 corporate elite figures including the CEOs of Coca-Cola, Home Depot, and Cox Enterprises (which owns the Atlanta Journal-Constitution)."⁴⁷⁴ Through backdoor processes, the city has "offer[ed] APF the land for an extreme discount" and "grant[ed] the police and a private foundation more resources at a time when locals are struggling to pay their rent and meet basic household needs."⁴⁷⁵ This is not a problem limited to the lease: campaign materials frame the mayor and council's alignment with APF as indicative of a broader "alignment with corporations over the working-class people of metro Atlanta."⁴⁷⁶

While labor organizing is a key font, democratization is a demand in the broader social movement ecosystem. There are demands for participatory budgeting, for example, or more democratic distribution of goods and services.⁴⁷⁷ But beyond It is embodied in the building of organizations, and how organizations participate in legislative, administrative, and judicial process through what might otherwise be seen as protest or disruption.⁴⁷⁸ Consider for example how community bail funds pool resources to pool people out who cannot afford bail, or in literal

Alyssa Battistoni, *Living, Not Just Surviving*, Jacobin (Aug. 15, 2017), <https://jacobin.com/2017/08/living-not-just-surviving>.

⁴⁷³ *DARC Flyer*.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ E.g., Brandon Jordan, *How communities are using direct democracy to shape city budgets*, Waging Nonviolence (Sept. 28, 2016), <https://wagingnonviolence.org/2016/09/direct-democracy-participatory-budgeting/>. See also Akbar, *Demands for a Democratic Political Economy*. For a persuasive criticism of the limits of participatory budgeting demands for actually shifting power, see Gianpaolo Baiocchi & Ernesto Ganuza, *Popular Democracy: The Paradox of Participation* (2016).

⁴⁷⁸ Jocelyn Simonson has written powerful work about these forms of participation and disruption with the criminal courts and process. See, e.g., Jocelyn Simson, *The Place of "the People" in Criminal Procedure*, 119 Colum. L. Rev. 249 (2019); Jocelyn Simonson, *Copwatching*, 104 Calif. L. Rev. 391 (2016); Jocelyn Simonson, *The Criminal Court Audience in a Post-Trial World*, 127 Harv. L. Rev. 2173 (2014); Jocelyn Simonson, *Democratizing Criminal Justice through Contestation and Resistance*, 111 Northwestern U. L. Rev. 1609 (2017).

blockades of housing courts effectuating evictions.⁴⁷⁹ KC Tenants explains: “organizing is fundamentally democratic: it relies on developing tenant leader to learn their rights, tell their own stories, and determine their own liberation.”⁴⁸⁰

CONCLUSION

[back to protest as an essential force of reform]

⁴⁷⁹ Jocelyn Simonson, *The Bail Fund Movement*, N+1 (June 22, 2020), <https://www.nplusonemag.com/online-only/online-only/the-bail-fund-moment> [https://perma.cc/M5KE-9CT2]; Michelle Conlin, ‘*This is not justice.*’ Tenant activists upend U.S. eviction courts, Reuters (Feb. 8, 2021, 6:04 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112> (Kansas City); Anna Lamb, *Ithaca Tenants Union sets up ‘eviction blockade’ outside city court*, The Ithaca Voice (Aug. 6, 2020), <https://ithacavoice.com/2020/08/ithaca-tenants-union-sets-up-eviction-blockade-outside-city-court/> (Ithaca); Ann Rubin, *Protestors demand no evictions during pandemic, blockade courthouse steps*, KTVU (Jan. 27, 2021) (Santa Clara County), <https://www.ktvu.com/news/protesters-demand-no-evictions-during-pandemic-blockade-courthouse-steps>. Blockades have also been used around homes themselves. See, e.g., Jonathan Levinson, *Understanding the ongoing ‘eviction blockade’ in Portland*, OPB (Dec. 10, 2020 8:25 pm), <https://www.opb.org/article/2020/12/10/portland-red-house-eviction-blockade-protest/>. See also Metro DC DSA, Stomp Out Slumlords, *An Anti-Eviction Operations Manual*, <https://www.stompoutslumlords.org/wp-content/uploads/2019/02/Anti-Eviction-Operations-Manual-10.17.pdf> (2019).

⁴⁸⁰ About, KC Tenants, <https://kctenants.org/about>.